

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawai'i

October 8, 2021

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

SUBJECT: Denial of petitions for contested case hearing filed by Nā Papa'i Wawae 'Ula'Ula, Ka Malu O Kahālāwai, Kekai Keahi, and Kai Nishiki, regarding the renewal of commercial use permits issued to various commercial ocean operators for Mala Launch Ramp, Maui.

SUMMARY:

Nā Papa'i Wawae 'Ula'Ula, Ka Malu O Kahālāwai, Kekai Keahi, and Kai Nishiki (hereinafter "Petitioners") collectively filed two contested case hearing (CCH) petitions on July 27, 2021 regarding renewal of commercial use permits (CUPs) for various commercial operators using the Mala boat launch ramp. The Division of Boating and Ocean Recreation (DOBOR) recommends that the Board of Land and Natural Resources (Board) deny the petition because Petitioners have not shown that they are entitled to a contested case hearing.

BACKGROUND:

DOBOR's jurisdiction includes issuing CUPs for companies and individuals wishing to operate commercially in state ocean waters. Pursuant to Hawaii Administrative Rule (HAR) § 13-231-67, CUPs may be issued by DOBOR without the need for Board approval. CUPs are valid for up to one year and may be renewed indefinitely as long as the permittee is current on all fees and charges owed to DOBOR, has met minimum gross receipt requirements as defined in HAR § 13-231-61, and is not in violation of any rules or laws of the Department.

Petitioners filed two CCH petitions regarding the renewal of CUPs for various commercial operators using the Mala boat launch ramp: one dated July 27, 2021 and the other dated July 28, 2021 (the petitions are attached as **Exhibits A** and **B**). There are four operators whose permit would be subject to Petitioners' CCH petitions: (1) Extended Horizons Inc.; (2) Kaanapali Beach Watercraft Rentals, Inc.; (3) Noio Charters, Inc.; and (4) Pacific Jet Sports, Inc.

The CUPs for Extended Horizons Inc. and Noio Charters, Inc. were both set to expire on August 31, 2021 and were renewed for a period of three months to allow for the Board to review and decide on Petitioners' CCH petitions. The CUPs for Kaanapali Beach Watercraft Rentals, Inc. and Pacific Jet Sports, Inc. were renewed before the CCH petitions were filed, and therefore, the CCH petitions as they relate to these two permits should be denied as untimely.

The CCH petitions allege the following claims:

1. Petitioners cannot use the Mala boat launch ramp to launch their boats for traditional and customary fishing and canoe paddling, and to conduct nearshore gathering due to "excessive permitted commercial activity."
2. The public parking lot is full of commercial customers.
3. Commercial activities and unsafe sunscreens contribute to ocean pollution.

Petitioners seek a CCH for the purpose of "[adjudicating] the rights and interests of Petitioners with respect to the issuance of new permits." Petitioners' desired relief include: denial of Mala boat launch ramp CUPs, improvements to commercial operations, increased training requirements, requiring use of reef-safe sunscreens, and limiting the number of launches or commercial customers.

DISCUSSION:

The basis of Petitioners' claims is the alleged overuse of the Mala boat launch ramp for commercial purposes. HAR § 13-231-67(d) limits the number of CUPs that can be issued for commercial use of the Mala launch ramp. This rule was adopted in 1994 and amended in 2014 in order to limit the number of commercial permits allowed from DOBOR launch ramps. The rule is presumed legal and valid because it was adopted and amended pursuant to the procedures required by Hawaii Revised Statutes § 91-3. "Generally, administrative rules and regulations promulgated pursuant to statutory authority have the force and effect of law." *State v. Kimball*, 54 Haw. 83, 89, 503 P.2d 176, 180 (1972). A CCH cannot be used to challenge the validity of an administrative rule. *See In re 'Iao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications*, 128 Hawai'i 228, 239, 287 P.3d 129, 140 (2012) ("[i]n a declaratory judgment action challenging the validity of administrative rules, [t]he court shall declare the rule invalid if it finds that it violates ... statutory provisions, or exceeds the statutory authority of the agency").

Land based activities, such as overcrowded parking lots, cannot be addressed by the regulation of ocean activities. *See Young v. Coloma-Agaran*, 2001 WL 1677259, 2002 A.M.C. 1114 (D. Haw. 2001) (a DOBOR rule banning commercial vessels on the Hanalei River or Hanalei Bay ocean waters that was adopted in order to control a proliferation of tourism, was found to be unconstitutional under the Commerce Clause and the Supremacy Clause), *aff'd* 340 F.3d 1053 (9th Cir. 2003). These concerns must be, and are being, addressed by other means. A Mala Working Group is being formed to address various community concerns. DOBOR has spoken with commercial

permittees to ask that their customers not park in the facility and DOBOR will be reconfiguring the area to create additional parking.

Petitioners claim that commercial permittees monopolize Mala boat launch ramp by having customers sign contracts and obtain safety instructions while on the ramp. DOBOR will address this allegation directly with commercial permittees and reiterate that there is a thirty (30) minute time limit for use of the loading dock, as well as remind them that these types of business activities need to take place offsite. DOBOR can also make this a condition of the permit and take administrative enforcement action if necessary to ensure compliance.

Petitioners claim that there are no "corresponding and reasonable benefits and returns to the public" as is required for the issuance of a DOBOR CUP. See HAR § 13-251-33. To the contrary, encouraging commercial use of State boating facilities will bring economic returns to the State, which is a public benefit. Also, allowing a limited number of CUPs affords ocean recreation opportunities to the general public who otherwise may not have access to the State's ocean waters.

Pursuant to HAR § 13-1-29.1, the Board may deny a CCH petition when it is clear as a matter of law that the petitioner does not have a legal right, duty, or privilege entitling them to a CCH. Staff therefore recommends that the Board deny the CCH petitions pursuant to HAR § 13-1-29.1 for the reasons stated above.

RECOMMENDATION:

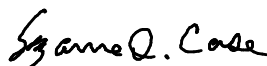
1. That the Board deny the contested case hearing petitions by Petitioners, pursuant to HAR § 13-1-29.1; and
2. That the Board authorize the Chairperson to take any and all actions necessary to effectuate its decision.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment:

- A. July 27, 2021 Contested Case Hearing Petition by Nā Papa'i Wawae 'Ula'Ula, Ka Malu O Kahālāwai, Kekai Keahi, and Kai Nishiki
- B. July 28, 2021 Contested Case Hearing Petition by Nā Papa'i Wawae 'Ula'Ula, Ka Malu O Kahālāwai, Kekai Keahi, and Kai Nishiki

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DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Petitioner and Officer for
NĀ PAPA'I WAWAE 'ULA'ULA

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Petitioner and Officer for
KA MALU O KAHĀLĀWAI

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

In re Applications of

Kā'anapali Beach Watercraft Rentals, Inc. under Permit No. 20-36727/MALA #07; Pacific Jet Sports, Inc. under Permit No. 20-36750/ MALA #16; Pacific Jet Sports, Inc. under Permit No. 20-36737/MALA #15, for Commercial Use Permits to utilize Mala Wharf and Ramp, at Mala Wharf Road, Lahaina, Hawai'i on the Island of Maui, TMK No. (2) 4-5-5:003

PETITIONERS NĀ PAPA'I WAWAE 'ULA'ULA, KA MALU O KAHĀLĀWAI, KEKAI KEAHI, AND KAI NISHIKI'S PETITION FOR CONTESTED CASE HEARING ON COMMERCIAL USE PERMITS APPLICATIONS FOR USE OF MALA WHARF AND RAMP

PETITIONERS NĀ PAPA'I WAWAE 'ULA'ULA, KA MALU O KAHĀLĀWAI, KEKAI KEAHI, AND KAI NISHIKI'S PETITION FOR CONTESTED CASE HEARING ON COMMERCIAL USE PERMITS APPLICATIONS FOR USE OF MALA WHARF AND RAMP

NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association, KA MALU O KAHĀLĀWAI, a domestic non-profit corporation, KEKAI KEAHI, individual, and KAI NISHIKI, individual, hereby petition the Board to hold a contested case hearing on applications for commercial use permits from Applicants KĀ'ANAPALI BEACH WATERCRAFT RENTALS, INC., being the same entity and use currently operating under Permit No. 20-36727/MALA #07 and PACIFIC JET SPORTS, INC. being the same entity and use currently operating under Permit No. 20-36750/ MALA #16 and No. 20-36737/MALA #15, for Commercial Use Permits to utilize Mala Wharf and Ramp, at

Mala Wharf Road, Lahaina, Hawai'i on the Island of Maui, TMK No. (2) 4-5-5:003 (Mala wharf CUPs or Mala wharf permits) pursuant to Hawai'i Administrative Rules (HAR) §13-1-31.

Upon information and belief, the Mala wharf CUPs will expire on July 31, 2021 or thereafter. New permits should not be issued unless and until Petitioners are afforded an opportunity to protect their rights through contested case hearings as defined by Hawai'i Revised Statutes (HRS) § 91-1 and to provide information to assist decisionmakers in protecting those rights.

I. PETITIONERS' INTERESTS IMPACTED BY PERMITS

Petitioner Nā Papa'i Waewae 'Ula'ula (Nā Papa'i) is an unincorporated association of West Maui residents and other beach users who are concerned about protecting and preserving the quality of life and environment for West Maui communities particularly as it relates to the public's use and access of our coastlines. Nā Papa'i holds in-person community meetings with West Maui communities and administers a social media page on facebook.com called, "Access Denied!" which group has over 4,700 members.

Petitioner Ka Malu o Kahālāwai is organized to protect the natural and cultural history and resources of Kahoma and surrounding ahupua'a from mauka to makai. Ka Malu o Kahālāwai conduct traditional and customary practices of fishing, surfing, canoe paddling, and diving in nearshore areas and also pelagic fishing.

Petitioners' officers and supporters, including Petitioner officer representative for Ka Malu o Kahālāwai, are Kānaka Maoli traditional and customary practitioners who utilize Mala wharf to launch boats to conduct subsistence and customary fishing practices and to teach younger generations to do the same. HRS §7-1. Petitioners include many who live in the vicinity of Mala wharf and utilize it regularly. Petitioners' officers and supporters also conduct traditional and customary nearshore gathering and canoe paddling in waters that are overrun by commercial boating activity from Mala wharf and affected by pollution from commercial boating operations. Id.

Petitioners' officers and supporters have been unable to access public parking spaces at and near to Mala wharf due to the excessive permitted commercial activity. Petitioners' officers and supporters have been unable to use Mala wharf areas to launch boats to conduct traditional and customary practices due to excessive permitted commercial activity.

Petitioners' officers and supporters have been thwarted in their ability to conduct nearshore gathering and canoe paddling due to the excessive commercial boating activity proceeding from Mala wharf. Their ability to conduct traditional and customary practices is also compromised by increasing water pollution. Petitioners' Hawaiian traditional and customary rights are obligated to be protected under article XII, §7 of the Hawai'i Constitution. See *Ka Pa'akai o Ka 'Āina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

Petitioners' officer and supporters are persons with rights to a clean and healthy environment, including the environs used by commercial use permittees launching from Mala wharf and ramp. Hawai'i const. art. XI, §9. The Mala wharf permit applications primarily concern commercial uses of thrillcraft that disturb traditional and customary fishing practices of canoeing, gathering schools of 'ōpelu and other schooling fish, and endanger spearfishers, in addition to adding to tourism traffic in the area that prevents Petitioners' officers and supporters from accessing boat ramps necessary to enter the ocean safely. Noisy thrillcraft deter schools of fish. Inexpert uses of these thrillcraft by their tourist patrons endanger other ocean users, including spearfishers

and other divers. Mala wharf permit operations include the use of ocean-going vehicles that lack restroom facilities. Customers of these operations include tourists from areas that lack regulations requiring reef-safe sunscreen and who are not educated in Hawai'i regulations such that they purchase unsafe sunscreens that remain available for sale. The operations and their users increase noise levels in otherwise relatively quiet ocean spaces. These polluting activities compromise and degrade ocean water resources.

II. DISAGREEMENT WITH APPLICATIONS

Commercial use permits for use of Mala wharf not "allowed without corresponding and reasonable benefits and returns to the public." HAR §13-251-33(a). Mala wharf CUPs have not brought corresponding or reasonable benefits and returns to the public, but rather exclude public use of Mala wharf and ramp.

Petitioners further disagree with the Mala wharf CUPs because the conditions imposed do not feasibly protect Kānaka maoli traditional and customary practices that are affected by these commercial operations at Mala wharf. Permittees are using multiple affiliations to gain additional permits.

III. RELIEF SOUGHT

Petitioners seek relief in a contested case hearing that will adjudicate the rights and interests of Petitioners with respect to the issuance of new permits. The Department is obliged to observe the following procedures: (1) refrain from granting Mala wharf permit applications or allowing extensions of prior permits; (2) hold a contested case hearing on the impact of these permitting activities on Petitioners' rights and interests; (3) enter findings on Petitioners' rights and interests, the impact of permitted activities on those rights, and develop feasible protections against those impacts

Such relief could include denial of the permits, required improvements to commercial operations to prevent pollution, increased training requirements for customers and employees to less impact to natural and cultural resources, requiring personnel and customers use provided reef-safe sunscreens, limiting the number of launches or patrons. As one example, employees and customers of the Mala wharf permittees take up more than a reasonable amount of public parking, and sometimes take all of the vehicular parking. These commercial users should be required to institute a shuttle for their employees and customers so that they can park in areas with more available space and leave a reasonable amount of parking for the public, including Petitioners' officers and supporters.

Relief could also be provided through more effective enforcement measures imposed on the Division of Boating and Ocean Recreation (DOBOR) at Mala Wharf. Mala wharf permittees also monopolize the boat ramp for excessive periods of time, often because these permittees are still engaged in ensuring their customers sign contracts and obtain safety instruction. These activities should occur in areas away from boat ramp traffic. No one enforces the length of time allowed on the ramp. Petitioners' officers and supporters have been unable to launch their boats or have had to wait an excessive amount of time and cut short their gathering practices.

IV. PETITIONERS' CONTESTED CASE SERVES THE PUBLIC INTEREST

Petitioners' participation in a contested case would serve to vindicate public interest in public use of Mala wharf and ramp. Petitioners' seek relief that would protect the public's ability to use Mala wharf and the nearby environs. See *supra* Part III.

V. PETITIONERS' INFORMATION WILL ASSIST DECISIONMAKING

The Board is obligated to conduct an analysis to ensure that permitting decisions will not unreasonably burden Petitioners' traditional and customary rights under article XII, §7 of the Hawai'i constitution. Petitioners can provide information about the traditional and customary practices that underlie those rights, how they are affected, and how they may be feasibly protected. Petitioners are and include members of the public that regularly use Mala wharf and ramp and have had numerous engagements with DOBOR personnel in regard to ways of resolving user conflicts and impacts on natural resources and traditional and customary practices.

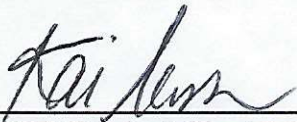
To the extent that issuance of permits and contested cases regarding issuance of said permits is a matter within the jurisdiction and authority of the Administrator of the Division of Boating and Ocean Recreation solely, Petitioners alternatively seek a contested case before the Administrator for the same reasons mentioned herein.

VI. CONCLUSION

For these reasons, Petitioners respectfully request that the Board grant a contested case on the above-captioned permits.

DATED: Lahaina, Maui, Hawai'i

July 27, 2021



KAI NISHIKI, Individual & Officer of
NĀ PAPA'I WAWAE 'ULA'ULA



KEKAI KEAHI, Individual & Officer of
KA MALU O KAHĀLĀWAI

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NĀ PAPA'I WAWAE 'ULA'ULA

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Petitioner and Officer for
KA MALU O KAHĀLĀWAI

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In re Applications of)	PETITIONERS NĀ PAPA'I WAWAE
)	'ULA'ULA, KA MALU O KAHĀLĀWAI,
EXTENDED HORIZONS, under Permit No.)	KEKAI KEAHI, AND KAI NISHIKI'S
20-34567/ MALA 13; and NOIO CHARTERS,)	PETITION FOR CONTESTED CASE
INC. under Permit No. 20-34567/ MALA 13;)	HEARING ON COMMERCIAL USE
for Commercial Use Permits to utilize Mala)	PERMITS APPLICATIONS FOR USE OF
Wharf and Ramp, at Mala Wharf Road, Lahaina,)	MALA WHARF AND RAMP; REQUEST
Hawai'i on the Island of Maui, TMK No. (2) 4-)	FOR WAIVER OF CONTESTED CASE
5-5:003)	FILING FEE

PETITIONERS NĀ PAPA'I WAWAE 'ULA'ULA, KA MALU O KAHĀLĀWAI, KEKAI
KEAHI, AND KAI NISHIKI'S PETITION FOR CONTESTED CASE HEARING ON
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NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association, KA MALU O
KAHĀLĀWAI, a domestic non-profit corporation, KEKAI KEAHI, individual, and KAI
NISHIKI, individual, hereby petition the Board to hold a contested case hearing on applications for
commercial use permits from Applicants EXTENDED HORIZONS, being the same entity and use
currently operating under Permit No. 20-34567/ MALA 13 and NOIO CHARTERS, INC.. being
the same entity and use currently operating under Permit No. 20-34567/ MALA 13, for Commercial
Use Permits to utilize Mala Wharf and Ramp, at Mala Wharf Road, Lahaina, Hawai'i on the Island

of Maui, TMK No. (2) 4-5-5:003 (Mala wharf CUPs or Mala wharf permits) pursuant to Hawai'i Administrative Rules (HAR) §13-1-31.

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Petitioners' officers and supporters, including Petitioner officer representative for Ka Malu o Kahālāwai, are Kānaka Maoli traditional and customary practitioners who utilize Mala wharf to launch boats to conduct subsistence and customary fishing practices and to teach younger generations to do the same. HRS §7-1. Petitioners include many who live in the vicinity of Mala wharf and utilize it regularly. Petitioners' officers and supporters also conduct traditional and customary nearshore gathering and canoe paddling in waters that are overrun by commercial boating activity from Mala wharf and affected by pollution from commercial boating operations. *Id.*

Petitioners' officers and supporters have been unable to access public parking spaces at and near to Mala wharf due to the excessive permitted commercial activity. Petitioners' officers and supporters have been unable to use Mala wharf areas to launch boats to conduct traditional and customary practices due to excessive permitted commercial activity.

Petitioners' officers and supporters have been thwarted in their ability to conduct nearshore gathering and canoe paddling due to the excessive commercial boating activity proceeding from Mala wharf. Their ability to conduct traditional and customary practices is also compromised by

increasing water pollution. Petitioners' Hawaiian traditional and customary rights are obligated to be protected under article XII, §7 of the Hawai'i Constitution. *See Ka Pa'akai o Ka 'Āina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

Petitioners' officer and supporters are persons with rights to a clean and healthy environment, including the environs used by commercial use permittees launching from Mala wharf and ramp. Hawai'i const. art. XI, §9.¹ The Mala wharf permit applications primarily concern commercial uses of Maui ocean waters for scuba diving, whale watching tours, and other tourist-oriented activities. These activities bring crowds that monopolize public parking, ramp access, and otherwise disturb traditional and customary fishing practices by adding to tourism traffic in the area. Petitioners' officers and supporters have been prevented from accessing boat ramps necessary to enter the ocean safely.

Mala wharf permit operations include the use of ocean-going vehicles that may lack restroom facilities. Customers of these operations include tourists from areas that lack regulations requiring reef-safe sunscreen and who are not educated in Hawai'i regulations such that they purchase unsafe sunscreens that remain available for sale. The operations and their users increase noise levels in otherwise relatively quiet ocean spaces. These polluting activities compromise and degrade ocean water resources.

II. DISAGREEMENT WITH APPLICATIONS

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Petitioners further disagree with the Mala wharf CUPs because the conditions imposed do not feasibly protect Kānaka maoli traditional and customary practices that are affected by these commercial operations at Mala wharf. Permittees are using multiple affiliations to gain additional permits.

¹ The Board is authorized to issue commercial use permits as part of its “primary responsibility for administering the ocean recreation and coastal areas programs and performing the functions heretofore performed by the department of transportation and the department of public safety in the areas of boating safety, conservation, search and rescue, and security of small boat harbor environs.” HRS §200-2(a) (emphasis added). Safety and conservation are indices of the environmental quality for human life. Permits for use of Hawai'i's ocean recreation and coastal areas are issued under laws that define environmental quality and therefore implement Petitioners' rights to a clean and healthy environment.

III. RELIEF SOUGHT

Petitioners seek relief in a contested case hearing that will adjudicate the rights and interests of Petitioners with respect to the issuance of new permits. The Department is obliged to observe the following procedures: (1) refrain from granting Mala wharf permit applications or allowing extensions of prior permits; (2) hold a contested case hearing on the impact of these permitting activities on Petitioners' rights and interests; (3) enter findings on Petitioners' rights and interests, the impact of permitted activities on those rights, and develop feasible protections against those impacts

Such relief could include denial of the permits, required improvements to commercial operations to prevent pollution, increased training requirements for customers and employees to less impact to natural and cultural resources, requiring personnel and customers use provided reef-safe sunscreens, limiting the number of launches or patrons. As one example, employees and customers of the Mala wharf permittees take up more than a reasonable amount of public parking, and sometimes take all of the vehicular parking. These commercial users should be required to institute a shuttle for their employees and customers so that they can park in areas with more available space and leave a reasonable amount of parking for the public, including Petitioners' officers and supporters.

Relief could also be provided through more effective enforcement measures imposed on the Division of Boating and Ocean Recreation (DOBOR) at Mala Wharf. Mala wharf permittees also monopolize the boat ramp for excessive periods of time, often because these permittees are still engaged in ensuring their customers sign contracts and obtain safety instruction. These activities should occur in areas away from boat ramp traffic. No one enforces the length of time allowed on the ramp. Petitioners' officers and supporters have been unable to launch their boats or have had to wait an excessive amount of time and cut short their gathering practices.

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Petitioners' participation in a contested case would serve to vindicate public interest in public use of Mala wharf and ramp. Petitioners' seek relief that would protect the public's ability to use Mala wharf and the nearby environs. *See supra* Part III.

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The Board is obligated to conduct an analysis to ensure that permitting decisions will not unreasonably burden Petitioners' traditional and customary rights under article XII, §7 of the

Hawai'i constitution. Petitioners can provide information about the traditional and customary practices that underlie those rights, how they are affected, and how they may be feasibly protected. Petitioners are and include members of the public that regularly use Mala wharf and ramp and have had numerous engagements with DOBOR personnel in regard to ways of resolving user conflicts and impacts on natural resources and traditional and customary practices.

To the extent that issuance of permits and contested cases regarding issuance of said permits is a matter within the jurisdiction and authority of the Administrator of the Division of Boating and Ocean Recreation solely, Petitioners alternatively seek a contested case before the Administrator for the same reasons mentioned herein.

VI. CONCLUSION

For these reasons, Petitioners respectfully request that the Board grant a contested case on the above-captioned permits.

DATED: Lahaina, Maui, Hawai'i

July 28, 2021

KAI NISHIKI, Individual & Officer of
NĀ PAPA'I WAWAE 'ULA'ULA

KEKAI KEAHI, Individual & Officer of
KA MALU O KAHĀLĀWAI

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In re Applications of)
) REQUEST FOR WAIVER OF CONTESTED
) CASE FILING FEE
EXTENDED HORIZONS, under Permit No.)
20-34567/ MALA 13; and NOIO CHARTERS,)
INC. under Permit No. 20-34567/ MALA 13;)
for Commercial Use Permits to utilize Mala)
Wharf and Ramp, at Mala Wharf Road, Lahaina,)
Hawaii on the Island of Maui, TMK No. (2) 4-)
5-5:003)

REQUEST FOR WAIVER OF CONTESTED CASE FEE

NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association, KA MALU O KAHĀLĀWAI, a domestic non-profit corporation, KEKAI KEAHI and KAI NISHIKI, individuals, request a waiver of the \$100 fee for their contested case request under HAR §13-1-30. Petitioners are community-based organizations, associations, and individuals who have no commercial properties to gain from their challenge to the above-referenced permits. For these reasons, Petitioners respectfully request the Board grant this waiver.

DATED: Lahaina, Maui, Hawaii

July 28, 2021

KAI NISHIKI, Individual & Officer of
NĀ PAPA'I WAWAE 'ULA'ULA

KEKAI KEAHI, Individual & Officer of
KA MALU O KAHĀLĀWAI