



Activities & Attractions Association of Hawaii
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Chairperson and Members
Board of Land and Natural Resources
Honolulu, HI 96819

October 8th 9:00 am

**RE: Petition contesting the renewal of commercial use permits issued to
FOUR specific Mala Launch Ramp commercial ocean operators.**

Thank you for the opportunity to submit testimony regarding this Petition. My name is Toni Marie Davis; for the last 24 years, it has been my honor to serve Hawaii's in-destination experiences through my position as the Executive Director of A3H (Activities & Attractions Association of Hawaii). A3H, established in 1989, represents over 100 businesses statewide, many of which are ocean-related commercial activities. Our members range from large (more than 300 employees) to small (1-2 employees) businesses. The vast majority are owned and operated by residents, community stakeholders. In addition, A3H members make up nearly half of STA (Sustainable Tourism Association of Hawaii) members. A3H unites Hawaii's in-destination experiences to ensure sustainability for Hawaii's environment, our community, and their business.

We respectfully ask that the Board deny this Petition.

I was pleased to read Ed Underwood's request to deny the Petition, advising the Board on the legalities, with citations of similar cases that set precedence. A simple solution to the parking problem is to lay down gravel in nearby vacant lots. A3H would be happy to assist DOBOR in remedying these issues. Despite the Petition's claim of discord, most who operate out of Mala Launch Ramp regularly have a respectful and courteous working relationship as they have been doing so for decades. That said, there are still MANY opportunities for improvement.

A few of the problems cited by the Petition are valid. Mala Launch Ramp facilities desperately need improvement. The issues are most apparent during "weather" events, as additional recreational and commercial boaters utilize the protected location. These problems stem from inadequate facilities and management opportunities. Stopping the livelihood of four out of 16 Mala commercial operators (who have been in operation for 40, 30, 35, and 40 years) is NOT a solution to the parking and launch availability. Not mentioned in the Petition, but current "real" opportunities at Mala Launch Ramp are homeless squatters, safety, disgusting & dilapidated public restrooms, lack of dumpsters, and vandalism/theft of parked vehicles.

Regarding the petitioner's sunscreen comments, A3H actively & proudly lobbied to support Hawaii's ban on the sale of sunscreen containing coral-harming chemicals. This law became effective 01/01/2021. In support, operators sell reef-friendly sunscreens or even provide them free to customers while confiscating & destroying those with oxybenzone and octinoxate. The MSD pump out is another non-issue; the vast majority of Mala permitted vessels do not have bathrooms, same as the vast majority of recreational trailer boats.

Our community needs less division and more unity, especially with Tourism related businesses. A balance supporting regenerative tourism, which will allow this place, the host, and our guests to enjoy an elevated existence, should be our common goal as we mālama this place and each other.

Mahalo,
Toni
Toni Marie Davis/Executive Director
Activities & Attractions Association of Hawaii, Inc.

From: [Chris Adams](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Written Testimony of how GREAT Extended Horizons is as a Company on Maui
Date: Thursday, October 7, 2021 7:42:58 AM

Aloha and Good morning to the members of the board;

As a resident of Maui please allow me to tell you all the good things that Extended Horizons does. They are the most eco conscious boating company I know of. They run on biodiesel, not diesel nor even gas. They educate tourists about the marine life and how to care for the oceans. Advocate and only use reef safe sunscreen and teach proper stewardship of the local reefs. They are currently, since covid in 2020, only running ultra private charters of 6 people (less than 50% capacity) even though their boat is rated for way more. They regularly do clean up efforts in the ocean and at mala pulling large amounts of trash out of the ocean. They have been around for over 35 years operating out of Mala adding value to the area and employing local instructors. They are quick and efficient loading their boat and cause no significant issue with overcrowding. They have been a wonderful neighbor, helping out local businesses when there is a problem and offering help in anyway within their power We as a community do not want to lose them or see them lose their permit or have it restricted in any way.

Thank you So much for your time.
Chris Adams

From: [Maren Anka](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony for contested Mala Wharf Permits
Date: Wednesday, October 6, 2021 3:25:06 PM

I am writing on behalf of Extended Horizons SCUBA and **strongly urging BLNR to DENY petitioners' request for a contested case, reference ITEM J-1.**

I have dove with and worked with Extended Horizons since 2005. They have been respectful Mala Wharf users for the last 38 years. If anyone deserves a permit for commercial usage, its Extended Horizons SCUBA.

In 2 decades as a dive professional, I have never known an organization to care as much for the environment as Extended Horizons. The list of their commitments range from contributing time and resources to Malama Kai (Mooring for Maui County), to regularly leading reef clean ups on Maui and Lana'i. Their usage of local 100% bio-diesel sets the standard for dive operations, in regards to supporting local businesses and reducing their carbon footprint. I was impressed when they shifted to reusable water bottles for all charters, to reduce their single use plastic consumption. When it comes to being marine stewards, this organization literally walks the walk and prides themselves on their conservation efforts.

They run a tight and timely ship, with prompt check ins, minimal time on the dock and always cooperate with the other Mala boat users to the best of their ability. They take small groups of divers 6-12, with minimal impact to the boat ramp and the reef. Their captains are safe and knowledgeable, focusing on diver safety and careful boating practices. As a full time paramedic in Maui County, I know the safety track records for dive operations and Extended Horizons' is impeccable.

I strongly believe they uniquely contribute to West Maui, Lana'i and Mala. After their decades of being respectful boat ramp users, contesting their permit would be unconscionable.

Thank you for your time and please feel free to contact me with any questions or comments.

Respectfully,

Maren Anka
PADI OWSI - 193190
EMT-P- 2200, Safety Officer AMR, Maui County

From: [Richard Carman](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Item J-1
Date: Wednesday, October 6, 2021 9:56:07 AM

I have been going out with Extended Horizons on their boat charter since I moved to Maui in 2009. As a Scuba Diver on Maui, I have personally witnessed first hand, how much they care for and love the environment here.

I still remember my first trip on their boat, how impressed I was at the detail they went into, educating the group and I, on the tiniest of corals and why they are important to keep our fins off the reef. They had reusable water containers before any bans on plastic took place, and have been running on bio-diesel, which is better for the environment, and a renewable resource. They converted their shop to solar for their electrical needs, again choosing sustainability to offset their energy consumption.

They were encouraging tourists back before the sunscreen ban, to use mineral based sunscreen, or using rash guards and hats as sun protection.

I personally know this operator and have always looked to their operations as a model for what is right about the tourism industry here in Maui, and why I will continue to use their boat.

Tourism is what drives our economy here in Hawaii, as we have seen through the fiscal impacts during covid. They took their time getting back to taking tourists out once restrictions were lifted. They spent the time to better prepare their operations for covid restrictions.

They are operating at under 50% capacity which is only 6 divers at a time. Other operators are able to take more than double that number of divers, and do so regularly.

I know that they actually operate under the vessel capacity even prior to covid, in an effort to reduce their impact on the environment.

They have been taking divers out for years, and have a very efficient launching and boarding procedure, and are not known to cause delays in the flow of traffic at Mala Ramp.

They regularly use their charters for trash collection events bringing in 1000s of pounds of trash, fishing line, nets, and weights a year. They spearhead mooring maintenance projects for the whole boating community, to assure they are in good repair and safe to use. They are a good community partners, and always willing to help other local businesses out.

I personally know many of their dive instructors, and know that they are trained as naturalists, and are expected to know about human impact on this delicate ecosystem that we all love and wish to protect.

I am therefore urging BLNR to deny the petitioner's request for a contested case in Item J-1.

Mahalo nui loa,

Richard Carman

[Sent from Yahoo Mail on Android](#)

From: [Raymond Catugal](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Extended Horizons spelling corrected
Date: Wednesday, October 6, 2021 12:31:37 PM

Extended Horizon charters have upgraded their main engines from conventional diesel engines that produce black smoke to engines that are EPA compliant common rail electronic controlled fuel system along with using Biodiesel. Biodiesel is harder on diesel fuel systems and over the years it has cost this company more financially to keep on using this fuel to help lessen their carbon footprint here in the islands. I know this as fact.

I also understand that they educate tourists about marine life and how to care for the oceans. Advocate and only use reef safe sunscreen and teach proper stewardship of the local reefs. And doing their part in helping to clean up and control the man-made trash and debris in the ocean and at our boat ramp.

Ray Catugal

From: [Jamie Christner](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Regarding ITEM J-1 for Mala Pier Access
Date: Thursday, October 7, 2021 8:28:30 AM

Aloha,

I am writing to ask you to DENY the contested case hearing on the issuance of some commercial use permits to utilize Mala Wharf and ramp for commercial boating activity, Item J-1.

I am a full-time resident of Lahaina, HI, Maui. Companies such as Extended Horizons are instrumental in educating visitors and executing ocean and land protections with the utmost of environmentally safe practices. The petitioners' assertions that they have a detrimental effect is in direct opposition to the actual environmental benefits these companies are supporting.

Extended Horizons not only educate others about how to care for the ocean but they walk the talk. They run on biodiesel, not even gas. They advocate and only use reef safe sunscreen. They currently run very small groups of 6 out of respect for the locals and COVID regulations.

Extended Horizons has been operating out of Mala for over 35 years; adding value to the area and employing local instructors. Please, we as a community do not want to lose them or see them lose their permit or have it restricted in any way.

Thank you for listening; I know your time is valuable.

Sincerely,

Jamie Christner
808-359-3879
jamiechristner@gmail.com

From: [Derick De Jesus](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Item J-1 | Denying Petitioners' request for a contested case
Date: Thursday, October 7, 2021 8:56:58 AM

To Whom This May Concern,

I am writing in personal reference for my friend and competitor Extended Horizons. As a local spearfisherman, scuba diving professional and, most importantly, ocean conservationist I speak confidently when I say Extended Horizons is the most eco-conscious boating company I know. It is no secret that Extended Horizons has been in business for nearly 40 years on Maui, runs its dive charter on 100% biodiesel, operates its dive shop on solar power and makes tremendous efforts and investments into reef clean up, recycling and conservation education. It's all over their website and well-known amongst the dive community. In addition, Extended has been sourcing their biodiesel from locally recycled cooking oils since 2006. That alone should speak to the character of this company and we should applaud them for being great stewards of the sea.

Therefore, it is safe to say it would be detrimental to our precious reef and marine life to lose Extended Horizons. I ask that you carefully consider the best interests of our ocean and the impact our visitors place on it. Without Extended Horizons and a few other local dive companies -- the impact would not be mitigated.

Very Respectfully,

Derick C de Jesus
808-666-1701
vigilance@connectedawareness.com

From: [David Freedman](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Extended Horizons
Date: Wednesday, October 6, 2021 11:29:02 AM

I have known and been a friend as well as a paying customer of Extended Horizons for over 25 years .

I have been a registered boat owner in the beautiful state of Hawaii for over 25 years. I have seen this business act as a caretaker of the natural resources, a responsible steward of the Aina reefs , participate in cleaning the reefs of trash , and cleaning the beach of trash , year after year for over 25 years .

I am shocked that this action would be even considered. I voice my support for the small business owner Extended Horizons who has been a good standing member of the boating community

Mahalo,

David Jason Freedman President NMLS #422412
Cell 808.385.8558
Diamond Head Funding INC. NMLS #451743
463 Lahainaluna Road Lahaina 96761 Hawaii U.S.A.
Cell 808-667-6805

From: [Hawaiian Supaman](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Re: ITEM J-1
Date: Tuesday, October 5, 2021 4:21:38 PM

Aloha,

Please grant petitioners' request for a contested case, reference ITEM J-1.

Mahalo.

Paul Hanada
Resident of Maui 70 years

October 6, 2021

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

Re: Item J(1) – Contested Case Hearing Petition by Ka Malu O Kahālāwai, Nā Papa‘i Waewae ‘Ula‘Ula (“Nā Papa‘i”), Kekai Keahi, and Kai Nishiki regarding Issuance of Commercial Use Permits at Mala Wharf

Dear Members of the Board of Land and Natural Resources:

Thank you for considering these comments and supporting declarations submitted on behalf of Ka Malu O Kahālāwai, Nā Papa‘i Waewae ‘Ula‘Ula (“Nā Papa‘i”), Kekai Keahi, and Kai Nishiki with respect to the Board of Land and Natural Resources October 8, 2021 Meeting Agenda Item J(1): “Denial of Petitions for Contested Case Hearing filed on July 27 and 28, 2021 by Nā Papa‘i Wawae ‘Ula‘Ula, Ka Malu O Kahālāwai, Kekai Keahi, and Kai Nishiki, regarding the Renewal of Commercial Use Permits for Extended Horizons Inc., Kaanapali Beach Watercraft Rentals, Inc., Noio Charters, Inc., and Pacific Jet Sports, Inc. for Mala Launch Ramp, Maui.”

On July 28, 2021, Ka Malu O Kahālāwai, Nā Papa‘i, Kekai Keahi, and Kai Nishiki (collectively, “Petitioners”) requested a contested case on any application to the Division of Boating and Ocean Recreation in the Department of Land and Natural Resources (“DOBOR”) for renewal or issuance of commercial use permits to Noio Charters, Inc. (“Noio Charters”) and Extended Horizons, Inc. (“Extended Horizons”) for commercial use of Mala wharf and ramp, located in Lahaina, Maui (“Mala Wharf”).¹ DOBOR previously granted both entities year-long commercial use permits that expired August 31, 2021. Specifically, Noio Charters held permit 20-34567/MALA #13 and Extended Horizons held permit 20-40755 / MALA #18.

Petitioners are entitled to a contested case hearing. Excessive commercial use of Mala Wharf has thwarted Petitioners’ ability to engage in traditional and customary practices and degrades the

¹ Petitioners separately filed a contested case petition pertaining to the renewal or issuance of commercial use permits to Kā‘anapali Beach Watercraft Rentals, Inc. and Pacific Jet Sports, Inc. As the DOBOR Submittal indicates, permits were issued prior to the receipt of the contested case request. Petitioners therefore do not contest the denial of their petition as to Kā‘anapali Beach Watercraft Rentals, Inc. and Pacific Jet Sports, Inc.

environmental quality of waters in and around Mala Wharf, which waters are also held in public trust. Issuance of commercial use permits to Noio Charters and Extended Horizons, therefore implicates Petitioners' protected interests, as well as DOBOR and the Board's duties as fiduciaries of public trust resources. Due process requires the requested contested case hearing.

Without holding a contested case hearing, however, on or about August 30, 2021, DOBOR issued Noio Charters and Extended Horizons commercial use permits for Mala Wharf, effective September 1, 2021 through December 31, 2021. DOBOR thus effectively denied Petitioners' request for a contested case. On September 29, 2021 Petitioners timely filed an appeal from the denial in the Circuit Court of the Second Circuit.

Petitioners now respectfully request that the Board vacate the commercial use permits issued to Noio Charters and Extended Horizons and grant Petitioners contested case request. In the alternative, Petitioners hereby petition and request that the Board grant a contested case for any issuance of commercial use permits to Noio Charters and Extended Horizon beyond December 31, 2021.

A. DOBOR's Submittal Incorrectly Characterizes Contested Case Petition

DOBOR's submittal recommending denial of the Petition mischaracterizes the basis of Petitioners' contested case request. Petitioners assert due process rights to a contested case hearing based on (1) article XII, § 7 of the Hawai'i Constitution rights to engage in traditional and customary practices that are impeded by the issuance of commercial use permits at Mala Wharf; and (2) Petitioner's property interest in a clean and healthful environment, as provided for under article XI, § 9 of the Hawai'i State Constitution and defined by Chapter 200, Hawaii Revised Statutes ("HRS"), and the administrative rules implementing the Board's conservation duties through DOBOR. A contested case is also required to effectuate the Board and DOBOR's fiduciary duties over public trust resources. Petitioners do not contest the validity of Hawaii Administrative Rule ("HAR") § 13-231-67(d) or the limits that it sets on the number of commercial use permits that may be issued at Mala Wharf. Nor do Petitioners seek to contest any other administrative rule related to the issuance of commercial use permits through a contested case request.

Moreover, contrary to DOBOR's assertion, *Young v. Colma-Agaran*, 340 F.3d 1053 (9th Cir. 2003), does not restrict the regulation of land-based activities through commercial permitting of ocean vessels. In *Young v. Coloma-Agaran*, the Ninth Circuit Court of Appeals considered whether an

administrative rule² banning issuance of commercial use permits to all commercial vessels in Hanalei River, Hanalei Bay ocean waters and at Anini Beach launching ramp was preempted by federal law regulating coastal licenses. *Id.*, 340 F.3d at 1055. Pursuant to title 46 of the United States Code, section 1206, Commercial vessels are required to obtain a federal coastal license to engage in coastwide trade. *Id.*, 340 F.3d at 1056 (citations omitted). A federal coastal license grants its holder the “authority to carry on the coasting trade,” which includes carrying passengers. *Id.* A state “may not completely exclude from its waters a ship operating under a federal license.” *Id.* Therefore, because the state ban “completely exclude[d]” coastal license holders “conducting their federally-licensed tour boat businesses,” the state ban was preempted by federal law. The court declined to consider whether the ban was unconstitutional under the Commerce Clause. *Id.*, 340 F.3d at 1058.

Importantly, the court reiterated, “that States may impose upon federal licensees reasonable, nondiscriminatory conservation and environmental protection measures otherwise within their police power,” so long as those regulations are not in conflict with federal law. *Id.*, 340 F.3d at 1056 (quoting *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265, 277, 97 S.Ct. 1740, 52 L.Ed.2d 304 (1977)). Indeed, DOBOR has conceded that it intends to impose such measures upon commercial users through the establishment of a Mala Working Group to address some of the concerns raised by Petitioners, as well as by including conditions in future permits upon which administrative enforcement action may be based. This “working group” and proposed conditions, however, neither satisfy nor diminish Petitioners’ right to due process with respect to permits issued to Noio Charters and Extended Horizons.

B. A Contested Case is Constitutionally and Statutorily Required

“As a matter of constitutional due process, an agency hearing is . . . required where the issuance of a permit implicating an applicant’s property rights adversely affects the constitutionally protected rights of other interested persons who have followed the agency’s rules governing participation in contested cases.”³ *Pele Defense Fund v. Puna Geothermal Venture*, 77 Hawai‘i 64, 68, 881

² HAR § 13-256-36 (2000) (subsequently repealed) provided as follows:

(1) No commercial vessel shall operate at or use the Hanalei River, Hanalei Bay ocean waters, or Anini Beach launching ramp for any commercial purposes without a commercial use permit.

(2) No commercial use permits shall be issued for commercial vessels to operate at or on the Hanalei River or Hanalei Bay ocean waters, except that up to two commercial use permits may be issued for kayaks to operate on the Hanalei River or Hanalei Bay ocean waters.

³ Petitioners followed applicable agency procedures. Commercial use permits issued pursuant to

P.2d 1210, 1214 (1994). Noio Charters and Extended Horizons applications for commercial use permits pursuant to HAR § 13-231-61 at Mala Wharf adversely affects Petitioners' constitutionally protected rights under article XII, § 7 and article XI, § 9 of the Hawai'i State Constitution, mandating a hearing. The Board may not deny Petitioners' request for a contested case on the basis that Petitioners do "not have a legal right, duty, or privilege entitling one to a contested case proceeding." HAR § 13-1-29.1.

i. Article XII, Section 7 of the Hawai'i State Constitution

Article XI, § 7 of the Hawai'i Constitution states that: "[t]he State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian island prior to 1778, subject to the right of the State to regulate such rights."

Petitioners include those who are descended from the aboriginal people that inhabited the Hawaiian Islands in 1778. Petitioners include those who engage in traditional and customary practices in and around Mala Wharf, including fishing, canoe paddling, diving, and pelagic fishing, and who teach future generations to do the same. *See* Declaration of Kekai Keahi ("Keahi Decl.") ¶¶ 4-7; Declaration of Kai Nishjki ("Nishiki Decl.") ¶¶ 6-12. Due to excessive commercial activity, Petitioners' ability to conduct these traditional and customary practices has been diminished at Mala Wharf. Issuance of commercial use permits to Noio Charters and Extended Horizons, without any protections afforded to Petitioners, will result in the continued diminishment of Petitioners' article XII, § 7 rights.

For example, due to excessive commercial activity, Kekai Keahi has not been able to conduct his family's traditional and customary practice of 'ōpelu māmā. Keahi Decl. ¶ 16. This practice involves training a barracuda to "round up the 'ōpelu." Keahi Decl. ¶ 12-13. Commercial

HAR 13-231-5 are administratively approved by DOBOR without Board review. Thus, the Board's rules pertaining to filing a request for a contested cases are not applicable. For example, HAR § 13-1-29(a) cannot be met as it requires that an oral or written request be made "no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition." Nevertheless, Petitioners substantially complied with HAR § 13-1-29 by filing by mail and e-mail a formal written petition to the Board and DOBOR prior to the expiration of Noio Charters and Extended Horizons' commercial use permits, and providing the information required in HAR § 13-1-29(b). Petitioners requested a contested hearing before the Board, or alternatively, before DOBOR if DOBOR had the sole discretion to issue the permits. DOBOR's administrative regulations provide procedures for holding administrative hearings required by law, but do not provide a process for requesting a contested case or administrative hearing. HAR § 13-231-31. DOBOR does not challenge Petitioners' compliance with agency rules in submitting the Petition.

activity “scared away the opelu schools.” Keahi Decl. ¶ 16. Commercial activity also negatively impacts a traditional fishing ko‘a located off of Mala wharf by scaring away fish. Keahi Decl. ¶ 18. Traditional and customary practices are also thwarted or cut short due to the inability of practitioners to find parking or access the boat ramp to enter and exit the water. Keahi Decl. ¶ 26. Customers and staff of commercial operations such as Noio Charters and Extended Horizons utilize parking spaces that are supposed to be available to the general recreational public. Commercial boat operations also utilize the ramp repeatedly throughout the day, forcing others to compete with them for access to enter and exit the water. Keahi Decl. ¶¶ 21-22. There has not been enforcement of any time limits imposed on commercial permittees for use of the ramp, assuming such conditions exist. *See* Keahi Decl. ¶ 24. Petitioners have raised these concerns to DOBOR, including to Administrator Edward Underwood, as well as with individual commercial use permit holders. Keahi Decl. ¶¶ 27-28. Petitioners’ concerns have not been resolved.

ii. Article XI, Section 9 of the Hawaii State Constitution

Petitioners are also entitled to procedural due process based upon their substantive right to a clean and healthful environment. *See In re Maui Elec. Co., Ltd.*, 408 P.3d 1, 12-13 (2017) (“‘The right to a clean and healthful environment’ is a substantive right guaranteed to each person by article XI, section 9 of the Hawai‘i Constitution.”). Article XI, § 9 of the Hawai‘i State Constitution provides: “[e]ach person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources.” This right is defined in relation to existing laws related to environmental quality. *Id.* 408 P.3d at 13.

The regulations and laws authorizing issuance of commercial use permits relate to environmental quality. Commercial use permits are required for commercial use of State ocean waters pursuant to HAR § 13-231-61. Applicants must also comply with all provisions of HAR §§ 13-231-50 to 13-231-70, and all other applicable boating regulations. DOBOR’s regulations implement BLNR’s “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); *see* HAR § 12-231-61 (implementing authorities). Further, they implement the BLNR’s function to “assist in abating air, water, and noise pollution,” HRS § 200-3(8). Pursuant to HRS § 200-4, these regulations are also in place to “to prevent discharge or throwing into small boat harbors, launching ramps, other boating

facilities, ocean waters, and navigable streams, of rubbish, refuse, garbage or other substances likely to affect the quality of water,” or that make such waters and facilities “unsightly, unhealthful, or unclean.” See HRS §§ 200-4(a)(6), (6)(A)(i). Commercial use permittees must comply with regulations that are intended “to prevent the escape of fuel or other oils or substances into the waters in, near, or affecting small boat harbors, launching ramps, or other boating facilities and the ocean waters. . . from any source point, including but not limited to any vessel or from pipes or storage tanks upon land.” See HRS §§ 200-4(a)(6), (6)(A)(i). The commercial use regulations thus are in place to, in part, regulate the impact of commercial uses on environmental quality. Petitioners’ thus have a protected property interest in their right to a clean and healthful environment, as defined by HRS Chapter 200 and administrative regulations governing commercial use of state waters.

Issuance of permits to Noio Charters and Extended Horizons contributes to ongoing degradation of environmental quality. Such operations target visitors 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. Operations scare away fish that have otherwise been known to congregate in the area. The operations and their users increase noise levels in otherwise relatively quiet ocean spaces. These activities compromise and degrade ocean water resources.

iii. Due Process Requires a Contested Case Hearing

“Procedural due process ‘requires that parties be given a meaningful opportunity to be heard. This implies the right to submit evidence and argument on the issues.’” *Application of Hawai‘i Elect. Light Co.*, 67 Haw. 425, 430, 690 P.2d 274, 278 (1984). To determine what procedures due process demands, courts consider: “(1) the private interest which will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and (3) the governmental interest, including the burden that additional procedural safeguards would entail.” *Protect & Pres. Kaboma Abupua‘a Ass’n v. Maui Planning Comm’n*, SCWC-15-0000478, at *23 (June 16, 2021) (citation omitted).

As stated, Petitioners’ have constitutionally protected interests in the exercise of traditional and customary rights at Mala Wharf, as well as protected interested in their right to a clean and healthful environment that are impacted by the issuance of permits to Noio Charters and Extended Horizons.

The risk of an erroneous deprivation of these rights is high, and indeed, has already occurred due to DOBOR’s premature issuance of permits effective September 1, 2021-December 31, 2021 to

Noio Charters and Extended Horizons without holding a contested case. Petitioners' have no other administrative means to comment on or be consulted with regarding issuances of the permits, which are administratively approved. Petitioners' ability to conduct traditional and customary practices at Mala Wharf and right to a clean and healthful environment have been and will continue to be negatively impacted absent a contested case. DOBOR's suggested unilateral imposition of enforcement conditions on permits issued to Noio Charters and Extended Horizons does not afford Petitioners an opportunity to submit evidence and argument on the issue. *See* Submittal of Edward Underwood, Administrator of DOBOR to Board of Land and Natural Resources (dated October 8, 2021) at 3. Nor does the establishment of a "working group" provide Petitioners with a meaningful opportunity to be heard regarding the issuance of permits to Noio Charters and Extended Horizons. *Id.* Indeed, Petitioners have not to date been invited to participate in the working group. Thus, the risk of an erroneous deprivation of Petitioners constitutional rights under these approaches is high.

Further, agencies are obligated "to protect reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible." *Ka Pa'akai O Kaaina v. Land Use Commission*, 94 Hawai'i 31, 35, 7 P.3d 1068, 1072 (citing *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission* ("PASH"), 79 Hawai'i 425, 250 n. 43, 903 P.2d 1246, 1271 n. 43 (1995)). As part of that duty, agencies must independently consider the effects of their decisions on traditional and customary practices. *Ka Pa'akai*, 94 Hawai'i at 46, 7 P.3d at 1083. A contested case hearing would enable Petitioners to provide DOBOR and the Board with information about the impacts of the issuance of commercial use permits on Petitioners' practices and assist the State with conducting the required balancing to protect Petitioners' native Hawaiian rights. 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. With this information, DOBOR or the Board could tailor permit conditions consistent with their public trust duties to protect the exercise of Petitioners' traditional and customary rights.

Additionally, the State's marine waters and submerged lands are held in public trust, and "are subject to the State's constitutional and common-law public trust duties." *Umberger v. Dep't of Land & Natural Res.*, 403 P.3d 277, 298 (2017). An "agency must perform its functions in a manner that fulfills the State's affirmative obligations under the Hawai'i constitution." *In re Application of Gas Co.*, 147 Hawai'i at 207, 465 P.3d at 654. The State is thus "obligated to manage and preserve" the waters in and around Mala Wharf "[f]or the benefit of present and future generations[.]" *Haleakala v. Bd. of Land and Natural Resources*, 131 Haw. 193, 317 P.3d 27, 46 (2013) (Acoba, J., concurring). (quoting

Haw. const. Art. XI, § 1). Issuance of permits to Noio Charters and Extended Horizons impacts ocean waters. Thus, a contested case would also assist the State to uphold its obligations as a fiduciary of this public trust resources.

Procedural due process, therefore, requires that the Board vacate the prematurely issued permits, and grant Petitioners' contested case request.

C. CONCLUSION

Petitioners seek relief in a contested case hearing that will adjudicate the rights and interests of Petitioners with respect to the issuance of permits to Noio Charters and Extended Horizons. Such relief could include denial of the permits, required improvements to commercial operations to prevent pollution, increased training requirements for customers and employees to lessen impacts to natural and cultural resources, requiring personnel and customers use provided reef-safe sunscreens, requiring shuttling of customers, requiring customers to gather away from the ramp, or limiting the number of launches per day for permittees.

A contested case hearing would also vindicate the public interest, as the effects of overcrowded parking lots, access to the ramp, and ocean water quality impact all recreational users of Mala Wharf. Petitioners' will provide information to assist decision-makers in carrying out their obligations as fiduciaries of public trust resources, and ensuring that the issuance of commercial use permits does not unreasonably burden Petitioners' traditional and customary rights under article XII, § 7 of the Hawai'i constitution.

For the reasons set forth above, Petitioners' protected interests are affected by the issuance of commercial use permits to entities to utilize Mala Wharf, including Noio Charters and Extended Horizons. Due process thus requires that the Board vacate the prematurely issued permits, and provide Petitioners' with a meaningful opportunity to protect their interests through contested case proceedings.

Dated: Wailuku, Hawaii

October 6, 2021



Christina Lizzi, Esq.
Law Office of Christina Lizzi, LLC
Attorney for Petitioners

BEFORE THE BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

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

DECLARATION OF KEKAI KEAHI

I, KEKAI KEAHI, do declare under penalty of law that the following is true and correct.

1. I am a longtime resident of Lahaina, in the island and county of Maui, and over eighteen years of age.
2. I am a board member of Ka Malu O Kahālāwai.
3. Ka Malu O Kahālāwai, a domestic nonprofit corporation, is organized to protect the natural and cultural history and resources of Kahōma and surrounding ahupua'a from mauka to makai.
4. Ka Malu o Kahālāwai members conduct traditional and customary practices of fishing, surfing, canoe paddling, and diving in nearshore areas and also pelagic fishing, utilizing Mala wharf and ramp.
5. I am also a member of Nā Papa'i o Waewae 'Ula'ula.
6. I am a descendent of the aboriginal people who inhabited the Hawaiian Islands prior to 1778.
7. I am a Native Hawaiian traditional and customary practitioner.
8. My family has lived in West Maui for generations.
9. I am a lineal descendant of owners of a kuleana parcel in Kanahā Valley, where we were raised as small children.
10. Until I was in seventh or eighth grade, approximately 35 years ago, I would go with my father and others in my family to conduct traditional and customary fishing practices in the area of Mala wharf and ramp.

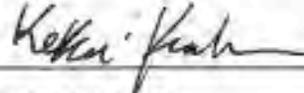
11. Our traditional and customary fishing practice involved an 'ōpelu māmā.
12. We trained a barracuda, called the 'ōpelu māmā, so that it would round up the 'ōpelu.
13. We would paddle out, hit the boat with a specific drum beat, and the 'ōpelu māmā would go to the canoe.
14. Boat captains, like my father, would name their 'ōpelu māmā. My father's 'ōpelu māmā was called Jacob. He was recognizable because he had a blind eye.
15. Once Jacob rounded up the 'ōpelu into a ball we could more easily catch the 'ōpelu.
16. Our traditional fishing practice of 'ōpelu māmā ceased when commercial activity increased at Mala Wharf and Ramp, which scared away the opelu schools.
17. The knowledge of how to train the 'ōpelu māmā will be lost without places where future generations are able to learn it.
18. There is a traditional fish ko'a off of Mala wharf, but the fish have largely been scared away from it by commercial activity and use of Mala wharf and ramp.
19. I and other officers and supporters of Ka Malu O Kahālāwai have had difficulty finding parking at Mala wharf, which prevents us from being able to go out fishing, or cuts our time short.
20. Customers and staff of commercial operations at Mala wharf take up the parking spaces that are supposed to be available to the general recreational public.
21. Commercial companies arrive at Mala wharf and ramp early and use the ramp repeatedly throughout the day.
22. Fishermen have to compete with the commercial operations for an opportunity to launch their boats and again to return to the ramp.
23. I have observed groups gathering at the ramp waiting to board commercial vessels, which makes it more difficult and dangerous for others trying to launch from the ramp.
24. No one appears to be enforcing any time limits on use of the ramp by commercial companies.
25. Excessive commercial activity negatively impacts the environment around Mala wharf, including through pollutants from the boats, litter, and use on non-reef safe sunscreens.
26. I, and others in my 'ohana and Ka Malu o Kahālāwai, have been unable to conduct our traditional and customary practices of fishing due to the lack of parking spaces, inability to launch our boats from Mala wharf, and the uncertainty and complications associated with timing a return to the ramp.

27. I, and others in Ka Malu o Kahālāwai have attempted to raise our concerns to the Division of Boating and Ocean Recreation by talking to Ed Underwood and Paul Sensano, and DOBOR staff were unable to resolve our concerns.
28. I, and others in Ka Malu o Kahālāwai have attempted to raise our concerns to commercial use permit holders, but they denied having any responsibility for ensuring access for the recreational public or Hawaiian traditional and customary practitioners.

DECLARANT FURTHER SAYTEH NAUGHT.

Dated: Lahama, Maui, Hawai'i

October 1, 2021



KEKAI KEAHI

Petitioner, Ka Malu O Kahālāwai

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

In re Applications of

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, 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
} PETITION FOR CONTESTED CASE

} DECLARATION OF KAI NISHIKI

DECLARATION OF KAI NISHIKI

I, KAI NISHIKI, do declare under penalty of law that the following is true and correct.

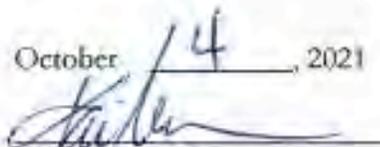
1. I was born and raised on the island and county of Maui and continue to be a resident of Maui.
2. In 2017, I was one of the awardees of the Sierra Club Maui Group's "Mālama Kahakai" award, which recognized our work in protecting Maui's coasts and defending public access to beaches.
3. I live in Wāhikuli, West Maui, less than five miles from the Mala Wharf and Boat ramp in Lahaina.
4. I am a coordinating member of Nā Papa'i o Waewae 'Ula'Ula (Nā Papa'i), an unincorporated association based in West Maui.
5. Nā Papa'i holds in-person community meetings with West Maui communities and administers a social media page on facebook.com for a group called "Access Denied!" which group has over 4,000 members.
6. Nā Papa'i and its members, including Native Hawaiians, hold interests in preserving and expanding public beach access for public recreational use, Hawaiian cultural practices, subsistence, aesthetic enjoyment, and ecological protections for West Maui.
7. My family and I have often been thwarted in attempts to use public beach access parking stalls located near to Mala wharf and ramp due to overcrowding.
8. I, and my family, frequently use Mala Wharf and surrounding shoreline areas for recreational purposes and to serve our aesthetic interests.

9. I, members of my family, and Nā Papa'i members frequently surf, paddle, fish, swim, spearfish, and snorkel in waters around Mala Wharf.
10. I hold a recreational and aesthetic interest in the maintenance of a healthy marine environment at Mala Wharf and its shoreline areas.
11. Members of Nā Papa'i include spearfishers, fishers, surfers, paddlers, swimmers, native Hawaiian traditional and customary practitioners, and others concerned about the environment created by commercial operations at Mala Wharf.
12. Mala Wharf and the nearshore areas are frequently crowded with various thrillcraft jetskis, wave runners, catamarans, and other commercial activities.
13. Holding a contested case hearing prior to issuance of commercial use permits to Noio Charters and Extended Horizons would further Nā Papa'i's mission and my interests in recreation and protecting the clean and healthful environment of West Maui and the waters in and around Mala Wharf specifically.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Lahaina, Maui

October 4, 2021


KAI NISHIKI
Petitioner-Declarant

From: [Ed Lyman](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Individual testimony on a valuable benefit of tour operations out of Mala
Date: Thursday, October 7, 2021 5:03:13 AM

To whom it may concern,

While as an individual I cannot speak to all the concerns outlined in the petition. However, due to the role I play monitoring and responding to the humpback whales that seasonally return to the waters of Hawaii, I can say, again, as that individual, that many of the tour operations play an important role in the monitoring and response efforts. For instance, tour operations (e.g., whale watch vessels) play a very integral part towards the response to entangled whales by finding, reporting, assessing, documenting, and when authorized responses are mounted, monitoring the animals. Tour operations have been an extremely valuable resource in this regard and their assistance, along with others, have been greatly appreciated.

Sincerely,

Ed Lyman

~~~~~

**From:** [Marcy Martin](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] KAI NISHIKI'S petition for contested case hearing re commercial use permits at Mala Wharf  
**Date:** Tuesday, October 5, 2021 7:00:32 PM

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Please consider Petitioners NĀ PAPA'I WAWAE 'ULA'ULA, KA MALU O KAHĀLĀWAI, KEKAI KEAHI, and KAI NISHIKI'S petition for contested case hearing on the issuance of some commercial use permits to utilize Mala Wharf and ramp for commercial boating activity.

The overflow parking lot by the mission has been closed for over a year which has reduced beach access parking.

There are too many boats taking people snorkeling and diving there. The reef is over crowded with people. No boats should be allowed to visit a reef that close to shore. It is dangerous beyond belief.

Businesses should not be allowed to use resources at the expense of residents.

Marcy Martin  
Paia

Chairperson and Members  
Board of Land and Natural Resources  
Honolulu, HI 96819

October 8, 2021 9 am meeting, Agenda Item J1

SUBJECT: Denial of petition contesting the renewal of commercial use permits issued to Mala Launch Ramp commercial ocean operators

Aloha and thank you for the opportunity to submit testimony regarding this petition. My name is Steven Lawless, owner of NOIO Charters, Inc., and I have been in the boating business from Mala Boat Ramp since 1986, operating NOIO Charters, Inc. since 1989. NOIO is one of the longest running wildlife viewing and education operations on Maui, employing dozens of people over the years.

We have provided educational whale watches and snorkel trips for thousands of visitors and kama'aina for 35 years from Mala Boat Ramp. We have donated many educational tours to schools, researchers, and not-for-profits such as the Pacific Cancer Foundation and Whale Trust. We have also supported schools in Lahaina from Sacred Hearts to Lahainaluna. We consider ourselves stewards of the ocean and operate using the quietest, most technically advanced engines available. Our vessel is US Coast Guard certified and is inspected annually. We have participated in search and rescue operations and provided assistance via towing or mechanical aid to many boaters in distress over the years. We also have provided assistance to NOAA when observing entangled whales and report injured dolphins, turtles, endangered sea birds, and Hawaiian monk seals. We remove all debris from the ocean that we can and report any that is too large for us to remove ourselves. We also have participated in numerous Mala Boat Ramp clean-up events. We, as do most of the other Mala Boat Ramp permittees, educate our customers about reef safe sunscreen and many of us provide such sunscreen.

We have paid harbor taxes and excise taxes to the state for 35 years. A few of the petitioner's items are valid points. The Mala Boat Ramp has needed improvement with parking, neglected/vandalized bathrooms, homeless encampments, and vandalized vehicles. DOBOR has begun to make improvements and has cleared out the homeless encampment and the derelict vehicles. Striping has been done in the trailer lot. We acknowledge that multiple truck/trailer parking spots are now being used by Ka'anapali Beach CUPs that didn't use to be. Parking issues could be improved by allowing parking in the dirt lot on the north side of the county property, while also allowing parking once again in the dirt lot behind the bathrooms once the Lahaina Harbor project is completed.

It should be noted that the majority of the commercial vessels snorkeling at Mala itself over the collapsed pier are boats that are not Mala Boat Ramp CUPs. We, ourselves, have counted sometimes up to 6 or more boats snorkeling at Mala at the same time that are from Lahaina Harbor, Ka'anapali Beach, even Ma'aleaea Harbor.

In my experience, most boaters communicate with each other to cooperate for access to the docks and the wash down areas.

We respectfully ask that the Board deny this petition.

Mahalo,

Steven Lawless

Owner/President, NOIO Charters, Inc.



# Ocean Tourism Coalition

*The Voice for Hawaii's Ocean Tourism Industry*

1188 Bishop St., Ste. 1003

Honolulu, HI 96813-3304

(808) 537-4308 Phone (808) 533-2739 Fax

[timlyons@hawaiiantel.net](mailto:timlyons@hawaiiantel.net)

October 8, 2021

Suzanne Case, Chairperson  
Board of Land and Natural Resources  
1151 Punchbowl Street; Room 131  
Honolulu, HI 96813

RE: OTC Testimony  
DLNR Board Meeting  
10/8/2021  
Agenda Item J-1

Via e-mail: [blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Chair Case and Members of the Board:

The Ocean Tourism Coalition ("OTC") is writing in strong support of the Department's decision to deny the petition for contested case hearing. Several of our members depend on the Commercial Use Permits ("CUPs") for the Mala boat launch ramp for their livelihood, and the loss of these CUPs would be catastrophic to their businesses.

OTC agrees with the Department that the issues at the Mala boat launch ramp should be addressed through discussion among the user groups and by the possible addition of parking stalls near the ramp. The CUP holders have not violated any laws, and the termination of their permits would be both premature and inconsistent with the intent of current administrative rules.

Resources are limited in our State, but only through discussion and compromise are conflicts between competing users reduced. Canceling the CUPs is unnecessary when avenues of cooperation can still be pursued. For these reasons, we humbly request that the Board affirm the denial of petition for a contested case hearing.

Sincerely,

A handwritten signature in cursive script that reads "Tim Lyons".

Tim Lyons, CAE  
Executive Director

**From:** [Bob King](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony Oct 7 Item J1  
**Date:** Thursday, October 7, 2021 6:52:15 AM

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## Testimony from Bob King on Item J-1

### Support for denial of petitions for Contested Case Hearing for Extended Horizons Inc.

BLNR Chair and Members,

While I understand there are serious issues with access at Mala Wharf, the State should not punish the legal operators who are actively helping to mitigate the situation.

As an organization Extended Horizons is exemplary in how they conduct themselves in the community and also care for the aina. The list of their commitments range from contributing time and resources to larger issues that the whole boating community benefits from like spearheading "Save Molokini NOW" from having bombs detonated there, to volunteering hours and use of manpower and resources to help Maui County maintain moorings for all users, to regularly leading reef clean ups on Maui and Lana'i. The list goes on and on. Their usage of only local 100% biodiesel fuel sets the standard for dive operations by being a non-polluting ocean user. When it comes to being marine stewards, this organization literally walks the walk and prides themselves on their conservation efforts.

They lead tours that teach respect for the environment while educating clients on how and why to steward the ocean. They lead by example and also have organized and participated in several clean ups of Mala itself above and below the water. They have done many things to make the harbor a better safer place for all users, from picking up trash to actively getting the lighting that had been out for months turned back on by going direct to Maui Electric. They take one trip a day and currently are only taking out 7 passengers at a time.

They already have been doing many of the things that are being asked of them as a good neighbor. They check people in away from the dock, and once they board people they are off the dock. When they return to retrieve their trailer they get pulled out of the way as soon as possible. Their commercial use of this facility has been positive for the State of Hawaii, positive for the community, and positive for many locals and visitors alike.

I support the position of DLNR to deny the Contested Case Hearing petition for this user.

Aloha,

Bob King

## Robert King

President

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**From:** [Tamara A. Paltin](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item J1  
**Date:** Wednesday, October 6, 2021 4:11:39 PM

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Aloha e Chair Case and BLNR members,  
Mahalo for your service to our communities. I am requesting a contested case hearing on this item. This is a big issue within our local community especially now that Lahaina Harbor is being dredged and not available for commercial usage as it usually has been, it leads to a big strain at Mala which has generally been used by resident and a few commercial operations.

As recently as this past June when we were scattering my mother-in-law's ashes in front of Mala where she grew up commercial activities impacted our abilities to get in and out of the water safely. Our cousin who was a State employee of the year and State firefighter was taking us and two other boats to scatter ashes and upon our return a commercial snorkeling tour boat had all of their snorkelers in the water blocking the legal ingress/egress at Mala, there was a DLNR/DOCARE officer there that day, I believe it was June 5 documenting the incident I am not sure the outcome but we did see him speaking with the commercial tour operator.

In addition to the above incident, a contested case is necessary to ensure that any permits issued contain conditions to address the following:

- Time limits must be set and enforced for commercial usage of the ramp. Other resident users cannot reliably access the ramp and must compete with commercial users to enter/exit the water.
- Commercial customers must gather and be instructed away from the ramp. Currently the large crowds receiving instructions, signing waivers etc unnecessarily and dangerously crowd the area creating a safety hazard should EMS be needed and is just disrespectful to the multitude of users that occupy this space.
- Parking needs to be provided offsite for commercial use due to the large number of commercial patrons and the very limited number of parking available which is in high demand.
- If it is true that only one vessel is allowed under a single permit that seriously needs to be looked into.
- Commercial entities need to be better monitored by DOCARE for violations including expired ramp fees, trailer fees and registration.

The above is not an exhaustive list but just some of the reasons that a contested case hearing is required to protect Petitioners' rights and will benefit all recreational users of Mala Wharf/Ramp.

Mahalo for this opportunity to provide testimony,  
Tamara Paltin

Sent from my iPad

**From:** [Steven Pickering](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] ITEM J-1 Petition to Deny a contested case against Extended Horizons  
**Date:** Thursday, October 7, 2021 7:47:40 AM

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Aloha,

I am a resident of Lahaina and I have friends that work at Extended Horizons. I heard about this crazy case being brought on them and I wanted to write you to encourage you to decide in their favor and deny a contested case. Extended Horizons is the most conservation-minded company I have ever known, personally. They are ALWAYS doing ocean clean ups. I went diving on their boat before and the entire trip is educating all the customers about marine life and what to NOT do in the water, what could hurt the reefs, and literally how to be better people in this world.

It upsets me that this company has gotten roped into someone's political agenda and is targeted in this way. They are not the problem. They cover with their customers proper loading and unloading procedures. They are a small company that only makes a small impact on the use of the ramp but they make a big impact on the world, making it a better place to be.

Sent from my iPhone  
Steven Pickering  
808-757-6866

**From:** [William Plozay](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Regarding ITEM J-1. Mala Pier Access  
**Date:** Wednesday, October 6, 2021 7:28:12 PM

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Aloha,

I am a Maui County resident and have lived in Lahaina for decades. I am writing you today in regard to an upcoming hearing about access to Mala Pier, and ask that you DENY the petitioners' request for a contested case in reference to ITEM J-1.

I have gone out with Extended Horizons (one of the businesses named in the case) many times and must strongly disagree with the petitioner who says they have a negative impact. This company does so much to protect the ocean and the environment. Quite the opposite of the petitioner's assertion that they have a detrimental effect is true.

Extended Horizons goes above and beyond to protect the environment and actually take action to help clean and restore our precious reefs while also employing the utmost of environmentally safe practices. Every day they share the beauty of our oceans with people they also go out of their way to educate and inform their clients as well. By sharing the ocean and educating people they are doing good work to help protect our waters. The more people who are aware of the environmental issues, hopefully the more people who will care and help make some positive changes. I think it's quite possible that Extended Horizons may actually do more than the petitioner who takes issue with them to address the real issues affecting our local environment.

Thank you for your time and consideration regarding this issue.

Sincerely,

William H. Plozay

[willplozay@gmail.com](mailto:willplozay@gmail.com)  
(808)250-8875



## HOUSE OF REPRESENTATIVES

STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813

October 06, 2021

Board of Land and Natural Resources  
1151 Punchbowl St.  
Honolulu, HI 96813

Suzanne D. Case, Chairperson  
Christopher Yuen, Hawai'i Member  
Doreen Nāpua Canto, Maui Member

Thomas Oi, Kaua'i Member  
Samuel "Ohu" Gon III, O'ahu Member  
Vernon Char, At-Large Member  
Wesley "Kaiwi" Yoon, At-Large Member

Re: Supporting Agenda Item J.1. Denial of Petitions for Contested Case Hearing filed on July 27 and 28, 2021 by Nā Papa'i Wawae 'Ula'Ula, Ka Malu O Kahālāwai, Kekai Keahi, and Kai Nishiki, regarding the Renewal of Commercial Use Permits for Extended Horizons Inc., Kaanapali Beach Watercraft Rentals, Inc., Noio Charters, Inc., and Pacific Jet Sports, Inc. for Mala Launch Ramp, Maui.

Aloha Chair Case and Honorable Members of the Board,

Thank you for this opportunity to testify in opposition for the request for contested case hearing regarding commercial users at Mala ramp.

Many of the commercial permit operators out of Mala have been operating there for decades without a negative community impact. While there are issues of parking and access that can and should be addressed, penalizing businesses who have been good faith operators and employers of local people should not be systematically destroyed with reactionary and intolerant prohibitionist actions.

Petitioners' best intentions will create catastrophic economic hardship for good faith actors who give back to the community by way of educational opportunities for local students, preservation of natural resources, guiding ocean users, modeling appropriate behavior for visitors, and the difficult work on safe munitions dismantlement around the state

Activity observations at Mala will show commercial operators who do not have permits to operate out of Mala are using that boat ramp to supply Ka'anapali vessels when swells make vessel supply difficult on the shoreline. When Ka'anapali beach users decided boat launches should not remain on Ka'anapali beach, those vessels moved to Mala and are now launched

**Office of Representative Tina Wildberger**

*Proudly serving the 11<sup>th</sup> House District*

415 S. Beretania St. Honolulu, HI 96813, Room 327

Phone: 808.586.8525 | Fax: 808.586.8529 | email: repwildberger@capitol.hawaii.gov

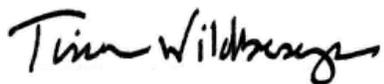
from Mala, without permits. Ka'anapali beach-loading permitted vessels are purported to be using Mala ramp to board passengers when beach-loading it's not safe or practical which is more unpermitted Mala Ramp use activity. All of this cumulated activity contributes to congestion and access issues at this important shoreline access point for the west side.

It might be reasonable to measure how many launches at Mala can be accommodated per hour and coordinate permittees launch times to reduce congestion at the boat ramp. Parking needs to be addressed and commercial clients should not be parking at Mala. Mala permittees should conduct their administrative business outside the ramp and commercial operators who do not have permits to launch out of Mala should be discouraged from using Mala without a permit.

Like so many issues that negatively impact our residents, management of operations out of Mala would go a long way to improve access for everyone.

Thank you for your time and consideration on this important issue. Commercial operators and residents can equitably access Mala Ramp with some improvement in management of this high-use community asset.

Mahalo,



Representative Tina Wildberger  
House District 11 - South Maui  
Kīhei · Wailea · Mākena

**Office of Representative Tina Wildberger**

*Proudly serving the 11<sup>th</sup> House District*

415 S. Beretania St. Honolulu, HI 96813, Room 327

Phone: 808.586.8525 | Fax: 808.586.8529 | email: repwildberger@capitol.hawaii.gov

**From:** [Amy Stephens](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item J-1 for 10/8/21 BLNR Meeting  
**Date:** Thursday, October 7, 2021 3:15:37 AM

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#### UPDATED

I am submitting testimony asking BLNR to deny petitioners' request for a contested case, reference item J-1. The usage and issues at Mala Boat Ramp are complicated and not easily summarized in black and white. I do support the goals of Ka Malu O Kahālāwai, Nā Papa'i Waewae 'Ula'Ula ("Nā Papa'i") to advocate for managed tourism, access for locals and stewardship of the environment. There is need for change and improvements to how Mala Boat Ramp is used and managed.

The contributions of Extended Horizons Scuba in alignment with the goals of Nā Papa'i cannot be overlooked in the pursuit of change. My testimony will address the positives, the negatives and offer some suggestions for mitigation of the challenges. My hope is that my testimony can present a wider view of the challenges as well as an opportunity to prove that singling out Extended Horizons Scuba and grouping them together as part of the problem is not only false and wrong but also harming a company that is the kind of business our community, our county and state should support not punish with this complaint. Most of us enjoyed the calm that came with the close down of 2020 due to the pandemic. It was an unsustainable utopia that we wish could continue without the hardship and suffering demonstrated by miles long lines waiting for food banks last year. While the goal to promote the right kind of tourism is needed we also need to recognize that if we want sustainable, educated tourism we must differentiate between the takers and the givers.

Extended Horizons Scuba has always taught their guests to be respectful of the ocean and the health of the reef. Erik Stein, the founder of Extended Horizons, taught his guides and guests to respect and appreciate the rhythm of the ocean, to appreciate not just the great moments but also what is right about the quiet subtleties of the marine life and reef, to know the value of conservation. Extended Horizons was instrumental in spearheading installing moorings throughout Maui County, donating time, funds, equipment including the boat and supplies in coordination with DLNR to establish, install and maintain moorings on Maui, Lana'i and Molokini. Their efforts to install and maintain moorings have continued for over 25 years.

When the US military considered detonation of WW2 ordinances in the Molokini Marine Life Conservation District, the efforts to stop the destruction of the reef was largely organized by Victoria Martocci (owner/operator of Extended Horizons Scuba and wife of Erik Stein).

Extended Horizons accommodates a minimum of 6 and a maximum of 12 people per day. This is a tiny fraction of other operations. The impact on usage of Mala's facilities is incomparable to companies that can accommodate hundreds of people per day during the busiest times.

Extended Horizons has switched to using biodiesel to be more environmentally friendly, advocated use of the Lahaina Harbor sewage pumping station rather than dumping in the ocean, ended single use plastics on their charters, educated guests about reef safe sunscreen, organized reef clean ups that removes thousands of pounds of fishing gear and trash from reefs each year and fosters the next generation of divers to share these responsibilities to the environment through their kids programs such as the July 2021 Kids Dive Day with support of Archie Kalepa. These are just a few things that both set Extended Horizons apart from other companies and demonstrate their shared goals with Nā Papa'i. If managed tourism is a goal as stated by Nā Papa'i, there is no company more in line with that mission than Extended Horizons Scuba.

In response to the community concerns about over use by commercial activity at Mala, Extended Horizons has asked guests to park off site when possible. An even greater show of respect and understanding of the community concerns is their decision to operate as little as possible and ideally not at all on weekends when local/non commercial use is highest. For a company to voluntarily cease operations for 2 out of 7 week days is practically unfathomable. Anyone who questions a company's ethics over profits should look to Extended Horizons as an example of the kind of company we should be embracing in the pursuit of managed tourism.

Addressing some of the problems and offering some solutions:

1) Unpermitted commercial use of Mala Boat Ramp.

It is a known fact that there are both shore operations as well as boats taking out guests that operate without a permit at Mala. Not only are these businesses operating without proper permitting they are also operating without insurance opening the county to liabilities. If over use of Mala, the parking and facilities, is the focus of this complaint, denying use to unpermitted businesses would be a logical place to start rather than punishing companies that operate legally, with proper permits that financially benefit

maintenance of Mala.

2)Trailer parking. The dirt lot adjacent to Jodo Mission could be paved to accommodate additional boat trailers

3)Vehicle Parking. There are both abandoned vehicles and vehicles that have become housing. In the early morning, 6am, prior to any commercial activity, much of the available parking is taken by people living and sleeping in cars. Obviously this is a sign of larger community issues but to address the issue

of access and parking at Mala: Overnight parking could be limited to one vehicle in the parking area per boat trailer. There could be a specific number of vehicle permits per commercial operation. Many ways to address overuse and abuse of parking.

4)Use of Mala by companies with Ka'anapali permits. A few years ago the same complainants on item J-1 successfully sought to deny the permitted Ka'anapali beach loading catamarans the ability to leave a zodiac on the shore of Ka'anapali. The result was that most Ka'anapali catamaran companies needing a place to launch their zodiacs to access their catamarans turned to Mala. Each day, each one of these businesses arrive at Mala with their zodiacs on trailers, taking valuable trailer parking. Each one of these businesses have 3-5 crew that arrive at Mala for work, taking 3-5 valuable vehicle parking spaces without contributing financially to the maintenance and improvements at Mala. Displaced permitted businesses from one location puts stress on another. There is usually unexpected consequences for the displaced, everyone who knows Hawai'i's history knows this truth.

5)Crowding of the boat ramp and loading dock by large groups waiting for a boat to dock.

Large groups waiting to board a boat coming in to dock from a previous charter get in the way of other vessels that are trying to use the ramp and loading dock. Commercial operations that are running multiple trips per day should have a company representative organizing and managing the group away from the loading dock and safely out of the way of other vessels rather than allowing passengers to wander around aimlessly and in the way of boat and trailer traffic.

6)Sustainable Fishing Practices. Mala supports a diverse and healthy reef, a great variety of reef fish and protected turtle species. The complainants claim that commercial activity hinders the ability of subsistence fishermen from their fishing grounds. They claim that commercial activity is harming Mala and it's near shore habitat. The stresses from unsustainable fishing practices must be addressed. Fishing gear and monofilament line is regularly found wrapped around coral heads stressing the reef and affecting the ecosystem from the smallest to the largest reef life. Turtles are regularly found with hooks embedded in them and fishing line wrapped around them. Video evidence shows a massive net cast and abandoned onto the Mala reef on 10/3/21 that killed huge numbers of fish, caused damage to massive numbers of coral heads and entrapped 2 protected green sea turtles, yet it is commercial activity that is the scapegoat.

Conservation and protection of fish stock, the coral reefs that sustain the fish stock and protected turtles is as much a responsibility of local fishermen as the boats that operate out of

Mala. One party cannot be blamed over another. Everyone has responsibilities to do their part for positive change.

7)Compare the facility at Mala to a similar facility at Kihei Boat Ramp. A long term solution at Mala could be not additional boat ramp space but additional docking space. At Kihei boat ramp boats are able to tie up on both sides of the dock increasing the capacity of each dock twofold. The capacity of Mala was designed in the 1970's . The chances of mitigating tourism and even local usage of Mala to 1970's levels is a pipe dream. It isn't going to happen. Better management and improved infrastructure at Mala could translate to a fairer system for all.

I ask BLNR to consider the whole picture, to find solutions for positive change and to deny the petitioners' request for a contested case, reference item J-1.

Mahalo for your time and reading my testimony,

Amy Stephens

808 281 4855

Napili, Maui

Extended Horizons Guide 1996-2002, No longer working in the industry just a concerned citizen.

**From:** [Amy Stephens](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item J-1 for 10/8/21 BLNR Meeting  
**Date:** Thursday, October 7, 2021 2:28:51 AM

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I am submitting testimony asking BLNR to deny petitioners' request for a contested case, reference item J-1. The usage and issues at Mala Boat Ramp are complicated and not easily summarized in black and white. I do support the goals of Ka Malu O Kahālāwai, Nā Papa'i Waewae 'Ula'Ula ("Nā Papa'i") to advocate for managed tourism, access for locals and stewardship of the environment. There is need for change and improvements to how Mala Boat Ramp is used and managed.

The contributions of Extended Horizons Scuba in alignment with the goals of Nā Papa'i cannot be overlooked in the pursuit of change. My testimony will address the positives, the negatives and offer some suggestions for mitigation of the challenges. My hope is that my testimony can present a wider view of the challenges as well as an opportunity to prove that singling out Extended Horizons Scuba and grouping them together as part of the problem is not only false and wrong but also harming a company that is the kind of business our community, our county and state should support not punish with this complaint. Most of us enjoyed the calm that came with the close down of 2020 due to the pandemic. It was an unsustainable utopia that we wish could continue without the hardship and suffering demonstrated by miles long lines waiting for food banks last year. While the goal to promote the right kind of tourism is needed we also need to recognize that if we want sustainable, educated tourism we must differentiate between the takers and the givers.

Extended Horizons Scuba has always taught their guests to be respectful of the ocean and the health of the reef. Erik Stein, the founder of Extended Horizons, taught his guides and guests to respect and appreciate the rhythm of the ocean, to appreciate not just the great moments but also what is right about the quiet subtleties of the marine life and reef, to know the value of conservation. Extended Horizons was instrumental in spearheading installing moorings throughout Maui County, donating time, funds, equipment including the boat and supplies in coordination with DLNR to establish, install and maintain moorings on Maui, Lana'i and Molokini. Their efforts to install and maintain moorings have continued for over 25 years.

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Addressing some of the problems and offering some solutions:

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2)Trailer parking. The dirt lot adjacent to Jodo Mission could be paved to accommodate additional boat trailers  
3)Vehicle Parking. There are both abandoned vehicles and vehicles that have become housing. In the early morning, 6am, prior to any commercial activity, much of the available parking is taken by people living and sleeping in cars. Obviously this is a sign of larger community issues but to address the issue of access and parking at Mala: Overnight parking could be limited to one vehicle in the parking area per boat trailer. There could be a specific number of vehicle permits per commercial operation. Many ways to address overuse and abuse of parking.

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I ask BLNR to consider the whole picture, to find solutions for positive change and to deny the petitioners' request for a contested case, reference item J-1.

Mahalo for your time and reading my testimony,

Amy Stephens

808 281 4855

Napili, Maui

Extended Horizons Guide 1996-2002, No longer working in the industry just a concerned citizen.

**From:** [Michelei Kahae](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Item J-1  
**Date:** Wednesday, October 6, 2021 10:42:12 PM

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Aloha,

I am emailing in support and URGE BLNR to grant petitioners request for a contested case reference to ITEM J-1. to address the many concerns and issues with commercial vessel use at Mala Boat ramp.

Mahalo,  
Michelei Tancayo  
808-357-7124

Sent from my iPhone