

From: [Sara Bill](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Mala Boat Ramp Use
Date: Tuesday, March 22, 2022 1:15:23 PM

To Whom it May Concern,

I am writing to express my concern about the increase in commercial activity taking place at Mala Boat Ramp. As a resident of Lahaina, each day I encounter challenges with too many cars on the road, limited infrastructure and overcrowded parking lots and intersections. Areas that have been popular locations for our local community are now being exploited for profit and tourism.

This area of Mala should be focused on local community use, fishing and beach goers - not for commercial use. There are other areas such as Lahaina Harbor and Ma'alaea Harbor that are specifically for high volume, commercial use. Each time the community sits back and does not voice our concerns, the more places like Mala will start to slip away and we will never get them back.

On behalf of our family, we urge you to listen to the voices of our community and those NOT looking to profit off this area - and do the right thing. These businesses can run their tours out of the other, larger harbors where there is appropriate infrastructure and regulations.

Mahalo,
Sara Bill & Kaliko Leialoha-Dutro
Lahaina Residents

From: [Chad Blair](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Ocean Riders testimony
Date: Wednesday, March 23, 2022 10:28:14 AM

To whom it may concern,

My name is Chad Blair, owner/operator of Ocean Riders, Inc. Ocean Riders has been an owner operated company since 1987 and has been working and permitted to work from the Mala Boat Ramp for the same time frame. We maintain employment for 3 local residents and are committed to providing a safe and low impact tour for visitors and locals alike. We do several community events throughout the year including remote beach clean ups, escorting swimming and canoe races and different charity events to name a few. We have always gotten along very well with the local boaters and fisherman and have provided assistance numerous times including tow Ins and trailer truck repairs at the ramp when the get in distress. Thank you for the opportunity to introduce myself and company to the board.

Mahalo
Chad Blair
Ocean Riders, Inc

Chairperson and Members

Board of Land and Natural Resources meeting

March 24th F

Subject: Denial of petition contesting the renewal of commercial permits to Mala Launch Ramp commercial ocean operators.

My name is Zari Casil (Ventura). I was born and raised on Maui. I am of Hawaiian descent and I have experienced and seen the changes to this island. One of the changes that has occurred fairly quickly is the amount of visitors we get. Maui is not built to accommodate the growth that has occurred. Places like Mala Warf have become frequented by not only locals, but visitors as well. Not having proper parking and or space allows for crowding and frustration. However, businesses such as West Maui Parasail do not have anything to do with the overcrowding of Mala Warf. They have been using Mala Warf since 1983, far before the overcrowding began.

I stand by West Maui Parasail. They operate respectfully, being cautious of the environment with the engines they use. They provide jobs for locals and bring in income that boosts our economy. They park their trailers and boats elsewhere so that it does not take up room at Mala. They also shut down during whale season and do not participate in whale watching or other ocean activities. Lastly, launching their guests from other locations keeps their business away from Mala where they only start and finish their days.

N. Scott Mercier, the managing partner of West Maui Parasail is a respectful business owner. I have known Scott for 22 years and his personal connection with the land and sea runs deep. He truly makes an effort to learn his surroundings and how to cautiously and effectively nurture while enjoying what it has to offer. I strongly feel West Maui Parasail should be allowed to operate just as they have for the last few decades. Your consideration for renewing their permitting would be greatly appreciated.

Sincerely,

Zari Casil

LAW OFFICE OF CHRISTINA LIZZI, LLLC

62 N. Market St. Suite 309, Wailuku, HI 96793

Christina@Lizzi.Law | (808) 633-3966

March 22, 2022

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
PO Box 621
Honolulu, HI 96809

Submitted via email to blnr.testimony@hawaii.gov

Re: Item J(1) – Denial of Petition for Contested Case Hearing filed on January 22, 2022 by Nā Papa‘i Waewae ‘Ula‘Ula and Ka Malu O Kahālāwai regarding the Renewal of Commercial Use Permits for Ocean Riders, Inc., Adventure Rafting, Inc., Lahaina Para-Sail, Inc., Lahaina Water Ski, Inc. Parasail Kaaanapali, Inc., and West Maui Parasail, Inc., for Mala Launch Ramp, Maui; and requesting a delegation of authority to the Chairperson to grant or deny any future contested case hearing petitions regarding DOBOR commercial use permit renewals for the fifteen authorized commercial permittees at Mala boat launch ramp.

Dear Chair Case and Members of the Board of Land and Natural Resources:

Thank you for considering these comments submitted on behalf of Ka Malu O Kahālāwai (“Ka Malu), Nā Papa‘i Waewae ‘Ula‘Ula (“Nā Papa‘i”), Kekai Keahi, and Kai Nishiki (collectively, “Petitioners”) with respect to the Board of Land and Natural Resources’ March 24, 2022 Meeting Agenda Item J(1) and Petitioners’ request for a contested case regarding renewal of seven individual commercial ramp permits to Ocean Riders, Inc., Adventure Rafting, Inc., Lahaina Para-Sail, Inc., Lahaina Water Ski, Inc. Parasail Kaaanapali, Inc., and West Maui Parasail, Inc. (collectively, “Companies”).

The petition sets forth the threatened property interests of Petitioners by renewal of the Companies’ commercial use permits, namely Petitioners’ substantive interests in (1) the reasonable exercise of traditional and customary practices that are protected by article XII, section 7 of the Hawai‘i State Constitution, and (2) their article XI, section 9 of the Hawai‘i State Constitution right to a clean and healthful environment as defined by Chapter 200, Hawai‘i Revised Statutes (“HRS”) and administrative regulations pertaining to commercial use of State boating facilities and waters, specifically, HAR §§ 13-231-1 through 13-257-91. These comments address additional issues, including:

- Discretionary permits are improperly being ministerially approved
- The Board does not have sufficient information to deny the petition

- DOBOR has failed to conduct a *Ka Pa‘akai* Analysis
- Petitioners do not challenge the number of commercial use permits that may be issued

Petitioners seek contested case proceedings to ensure that they may continue to reasonably engage in traditional and customary practices conducted in the Mala area, and to reasonably access the water, which is necessary for the continuation of such practices. At minimum, regardless of whether a contested case is granted to Petitioners, DOBOR has an affirmative constitutional obligation under article XII, section 7 of the Hawaii State Constitution to identify and protect the exercise of traditional and customary Native Hawaiian practices to the extent feasible. *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, 94 Hawai‘i 31, 46, 7 P.3d 1068, 1083 (2000).

Article XII, section 7 of the Hawaii State Constitution was enacted to “preserve the small remaining vestiges of a quickly disappearing culture [by providing] a legal means by constitutional amendment to recognize and reaffirm native Hawaiian rights.” Stand. Comm. Rep. No. 57, in 1 Proceedings of the Constitutional Convention of 1978, at 640. The present petition is about more than just having to wait for parking or to use the ramp; the repeat ministerial issuance of discretionary permits for commercial use of the ramp to the Companies is significantly impeding Petitioners’ ability to engage in and perpetuate the “small vestiges of a quickly disappearing culture.”

Petitioners implore DOBOR and the Board to take affirmative action to protect the exercise of traditional and customary practices from Mala ramp and wharf, which serves as one of the few ocean access points for such practices in the Lahaina area to continue. “If the practice of native Hawaiian rights being exercised will be curtailed to some extent by the [permit issuance], the [agency] is obligated to address this.” *Ka Pa‘akai*. 94 Hawai‘i at 50, 7 P.3d at 1087. Petitioners are not required to assert a total deprivation of their rights to either be entitled to contested case proceedings or for DOBOR to be required to protect Native Hawaiian practices to the extent feasible.

In *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, the Hawai‘i Supreme Court provided a framework for fulfilling an agency’s obligation to reasonably protect Native Hawaiian rights. This framework was expressly provided as “badly needed judicial guidance” to enable the “enforcement by courts” of Native Hawaiian rights, without which the “promise of preserving and protecting customary and traditional rights would be illusory. . . .” *Ka Pa‘akai*. 94 Hawai‘i at 50, 7 P.3d at 1087. At minimum, when it is asserted that permit issuance will negative impact the exercise of Native Hawaiian rights, the agency must:

(1) the identity and scope of valued cultural, historical, or natural resources in the relevant area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the area; (2) the extent to which those resources -- including traditional and customary Native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the agency to reasonably protect Native Hawaiian rights if they are found to exist.

In re Contested Case Hearing Re Conservation Dist. Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Sci. Reserve, 143 Hawai'i 379, 395, 431 P.3d 752, 768 (2018) *as amended* (Nov. 5, 2018 & Nov. 30, 2018), *recon. granted in part, denied in part*, 143 Hawai'i 327, 430 P.3d 425 (Table) (2018) and *recon. denied sub nom. In re Contested Case Hearing re Conservation Dist. Use Application (CDUA) HA-3568*, 143 Hawaii 328, 430 P.3d 426 (Table) (2018) ("*In re TMT CDUA*") (*citing Ka Pa'akai*, 94 Hawai'i at 47, 7 P.3d at 1084.)

Rather than attempting to identify the traditional and cultural practices at Mala, however, DOBOR's submittal merely presents a history of the ramp itself, without mention of the fishpond, numerous burials, or historic cemetery located in the same area. It does not mention Kekai Keahi's family's practice of 'ōpelu mama at Mala or the traditional fishing koa. It does not account for or identify Petitioners' practices of subsistence fishing, diving, canoe paddling, nearshore gathering, and pelagic fishing impacted by permit issuance.

Petitioners do not contest the regulatory scheme for permitting or the number of permits that may be issued. Petitioners are repeatedly harmed, however, by DOBOR's ministerial renewal of commercial use permits. Because the permits are issued for the same place and for the same use to each of the Companies, many of the impacts on Petitioners' rights are the same, and, because the permits allow for unlimited use of the ramp and shared facilities, each permit threatens similar harms to Petitioners. This is not a problem with the regulatory scheme, but a problem with DOBOR's treatment of permit renewals as ministerial, without taking into consideration the unique impacts of each permitted use. Nowhere in subtitle 11, chapter 13 of the HAR does it state that DOBOR *shall* issue or renew commercial use permits. Rather, DOBOR is required to exercise discretion when it issues the Companies' permits, including under HAR § 13-231-50 and 33(a) to ensure corresponding and reasonable benefits and returns to the public, and under HAR § 13-231-60(c) to ensure that the proposed use is appropriate for the facility. DOBOR also must comply with its affirmative constitutional obligation to protect the exercise of traditional and customary Native Hawaiian practices and other public trust obligations. It has repeatedly failed to do so.

If the Board has not been provided with copies of the permit applications and the proposed permits to be reissued, none of which appear to be included in the submittal, then the Board does not have sufficient information before it to deny Petitioners request for a contested case. DOBOR's assertions that it approves the permits ministerially, however, is sufficient for this Board to conclude that DOBOR will not be exercising its judgment as required under subtitle 11, chapter 13 of the HAR with respect to commercial use permits, or its obligations under the Hawaii State Constitution. There is a high risk of erroneous deprivation of Petitioners' rights absent a contested case hearing.

Further, DOBOR has repeatedly asserted in prior submittals to the Board that it will place conditions on similar commercial use permits but has failed to do so. Again, if DOBOR has not provided the Board with copies of the permits it intends to issue, then the Board cannot credibly conclude that no contested case hearing is needed to protect Petitioners' interests from the threatened harms of permit issuance. To date, there have been no conditions imposed on commercial use permits regarding a 30-minute loading period for launches and returns. Even if such condition is imposed, without limiting the number of commercial launches and returns per day that each company may engage in, issuance of such permits clearly impedes the ability of others to access the ramp.¹

A contested case hearing would enable Petitioners to cross-examine Companies and address numerous questions that DOBOR should already be considering, and which go to the impediment of access for exercise of traditional and customary practices and impacts on the environment, such as: How long will the applicant use the ramp per day? How many times per day? Do they anticipate increasing or decreasing their tour schedule in the coming year? Will they park their trailer on or off site? How many customers will they generate per day? Do they instruct customers to park off-site? Do they provide customer parking off-site? Do they load their customers from Mala or pick them up elsewhere? Do they engage in business activities such as waiver signing or safety briefing on the ramp? Does the applicant have a storefront where customers congregate? Are customers instructed to meet the applicant at the ramp or at another site? How soon before departure are customers instructed to arrive at the ramp for their tour? How long on average does the applicant need to load and unload customers? What routes does the tour take in the water? Do they avoid traditional

¹ For example, assuming that there is an enforceable 30-minute window for each launch and return at the ramp, then if each of the Companies engages in a tour on a single day, each taking an hour to load and unload at the ramp cumulatively, then the ramp is occupied for seven hours by only these seven Companies. The Companies have an economic incentive to maximize ramp use.

fishing koa? What kind of pollution protection devices and best practices do they employ? Do they provide reef safe sunscreens to customers? Where is trash generated by the company disposed of? Do they have a restroom on board, and if so, where is it emptied? What training do they provide for employees so that employees are familiarized with minimizing impacts on other users while using ramp? Have they had any prior conflicts with other users? How do they keep customers out of the ingress and egress of the ramp area when conducting activities in the water? Have they ever cut other ramp users off when entering or exiting the water?² All of these questions go to how permit issuance would impact the reasonable exercise of traditional and customary Native Hawaiian practices, the environment, and whether permit issuance provides reasonable and corresponding returns and benefits to the public. Most importantly, Petitioners would also present evidence on their traditional and customary practices and how they have been and will be impacted, including testimony from officers and supporters and other relevant witnesses.

DOBOR's submittal improperly insinuates that past Board hearings regarding other permittees should be included in the Board's present consideration of whether Petitioners have been afforded due process with respect to these specific Companies. Submittal at 11-12. Petitioners, however, have never had an opportunity to cross-examine those permittees and in the present proceedings in which the agenda item is limited to the petition are again afforded no opportunity to cross-examine the Companies. Nor was the February 25, 2022 hearing "due process," as it provided Petitioners no notice that such hearing would be determinative of their rights to a contested case vis-à-vis the issuance of these specific permits.³ That agenda item was a non-action item ostensibly for DOBOR to provide updates regarding the situation at Mala ramp.

Granting a contested case hearing in this instance does not necessitate granting contested case hearings as to all future commercial use permits. Rather, if DOBOR appropriately exercises its

² These questions are not included in the commercial use questionnaire that is part of the application for issuance or renewal of a commercial use permit.

³ Petitioners also note that individual officers and supporters of Ka Malu and Nā Papa'i who provided comments at the February 25, 2022 meeting did not speak for all officers and supporters of the organizations and their comments should not be construed as having done so. As such, whatever statements were provided do not constitute the entirety of testimony that would be provided by Petitioners' other officers and supporters in contested case proceedings. For example, over one-thousand supporters signed a petition within seventy-two hours of the petition's creation asking this Board to require DOBOR to better manage Mala ramp in accordance with its regulatory mandate, which was submitted as testimony for the February 25, 2022 hearing.

discretion instead of treating such commercial use permits as ministerial and affirmatively performs its constitutional obligations to protect and preserve Native Hawaiian rights vis-à-vis permit issuance, then additional process may not be necessary to reduce the risk of an erroneous deprivation of Petitioners’ substantive rights in the future. The Board or hearings officer also has broad discretion under chapter 91, HRS to shape proceedings for efficiency, and could consolidate such hearings.

The “issues” raised by Petitioners are not being sufficiently addressed otherwise. Petitioners are not being afforded due process through any other means vis-à-vis these specific permits, and DOBOR has not independently engaged in the necessary *Ka Pa’Akai* analysis regarding reissuance of the Companies’ permits. DOBOR has also made no specific findings as to why permit issuance to these specific companies provides reasonable and corresponding benefits and returns to the public, HAR §13-231-50, *see also* HAR § 13-251-33 (requiring same). To make such findings, at minimum, DOBOR would need to estimate the degree to which each permittee would displace public use of the ramp and shared facilities to ensure that “benefits” provided by the specific commercial use are both reasonable and corresponding. It has not done so.

Finally, the Board may not deny a contested case hearing without hearing unless it is clear as a matter of law that the petitioners are not entitled to a contested case hearing. HAR § 13-1-29.1. It is premature to make such a judgment where future petitions have not yet been filed and the circumstances are unknown. DOBOR’s request is also overly broad. It impacts not only Petitioners, but anyone who may seek contested case petitions regarding commercial use permits at Mala ramp without time restriction. Moreover, it would be prudent for the Board to wait to make such a determination on delegation until after the Circuit Court’s rulings in pending litigation appealing prior denials of the contested case petitions referenced in DOBOR’s submittal.

For these reasons and those set forth in the petition and any testimony offered on March 24, 2022, Petitioners respectfully request the Board grant their petition for a contested case and deny the request to delegate decision making to the Chair.

Dated: Wailuku, Hawai’i

March 22, 2022



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

From: [Dawnalyn Fujiwara](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Written testimony in item J-1
Date: Monday, March 21, 2022 4:52:17 PM

Aloha,

My name is Dawnalyn Fujiwara and I'm writing to voice my concerns about how commercial use of the ramp in particular By OCEAN RIDERS, INC., ADVENTURE RAFTING, INC., LAHAINA PARA-SAIL, INC., LAHAINA WATER SKI, INC., PARASAIL KĀ'ANAPALI, INC. and WEST MAUI PARA-SAIL, INC.

Mala wharf and ramp is the only recreational public boat ramp near Lahaina. Access to the ramp is critical to all those who are continuing traditional and customary Native Hawaiian practices as well as for the local community (island wide) to access the water.

The overuse from these above mentioned tour companies are slowly taking away the local residents access to the ramp. It's over congested for such a small area and the situation needs to be addressed.

I kindly ask that you grant Ka Malu O Kahalawai a contested case hearing.

Mahalo!

Dawnalyn Fujiwara
Dawnalyn02@gmail.com
808-344-5224

From: [Jezelyn Gonsalves](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Mala Ramp Issue Testimony
Date: Tuesday, March 22, 2022 10:15:19 AM

Aloha to whom this may concern,

My name is Jezelyn Gonsalves and I've lived here in Lāhainā all my life. I have been utilizing Mala Wharf for all these years for various reasons but the most important is gathering resources. I have never had any issues with accessing this area until recent years. I've never seen so much cars lined up, I've never seen tour buses in this area, I've never seen tour boats going in and out of this area because I thought that's what Lahaina Harbor was for. I mean the local fisherman got booted out of Lahaina Harbor because it was suppose to be for tour boats but now we getting pushed out of Mala Wharf because of tour boats. I say no. We've given up enough for this tourist industry and its time to think about ourselves first because we've always been getting the short end of the stick and it's us who has to live here and suffer the consequences but I say no more. I've never had an issue with parking but most of all I've never had such a disruption with gathering resources. I'd spend about 30 minutes to an hour gathering a good amount of bait fish and some good eating reef fish but now days I gotta spend half a day just to even get 2 bait fish and no reef fish to eat. It's really sad and the "brushing off the shoulders" attitude that we've been getting from those who can solve this issue is really starting to piss the community off. Thank you for your time.

Sincerely,
A very agitated RESIDENT

Sent from my iPhone

February 22, 2022

BLNR Chair - Suzann Case
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI. 96813

Re: Denial of petition contesting the renewal of commercial permits to Mala Launch Ramp commercial ocean operators.

Aloha Chair Case,

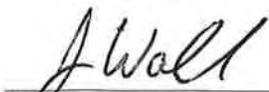
My name is Jim Walsh and I am the general manager for Atlantis Submarines on Maui. I am also a recreational boater as well. I am writing on behalf of Scott Mercier, of West Maui Parasail (permits listed under Lahaina Parasail). I am requesting the denial of petition contesting the renewal of commercial permits to Mala Launch Ramp for commercial ocean operators.

West Maui Parasail has been in operation for over 30 years, and have proven to be good stewards of the marine resources they operate within. The parasail operations have unque operating requirements already put upon them. As you know, they are only allowed to operate 6 months of year, outside of whale season. In addition, West Maui Parasail only launches and recovers their vessels from Mala Wharf at the beginning and end of their day. They do not use Mala Wharf for loading of passengers throughout their day. So, I am not sure why they are even named on this petition in the first place. They have a very small footprint on Mala Wharf now.

As a recreational boater who uses Mala Wharf to launch out of, I understand the need to work together with all of the boating community. The answer is that we need to collaborate with each other, and not threaten to remove one's livelihood. The businesses mentioned in this petition all have been ocean users for a long time, and all have good standing within the community. It would be a horribly bad precedent setting decision to have this petition approved and for these long standing businesses go out of business. They have done nothing wrong, they play by the rules, and they provide jobs for the community.

In closing, I would again ask that you deny the petition contesting the renewal of commercial permits to Mala Wharf. This could have far reaching consequences to all of the commerical operations, not only in Maui, but across the state.

Respectfully yours,



Jim Walsh

From: [Keola Kalawaia](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Mala wharf
Date: Wednesday, March 23, 2022 4:33:00 PM

No impacts to Mala Wharf is a bunch of bull. We as local families can't even access the beach which is our rights as Native Hawaiians because of over crowding. Parking lot is full with rental cars and now there's buses shuttling people to Mala Wharf is ridiculous.

I also as a fisherman see how the local fishermen are being pushed aside because of the commercial businesses. All commercial businesses, para sail, snorkeling whale watching should be launched from Lahaina Harbor which I understand is a commercial harbor. Mala Wharf was for fishing boats only at one time.

Thanks,
Bennett K Kalawaia

From: kaib22@yahoo.com
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Mala Boat Ramp Out of Control
Date: Monday, March 21, 2022 8:22:44 PM

I writing this letter from a person that was born a raised on Maui since the seventies. I remember Mala Boat ramp being strictly for the locals because city and county wanted to make Lahaina boat harbor strictly for tour boats which saddened me. This state don't care about Native Hawaiian or it's local people. It's all about greed and money. I'm asking you to put a restriction on all of these companies coming in and over using not only Mala boat ramp but all of Maui's heavy tours attractive spots this is killing our island and no one cares. Please but a STOP to all commercial tour groups coming and using Mala boat ramp!
Sent from my iPhone



February 15, 2022

Division of Boating and Ocean Recreation
Dept. of Land and Natural Resources
State of Hawaii

RE: Renewal of Commercial Use Permits of Mala Wharf and Ramp for related companies: Lahaina Para-Sail, Inc., currently operating under Permit Nos. 20-73175/MALA 08 and 20-73202/MALA 09 with expiration dates of April 30, 2022; Parasail Kaaanapali, Inc. under Permit No. 20-73212/MALA 17, with expiration date of April 30, 2022; and West Maui Para-Sail, Inc. under Permit NO. 20-73159/MALA 21.

To whom it may concern:

I am writing in support of the renewal of the Mala Wharf and Ramp commercial use permits for the businesses referenced above, who are collectively known as West Maui Parasail.

Under the guidance of N. Scott Mercier, the managing partner, West Maui Parasail has been an important part of the West Maui community, providing numerous jobs to residents and supporting the local economy for over 35 years. They are environmentally friendly, maintaining their vessels in peak condition while incorporating engines that emit very little pollution, and have honored their operating moratorium during the winter months in support of the returning humpback whales. Unlike some other companies, West Maui Parasail does not switch to “whale watching” activities during the winter, keeping their boats on trailers or in storage, which helps to reduce the number of vessels in the ocean during that time.

Our banking relationship goes back to 1985, and over the years we have helped this company finance new vessels, new engines, business expansion, etc. The company is well-run and does not abuse any of its privileges at Mala Wharf. Their passengers are not loaded at Mala and their equipment does not add to the growing congestion at the wharf, as their vehicles and trailers are parked elsewhere.

The operators of West Maui Parasail are good stewards of our environment, are respectful to local culture, and are leaders in an industry that provides a living to many Hawai'i residents.

Your consideration to renew these commercial use permits is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Knue'.

Greg Knue
Vice President and
Commercial Loan Officer

From: [Tiare lawrence](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Kai Nishiki](#); [Kekai Keahi](#); [Archie Kalepa](#)
Subject: [EXTERNAL] J1 MALA
Date: Wednesday, March 23, 2022 8:20:14 PM

Aloha board members,

My name is Tiare Lawrence. I was born and raised in Lahaina and trace my lineage back to the people who inhabited these islands in 1778. My traditional practices at Mala include hoe wa'a, papa he'e nalu, ho'okele wa'a, and lawai'a. My grandmother Lily Kaleiopu is remembered as "Lily by the sea". She was known for gathering limu, opihi, wana, and pipipi along the shores of Lele to Mala, a historic fishing village. As a child my mother Haunani would take us diving off of Mala and Wahikuli to gather wana and limu. Thirty years later our family still gathers from the shores today. Sadly over the years due to poor land management, tourism, commercialization, and land development our cherished resources have drastically declined. The reissuance of commercial use permits to Ocean Riders, Inc., Adventure Rafting, Inc., Lahaina Para-Sail, Inc., Lahaina Water Ski, Inc. Parasail Kaanapali, Inc., and West Maui Parasail, Inc., for use of Mala ramp threatens to further deprive me of my ability to engage in these practices at Mala.

The companies' commercial use permits are being reissued year after year without any consideration for their impacts on traditional and customary practices. DOBOR just renews each permit when requested without asking such basic questions about how much the company will use the ramp and what other impacts they'll have on parking and nearshore waters. To date, the commercial use permits that DOBOR has issued for Mala haven't contained any of the conditions that DOBOR has told this Board that it will impose, such as limiting the amount of time that permittees can use the ramp per trip. DOBOR has a constitutional obligation to protect traditional and customary practices, and has turned a blind eye to how these companies' use of the ramp in the past has harmed my practices, and that reissuing the permits without considering the impacts that each permit will have continues to injure my practices in the future.

So here we are today, kanaka oiwi from this moku urging decision makers like yourselves to allow us an opportunity to be heard regarding these specific permits - not just on a petition as to whether we are entitled to a contested case.

Without such hearing, the permits are likely to be issued again, without any conditions, and without consideration for how much each company will displace us and others from the ramp or reduce access to shared facilities, or whether the companies' in-water practices will impact our fishing practices. If the Board does not have the permit applications and proposed permits in front of it - how can the Board determine that permit issuance will not harm my practices?

It is infuriating that sometimes after launching Manaikalani, our Hawaiian voyaging canoe, that we have to drive our trailer back to Leiali'i because there's no parking at Mala, or that companies take a long time at the dock to load and unload passengers. Other times we are unable to launch a boat at all.

Commercial companies also contribute to the decline of our marine resources with heavy commercial traffic in and out of Mala everyday. In the last 20 years our native resources have declined drastically but there's GOOD news. If there's anything Kahoma stream restoration or the pandemic taught us is that our 'āina is resilient when we give her time to heal and manage our resources responsibly.

These companies continue to impact our traditional practices. We need relief. I urge you to grant the request for contested case hearings which will be the best way to ensure that each of these permits does not further injure us or allow the Companies' to engage in activities in the future that will harm our practices.

At a minimum, even if the Board does not grant a contested case, the Board should (1) require DOBOR to conduct the analysis set forth in Ka Pa'akai O Ka Aina before it issues the permits; (2) determine that issuance of these specific permits -- based on the Companies' proposed use for the year ahead - will provide corresponding and reasonable benefits and returns to the public even in the face of the

Companies' displacing other users; and (3) place conditions on the permits based on the Ka Pa'akai analysis to protect traditional and customary practices and access at Mala. Some potential conditions include limiting the number of launches and returns each day, setting an enforceable time limit per launch and return, requiring trailers to be parked off-site, requiring all other business activities to be conducted off-site and/or requiring customers to be picked up from Lahaina. DOBOR also needs to provide some actual enforcement and monitoring of the ramp to hold permittees accountable.

Tiare Lawrence

Attached are videos to the activity at Mala this past week sent to me by community members





March 22, 2022

VIA E-MAIL (blnr.testimony@hawaii.gov)

Chairperson Case and Members
Board of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, HI 96813

Re: Item J-1 - Denial of Petition for Contested Case Hearing filed on January 22, 2022 by Ka Malu O Kahālāwai, Nā Papa‘i Wawae ‘Ula‘Ula, Kekai Keahi, and Kai Nishiki, regarding the Renewal of Commercial Use Permits for Ocean Riders, Inc., Adventure Rafting, Inc., Lahaina Para-Sail, Inc., Lahaina Water Ski, Inc., Parasail Kaanapali, Inc., and West Maui Parasail, Inc., for Mala Launch Ramp, Maui.

Aloha Chairperson Case and Members of the Board of Land and Natural Resources,

This testimony is submitted on behalf of my clients Ocean Riders, Inc.; Adventure Rafting, Inc.; Lahaina Para-Sail, Inc.; Parasail Kaanapali, Inc.; and West Maui Parasail, Inc. (collectively, “Permittees”) regarding agenda item J-1, the Petition for Contested Case Hearing filed on January 22, 2022, by Ka Malu O Kahālāwai, Nā Papa‘i Wawae ‘Ula‘Ula, Kekai Keahi, and Kai Nishiki (collectively, “Petitioners”).

This petition for contested case hearing regarding the renewal of commercial use permits is the fifth such petition from Petitioners since July 2021. Petitioners raised similar, if not identical, issues in each of their petitions for contested case hearing. They also seek similar, if not identical, relief in each of their petitions. The Board denied each of the previous petitions for contested case hearing. Petitioners, however, continue to submit similar, if not identical, petitions for a contested case hearing for each commercial ocean operator at Mala Ramp whose commercial use permit is set to expire next. Most importantly, Petitioners do not make any allegations regarding these particular Permittees. Instead their arguments focus on commercial permittees generally.

Petitioners have also filed appeals from the denials of their petitions for contested case hearing in the Circuit Court of the Second Court (“circuit court”).¹ On

¹ These appeals also address permits as to other ocean operators.

Chairperson Case and Members
March 22, 2022
Page 2

November 10, 2021, Petitioners appealed the denial of their petition for contested case hearing regarding Lahaina Harbor Water Taxi, Inc. and Underwater Safari, Inc. in 2CCV-21-0000336; on January 5, 2022, Petitioners appealed the denial of their petition for contested case hearing regarding Noio Charters, Inc. and Extended Horizons Inc. in 2CCV-22-0000002;² and on January 28, 2022, Petitioners appealed the denial of their petition for contested case hearing regarding Adventure Rafting and Ocean Riders in 2CCV-22-0000026.³ All these appeals are currently pending before the circuit court. Like the petitions for contested case hearing, these appeals raise similar, if not identical, issues.

These multiple challenges place a heavy burden on Permittees, who have operated out of Maui for decades, and are small hardworking businesses that have complied with all permitting requirements. For these law-abiding small business owners, these repeated challenges to the renewal of commercial use permits are inappropriate. Petitioners raise no issues specific to permits for these particular Permittees, instead focusing on general claims of overuse at Mala Ramp.

While inappropriately focusing their challenges on law-abiding small business owners, Petitioners entirely ignore the unpermitted and illegal commercial uses at Mala Ramp. Indeed, Representative Tina Wildberger's October 6, 2021 written testimony to the Board shows that the *lawful* operators, namely Permittees, are not the source of the problems complained of by Petitioners:

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

² On October 8, 2021, the Board denied Petitioner's contested case hearing request regarding Noio Charters, Inc. and Extended Horizons Inc.'s permits. Petitioners appealed the denial to the circuit court in 2CCV-21-0000292. Then, even before the Board had a chance to consider Petitioners' second petition for contested case hearing, Petitioners filed a second appeal challenging the permits on January 5, 2022, in 2CCV-22-0000002. The two appeals were consolidated and the consolidated appeal is pending under 2CCV-22-0000002.

³ On January 5, 2022, after the Board issued three-month temporary permits to Adventure Rafting, Inc. and Ocean Riders Inc. to consider Petitioners' November 22, 2021 petition for contested case hearing and before the Board denied that petition, Petitioners appealed to the circuit court in 2CCV-22-0000003. The Board then denied the petition on January 14, 2022, and renewed Adventure Rafting, Inc. and Ocean Riders Inc.'s commercial use permits on January 24, 2022. On January 26, 2022, the Board then received Petitioners' petition for a contested case hearing dated January 22, 2022. Petitioners then appealed again in 2CCV-22-0000026 on January 28, 2022. The two appeals are currently pending.

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Page 3

users decided boat launches should not remain on Ka'anapali beach, those vessels moved to Mala and are now launched 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.

See Exhibit "A." This letter was submitted to the Board as part of its consideration of a similar request for contested case hearing filed by Petitioners at the October 8, 2021 Board meeting.

Permittees note that DOBOR's proposed consolidations of these multiple and repetitive requests for contested case hearing is consistent with the Board's procedural rules. Specifically, Haw. Admin. R. § 13-1-20 allows the Board to

contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related, if it finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

Where Petitioners' contested case petitions are largely repetitive, it is proper to consolidate them for purposes of denying the petitions.

Permittees also note that denial of the contested case hearings does not leave Petitioners without a remedy. Petitioners are allowed to testify at the Board meeting. They could also petition for adoption, amendment or repeal of a rule (Haw. Admin. R. § 13-1-26), or could petition for a declaratory ruling (Haw. Admin. R. § 13-1-27). Petitioners' allegation of due process issues does not allow them to choose the method by which the Board operates, and the Hawai'i Supreme Court has noted in other circumstances that appellants "should have initiated a rule-making petition if that is what they desired," even when those appellants were invoking the same constitutional rights Petitioners assert here. *In re Matter of Gas Co., LLC*, 147 Hawai'i 186, 206, 465 P.3d 633, 653 (2020).

The previous contested case requests, raising substantially similar grounds regarding general overuse of Mala Ramp, were denied. This contested case request should similarly be denied. As requested by the Board, DOBOR has already established

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a working group to address issues regarding overall commercial activity at Mala Ramp. For the foregoing reasons, I request the Board deny Petitioners' request for a contested case hearing. Thank you for your consideration.

Mahalo,

GOODSILL ANDERSON QUINN & STIFEL

A handwritten signature in black ink, appearing to read 'Lisa A. Bail', written in a cursive style.

Lisa A. Bail
Attorney for Ocean Riders, Inc.; Adventure Rafting, Inc; Lahaina Para-Sail, Inc; Parasail Kaanapali, Inc.; West Maui Parasail, Inc.

LAB

Attach.



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 11th House District

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

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

Exhibit A

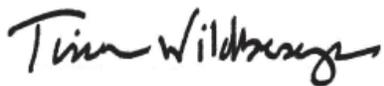
from Mala, without permits. Ka'anapali beach-loading permitted vessels are purported to be using Mala ramp to board passengers when beach-loading it's not safe or practical which is more unpermitted Mala Ramp use activity. All of this cumulated activity contributes to congestion and access issues at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

A handwritten signature in black ink that reads "Tina Wildberger". The signature is written in a cursive, flowing style.

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

Office of Representative Tina Wildberger

Proudly serving the 11th House District

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

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

Chairperson and Members
Board of Land and Natural Resources meeting,

March 24th BLNR meeting:

Subject: Denial of petition contesting the renewal of commercial permits to Mala Launch Ramp commercial ocean operators.

Thank you for letting me provide testimony regarding this petition. My name is N. Scott Mercier and I have been a Maui resident for over 41 years now. I am the President and General Manager of West Maui Parasail. We have 4 Mala Launch ramp permits for our operation. The permits are listed under Lahaina Parasail, Parasail Ka'anapali and West Maui Parasail.

Our Parasail operation operates from May 15th to December 15th each year. Our boats are parked on trailers and we **DO NOT** operate our Parasail boats during whale season. We have been operating out of Mala Warf launching and retrieving our boats since 1983 and were here when DLNR enacted the ORMA rules back in 1994. We have always stored our boats in the boat yards behind the Mala launch ramp in either Wilson's yard or in Lahaina Welding boat storage area. Our operation is different because we **DO NOT** load customers at Mala Ramp. We load and unload our customers at either Slip #15 in Lahaina Harbor with the use of a shuttle boat or off of Ka'anapali Beach in front of Whalers Village in the sanctioned ingress/egress zone. We also **DO NOT** park our trucks and trailers at the Mala Ramp parking area – our crew drops the Captain and boat in the water, goes and parks our truck and trailer back at our own parking area behind Mala Ramp parking area – then the crew gets picked up at the dock by the captain. Normally the boat is never tied up at the dock unless we have a mechanical issue or something.

Our usage of Mala Boat Ramp is for launching and retrieving only with our Customers checking in and loading and unloading elsewhere along with our truck and trailers being parked off site daily. We have been operating Volvo Penta EPA compliant common rail electronic fuel system since 2005 and updated all of our parasail vessels with new power packages in the last two years. This is a very clean running system with none of the conventional diesel black smoke issue.

I have seen a lot of changes over the 41 years. The biggest change in the last five have been the visitors coming and parking to use the Baby beach area as well as the large numbers going scuba diving at Mala. The State has removed the large homeless encampment and that has helped with the crime and vandalized vehicles in the area. If the County and the State can work together they can take the Parking lot behind the bathrooms, cut down the majority of trees, pave the area and stripe it. This would provide more parking for all boaters at Mala Wharf.

We respectfully request the Board deny this petition.

Mahalo,

N. Scott Mercier

P/D West Maui Parasail, Lahaina Parasail, Parasail Ka'anapali



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

March 24, 2022

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

Via E-mail: blnr.testimony@hawaii.gov

**RE: Ocean Tourism Coalition Testimony J-1
Denial of Contested Case Hearing 1/22/22**

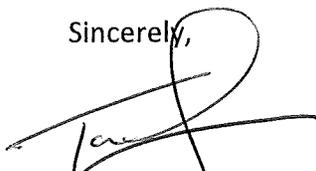
Dear Chair Case and Members of the Board:

The Ocean Tourism Coalition ("OTC") is writing in strong support of the Department's recommendation to deny petitions for contested case hearings on this matter. 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 its previous position to deny petitions for a contested case hearing on this issue.

Sincerely,



Tim Lyons, CAE
Executive Director

From: [Sara Riley](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Lahaina MALA small boat harbor
Date: Tuesday, March 22, 2022 8:14:09 AM

I am writing this on behalf of the MALA non commercial small boat harbor. My name is Sara riley and I was born and raised on front street "MALA camp". I have grown up fishing and swimming at MALA ramp and over the years have watched the pier deteriorate as well as the non commercial aspect of this community small boat harbor. My husband and I use this small boat harbor for recreational use with our kids with our boat on weekends thankful to go out on sea as our beaches have become so overcrowded we can't enjoy them much anymore. Now our kids have to watch the amount of paid visitors load onto these commercial boats as we the local residents once again have to watch what little we have left to enjoy be given to the visitor again. Please keep MALA non commercial and for the community. Keep all commercial activities to lahaina harbor so the visitors can enjoy the upgrade taken place there. Restroom, restaurants, banyan tree, etc. Allow the community to keep what little we have left untouched by the visitors and regulate the commercial use. Infrastructure and our jodo mission cemetery make for less friendly conditions at MALA boat ramp compared to lahaina harbor as well.
Thank you for giving me the time to write this on behalf of my family and community.

Sent from Sara Riley

WEST MAUI PARASAIL / LAHAINA PARASAIL/ PARASAIL KA'ANAPALI

930 Wainee Street, Suite 12, Lahaina HI 96761

Chairperson and Members
Board of Land and Natural Resources meeting,

March 24th BLNR meeting J-1 agenda:

Subject: Petition for contesting case hearing for commercial permits to Mala Launch Ramp commercial ocean operators. **We support the Departments recommendation to DENY petitions for contested case hearings.**

Thank you for letting me provide testimony regarding this petition. My name is N. Scott Mercier and I have been a Maui resident for over 41 years now. I am the President and General Manager of West Maui Parasail. We have 4 Mala Launch ramp permits for our operation. The permits are listed under Lahaina Parasail, Parasail Ka'anapali and West Maui Parasail.

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We support the Departments recommendation to DENY petitions for contested case hearings.

Mahalo,

N. Scott Mercier

P/D West Maui Parasail, Lahaina Parasail, Parasail Ka'anapali

From: [Michelei Kahae](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Malia Boat Ramp
Date: Wednesday, March 23, 2022 10:13:31 PM

Please address the overcrowding of Mala. More specifically to the Tour companies, They need to park off site. In addition they need to pick up their guests from another location. Many times we have to wait longer then the allowed active loading times while they load their group and discuss tour information. The amount of time they take is unacceptable and even insulting to me as a local Lahaina homeowner who has to wait for tourist to have a good time when all I wanna do is launch our boat and go! Go on the ocean to feed my family. Go on the ocean to visit my family on Molokai. What's even worst is the danger you are allowing with the over crowded parking of tourist cars along the road. Turning a 2 lane road into 1 lane. Causing for truck and trailered boat to be at a standstill facing each other. Having to maneuver dangerously. Stop closing your eyes to the danger you're allowing by the overwhelming crowding going on at Mala Boat Ramp.

Mahalo,
Michelei Tancayo

Sent from my iPhone