

STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawai'i 96813

October 12, 2012

Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

File: SP0064  
Hawai'i

Reconsideration of the Board's September 14, 2012, Decision to Terminate Revocable Permit No. SP0064 Issued to Hawaii Pack and Paddle, LLC, Kealakekua Bay State Historical Park, South Kona, Hawaii, Tax Map Key: (3)8-1-011: 001, 006, 010, 011, por.

BACKGROUND:

At its meeting on September 14, 2012, (Agenda Item E-1), the Board approved staff's recommendation to terminate the month to month, revocable permit issued to Hawaii Pack and Paddle, LLC effective upon thirty (30) calendar days notice issued by the Chairperson. That submittal, excluding the attachments, is attached as Exhibit A. In addition to approving the request to terminate the revocable permit, the Board agreed to reconsider the decision at its October 12, 2012 scheduled meeting. The Department notified Hawaii Pack and Paddle by regular mail that the termination of the revocable permit would become effective on October 26, 2012 in accordance with paragraphs B2 and B12 of the revocable permit.

REMARKS:

Staff believes the Board made the proper decision in terminating the revocable permit and sees no reason why that decision should be changed.

RECOMMENDATION: That the Board:

1. Reaffirm its decision to terminate the revocable permit issued to Hawaii Pack and Paddle, LLC.
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



DANIEL S. QUINN  
State Parks Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson

ITEM E-2

Exhibit A – September 14, 2012 Board Submittal without Attachments

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File: SP0064  
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Termination of Revocable Permit No. SP0064 to Hawai'i Pack and Paddle, LLC,  
Kealakekua Bay State Historical Park, South Kona, Hawaii, Tax Map Key: (3)8-1-011:  
001, 006, 010, 011, por.

REQUEST:

Termination of revocable permit No. SP0064 to Hawai'i Pack and Paddle, LLC.

LEGAL REFERENCE:

Sections 171-55 and other applicable sections of Chapter 171 and, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at the Kealakekua Bay State Historical Park, Kealakekua (South Kona), Hawai'i, identified by Tax Map Key: (3) 8-1-011: 001, 006, 010, 011 por., as shown on the attached tax map key labeled Exhibit A.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This is merely a request for the termination of a previously issued revocable permit approved by the Board at its May 26, 2006 meeting (Agenda Item E-1), and as such, State Parks believes that this will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

At its May 26, 2006 meeting (agenda Item E-1), the Board approved the issuance of revocable permits to four (4) named businesses for landing and launching kayaks at Ka'awaloa Flats at Kealakekua Bay State Historical Park. One of those revocable permits was issued to Hawai'i Pack and Paddle, LLC, (HPP) and was executed on May 30, 2008 and subsequently continued by the Board for additional one year periods. The most recent continuation of this revocable permit was approved by the Board at its December 9, 2011 meeting (agenda item E-1).

ITEM E-1

Based on a departmental investigation, staff finds that HPP violated three terms of the revocable permit on July 4, 2012:

1. HPP conducted a tour with thirteen (13) guests/passengers where paragraph B. 16 of the revocable permit allows only twelve (12);
2. HPP conducted a tour which exceeded the maximum time per landing of two and one half (2 ½) hours in violation of paragraph B.16 of the revocable permit; and,
3. HPP conducted a tour which deviated from the areas authorized under the revocable permit in violation of paragraphs A.3 and B.41.

In addition, staff has determined that HPP has under-reported the number of guests/passengers on July 4, 2012, as stated in its July 2012 report (Attached as Exhibit D), by indicating there were only 4 guests/passengers landed. In addition, the report contained mathematical errors which have also resulted in under-payment to DLNR.

DISCUSSION:

Pursuant to paragraph B(2) of the revocable permit, **“The Board may revoke and thereby terminate this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rent is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.”** Staff believes the three violations cited above constitute a material breach of the terms of the revocable permit and that the Board is within its rights to authorize the termination of the revocable permit. Staff recommends the revocable permit be terminated with thirty (30) calendar days written notice to be issued by the Chairperson.

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September 14, 2012

RECOMMENDATION: That the Board:

1. Declare that after considering the potential effects of the proposed action as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the termination of revocable permit SP0064 to Hawai'i Pack and Paddle effective upon thirty (30) calendar days written notice issued by the Chairperson.
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



DANIEL S. QUINN  
State Parks Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson