

COUNTY OF KAUAI DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawai'i Revised Statutes (HRS), Chapter 23, Article 3, Kaua'i County Code 1987 (KCC) as amended, and every other enabling power, the Director of Parks and Recreation of the County of Kaua'i does hereby prescribe the following:

RULES AND REGULATIONS GOVERNING COMMERCIAL BOATING ACTIVITIES AT COUNTY PARKS PART IV

Section 30. Findings and Purpose.

Pursuant to Section 23-3.3 of the KCC and Section 8 of these rules and regulations, a public hearing was conducted to determine the propriety of the proposed use of facilitating commercial boating activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard at those County beach parks and beach right-of-ways listed in the attachment.

The Department duly received applications from various individuals and organizations to conduct these activities, pursuant to Section 7 of these regulations.

As a result of the public hearing, the Department finds that the proposed use of the County beach parks identified herein facilitates commercial activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard. The Department further finds the proposed use to be essentially recreational in nature, complementary to the facilities of the parks and consistent with established park use.

These activities are hereby designated authorized activities in accordance with the definition provided in these rules, subject to the limitations and conditions hereinafter described.

Section 31. State Permit.

In order to operate a commercial boating activity operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR). If a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended, said permittee's County permit will automatically expire.

Section 32. Number of Persons.

(a) The maximum number of passengers permitted to participate in a commercial boating activity authorized by these rules within the County park shall be limited to that number allowed in the operator's current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) and any and all permits issued to the County, including but not limited to SMA, zoning and/or land use permits.

P-102.23-1

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Section 33. Time of Use.

- (a) No commercial boating activities shall occur within the County parks on Sundays.
- (b) Permittee shall limit their commercial boating and accessory activities within the County parks between the hours of 7:00 a.m. and 7:00 p.m.
- (c) Special events authorized by permit shall take precedence over commercial boating activities allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.
- (d) At the Director's discretion, no commercial boating activities shall occur within the County parks during periods when maintenance or repair of County beach park property or equipment is being performed or when a park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.

Section 34. Fees.

The fees for conducting commercial boating activities shall be as stated in Section 23-3.4 of the KCC.

Section 35. Permits.

- (a) Permits to conduct commercial boating activities shall be issued only for those County beach parks and beach right-of-ways listed in the attachment.
- (b) Permits for operation of commercial boating activities shall have a duration of up to one year and shall expire automatically, without notice to the permit holder, on the date specified on the permit and or if a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended.
- (c) The Director, or his authorized representative, may renew a permit for additional periods of up to one year provided the permittee is in compliance with all applicable rules. Permit renewal shall also be contingent upon the permittee renewing or attaining any necessary state and federal permits. A renewed permit shall be subject to the terms and conditions of these rules and any subsequent amendments.
- (d) The permittee shall notify the Director within five (5) business days of any changes regarding the information provided in the permit application.

Section 36. General Conditions.

- (a) Permittees must possess any and all license(s) required to conduct business in the State of Hawai'i. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.
- (b) Permittees must have in current force and effect an insurance policy, in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kaua'i as additional insured. A copy of the certificate shall name the County of Kaua'i as additional insured. A copy of the certificate shall be provided to the Parks Permit Section of the Department prior to any

permit being issued. Permittee shall be responsible for providing the Department with an updated copy of the certificate of insurance if such certificate expires during the term of the permit.

(c) Permittee shall use inclement weather as criteria to cease operation (i.e. continuous rain, flash flood warning, strong currents, heavy debris and high winds, or any other weather or water conditions that may cause a hazard).

(d) Picnic tables and benches and other facilities owned by the County shall not be used by permittees for commercial purposes, nor shall they be used for storage or as a staging area for commercial surfing and/or stand-up paddling activities, equipment and/or supplies. Loading or unloading of equipment at County beach parks shall be restricted to areas designated by the Department. All equipment not being utilized shall be stored at the operator's place of business. Equipment shall not, under any circumstances, be dragged across grassy recreational surfaces and slopes within County parks. County showers and hosebibs shall not be utilized by the permittee for cleaning of equipment.

(e) Permittees shall not be allowed to store, display, and show case their business in any County beach park of parking lot.

(f) Vehicles used for commercial boating activities shall not be driven onto or be parked in any County beach area. All customers and/or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or instructors shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for period not exceeding thirty minutes. All vehicles used for shuttling instructors and/or customers shall clearly indicate that they are owned and or operated in behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place.

(g) Trash generated by commercial operations shall be disposed of properly.

(h) Permittees shall at all times use due care for their clientele and other users and defend, hold harmless, and indemnify the County, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incident to the operations permitted under any permits.

(i) Soliciting and or conducting business is prohibited within any of the beach parks or parking lots.

(j) Commercial notices or advertisements for commercial boating activities shall not be displayed, posted or distributed within any of the beach parks or parking lot.

(k) Permittees and any instructors operating under their permit shall be required to present their permit, when requested, to any authorized representative of the Department, any police officer and/or any individual acting under the authority of any County, State or Federal governmental agency.

(l) Permittees shall be responsible for the safety of persons under their charge and for determining that their physical capability and experience are adequate to safely participate under the existing sea and surf conditions.

(m) Should it be adjudged that harm or death has resulted from the permittee's negligence or use of faulty equipment, the permit issued to the permittee shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits.

(n) All permittees must possess off site, permitted commercial staging areas and shuttle their customers to and from any County beach parks. Solicitation of monies and/or exchanging of monies are prohibited within the County parks.

(o) Permittees shall comply with all Federal, State and County laws and ordinances and the rules of the Department.

(p) Permittees shall demonstrate to the Director's satisfaction their experience and familiarity with seasonal and high surf conditions typical of the location requested.

(q) Permittees shall complete a course provided by the Department regarding the customary and historical place names (reef, channels, rivers, landmarks, etc.) typical of the location and surrounding areas being requested.

(r) Permittees shall demonstrate to the Director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.

(s) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.

(t) Permittees shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No washing or storage repair and or other maintenance of surfing and/or stand-up paddling instruction equipment and/or supplies are permitted in the County parks identified herein County parking lots or in road rights of way.

(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two years from the date of failure to perform.

(v) Non-compliance with any and all terms and conditions of this agreement shall automatically render this agreement null and void, and the permittee shall be required to cease and desist all commercial operation immediately upon notification by the Department.

PROMULGATION OF THE RULES AND REGULATIONS
RELATING TO COMMERCIAL BOATING ACTIVITIES AT COUNTY BEACH PARKS

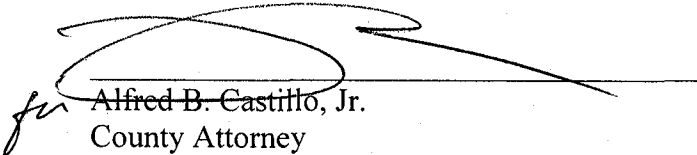
The Rules and Regulations Relating to Commercial Boating Activities at beach parks of the County of Kauai, State of Hawai'i were decided to be recommended for approval, pursuant to HRS 91-3 (2), thirty (30) days after the public hearing held by the Director of Parks and Recreation of the County of Kaua'i, State of Hawai'i on the 5th day of September 2012.

The rules shall become effective ten (10) days upon filing with the County Clerk of the County of Kaua'i.

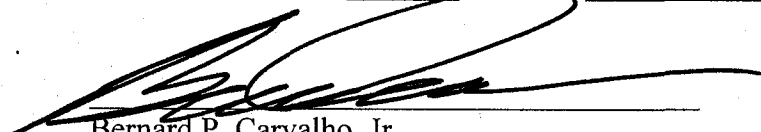
BY ORDER OF THE DIRECTOR OF PARKS AND RECREATION OF THE
COUNTY OF KAUA'I, STATE OF HAWAI'I.


Leonard A. Rapozo, Jr., Director of Parks and Rec.

APPROVED AS TO LEGALITY AND FORM:


for Alfred B. Castillo, Jr.
County Attorney

APPROVED THIS 3rd DAY OF December, 2012.


Bernard P. Carvalho, Jr.
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING RULES AND REGULATIONS
RELATING TO THE USE OF PARKS AND PARK FACILITIES BY PEDDLERS AND
CONCESSIONAIRES OF THE COUNTY OF KAUA'I WERE RECEIVED AND FILED IN
MY OFFICE THIS 4th DAY OF December, 2012.


Ricky Watanabe, County Clerk

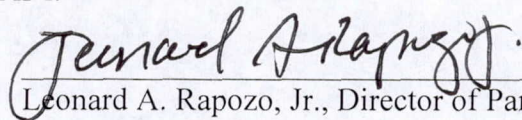
PUBLIC NOTICE: July 25, 2012
PUBLIC HEARING: September 5, 2012

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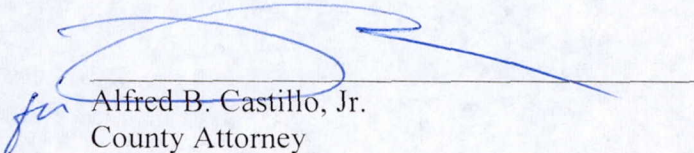
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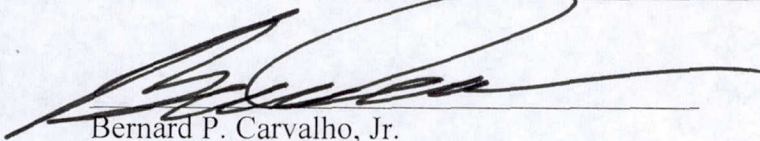
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Leonard A. Rapozo, Jr., Director of Parks and Rec.

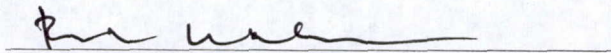
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for Alfred B. Castillo, Jr.
County Attorney

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