

**MICHAEL P. VICTORINO**  
Mayor

**MOANA M. LUTEY**  
Corporation Counsel

**RICHELLE M. THOMSON**  
First Deputy

**LYDIA A. TODA**  
Risk Management Officer



**DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI**

**200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793**

EMAIL: CORPCOUN@MAUICOUNTY.GOV

TELEPHONE: (808) 270-7740

FACSIMILE: (808) 270-7152

May 4, 2020

MEMO TO: Mike Molina, Chair  
Governance, Ethics, and Transparency Committee

FROM: Brian A. Bilberry, Deputy Corporation Counsel

SUBJECT: Litigation Matter – Case Status GET-11(35)  
*County of Maui v. Rick Markham; North Shore Maui, LLC*  
*Civil No. 17-1-0384(2)*

A handwritten signature in black ink, appearing to be "B. Bilberry", written over the "FROM:" line.

Our Department is requesting to update the Committee on this concluded litigation, the pending entry of Final Judgment against Defendants North Shore Maui, LLC and Rick Markham, and the conversion to Chapter 7 of North Shore Maui, LLC's Chapter 11 proceedings in U.S. Bankruptcy Court. We would like this matter heard at the currently scheduled May 19, 2020 committee meeting.

It is not anticipated that an executive session will be requested, although that is left to the discretion of the Committee.

Should you have any questions or concerns, please do not hesitate to contact us.

cc: Michele McLean, Director, Department of Planning

PATRICK K. WONG 5878  
Corporation Counsel  
BRIAN A. BILBERRY 7260  
THOMAS W. KOLBE 7679  
Deputies Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793  
Telephone No.: 270-7740  
Facsimile No.: 270-7152

FILED  
2017 SEP 11 PM 2:57

D. PELLAZAR, CLERK  
SECOND CIRCUIT COURT  
STATE OF HAWAII

Attorneys for Plaintiff  
COUNTY OF MAUI,  
DEPARTMENT OF PLANNING

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI, DEPARTMENT OF  
PLANNING,

Plaintiff,

vs.

RICK MARKHAM; NORTH SHORE MAUI  
LLC; JOHN DOES 1-10; JANE DOES 1-10;  
DOE COMPANIES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 17-1-0384 (2)  
(Other Civil Action)

VERIFIED COMPLAINT FOR INJUNCTION  
RELIEF AND DAMAGES; DECLARATION  
OF GAIL DAVIS; DECLARATION OF  
CHALSEY KWON; DECLARATION OF  
MICHAEL HOPPER; EXHIBITS 1 through 4;  
DEMAND FOR JURY TRIAL; SUMMONS

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

The COUNTY OF MAUI, by and through its attorneys PATRICK K. WONG,  
Corporation Counsel, BRIAN A. BILLERRY and THOMAS W. KOLBE, Deputies Corporation  
Counsel, file this Complaint for Injunctive Relief and Damages against Defendants RICK  
MARKHAM and NORTH SHORE MAUI LLC, alleging and averring as follows:

I hereby certify that this is a full, true and  
correct copy of the Original

Clerk, Second Circuit Court

1. Plaintiff COUNTY OF MAUI (hereinafter "COUNTY") is a political subdivision of the State of Hawaii, doing business in the County of Maui, State of Hawai'i.

2. Defendant RICK MARKHAM is owner of record of real property identified as Tax Map Key (2) 2-6-004:016-0000, located at 115 Hana Highway, Paia, Hawai'i, hereafter referred to as the "the Property." The Property lies within the Second Circuit as defined by Hawai'i Revised Statutes § 603-1.

2. Defendant RICK MARKHAM doing business as Defendant NORTH SHORE MAUI LLC (collectively "DEFENDANTS"), a limited liability company organized under the laws of Hawai'i and engaged in business in the State of Hawai'i at all relevant times alleged in this Complaint.

3. DOE DEFENDANTS 1-10 ("DOE Defendants") are unidentified persons or entities who have an involvement in these proceedings or who may claim an interest in the subject items (as described below), and whose true names, identities, and interests are presently unknown to Plaintiff's attorney. Plaintiff has performed a diligent investigation to ascertain the identities of said DOE Defendants but has so far failed to find any other defendants.

**COUNT 1: Maui County Code Violations (NOV # 2015/0090 and #2015/0091)**

4. This action is brought for relief pursuant to Hawai'i Revised Statutes §46-1.5, and for violation of the Maui County Code § 19.65.080(D), and § 19.65.040(A). This Court has jurisdiction over the parties and subject matter pursuant to Hawai'i Revised Statutes § 603-21-5 and § 603-23, and Chapter 19 of the Maui County Code.

5. Chapter 19.65 of the Maui County Code ("MCC") prohibits the operation of a short-term rental home without a permit. *See*, MCC § 19.65.080(E). The MCC also prohibits advertisements of short-term rental homes without valid permit numbers. *See*, MCC §§ 19.65.040(A) & 19.65.080(D).

6. Based on website advertising information obtained by a County inspector, the COUNTY noted Maui County Code violations pertaining to the Property. Advertising for and

operating a short-term rental home without a valid permit is a violation of Maui County Code, including but not limited to, Chapters 19.40 and 19.65.

7. On December 19, 2014, a County inspector sent a letter to NORTH SHORE MAUI LLC, asking DEFENDANTS to correct the violations by December 24, 2014, and stating that if the violations were not corrected, NORTH SHORE MAUI LLC could be subject to civil and possible criminal enforcement action with fines. *See, Exhibit 1.*

8. The December 19, 2014 letter stated that the violations needed to be corrected by December 24, 2014, and that if further investigation warranted it, Defendant NORTH SHORE MAUI LLC would be subject to civil enforcement action. *Id.*

9. The December 19, 2014 letter stated that the initial fines for each violation would be \$1,000.00, and \$1,000.00 per day for each day the violations continue. *Id.*

10. On September 23, 2015, a Notice of Violation issued for Defendant NORTH SHORE MAUI LLC'S operation of a short-term rental without a permit ("NOV 2015/0090"), and a separate Notice of Violations for its advertising for the short term operation without a permit ("NOV 2015/0091"). *See, Exhibit 2.*

11. Defendant RICK MARKHAM signed for and received both NOV 2015/0090 and NOV 2015/0091 on or around September 23, 2014. *Id.*

12. Both NOV 2015/0090 and NOV 2015/0091 ordered Defendant NORTH SHORE MAUI LLC to "cease and desist all activity immediately," and to correct the violations by "removing all advertising and stop[ping] all short-term rental home activities," by September 30, 2015. *Id.*

13. Both NOV 2015/0090 and NOV 2015/0091 ordered Defendant NORTH SHORE MAUI LLC to pay an initial fine in the amount of \$1,000.00 for each of the two violations by September 30, 2015 to the County's Department of Planning. *Id.*

14. Both NOV 2015/0090 and NOV 2015/0091 ordered Defendant NORTH SHORE MAUI LLC to pay a daily fine of 1,000.00 per day for each of the two violations beginning

September 30, 2015 if corrective action for the violations was not completed by the same date. Id.

15. Both NOV 2015/0090 and NOV 2015/0091 warned Defendant NORTH SHORE MAUI LLC that daily civil fines would double every 30 days up to a maximum of \$1,000 per day until the violation(s) are corrected. Id.

16. Both NOV 2015/0090 and NOV 2015/0091 warned Defendant NORTH SHORE MAUI LLC that it had thirty (30) days to appeal the two Notices of Violation and Orders. Id.

17. Defendant NORTH SHORE MAUI LLC did not appeal either of the two Notices of Violation and Orders. *See*, Declaration of Chalsey Kwon.

18. Subsequent internet searches on or about February 3, 2016 revealed the 115 Pulelehua Street property was continually being advertised for short-term accommodations. *See*, **Exhibit 4**; *see also* Declaration of Gail Davis.

19. On March 18, 2016, County of Maui Corporation Counsel sent a letter via certified mail to DEFENDANTS, stating that the daily fines had accrued to \$280,000.00, including the initial fine of \$1,000.00. *See*, **Exhibit 4**. DEFENDANT was warned that legal action may be commenced to collect all unpaid fines. Id.

20. To date, the COUNTY has received no response and DEFENDANT'S violation is continuing. The daily accrual of fines has resulted in the amount of \$1,333,000.00 due and owing as September 1, 2017.

#### **COUNT 2: INJUNCTIVE RELIEF**

21. Plaintiff COUNTY realleges and incorporates here by reference the allegations contained in paragraphs 1 – 20, above.

22. Maui County Code Chapter 19.530 ("Enforcement") provides that the County may bring an action for injunctive relief and "may take any other lawful action to prevent or remedy any violation." *See*, MCC § 19.530.020(D).

23. As of the date of the filing of this Complaint for Injunctive Relief and Damages, DEFENDANTS have not shown that corrective actions have been taken by them to abate any of the violations for which it was cited in the Notices of Violation described above.

24. Plaintiff COUNTY is suffering and will continue to suffer irreparable harm and injury by virtue of DEFENDANTS' continuing violation(s), and is without an adequate remedy at law to compel DEFENDANTS' compliance with code as related to the use of the Property.

WHEREFORE, Plaintiff COUNTY OF MAUI prays for relief as follows:

A. That the Court issue a judgment that DEFENDANTS are in violation of the Maui County Code.

B. That DEFENDANTS be ordered to pay the COUNTY the applicable fines for DEFENDANTS' violation(s) of the Maui County Code.


C. That DEFENDANTS be ordered to immediately comply with the applicable code and correct the unpermitted condition of the structure(s) on the Property.

D. That the COUNTY be awarded all of its court costs and reasonable attorneys' fees and any costs that may be incurred by the COUNTY in eliminating the violations on the Property.

E. That the COUNTY be awarded such other relief the Court deems appropriate, including injunctive relief, prior to final judgment.

DATED: Wailuku, Maui, Hawaii, SEP 11 2017.

PATRICK K. WONG  
Corporation Counsel  
Attorney for Plaintiff  
COUNTY OF MAUI

By   
BRIAN A. B. BERRY  
THOMAS W. KOLBE  
Deputies Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

RICK MARKHAM; NORTH SHORE MAUI  
LLC; JOHN DOES 1-10; JANE DOES 1-10;  
DOE COMPANIES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO.  
(Other Civil Action)

DECLARATION OF GAIL DAVIS

**DECLARATION OF GAIL DAVIS**

The undersigned, make this declaration on personal knowledge:

1. I am a Zoning Inspector for the Zoning Administration & Enforcement Division, of the Department of Planning, County of Maui.
2. I have personal knowledge of the matters attested to in this Declaration. I have read the foregoing Verified Complaint for Injunctive Relief and Damages. I know the contents thereof, and the same are true and correct.
3. **Exhibit 1** attached is a true and correct copy of the letter to NORTH SHORE MAUI LLC, dated December 14, 2014.
4. **Exhibit 2** attached is a true and correct copy of the Notices of Violation and Orders NOV 2015/0090 and NOV 2105-0091 as related to the property located at 115 Hana Highway, Paia, Maui, Hawaii and identified by TMK: (2) 2-6-004:016-0000 (the "Property").
5. Subsequent to the issuance of the Notices of Violation, I did a search for short-term rental advertisements for the Property and confirmed the Property was being advertised as a short-

term rental. A check of Department of Planning records confirmed that neither RICK MARKHAM or NORTH SHORE MAUI LLC had applied for a Short-Term Rental Home (“STRH”) permit as required by ordinance.

4. **Exhibit 3** attached are true and correct copies of the web pages I retrieved on or about February 3, 2016 reflecting that the Property is being advertised and operated for short-term rental use.

I declare under penalty of perjury that the above is true and correct.

DATED: Wailuku, Maui, Hawaii, September 8, 2017.

  
\_\_\_\_\_  
GAIL DAVIS



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,  
Plaintiff,

vs.  
RICK MARKHAM; NORTH SHORE MAUI  
LLC; JOHN DOES 1-10; JANE DOES 1-10;  
DOE COMPANIES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO.  
(Other Civil Action)

DECLARATION OF CHALSEY KWON

**DECLARATION OF CHALSEY KWON**

The undersigned, make this declaration on personal knowledge:

1. I am the Secretary to Boards and Commissions who primarily staffs the Board of Variances and Appeals (“BVA”), Department of Planning, County of Maui, and am one of the custodians of records. All BVA documents are received and kept in accordance with its regular practice and are maintained in the regular course of its business. At the request of The Department of Corporation Counsel, I conducted a search of all BVA records for the following:

a. any and all requests for a hearing or other notices of appeal regarding Notice of Violation No. NOV 2015/0090;

b. any and all requests for a hearing or other notices of appeal regarding Notice of Violation No. NOV 2015/0091;

c. any and all correspondence to the Board from RICK MARKHAM from December 14, 2014 to the present;

d. any and all correspondence to the Board from NORTH SHORE MAUI LLC from December 14, 2014 to the present;

e. any and all correspondence, requests or other documents relating to either 115 Hana Highway, Paia, Maui, Hawaii and TMK: (2) 2-6-004:016-0000 (the "Property").

2. No documents were located.

3. To the best of my knowledge, no requests for appeal or hearing were made in connection with these two Notices of Violation and Orders or the Property.

I declare under penalty of perjury that the above is true and correct.

DATED: Wailuku, Maui, Hawaii, September 8, 2017.

Chalsey Kwon  
CHALSEY KWON

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

RICK MARKHAM; NORTH SHORE MAUI  
LLC; JOHN DOES 1-10; JANE DOES 1-10;  
DOE COMPANIES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO.  
(Other Civil Action)

DECLARATION OF MICHAEL J. HOPPER

**DECLARATION OF MICHAEL J. HOPPER**

The undersigned, make this declaration on personal knowledge:

1. I am Deputy Corporation Counsel for the Department of Corporation Counsel, County of Maui, and have personal knowledge of the matter attested to in this Declaration.
2. **Exhibit 4** attached is a true and correct copy of my letter to Rick Markham, dated March 18, 2016.

I declare under penalty of perjury that the above is true and correct.

DATED: Wailuku, Maui, Hawaii, \_\_\_\_\_

9/7/17

  
MICHAEL J. HOPPER

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

December 19, 2014

Certified Receipt No. (7013 2630 0001 5132 8260)  
North Shore Maui LLC  
P.O. Box 791383  
Paia, Hawaii 96779

Dear North Shore Maui Llc:

**RE: NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S)**

**TMK:** (2) 2-6-004:016-0000

**RFS No.:** 14-0002191

**Description:** For short term rental home (Nalu Kai Lodge) located at 115 Hana Hwy , Paia, Hawaii, on the island of Maui

Based on information obtained, we have reason to believe that on your property, on or before December 15, 2014, there were one or more violations. Advertising for and operating a short-term rental home without a valid permit is a violation of Maui County Code , including but not limited to, Chapters/Sections 19.65.080(C) and (D), 19.37, 19.15.020.

The information obtained includes: Website advertisement.

You must correct any violations by **December 24, 2014**. We will investigate further, and if we find any of the above-described apparent violations, you will be subject to civil and possible criminal enforcement action.

Civil Fines for each of the violations will be 1) an initial fine of \$1,000; and 2) a daily fine of \$1,000 for each day the violation continues.

This request is only for violations of regulations that are enforced by the Department of Planning. There may be additional violations of regulations that are enforced by other County, State, or Federal agencies. If you have any questions about this request, please contact me at [gail.davis@co.maui.hi.us](mailto:gail.davis@co.maui.hi.us) or (808) 270-8244; and please refer to RFS 14-0002191.

Sincerely,

Gail Davis  
Zoning Inspector

xc: Jay Arakawa, Supervising Zoning Inspector (PDF)  
Gail Davis, Zoning Inspector (PDF)  
14-0002191 (KIVA; RFS File)

JSR:JAA:GD:smb S:\ZONING\RFS\2014\2191\_NorthShoreMaui\_strNOWNOW1\_str.wpd

**SENDER COMPLETE TO TRANSFER MAIL**

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the item to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

North Shore Maui LLC  
 P.O. Box 791383  
 Paia HI 96779

**RESTRICTED DELIVERY**

2. Article No. (Barcode #) **7013 2630 0001 5132 8260**

A. Signature  Agent  
 Addressee  
 B. Restricted Delivery  Yes  
 No  
 C. Certified Mail  Yes  
 No  
 D. Registered Mail  Yes  
 No  
 E. Insured Mail  Yes  
 No  
 F. Restricted Delivery/ Return Receipt  Yes  
 No

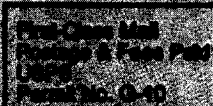
3. Service Type  
 Certified Mail  Priority Mail Express  
 Registered  Return Receipt for Merchandise  
 Insured Mail  Collect on Delivery  
 Restricted Delivery/ Return Receipt

PS Form 3811, July 2013 Domestic Return Receipt

United States POSTAGE

HI 968

25 DEC '14



\* Sender: Please print your name, address, and ZIP+4® in this box \*

COUNTY OF MAUI  
Department of Planning  
2200 Main Street, Suite 315  
Wailuku, HI 96793

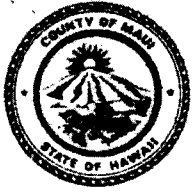
DEPT. OF PLANNING  
COUNTY OF MAUI

DEC 30 2014

RECEIVED

60-2-1-1  
11-2-1-1  
2-6-4-16





**COUNTY OF MAUI**  
**DEPARTMENT OF PLANNING**  
**ZONING ADMINISTRATION AND**  
**ENFORCEMENT DIVISION**  
 2200 Main Street, Suite 315  
 WAILUKU, MAUI, HAWAII 96793  
 Telephone: (808) 270-7253  
 Facsimile: (808) 270-7634  
 E-mail: [planning@mauicounty.gov](mailto:planning@mauicounty.gov)  
 Website: [www.mauicounty.gov](http://www.mauicounty.gov)

NOV 2015/0090
14-0002191
September 23, 2015
December 15, 2014
[X] YES [ ] NO
NONE
7014 0150 0002 3866 1260

<b>TO:</b>	North Shore Maui LLC P O Box 791383 Paia, Hawaii 96779		
<b>RE:</b>	<b>TMK</b>	(2) 2-8-004:018-0000	<b>PERMIT NO</b>
	<b>ADDRESS</b>	115 Hana Highway, Paia, Hawaii	

I have inspected the above described structure and/or premises and have found the following violation(s) of the County of Maui's Code(s) and/or Ordinance(s) governing same, as amended:

CODE(S); ORDINANCE(S); SECTION(S)	NATURE AND EVIDENCE OF THE VIOLATION(S)
Maui County Code ("MCC"), §19.65.080(D), 19.37.010, and 19.15.020	Operating a short-term rental home without a valid permit. Evidence of the aforementioned violation(s) include(s): Website advertisement

Pursuant to MCC §19.530.030(B), and Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code ("Administrative Rules"), as amended, you are hereby ordered as follows:

<input checked="" type="checkbox"/>	Cease and desist all activity immediately.		
<input checked="" type="checkbox"/>	Correct the violation(s) at your own expense by:	September 30, 2015	By taking the following corrective action(s): Remove all advertising and stop all short term rental home activities.
<input checked="" type="checkbox"/>	Pay an initial civil fine in the amount of:	\$1,000	To the Department of Planning ("Planning") by: September 30, 2015
<input checked="" type="checkbox"/>	Pay a daily civil fine in the amount of:	\$1,000	Per day to Planning if the corrective action described above is not completed by: September 30, 2015

Pursuant to MCC, §19.530.030(B)(2) and (C) and §12-103-5(a)(6), Administrative Rules, as amended, this notice of violation and order shall become final thirty (30) days after the date of this notice, unless an appeal is properly filed with the Board of Variances and Appeals ("BVA"). The appropriate form may be found online at [www.co.maui.hi.us/documents/Planning/Forms/AppealApp\\_Online.PDF](http://www.co.maui.hi.us/documents/Planning/Forms/AppealApp_Online.PDF) or at the Department of Planning, One Main Plaza, 2200 Main Street #315, Wailuku, Maui, Hawaii 96793. An appeal to the BVA shall not stay any provision of this order.

Pursuant to §12-103-12(b), Administrative Rules, as amended, the initial fine shall be payable whether the violation is corrected before or after the order becomes final.

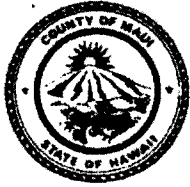
Pursuant to §91-9(b)(5), Hawaii Revised Statutes, you may retain counsel or appear on your own behalf.

Pursuant to §12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first (1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of one thousand dollars (\$1,000.00) per day.

Print Administrator's Name	John Rapacz	Administrator's Signature	
Print Supervisor's Name	Jay Arakawa	Supervisor's Signature	
Print Inspector's Name	Gail Davis	Inspector's Signature	







**COUNTY OF MAUI**  
**DEPARTMENT OF PLANNING**  
**ZONING ADMINISTRATION AND**  
**ENFORCEMENT DIVISION**  
**2200 Main Street, Suite 315**  
**WAILUKU, MAUI, HAWAII 96793**  
 Telephone: (808) 270-7253  
 Facsimile: (808) 270-7634  
 E-mail: [planning@mauicounty.gov](mailto:planning@mauicounty.gov)  
 Website: [www.mauicounty.gov](http://www.mauicounty.gov)

NOV 2015/0091
14-0002191
September 23, 2015
December 15, 2014
[X] YES [ ] NO
NONE
7014 0150 0002 3866 1260

<b>TO:</b>	North Shore Maui LLC P O Box 791383 Paia, Hawaii 96779		
<b>RE:</b>	<b>TMK:</b> (2) 2-6-004:016-0000	<b>PERMIT NO</b>	
<b>ADDRESS</b>	115 Hana Hwy, Paia, Hawaii		

I have inspected the above described structure and/or premises and have found the following violation(s) of the County of Maui's Code(s) and/or Ordinance(s) governing same, as amended:

CODE(S); ORDINANCE(S); SECTION(S)	NATURE AND EVIDENCE OF THE VIOLATION(S)
Maui County Code ("MCC"), §19.65.040(A)	Advertising a short-term rental home without a valid permit listed within the advertisement. Evidence of the aforementioned violation(s) include(s): Website advertisement

Pursuant to MCC §19.530.030(B), and Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code ("Administrative Rules"), as amended, you are hereby ordered as follows:

<input checked="" type="checkbox"/>	Cease and desist all activity immediately.		
<input checked="" type="checkbox"/>	Correct the violation(s) at your own expense by:	September 30, 2015	By taking the following corrective action(s): Remove all advertising and stop all short term rental home activities
<input checked="" type="checkbox"/>	Pay an initial civil fine in the amount of:	\$1,000	To the Department of Planning ("Planning") by: September 30, 2015
<input checked="" type="checkbox"/>	Pay a daily civil fine in the amount of:	\$1,000	Per day to Planning if the corrective action described above is not completed by: September 30, 2015

Pursuant to MCC, §19.530.030(B)(2) and (C) and §12-103-5(a)(6), Administrative Rules, as amended, this notice of violation and order shall become final thirty (30) days after the date of this notice, unless an appeal is properly filed with the Board of Variances and Appeals ("BVA"). The appropriate form may be found online at [www.co.maui.hi.us/documents/Planning/Forms/AppealApp\\_Online.PDF](http://www.co.maui.hi.us/documents/Planning/Forms/AppealApp_Online.PDF) or at the Department of Planning, One Main Plaza, 2200 Main Street #315, Wailuku, Maui, Hawaii 96793. An appeal to the BVA shall not stay any provision of this order.

Pursuant to §12-103-12(b), Administrative Rules, as amended, the initial fine shall be payable whether the violation is corrected before or after the order becomes final.

Pursuant to §91-9(b)(5), Hawaii Revised Statutes, you may retain counsel or appear on your own behalf.

Pursuant to §12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first (1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of one thousand dollars (\$1,000.00) per day.

Print Administrator's Name	John Rapacz	Administrator's Signature	
Print Supervisor's Name	Jay Arakawa	Supervisor's Signature	
Print Inspector's Name	Gail Davis	Inspector's Signature	

xc: JSR:JAA:GMD:GAN

<p>1. Return to sender if no address is legible.</p> <p>2. Return to sender if no return address is legible.</p> <p>3. Return to sender if no postage is paid.</p> <p>4. Return to sender if no postage meter imprint is legible.</p> <p>5. Return to sender if no postage meter imprint is legible.</p>	<p>6. Return to sender if no postage meter imprint is legible.</p> <p>7. Return to sender if no postage meter imprint is legible.</p> <p>8. Return to sender if no postage meter imprint is legible.</p> <p>9. Return to sender if no postage meter imprint is legible.</p> <p>10. Return to sender if no postage meter imprint is legible.</p>
<p>11. Return to sender if no postage meter imprint is legible.</p> <p>12. Return to sender if no postage meter imprint is legible.</p> <p>13. Return to sender if no postage meter imprint is legible.</p> <p>14. Return to sender if no postage meter imprint is legible.</p> <p>15. Return to sender if no postage meter imprint is legible.</p>	<p>16. Return to sender if no postage meter imprint is legible.</p> <p>17. Return to sender if no postage meter imprint is legible.</p> <p>18. Return to sender if no postage meter imprint is legible.</p> <p>19. Return to sender if no postage meter imprint is legible.</p> <p>20. Return to sender if no postage meter imprint is legible.</p>

North Shore Maui LLC  
P.O. Box 791383  
Paia, HI 96778  
**RESTRICTED DELIVERY**

United States MAIL  
HI 968  
09 OCT '15



Post Office Box  
Postage & Fees Paid  
EPA  
Permit No. G-10

Sender: Please print your name, address, and ZIP+4 in the box

COUNTY OF MAUI  
Department of Planning  
DEPT. OF PLANNING  
2200 Main Street, Suite 315  
COUNTY OF MAUI, HI 96793

OCT 11 2015

RECEIVED

*Handwritten:*  
14-002191  
2/24/09 2016  
NOV 20 2015

5793168890



# NALUKAI LODGE

(<http://www.palatable.com>)

Menu

8083854344 | USD | ist)

myl  
h/  
arc  
se  
ntal  
nfe

2/3/16

## All Rentals

Property Name	Beds	Baths	Sleeps
<input type="checkbox"/> # Room with a Queen Bed (/rentals/allrentals/hotel-room-paia-wi-fi-212/)	1	1	2
<input type="checkbox"/> # Room with King Bed and AC (/rentals/allrentals/hotel-room-paia-wi-fi-214/)	1	1	2
<input type="checkbox"/> # Room with One King Bed or Two Twins (Must specify request) (5) (/rentals/allrentals/hotel-room-paia-wi-fi-213/)	2	1	2
<input type="checkbox"/> # Room with Two Twin Beds (/rentals/allrentals/hotel-room-paia-wi-fi-211/)	2	1	2
<input type="checkbox"/> #9 Bedroom Apartment with Full Kitchen, King Bed, and Twin Bed (/rentals/allrentals/apartment--studio--cottage-paia-wi-fi-206/)	2	1	3

	2 Bedroom Lodge Apartment (/rentals/allrentals/apartment--studio--cottage-pala-wi-fi-654/)	2	1	5
	3 Bedroom Pala House (/rentals/allrentals/house-pala-wi-fi-676/)	3	2	6

There are no more results

Vacation Rental Software by InstaManager (<http://www.InstalManager.com>)

Avg. Nightly \$152

Continue Blocking

Allow...

February 2016

SU	MO	TU	WE	TH	FR	SA

March 2016

SU	MO	TU	WE	TH	FR	SA

April 2016

SU	MO	TU	WE	TH	FR	SA

May 2016

SU	MO	TU	WE	TH	FR	SA
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June 2016

SU	MO	TU	WE	TH	FR	SA
1	2	3	4			
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July 2016

SU	MO	TU	WE	TH	FR	SA

Detailed Price

Save to my favorites

Owner  
Member since: 2013

Send email

Response time Within 2 days

Response rate 90.9%

Calendar last updated 01/30/2016

Show phone number

23 Available  Unavailable  Today  Selected dates

Location

Software download complete.

Install Now

Install later

PAIA . MAUI . HAWAII

# NALU KAILODGE



CALL

808-385-4344



EMAIL

[info@nalukailodge.com](mailto:info@nalukailodge.com)



RESERVATIONS

[View room options](#)



LOCATE

[18 Nalu Place, Paia, HI 96779](#)



The connection was reset.

## About The Lodge

---

In the heart of Paia town

Charming boutique hotel

Unique Hawaiian atmosphere

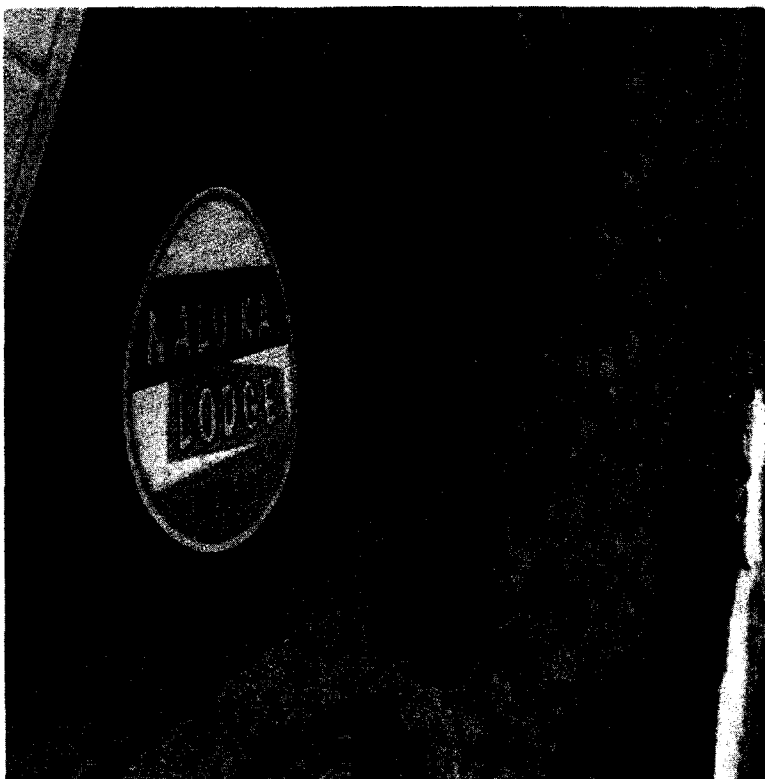
Affordable rates

Oceanside – steps to the beach

Simple, Spotless, & Comfortable rooms

Updates & Happenings





Hotel Updates Paia

**Promo Video About The Lodge**

January 17, 2016

Read more → [http://nallukailodge.com/promo-video-about-the-lodge/]

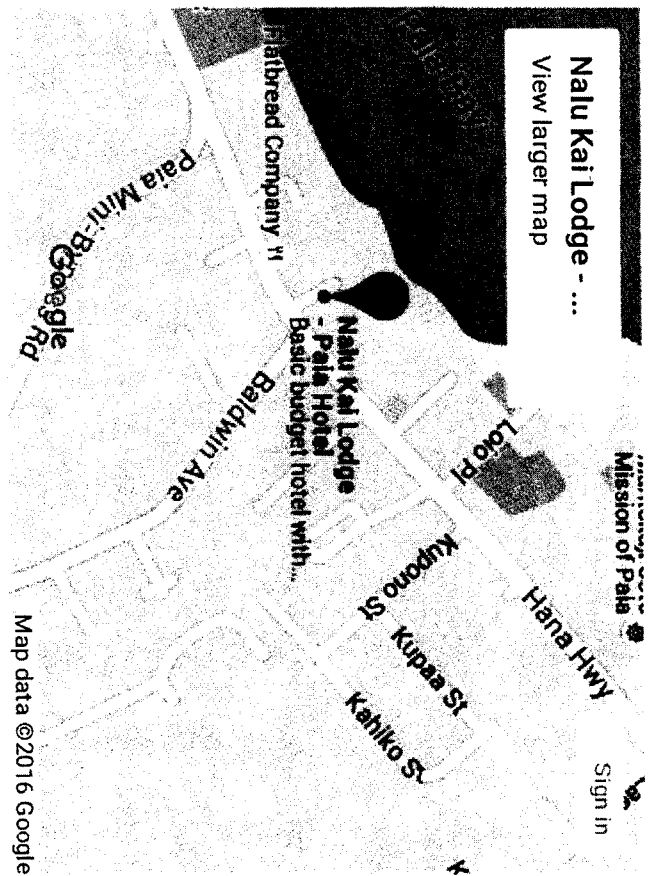
Hotel Updates Paia

**Aloha Classic**

November 9, 2015

Read more → [http://nallukailodge.com/aloha-classic/]

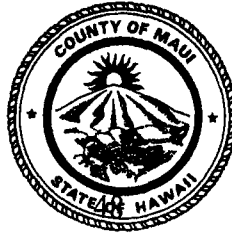
Locate



NALU KAI LODGE - Paia Hotel

© Copyright - Nalu Kai Lodge. Website by Liamata Creative

ALAN M. AIKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

March 18, 2016

CERTIFIED MAIL 7008 1300 0000 5090 3448  
RETURN RECEIPT REQUESTED

North Shore Maui LLC  
P. O. Box 791383  
Paia, Hawaii 96779

Attn: Rick Markham

Re: Notice of Violation #NOV 20150091 and 20150090  
RFS No. 14-0002191  
TMK: (2) 2-6-004:016-0000  
Violation: Advertising and operating a short-term  
rental home without a valid permit at  
Nalu Kai Lodge located at 115 Hana Hwy,  
Paia, Hawaii 96779

Dear Mr. Markham:

I represent the Maui County Department of Planning ("Department") regarding the above matter. On or before December 15, 2014, the Department found evidence of your advertising and operating a short-term rental home without a valid permit which would violate Maui County Code (MCC) §§19.65.080(C) and 19.65.040(A), 19.65.080(D), 19.37.010, and 19.15.020.

By letter dated December 19, 2014, you were asked to correct the violations by December 24, 2014, and if not

North Shore Maui LLC  
Attn: Rick Markham  
March 18, 2016  
Page 2

corrected by the given date, you will be subject to civil and possible criminal enforcement action. (See Exhibit "A").

On September 23, 2015, you were issued two (2) Notices of Violation (see enclosed exhibits "B" and "C"). You had thirty (30) days to appeal this Order to the Board of Variances and Appeals, but you chose not to contest the Notices of Violation issued to you by the Maui County Department of Planning.

Fines began accruing on September 30, 2015, up to and including March 18, 2016. The outstanding fines currently owed to the County of Maui amount to \$280,000, including an initial fine of \$1,000 for each violation. Daily fines will continue to accrue at the rate of \$2,000.00 per day for each day the violations continue until such time as you comply with the corrective action(s) as described in the Notices of Violation and Order.

The County may take action against you to abate the ongoing violations on your property.

Furthermore, the County may also commence a lawsuit against you to collect the unpaid fines in addition to any remedies the County may seek. Unless you contact the undersigned regarding these matters by March 28, 2016, we will presume that you have no interest in resolving the situation and will act accordingly.

Very truly yours,



MICHAEL J. HOPPER  
Deputy Corporation Counsel

MJH:ma

Enclosures

Cc: Gail Davis, Zoning Inspector  
John S. Rapacz, Planning Program Administrator

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

December 19, 2014

Certified Receipt No. (7013 2630 0001 5132 8260)  
North Shore Maui LLC  
P.O. Box 791383  
Paia, Hawaii 96779

Dear North Shore Maui Lic:

**RE: NOTICE OF WARNING AND REQUEST TO CORRECT APPARENT VIOLATION(S)**

TMK: (2) 2-6-004:016-0000

RFS No.: 14-0002191

Description: For short term rental home (Nalu Kai Lodge) located at 115 Hana Hwy, Paia, Hawaii, on the island of Maui

Based on information obtained, we have reason to believe that on your property, on or before December 15, 2014, there were one or more violations. Advertising for and operating a short-term rental home without a valid permit is a violation of Maui County Code, including but not limited to, Chapters/Sections 19.65.080(C) and (D), 19.37, 19.15.020.

The information obtained includes: Website advertisement.

You must correct any violations by **December 24, 2014**. We will investigate further, and if we find any of the above-described apparent violations, you will be subject to civil and possible criminal enforcement action.

Civil Fines for each of the violations will be 1) an initial fine of \$1,000; and 2) a daily fine of \$1,000 for each day the violation continues.

This request is only for violations of regulations that are enforced by the Department of Planning. There may be additional violations of regulations that are enforced by other County, State, or Federal agencies. If you have any questions about this request, please contact me at [gail.davis@co.maui.hi.us](mailto:gail.davis@co.maui.hi.us) or (808) 270-8244; and please refer to RFS 14-0002191.

Sincerely,

Gail Davis  
Zoning Inspector

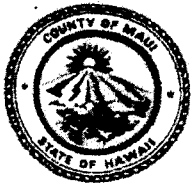
xc: Jay Arakawa, Supervising Zoning Inspector (PDF)

Gail Davis, Zoning Inspector (PDF)

14-0002191 (KIVA; RFS File)

JSR:JAA:GD:smb S:\ZONING\RFS\2014\2191\_NorthShoreMaui\_strNOWNOW1\_str.wpd

EXHIBIT " A "



**COUNTY OF MAUI**  
**DEPARTMENT OF PLANNING**  
**ZONING ADMINISTRATION AND**  
**ENFORCEMENT DIVISION**  
 2200 Main Street, Suite 315  
 WAILUKU, MAUI, HAWAII 96793  
 Telephone: (808) 270-7253  
 Facsimile: (808) 270-7634  
 E-mail: [planning@mauicounty.gov](mailto:planning@mauicounty.gov)  
 Website: [www.mauicounty.gov](http://www.mauicounty.gov)

NOV 2015/0090
14-0002191
September 23, 2015
December 15, 2014
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
NONE
7014 0150 0002 3866 1260

**TO:** North Shore Maui LLC  
 P O Box 791383  
 Paia, Hawaii 96779

**RE:** (2) 2-6-004:016-0000    **PERMIT NO:**

**ADDRESS:** 115 Hana Highway, Paia, Hawaii

I have inspected the above described structure and/or premises and have found the following violation(s) of the County of Maui's Code(s) and/or Ordinance(s) governing same, as amended:

CODE(S); ORDINANCE(S); SECTION(S)	NATURE AND EVIDENCE OF THE VIOLATION(S)
Maui County Code ("MCC"), §19.65.080(D), 19.37.010, and 19.15.020	Operating a short-term rental home without a valid permit. Evidence of the aforementioned violation(s) include(s): Website advertisement

Pursuant to MCC §19.530.030(B), and Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code ("Administrative Rules"), as amended, you are hereby ordered as follows:

<input checked="" type="checkbox"/> Cease and desist all activity immediately.			
<input checked="" type="checkbox"/> Correct the violation(s) at your own expense by:	<b>September 30, 2015</b>	By taking the following corrective action(s): Remove all advertising and stop all short term rental home activities.	
<input checked="" type="checkbox"/> Pay an initial civil fine in the amount of:	<b>\$1,000</b>	To the Department of Planning ("Planning") by:	<b>September 30, 2015</b>
<input checked="" type="checkbox"/> Pay a daily civil fine in the amount of:	<b>\$1,000</b>	Per day to Planning if the corrective action described above is not completed by:	<b>September 30, 2015</b>

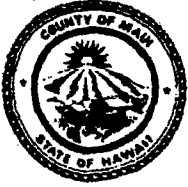
Pursuant to MCC, §19.530.030(B)(2) and (C) and §12-103-5(a)(8), Administrative Rules, as amended, this notice of violation and order shall become final thirty (30) days after the date of this notice, unless an appeal is properly filed with the Board of Variances and Appeals ("BVA"). The appropriate form may be found online at [www.co.maui.hi.us/documents/Planning/Forms/AppealApp\\_Online.PDF](http://www.co.maui.hi.us/documents/Planning/Forms/AppealApp_Online.PDF) or at the Department of Planning, One Main Plaza, 2200 Main Street #315, Wailuku, Maui, Hawaii 96793. An appeal to the BVA shall not stay any provision of this order.

Pursuant to §12-103-12(b), Administrative Rules, as amended, the initial fine shall be payable whether the violation is corrected before or after the order becomes final.

Pursuant to §91-9(b)(5), Hawaii Revised Statutes, you may retain counsel or appear on your own behalf.

Pursuant to §12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first (1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of one thousand dollars (\$1,000.00) per day.

Print Administrator's Name	John Rapacz	Administrator's Signature	<i>[Signature]</i>
Print Supervisor's Name	Jay Arakawa	Supervisor's Signature	<i>[Signature]</i>
Print Inspector's Name	Gail Davis	Inspector's Signature	<i>[Signature]</i>



**COUNTY OF MAUI**  
**DEPARTMENT OF PLANNING**  
**ZONING ADMINISTRATION AND**  
**ENFORCEMENT DIVISION**  
 2200 Main Street, Suite 315  
 WAILUKU, MAUI, HAWAII 96793  
 Telephone: (808) 270-7253  
 Facsimile: (808) 270-7634  
 E-mail: [planning@mauicounty.gov](mailto:planning@mauicounty.gov)  
 Website: [www.mauicounty.gov](http://www.mauicounty.gov)

NOV 2015/0091
14-0002191
September 23, 2015
December 15, 2014
[X] YES [ ] NO
NONE
7014 0150 0002 3866 1260

**TO:** North Shore Maui LLC  
 P O Box 791363  
 Paia, Hawaii 96779

**PHONE:** (2) 2-6-004:016-0000

**ADDRESS:** 115 Hana Hwy, Paia, Hawaii

I have inspected the above described structure and/or premises and have found the following violation(s) of the County of Maui's Code(s) and/or Ordinance(s) governing same, as amended:

CODE(S); ORDINANCE(S); SECTION(S)	NATURE AND EVIDENCE OF THE VIOLATION(S)
Maui County Code ("MCC"), §19.65.040(A)	Advertising a short-term rental home without a valid permit listed within the advertisement. Evidence of the aforementioned violation(s) include(s): Website advertisement

Pursuant to MCC §19.530.030(B), and Chapter 12-103, Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code ("Administrative Rules"), as amended, you are hereby ordered as follows:

<input checked="" type="checkbox"/>	Cease and desist all activity immediately.		
<input checked="" type="checkbox"/>	Correct the violation(s) at your own expense by:	September 30, 2015	By taking the following corrective action(s): Remove all advertising and stop all short term rental home activities
<input checked="" type="checkbox"/>	Pay an initial civil fine in the amount of:	\$1,000	To the Department of Planning ("Planning") by: September 30, 2015
<input checked="" type="checkbox"/>	Pay a daily civil fine in the amount of:	\$1,000	Per day to Planning if the corrective action described above is not completed by: September 30, 2015

Pursuant to MCC, §19.530.030(B)(2) and (C) and §12-103-5(a)(6), Administrative Rules, as amended, this notice of violation and order shall become final thirty (30) days after the date of this notice, unless an appeal is properly filed with the Board of Variances and Appeals ("BVA"). The appropriate form may be found online at [www.co.maui.hi.us/documents/Planning/Forms/AppealApp\\_Online.PDF](http://www.co.maui.hi.us/documents/Planning/Forms/AppealApp_Online.PDF) or at the Department of Planning, One Main Plaza, 2200 Main Street #315, Wailuku, Maui, Hawaii 96793. An appeal to the BVA shall not stay any provision of this order.

Pursuant to §12-103-12(b), Administrative Rules, as amended, the initial fine shall be payable whether the violation is corrected before or after the order becomes final.

Pursuant to §91-9(b)(5), Hawaii Revised Statutes, you may retain counsel or appear on your own behalf.

Pursuant to §12-103-12(d), Administrative Rules, as amended, in the case of a continuing violation, the daily fine shall be doubled on the first (1st) day of each thirty (30) day period after the end of the time to take corrective action, up to a maximum amount of one thousand dollars (\$1,000.00) per day.

Print Administrator's Name	John Rapacz	Administrator's Signature	<i>[Signature]</i>
Print Supervisor's Name	Jay Arakawa	Supervisor's Signature	<i>[Signature]</i>
Print Inspector's Name	Gail Davis	Inspector's Signature	<i>[Signature]</i>

c: JSR:JAA:GMD:GAN

EXHIBIT "4"

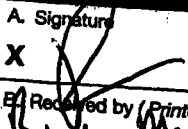
**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 North Shore Maui LLC  
 P.O. Box 791383  
 Paia, Hawaii 96779

2. Article Number  
 (Transfer from service above) 7008 1300 0000 5090 3448

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X   Agent  
 Addressee

B. Received by (Printed Name)  
 Rick Markham

C. Date of Delivery  
 3-24

D. Is delivery address different from item 1?  
 Yes  
 No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

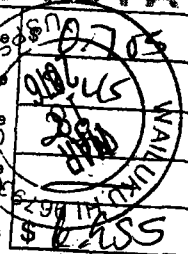
4. Restricted Delivery? (Extra Fee)  Yes

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1500

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ 0.705		Postmark Here
Certified Fee	\$ 0.15		
Return Receipt Fee (Endorsement Required)	\$ 0.00		
Restricted Delivery Fee (Endorsement Required)	\$ 0.00		
Total Postage & Fees	\$ 0.855		

Sent To  
 North Shore Maui LLC - Rick Markham  
 Street, Apt. No., or PO Box No. P.O. Box 791383  
 City, State, ZIP+4 Paia, Hawaii 96779

PS Form 3800, August 2006 See Reverse for Instructions



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

RICK MARKHAM; NORTH SHORE MAUI  
LLC; JOHN DOES 1-10; JANE DOES 1-10;  
DOE COMPANIES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO.  
(Other Civil Action)

DEMAND FOR JURY TRIAL

**DEMAND FOR JURY TRIAL**

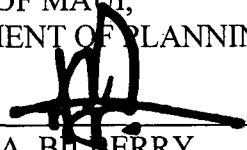
Defendant COUNTY OF MAUI, DEPARTMENT OF PLANNING, by and through its attorneys, PATRICK K. WONG, Corporation Counsel, BRIAN A. BILBERRY and THOMAS W. KOLBE, Deputies Corporation Counsel, hereby demands a trial by jury on all issues herein.

DATED: Wailuku, Maui, Hawai'i

SEP 11 2017

PATRICK K. WONG  
Corporation Counsel  
Attorney for Defendants  
COUNTY OF MAUI,  
DEPARTMENT OF PLANNING

By

  
BRIAN A. BILBERRY  
THOMAS W. KOLBE  
Deputies Corporation Counsel

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

RICK MARKHAM; NORTH SHORE MAUI  
LLC; JOHN DOES 1-10; JANE DOES 1-10;  
DOE COMPANIES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR OTHER  
DOE ENTITIES 1-10,

Defendants.

CIVIL NO.  
(Other Civil Action)

SUMMONS

**SUMMONS**

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file with the court and serve upon the Department of the Corporation Counsel of the County of Maui whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this SUMMONS upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Pursuant to Rule 4(b) of the Hawai'i Rules of Civil Procedure, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge or the District of Circuit courts permits, in writing on the summons, personal delivery during those hours.

If you fail to obey this summons, this may result in an entry of default and default judgment against the disobeying person or party.

DATED: Wailuku, Maui, Hawai'i, SEP 11 2017.

/sgd/ D. PELLAZAR (seal)

CLERK OF THE ABOVE-ENTITLED COURT

Electronically Filed  
SECOND CIRCUIT  
2CC171000384  
16-APR-2020  
11:47 AM

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

RICK MARKHAM; NORTH SHORE  
MAUI LLC; JOHN DOES 1-10; JANE  
DOES 1-10; DOE COMPANIES 1-10;  
DOE PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; AND/OR  
OTHER DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 2CC171000384(2)

COURT'S FINDINGS OF FACT;  
CONCLUSIONS OF LAW; and ORDER

COURT'S FINDINGS OF FACT;  
CONCLUSIONS OF LAW; and ORDER

Trial to the bench on Plaintiff County of Maui's ("COUNTY") request for a permanent injunction against defendants Rick Markham ("MARKHAM") and NORTH SHORE MAUI, LLC ("NSM") in the above-captioned case commenced before the Honorable Peter T. Cahill on December 16, 2019. Terry Revere, Esq. and Magdalena Bajon, Esq. appeared on behalf of Defendants. Deputy Corporation Counsel Brian A. Bilberry, Esq. appeared on behalf of the Plaintiff COUNTY. Trial concluded on December 19, 2019. The Court received written closing arguments on January 13, 2020. The court issued its ruling on January 17, 2020 on the record with the parties or their attorneys present. The Court entered its Interim Order Granting Permanent Injunction on January 22, 2020. On January 22, 2020 defendant NSM filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code.

Having entered the Order Granting Plaintiff County of Maui's Motion for Summary Judgment, et seq, on August 12, 2019 [see JEFS Dkt. 52], and having considered the evidence and arguments of counsel presented at trial, the court makes the following Findings of Fact and Conclusions of Law, and enters its Order:

FINDINGS OF FACT

1. COUNTY Planning Department Zoning Inspector Gail Davis testified that in 2014, she learned about a transient vacation rental being operated at 115 Hana Highway, Paia, Maui ("Nalu Kai Lodge"). See 2019-12-17 Transcript of Proceedings, Vol. II, p. 8, ll. 23-25 – p. 9, ll. 1-10.
2. Ms. Davis received a Request for Service directing that Defendants' operation of Nalu Kai Lodge be investigated. Id.; see also p. 17, ll. 19-22.
3. Then Planning Director William Spence submitted the Request for Service to the Planning Department by. Id.

4. Based on the discovery of website advertising for the Nalu Kai Lodge as a transient vacation rental, the COUNTY issued a warning letter to NORTH SHORE MAUI, LLC through its principal RICK MARKHAM, advising him that NORTH SHORE MAUI, LLC needed to correct any violation(s). **See Exhibit Trial Exhibit P-1; see also** 2019-12-17 Transcript of Proceedings, Vol. II, p. 23, ll. 4-5.

5. The COUNTY advised and notified Defendants that the operation of their transient vacation rental would subject them to citation(s), civil fines, and penalties if they failed to correct the violations. Id.

6. The warning letter advised defendants that the Planning Department had discovered the violations and that the COUNTY sought to work with MARKHAM and NORTH SHORE MAUI, LLC to bring about compliance **with the law**. *See* 2019-12-17 Transcript of Proceedings, Vol. II, p. 12, ll. 16-25.

7. The COUNTY provided NORTH SHORE MAUI, LLC ample and adequate time to correct the violation(s) or demonstrate compliance prior to any Notice of Violations issuing. *See* 2019-12-17 Transcript of Proceedings, Vol. III, p. 48, ll. 5-14 & 19-25.

8. In fact, the COUNTY gave Defendants at least nine (9) months to correct the violations, despite the customary time period of 30 days before issuing a Notice of Violation issuing after a warning being 30 days. Id.

9. During this extended nine (9) month period, Ms. Davis made numerous efforts to contact MARKHAM as part of her own ongoing investigation. Id., p. 24, ll. 21-24.

10. During this same nine (9) month period, MARKHAM never submitted a permit application. *See* 2019-12-18 Transcript of Proceedings, p. 69, ll. 21-23.

11. MARKHAM never inquired about obtaining a permit for the transient vacation rental operation. Id.

12. Yet, MARKHAM and NORTH SHORE MAUI, LLC failed to cease operations of the Nalu Kai Lodge.

13. MARKHAM claimed and continues to claim that despite the lack of credible believable evidence or testimony, the lodge had been in operation since 1960 and therefore constitutes a legal nonconforming use.

14. MARKHAM testified that in 2009 he approached Ronald Sandate, at that time an inspector with the Planning Department, to inquire about whether his operation of the Nalu Kai Lodge would be considered as a legal nonconforming use. *See Transcript of Proceedings, dated December 18, 2019, pp. 23, 57-59.*

15. MARKHAM testified that at that time he became concerned that his lucrative business operation could be shut down after learning the administration of former Mayor Charmaine Tavares had started shutting down unpermitted transient vacation rentals. *Id.*

16. Ronald Sandate testified on behalf of defendants at trial. Sandate testified MARKHAM approached him in the mid to late 2000s and asked to conduct an investigation into past operations of his profit-making business venture. Sandate testified he remembered the Nalu Kai Lodge being used as a hotel way back in the 1980s and before. Based upon his personal recollection, he concluded the operation would constitute a preexisting nonconforming use. *See Transcript of Proceedings, Vol. 3, dated December 17, 2019, pp. 66-67.*

17. Sandate testified that he spoke with then Planning Director Jeff Hunt and his supervisor Aaron Shinmoto, and they agreed that Nalu Kai Lodge would be grandfathered. *Id.*

18. MARKHAM **NEVER** requested that Sandate or anyone else at the Planning Department memorialize in writing confirming the purported determination of Nalu Kai Lodge as a legal nonconforming use. *See Transcript of Proceedings, dated December 18, 2019, p. 59-60.*

19. When he testified, MARKHAM could also not confirm that in 2014 he told Gail Davis or anyone else at the Planning Department that its prior Director, Jeff Hunt and the Planning Department itself had agreed that his profit-making

business operation constituted a legal nonconforming use. *See* Transcript of Proceedings, dated December 18, 2019, p. 62.

20. Following the notice of violations in 2014, the Planning Department found that MARKHAM had failed to provide sufficient credible evidence to demonstrate a legal nonconforming use. *See* 2019-12-17 Transcript of Proceedings, Vol. II, p. 13, ll. 22-25; *see also* Transcript of Proceedings, dated December 17, 2019, Vol. II, p. 14.

21. MARKHAM testified he submitted an old menu and written statements from two longtime Paia residents that confirmed that Nalu Kai Lodge operated as a legal non-conforming use. This purported documentation came months after the COUNTY had issued its notice of violations. *See* Transcript of Proceedings, dated December 18, 2019, Vol. III, p. 29-30, 75-80. He also failed to back up that evidence with other available or easily ascertainable documents such as business income, HI GET, or HI TAT tax returns or filings.

22. On **September 23, 2015**, the County issued a Notice of Violation to Defendant NORTH SHORE MAUI, LLC c/o MARKHAM, for operation of the Nalu Kai Lodge as a short-term rental without a permit (NOV 2015/0090), and a separate Notice of Violation for advertising the short-term rental without a permit (NOV 2015/0091). *See* **Trial Exhibits P-1 and P-2**.

23. Defendant MARKHAM signed for and received both NOV 2015/0090 and NOV 2015/0091 on or around **September 23, 2015**. *Id.*

24. In addition to imposing fines and penalties, both NOV 2015/0090 and NOV 2015/0091 ordered Defendant NORTH SHORE MAUI LLC to “***cease and desist all activity immediately,***” and to correct the violations by “***removing all advertising and stop[ping] all short-term rental home activities***” by **September 30, 2015**. *Id.* (emphasis added).

25. Despite the violations having been found and citations having issued, the Court finds that the COUNTY demonstrated extraordinary patience and reasonableness by giving Defendants a further opportunity to correct the violations

or demonstrate compliance or file an appeal as allowed by law. *Id.*; *see also* 2019-12-17 Transcript of Proceedings, Vol. II, p. 18, ll. 3-13.

26. Despite the violations having been determined, and despite being ordered to stop their transient vacation rental operations, Defendants **did not** cease operation of Nalu Kai Lodge.

27. Defendants stipulated that their operation of Nalu Kai Lodge continued throughout this matter and through trial. *See* 2019-12-17 Transcript of Proceedings, Vol. I, p. 31., ll. 3-17; *see also* 2019-12-18 Transcript of Proceedings, p. 69, ll. 24-25.

28. It is undisputed that MARKHAM never applied for permits. *See* 2019-12-17 Transcript of Proceedings, Vol. II, p. 9, ll. 14-16; *see also* 2019-12-18 Transcript of Proceedings, p. 69, ll. 21-23.

29. It remains undisputed that until the last day of trial neither NORTH SHORE MAUI, LLC nor RICK MARKHAM appealed the Notices of Violation to prove their claim of entitlement as a legal nonconforming use to the County of Maui Board of Variances. *See also* **Exhibit P-5**.

30. Before submitting enforcement of the Notices of Violation to the COUNTY's legal office, Ms. Davis performed further investigation on February 3, 2016 and determined that Defendants still advertised Nalu Kai Lodge for short term rental accommodations. *See* 2019-12-17 Transcript of Proceedings, Vol. II, p. 10, ll. 16-18; *see also* **Exhibit P-4** (internet advertisement for Nalu kai Lodge); *see also* 2019-12-17 Transcript of Proceedings, Vol. III), p. 24, ll. 8-12.

31. Eventually, Ms. Davis also inspected the property at 115 Hana Highway. *See*, 2019-12-17 Transcript of Proceedings, Vol. II, p. 9, ll. 14-25.

32. Ms. Davis saw the rooms that had been advertised for short term rentals. *Id.*, p. 10, ll. 1-9.

33. MARKHAM himself gave Ms. Davis a tour of his unpermitted and profitable transient vacation rental operation. *See* 2019-12-17 Transcript of Proceedings, Vol. III, p. 9, ll. 21-25 – p. 10, ll. 1-6.



34. On **March 18, 2016**, the Department of the Corporation Counsel reminded NORTH SHORE MAUI, LLC and MARKHAM by letter that “*you were asked to correct the violations by December 24, 2014[.]*” See **Exhibit P-5**.

35. The COUNTY reminded defendants that “[y]ou had thirty (30) days to appeal this [Notices of Violation] to the Board of Variances and Appeals, but instead they chose not to contest the Notices of Violation issued by the Maui County Department of Planning.” Id.

36. Prior to the Notices of Violation being given to Corporation Counsel for enforcement, the COUNTY gave NORTH SHORE MAUI, LLC and MARKHAM further opportunity to prove their claim of legal nonconforming use. They failed to provide the necessary valid, credible, and legal proof to establish their claim of legal nonconforming use. See 2019-12-18 Transcript of Proceedings, Bates pp. COM 486-487.

37. The COUNTY filed its Verified Complaint for Injunctive Relief and Damages on September 11, 2017. The Verified Complaint sought collection of fines and penalties for violations of the Maui County Code, § 19.37.010 imposing geographic restrictions on transient vacation rentals, and §§ 19.65.040 and 19.65.080 prohibiting the operation of a short term rentals without a valid permit. The Verified Complaint also sought an injunctive order that NORTH SHORE MAUI LLC and MARKHAM cease their transient vacation rental operation. See JEFD Dkt. 1.

38. The COUNTY filed its Motion for Summary Judgment as to All Claims Against Rick Markham and North Shore Maui LLC on November 15, 2018. The Court heard that Motion on July 19, 2019. See JEF S Dkt. 10.

39. The court concluded that the failure by MARKHAM and NORTH SHORE MAUI LLC to have filed a timely appeal from the Notices of Violation to the Board of Variances precluded Defendants from contesting the fines and penalties imposed and granted the Motion for Summary Judgment filed by the COUNTY. See Transcript of Proceedings, dated July 19, 2019, pp. 26-27. The Court

further ruled that pursuant to the Notices of Violation, fines and penalties would accrue up to the date of the court's ruling granting the Motion for Summary Judgment. Id.

40. The Court filed its Order Granting Plaintiff County of Maui's Motion for Summary Judgment as to All Claims Against Defendant Rick Markham and North Shore Maui LLC filed September 11, 2017 on August 19, 2019. *See* JEFS Dkt. 52.

41. *Exhibit E* to Plaintiffs' Reply Memorandum to Defendants' Memorandum in Opposition to Plaintiff County of Maui's Motion for Summary Judgment on All Claims, et seq., filed July 16, 2019, calculates fines and penalties accrued through July 12, 2019 at \$2,762,000.00. *See* JEFS Dkt. 51; *see also* Plaintiffs' **Exhibit P-10**.

42. At the time the court granted Plaintiff's Motion for Summary Judgment, it reserved ruling on Plaintiff's claim for injunctive relief.

43. Trial on Plaintiffs' claim for injunctive relief occurred from December 16, 2019 through December 19, 2019.

44. Defendants never ceased operating the Nalu Kai Lodge and continued to do so to through trial of this matter. *See* 2019-12-17 Transcript of Proceedings, Vol. 1, p. 31., ll. 3-17; *see also* 2019-12-18 Transcript of Proceedings, p. 69, ll. 24-25.

#### CONCLUSIONS OF LAW

##### **I. DEFENDANTS ARE LIABLE TO THE COUNTY FOR FINES AND PENALTIES**

1. The COUNTY established Defendants' liability for violations of Maui County Code § 19.37, and § 19.65.080(C) and (D), in its Motion for Summary Judgment, et seq., on August 12, 2019 [*see* JEFS Dkt. 52].

2. The Planning Department acted within its authority in making the determination that Defendants failed to prove their transient vacation rental

operation constituted a legal nonconforming use, before issuing the Notices of Violation.

3. Defendants' failure to appeal the Notices of Violation 2015/0090 and 2015/0091 to the Board of Variances and Appeals, as permitted by law and administrative procedure, remained undisputed at trial.

4. Defendants failure to appeal the Notices of Violation to the Board of Variances precluded Defendants from invoking the jurisdiction of this court to contest the determination by the Planning Department that the operation of a profit-making and unlicensed transient vacation rental by these Defendants violated the law.

5. As liability for the violations had been established on summary judgment, the COUNTY would, ordinarily, be entitled to a judgment for fines and penalties in the amount accrued as of the date of the court's ruling on the Motion for Summary Judgment on July 19, 2019, in the amount of \$2,762,000.00 against both Defendants. The automatic stay provisions of the United States Bankruptcy Code, however, preclude the entry of any order, judgment, or other action by this Court that could result in impairment of the rights of the creditors of Defendant NORTH SHORE MAUI LLC. Therefore, this Court concludes as a matter of law that although its findings of fact and conclusion of law are otherwise final as to Defendant NORTH SHORE MAUI LLC no part of the Court's order is to be construed in any way as an action that constitutes a debt or action to collect money on a debt unless and until the automatic stay is lifted or deemed by the appropriate United States Court not to apply.

6. This Court finds that Ronald Sandate's testimony about conversations he had with his supervisors former Planning director Jeff Hunt and Aaron Shinmoto in 2009 and their alleged determination that Nalu Kai Lodge could continue to operate as a legal nonconforming use is not credible.

7. Sandate testified that he received **verbal** approval from Hunt and Shinmoto that would have ~~allowed~~ Defendants to continue its money-making

venture based largely on his personal recollections. Sandate also admitted that neither his immediate supervisor Shinmoto nor the Planning Director Jeff Hunt gave written authorization allowing continued operation or even acknowledged the existence of any credible evidence that would have warranted further consideration. *See* 2019-12-17 Transcript of Proceedings, Vol. III, p. 74, 13-16.

8. MARKHAM confirmed in his testimony that he neither sought nor even asked that the purported determination of legal nonconforming use be put in writing. *See* 2019-12-18 Transcript of Proceedings, p. 59, ll. 7-9, ll. 24-25 – p. 60, ll. 1-7.

9. The Court finds MARKHAM'S testimony deceitful and deliberately deceptive. The Court has no reason to doubt that MARKHAM had a concern that Mayor Tavares' desire to shut-down illegal unlicensed transient vacation rentals would have resulted in the loss of a lucrative under the radar profit-making venture. Yet, when he requested an inquiry by the Planning Department seeking a determination that Nalu Kai Lodge would be allowed to continuing operating as a legal nonconforming use and received that determination from Sandate, MARKHAM's failure to "get it in writing" renders his testimony incredulous. The Court not only heard MARKHAM's testimony but assessed his credibility by the manner he spoke and his demeanor. MARKHAM prefaced his testimony by stating that he is just a professional windsurfer. Again the Court has no reason to doubt his prior profession, his attempt, however, to emphasize his own ignorance belied a shrewd and successful gentleman that had managed to accumulate an extensive portfolio of real estate holdings on Maui. Once again the Court neither begrudges nor seeks to diminish MARKHAM's success, indeed it commends him. In the context of his testimony, however, the feigning of business acumen and MARKHAM's many efforts at attempting to skirt the law resulted in this Court concluding that he had been neither candid nor truthful.

10. Former Planning Director William Spence testified that if such a determination had been officially made, it would have been documented. *See* 2019-12-19 Transcript of Proceedings, Vol. 2, p. 27-28.

11. Since the Court finds Sandate's testimony not believable any testimony from MARKHAM that he relied upon that verbal representation that he could continue business as usual is equally unsupported.. *See* Maui Vacation Rental Association v. County of Maui, 2007 WL 44440962 \*14 (U.S Dist. Haw. 2007) ("It is well accepted that a public employee not vested with decision making authority may not bind the [county] in its exercise of the police power"). "Estoppel 'cannot be applied to actions for which the agency or agent of the government has no authority.'" *Id.* (quoting Brescia v. North Shore Ohana, 115 Haw. 477, 499, 168 P.3d 929, 952 (2007) (quoting Turner v. Chandler, 87 Haw. 330, 334, 955 P.2d 1062, 1066 (Haw. App. 1998)); *see also* Maui Vacation Rental Association v. County of Maui, 303 Fed. Appx. 416 (9th Cir. 2008) ("government agents 'must act within the bounds of their authority,' and 'one who deals with [government agents] assumes the risk that [the agents] are so acting[])").

12. Sandate acknowledged repeatedly he had no legal authority to determine the status of Nalu Kai as a legal nonconforming use. *See* 2019-12-17 Transcript of Proceedings, Vol. III, p. 73, l. 25 – p. 74, ll. 1-12.

13. Even MARKHM admitted that he only dealt with Sandate. *Id.*, p. 58, ll. 9-11.

14. MARKHAM admitted that he never spoke to former Planning Director Hunt or Deputy Director Shinmoto about this purported investigation. *See*, 2019-12-18 Transcript of Proceedings, p. 58, ll. 3-8.

15. Finally, MARKHAM could offer no explanation whatsoever why he failed to mention the purported 2009 investigation and determination of legal nonconforming use to the Planning Department at the time it issued its warning letter of December 2014. *See* 2019-12-18 Transcript of Proceedings, p. 62, ll. 17-21, & p. 64, ll. 2-5 and 13-23 – p. 65, ll. 1-2.

16. In light of all of the above, Defendants failed to prove any equitable defense in the form of reliance to the Notices of Violation and failed to refute their liability for the accrued fines and penalties.

II. THE COUNTY PROVED ITS ENTITLEMENT TO A PERMANENT INJUNCTION

17. The court concludes as a matter of law that the County has established by clear and convincing evidence at trial that it is entitled to a permanent injunction, enjoining the Defendants from operating and continuing to operate the Nalu Kai Lodge or any other similar establishment as a transient vacation rental at 115 Hana Highway, Paia, Maui.

18. Maui County Code § 19.66.050 [*Penalty*] provides in relevant part that “[a]ny person violating any provision of this chapter may be enjoined by the circuit court of the State by temporary or permanent restraining order necessary or proper to effectuate the purposes of this chapter in a suit brought by any person or agency.”

19. Section 19.66.050 unequivocally provides the COUNTY with a judicial remedy to enforce compliance with its zoning laws.

20. The Court concludes as a matter of law the evidence at trial proved that Defendants’ zoning code violations continued unabated. *See* 2019-12-18 Transcript of Proceedings, p. 69, ll. 24-25.

21. The Court concludes as a matter of law that the credible evidence of the continuance of Defendants’ actions and activities demonstrated with clear and convincing force that without an injunction they would continue operating their for-profit illegal transient accommodation. *See* 2019-12-17 Transcript of Proceedings, Vol. 1, p. 31, ll. 3-17.

22. The Court further concludes as a matter of law that a permanent injunction is the only remedy available to the COUNTY to abate the continuing violation.

23. As provided by Maui County Code § 19.66.05, a permanent injunction is “necessary [and] proper to effectuate the purposes of th[e] [zoning code] in [this] suit brought by [the COUNTY].”

24. “Generally, the granting or denying of injunctive relief rests with the sound discretion of the trial court and the trial court's decision will be sustained absent a showing of a manifest abuse of discretion. (citations omitted).” Pofolk Aviation Hawaii, Inc. v. Dep't of Transp. for State, 134 Haw. 255, 263, 339 P.3d 1056, 1064 (Ct. App. 2014), *aff'd on other grounds*, 136 Haw. 1, 354 P.3d 436 (2015).

25. The common law in Hawai'i also favors issuance of a permanent injunction:

“[T]he appropriate test in this jurisdiction for determining whether a permanent injunction is proper is: (1) whether the plaintiff has prevailed on the merits; (2) whether the balance of irreparable damage favors the issuance of a permanent injunction; and (3) whether the public interest supports granting such an injunction.”

*See Pofolk Aviation Hawaii, Inc. v. Dep't of Transp. for State*, 134 Haw. 255, 261–62, 339 P.3d 1056, 1062–63 (Ct. App. 2014), *aff'd on other grounds*, 136 Haw. 1, 354 P.3d 436 (2015) (citing Office of Hawaiian Affairs v. Hous. & Comm. Dev. Corp. of Hawaii (HCDCH), 117 Hawai'i 174, 212, 177 P.3d 884, 922 (2008) (emphasis added); *rev'd on other grounds by Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 129 S.Ct. 1436, 173 L.Ed.2d 333 (2009)).

26. Plaintiffs have met the first prong of the test for a permanent injunction. On Motion for Summary Judgment prior to trial, the court ruled in the favor of Plaintiff COUNTY as to Defendants' liability for fines and penalties. *See* JEFS Dkt. 52.

27. As to the second prong of the test for a permanent injunction, the balance of irreparable harm favors issuance of the injunction.

28. The harm to the interests of the COUNTY *and* its constituents clearly outweighs allowing an illegal operation to continue unabated.

29. The County and the people of the Maui County will suffer irreparable damage if the transient vacation rental operated by MARKHAM and NORTH SHORE MAUI, LCC continues in the absence of a viable and valid permit.

30. Permitting is a process whereby the County can regulate, keep track of, and enforce its zoning laws.

31. In this case, the clear and convincing evidence demonstrates that MARKHAM and NORTH SHORE MAUI LLC decided to circumvent permitting laws, compelling the County to file this enforcement and collection action, all while continuing to operate their unpermitted transient vacation rentals.

32. The People of the County of Maui have the right to expect: that its laws will be enforced; that the County will seek judicial relief where necessary to enforce those laws; and that operators of transient accommodations who have obtained valid permits may continue to operate their businesses unfettered by illegal competition.

33. Persons and business entities who are operating legal transient vacation rentals in Paia, Maui have a right to compete with others who are validly permitted. The Court concludes as a matter of law that in the absence of enforcement against unpermitted operators, those whose are validly permitted are competing with persons or businesses that are not playing by the rules. It is unfair and does irreparable damage not only to those validly permitted businesses and owners but to the community as a whole.<sup>1</sup>

34. For these same reasons, the third prong of the test for a permanent injunction is met. It is in the public interest that owners and operators of transient accommodations obtain valid permits for their operations, and not be allowed to run their businesses in violation of zoning laws and permitting regulations.

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<sup>1</sup>During the preparation of these FOF, COL and Order the COVID-19 health crisis struck Maui County. Mayor Victorino has ordered the suspension of all licensed TVR and B and B operations. Injunctive relief is even more critical now as it pertains to illegal operations in this time of crisis.



35. It is in the public interest for the County to ensure that lawful businesses exist and operate and that persons and businesses go through the proper process to obtain legal permission for their operations.

36. Finally, the public has an interest in seeking compliance with zoning laws. The need for zoning compliance and enforcement has become a matter of particular importance as far as transient accommodations, and their proliferation through internet sites like VRBO and AirBNB are concerned. Without meaningful and *enforceable* zoning regulations and procedures, there are no protections to the community. Undoubtedly, the community has an interest in ensuring zoning compliance, for reasons including proper restrictions on commercial development and environmental protection.

37. This Court finds that under *In re First Alliance Mortg. Co.*, 263 B.R. 99 (2001), Section 362(b)(4) of the Bankruptcy Code does provide an exception for certain governmental police and regulatory actions. Specifically, this provision permits a governmental unit to continue or commence any “police or regulatory action, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s . . . police or regulatory power[.]”

38. The Court concludes that enforcement of this Court’s Order enjoining Defendants from operating, advertising, accepting funds for, or employing anyone in connection to any transient vacation rental at the Property, falls within this exemption to the automatic stay and satisfies both the “pecuniary purpose” and “public policy” tests used by the United States Court of Appeals for the Ninth Circuit.

### **III. DEFENDANTS HAVE NO LACHES DEFENSE**

39. The defense of laches raised by the Defendants is rejected by the court because no evidence supports it. *See* JEFS Dkt. 196 (p. 14, citing AOAO Association of Apartment Owners or Royal Aloha v. Certified Management, Inc., 139 Haw. 229, 386, 386 P.3d 866 (2016)).

40. The court finds that Defendants failed to prove with credible evidence and by a preponderance of the evidence that the County delayed seeking to enforce its zoning laws and permitting regulations.

41. When the County received notice of Defendants' unpermitted transient vacation rental in 2014, it issued a warning and gave Defendants an opportunity to correct the violations.

42. The County gave Defendants additional opportunity to prove their claim of entitlement as a legal nonconforming use in the interim but did not cease their transient vacation rental operation as ordered in the warning letter or the Notices of Violation.

43. Once the notices of violation issued, Defendants had adequate notice of the violation and had been and fully informed that fines and penalties would accrue. The Court finds that Defendants received actual, not mere constructive notice of the violations, the proposed action that would be taken, and ensuing penalties for noncompliance

44. If the Defendants had ceased and desisted from their unpermitted transient vacation rental operation, the fines they incurred would not have accrued.

45. Moreover, even assuming there some delay occurred in bringing this lawsuit, Defendants took advantage of and benefitted from the delay by continuing to operate and generate revenue through their unpermitted transient vacation rental operation.

46. Even assuming for the sake of argument, some delay occurred, the Court concludes as a matter of law that the doctrine laches does not allow that which is otherwise unlawful and illegal to become lawful and legal. Thus by

continuing to operate a transient vacation rental that required permitting without permits MARKHAM and NORTH SHORE MAUI LLC disavowed themselves of any equitable recompense by their own unclean hands.

47. Allowing a violation to continue simply because it has been occurring and continuous from the past to present would make zoning laws and permitting requirements meaningless.

48. More particularly here, Defendants, by failing to appeal the Notices of Violation to the Board of Variances, avoided seeking an administrative determination on their claim of entitlement as a legal nonconforming use.

49. Despite being required to do so *within thirty (30) days* of the Notices of Violation issuing on **September 23, 2015**, Defendants waited *more than four (4) years* until **December 18, 2019** to seek that review.<sup>2</sup>

50. Moreover, Defendants made no gesture towards seeking appropriate review by the Board of Variances and Appeals until *after* the COUNTY filed this lawsuit to seek enforcement and collection of fines and penalties.

51. Allowing Defendants to use their own delay as the basis for making an equitable defense of laches also does irreparable harm to the substance of the zoning law. Defendants' failure to follow proper appellate procedure - their conscious shirking of the required administrative review - does not somehow provide them a defense on the merits.

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<sup>2</sup> Nothing in these FOF, COL, and Order should be construed as prohibiting Defendants from seeking such review.

52. Defendants can have no reasonable expectation of protection for their unpermitted transient vacation rental. Defendants' conscious failure to comply with the zoning regulations and permitting laws after they received the Notices of Violation four (4) years ago, does not entitle them to continue transient vacation rental operations after having been lawfully notified to stop.

53. From the day Defendants started operating the Nalu Kai Lodge, they took the risk of an enforcement action against them. Defendants weighed risks of operating without permits, and therefore are responsible for the consequences for their actions. The Court concludes as a matter of law that Defendants made a calculated decision to continue to operate their for-profit ventures because the risk of fines and even a shutdown had been outweighed by significant cash-flow generated by the illegal transient vacation rentals.

#### VERDICT AND ORDER

The Court FINDS and RULES that the County has established by clear and convincing evidence that it is entitled to the relief requested; namely, a permanent injunction enjoining the defendants, RICK MARKHAM and NORTH SHORE MAUI LLC, from operating and continuing to operate a transient vacation rental at the location 115 Hana Highway, Paia, Maui.

It is therefore ORDERED, ADJUDGED, and DECREED that consistent with the Interim Order Granting Permanent Injunction [*See* JEFS Dkt. 213], filed January 22, 2020, Defendants RICK MARKHAM and NORTH SHORE MAUI, LLC, as named in this lawsuit, and their agents, employees, servants, attorneys and others acting in concert with or assisting them are permanently enjoined, restrained, and prohibited from:

1) Operating any transient vacation rental accommodations at 115 Hana Highway, Paia, Maui, either identified as Nalu Kai Lodge, or under any other business or trade name, in any building, structure, or improvement on the Property;

2) Advertising for any transient vacation rental at 115 Hana Highway, Paia, Maui (the "Property"), either identified as Nalu Kai Lodge, or under any other business or trade name, in any building, structure, or improvement on the Property;

3) Accepting any funds from any source or from any person who might use a transient vacation rental at 115 Hana Highway, Paia, Maui (the "Property"), either identified as Nalu Kai Lodge, or under any other business or trade name, in any building, structure, or improvement at 115 Hana Highway, Paia, Maui; and

4) Employing anyone in any capacity as connected with a transient vacation rental at 115 Hana Highway, Paia, Maui (the "Property"), either identified as Nalu Kai Lodge, or under any other business or trade name, in any building, structure, or improvement on the Property.

Any violation of this Verdict and Order may subject Defendants and anyone acting on their behalf to sanctions by the court as permitted by law including civil contempt.

DATED: Wailuku, Maui, Hawai'i APR 16 2020

  
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JUDGE OF THE ABOVE-ENTITLED COURT

