

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

February 28, 2014

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

Project No.:SP12STAT01

Statewide

Amend Prior Board Action of July 27, 2012, Item E-2, Request for Approval for the Sale and Independent Award of Eight (8) Concession or Mobile Concession Agreements by Means of Sealed Bid Auctions for the Purposes Indicated and Delegation to the Chairperson to Issue the Information for Bidders (IFB), Award Each Bid and Give Notice to Proceed for the Following State Parks on O'ahu, Kaua'i, Maui and Hawai'i: Diamond Head State Monument (O'ahu) TMK: (1) 3-1-042:006(por.), Including a Mobile Concession Agreement and a Beverage Vending Agreement), Kōke'e State Park (Kaua'i) TMK: (4) 1-4-001:013 (por.) (Including a Concession Lease for the Kōke'e Lodge and Cabins); Waimea Canyon State Park (Kaua'i) TMK: (4)1-2-001:004 (por.) (Including a Mobile Concession Agreement for Waimea Canyon Lookout), Wailua River State Park, (Kaua'i) TMK: (4) 3-9-004:010 (por.) Including a Concession Lease for an Existing Restaurant Space), Wailua River State Park (Kaua'i)TMK (4) 4-2-004:002 (por.) (Including a Proposed Mobile Concession), Hāpuna Beach State Recreation Area (Hawai'i) TMK: (3) 6-6-002:035 (por.) (Including a Concession Lease for Existing Food Concession Space), and Makena State Park (Maui) TMK: (2) 2-1-006:030 (por.) (Including a Mobile Concession Agreement). The Purpose of the Amendment is to Revise the Term of the Proposed Hapuna Beach State Recreation Area Concession Lease from a Period of Five Years to Three Years and to Waive the Requirement for a Phase I Environmental Assessment.

**BACKGROUND:**

On July 27, 2012 the Board approved the sale and independent award of eight (8) concession and mobile concession agreements for certain parks throughout the state.<sup>1</sup> One of the concessions is for a restaurant space lease in an existing concession building at the Hapuna Beach State Recreation Area. Bidding documents for this lease are being prepared currently. This submittal applies only to the Hapuna Concession Lease.

In the 2012 submittal, all of the concession leases were proposed for a term of five (5) years, except the Wailua River Restaurant space (15 years), but after a review of the circumstances at the Hapuna Beach property, the Division of State Parks (State Parks) staff finds that a shorter term of three (3) years would be more appropriate.

In addition, under recommendation 2(a) in the submittal, State Parks requested approval for the lease based on the standard terms and conditions of the most current concession lease agreement. Although it is unclear as to whether or not there is a standard form concession lease, other leases issued by the Department typically include a provision for a Phase I environmental assessment. Given the shorter duration of the lease and the nature of the intended use, staff recommends the requirement be waived in this case.

**ITEM E-1**

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<sup>1</sup> The July 27, 2012 Submittal is attached as Exhibit A.

REMARKS:

The Hapuna Beach State Recreation Area is mostly undeveloped. Under a 2001 Master Plan and Final Environmental Impact Statement (FEIS), an additional 784 acres are available for expanded recreational facilities to complement the park. The plans call for picnic areas, comfort stations, family and group camping, hiking trails, parking areas and potentially, even a golf course. State Parks plans to start a process shortly for a public/private partnership to develop this area in accordance with the FEIS and would like the flexibility to include the restaurant and retail concession area with the offering. A lease term of three years would provide a restaurant operator with a reasonable time period to recapture its initial investment while allowing a potential long term lessee for the larger portion of the park the opportunity to maintain a more consistent operation and stable revenue base.

The requirement for a Phase I environmental assessment is included under the Department's standard form general lease. Staff was unable to locate a Departmental retail or restaurant concession lease form and relies on specimen leases used for similar types of properties in previous years. The assessment requires that the lessee identify and abate any hazardous materials on the property prior to the termination of the lease. In this case, staff has inspected the property and found no evidence of existing hazardous materials and, given that the proposed use is for a relatively short term space lease (with no expansion or planned construction), and that the lease is generally not assignable, staff recommends that a waiver is justified.

RECOMMENDATION: That the Board:

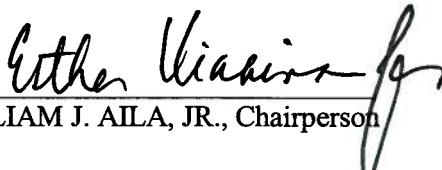
1. Amend its prior Board action of July 27, 2012 by revising the term of the proposed concession lease for the Hapuna Beach State Recreation Area from a period of five (5) years to three (3) years and waiving the requirement for a Phase I environmental assessment.
2. All other terms and conditions in its July 27, 2012 approval to remain the same.

Respectfully Submitted,



DANIEL S. QUINN  
State Parks Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson

Attachments

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

July 27, 2012

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

Project No.:SP12STAT01

Statewide

SUBJECT:

Request for approval for the sale and independent award of eight (8) concession or mobile concession agreements by means of sealed bid auctions for the purposes indicated and delegation to the Chairperson to issue the Information for Bidders (IFB), award each bid and give notice to proceed for the following State Parks on O'ahu, Kaua'i, Maui and Hawai'i: Diamond Head State Monument (O'ahu) TMK: (1) 3-1-042:006(por.), (including a mobile concession agreement and a beverage vending agreement), Kōke'e State Park (Kaua'i) TMK: (4) 1-4-001:013 (por.) (including a concession lease for the Kōke'e Lodge and Cabins); Waimea Canyon State Park (Kaua'i) TMK: (4)1-2-001:004 (por.) (including a mobile concession agreement for Waimea Canyon Lookout), Wailua River State Park, (Kaua'i) TMK: (4) 3-9-004:010 (por.) (including a concession lease for an existing restaurant space), Wailua River State Park (Kaua'i)TMK (4) 4-2-004:002 (por.) (including a proposed mobile concession), Hāpuna Beach State Recreation Area (Hawai'i) TMK: (3) 6-6-002:035 (por.) (including a concession lease for existing food concession space), and Makena State Park (Maui) TMK: (2) 2-1-006:030 (por.) (including a mobile concession agreement)

REQUEST:

The DLNR Division of State Parks (State Parks) requests approval for the sale and independent award for the sale of eight (8) concession agreements by means of sealed bid auctions for mobile concession and concession lease purposes as indicated herein and delegation to the Chairperson to issue to Information for Bidders (IFB), award each bid and give the notice to proceed.

LEGAL REFERENCE:

Sections 102-2, 171-14,16, 26, 41, 56, 184-3, and other applicable sections of Chapter 171 and Chapter 102, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at:

Diamond Head State Monument, Honolulu, O'ahu, Hawaii: TMK: (1) 3-1-042:006 (por.);  
Kōke'e State Park, Waimea, Kaua'i, Hawai'i TMK (4) 1-4-001:013 (por.);  
Waimea Canyon State Park TMK: (4)1-2-001:004 (por.)  
Wailua River State Park, Wailua, Kaua'i, Hawai'i (4) 3-9-004:010 (por.) and  
TMK: (4) 4-2-004:002 (por.)  
Makena State Park, Mooiki and Mooloa, Makawao, Maui, Hawai'i TMK: (2) 2-1-  
006:030 (por.);  
Hāpuna Beach State Recreation Area, Waimea, (South Kohala) Hawai'i TMK: (3)  
6-6-002:035 (por.); all as shown on the attached tax map keys and descriptions  
labeled Exhibit A.

ITEM E-2

**EXHIBIT A**

July 27, 2012

**AREA:**

Diamond Head State Monument: A beverage vending concession area consisting of approximately 300 sf area adjacent to the existing comfort station, and a mobile food concession area consisting of approximately 1,000 sf of land, more or less,  
Kōke'e State Park: 3.324 acres, more or less  
Waimea Canyon State Park: approximately 500 sf, more or less  
Wailua River State Park: (Restaurant) 5,832 sf under roof, and a mobile concession space consisting of 500 sf of land, more or less;  
Makena State Park, 1,000 sf of area, more or less  
Hāpuna Beach State Recreation Area, 15,000 sf, more or less  
all subject to confirmation by the Department of Accounting and General Services, Survey Division.

**ZONING:**

Diamond Head State Monument  
State Land Use District: Conservation  
Subzone: General (non-conforming use)  
The property is zoned Preservation.

Kōke'e State Park  
State Land Use District: Conservation  
Subzone: Resource (non-conforming use)  
County of Kaua'i CZO: None.

Waimea Canyon State Park  
State Land Use District: Conservation  
Subzone: Resource  
County of Kaua'i CZO : None.

Wailua River State Park (Wailua Marina restaurant space)  
State Land Use District: Conservation  
Subzone: Resource  
The property is zoned CN, Neighborhood Commercial

Wailua River State Park ('Ōpaeka'a Falls proposed mobile concession space).  
State Land Use District: Conservation  
Subzone: Resource  
County of Kaua'i CZO: None.

Makena State Park  
State Land Use District: Rural  
Subzone: N/A  
Maui County Zoning: Rural

Hāpuna Beach State Recreation Area  
State Land Use District: Conservation  
Subzone: Resource 5/8/78  
Hawai'i County Zoning: Open.

July 27, 2012

**TRUST LAND STATUS:**

**Diamond Head State Monument**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO   x  

**Kōke'e State Park**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO   x  

**Waimea Canyon State Park**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO   x  

**Wailua River State Park**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO   x  

**Makena State Park**

The land was acquired after 1959

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO   x  

**Hāpuna Beach State Recreation Area**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO   x  

**CURRENT USE STATUS:**

**Diamond Head State Monument**

Encumbered by Governor's Executive Order No. 2000 Setting aside land for public purposes to the Division of State Parks. The space is currently operated pursuant to a revocable permit issued by the Board to Pepsi Bottling Group (for the beverage concession) and Curtis Hong (for the mobile food concession).

**Kōke'e State Park**

Encumbered by Governor's Executive Order No. 1509 to the Division of State Parks setting aside as a territorial park and forest reserve. The property is currently operated under a revocable permit issued to Kokee Lodge, LLC.

**Waimea Canyon State Park**

Encumbered by Governor's Executive Order No. 2209 to the Division of State Parks setting aside as a territorial park and forest reserve. The property is currently operated under a revocable permit issued to Sukhothai Corporation for mobile food vending.

**Wailua River State Park**

Encumbered by Governor's Executive Order No. 2023 to the Division of State Parks for addition to the Wailua River State Park. The property is currently operated by Wailua Marina Restaurant, Inc. under a revocable permit as a full service restaurant. The proposed location for a mobile food vendor

at 'Ōpaeka'a Falls is not currently occupied and is encumbered by Governor's Executive Order No. 2423 Setting aside land to the Division of State Parks for addition to the Wailua River State Park.

**Makena State Park**

Encumbered by Governor's Executive Order No. 4184 setting aside land for park purposes. The property is used for mobile food vending and operated under a revocable permit issued to Island Inspirations, LLP.

**Hāpuna Beach State Recreation Area**

Encumbered by Governor's Executive Order No. 2909 to the Division of State Parks for park purposes. The property is used as a food establishment under a revocable permit issued to George Mayer.

**CHARACTER OF USE:**

**Diamond Head State Monument**

Existing beverage concession and mobile concession by way of revocable permit. There is no change with the proposed concessions.

**Kōke'e State Park**

The existing operator by way of revocable permit may use the premises for the following purposes: Operation of cabin rentals, gift shop, rental of camping and fishing equipment, film, cameras, postcards photographic supply and sales, restaurant use including the sale of alcoholic beverages in the restaurant. The proposed use is the same.

**Waimea Canyon State Park**

The current use is for a mobile food concession. The proposed use is a mobile concession to sell food and park related retail items.

**Wailua River State Park**

Wailua Marina Restaurant location: Full service restaurant including the sale of alcoholic beverages, serving at a minimum, lunch and dinner every day of the week, except Monday. The proposed use is the same.

'Ōpaeka'a Falls location: The mobile vending concession will include food and other park related retail items. There is no vendor currently in place.

**Makena State Park**

Mobile food concession. The proposed use is the same.

**Hāpuna Beach State Recreation Area**

Provide and sell food, non-alcoholic beverages, sell and/or rent beach equipment. The proposed use is the same.

**CONCESSION AGREEMENT TERM:**

Five (5) years beginning on the Commencement Date for each concession agreement, except for the restaurant concession at the Wailua River State Park which shall be 15 years, or as determined by the Chairperson.

**COMMENCEMENT DATE:**

Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

**MINIMUM UPSET ANNUAL RENT:**

To be determined by staff or by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

**MINIMUM PERCENTAGE ANNUAL RENT:**

Percentage of gross revenue from all sources within the leased premises, excluding State excise tax. Percentage to be determined by staff or independent appraisal establishing fair market rent, subject to approval by the Chairperson.

**EFFECTIVE RENTAL:**

The amount of the successful bid at public auction or a percentage of the gross revenue (as determined by staff or independent appraisal), whichever is higher.

**METHOD OF PAYMENT:**

Monthly payments, in advance. Percentage rent payments shall be due by the 25<sup>th</sup> day of the following month.

**RENTAL REOPENINGS:**

None, except that in the case of a fifteen (15) year concession lease for the Wailua Marina restaurant facility, the rental rate will be re-opened after the 10<sup>th</sup> year.

**PERFORMANCE BOND:**

The bond shall be equal to two times the monthly minimum concession fee.

**MINIMUM IMPROVEMENTS:**

If needed or appropriate, Concessionaire will construct and maintain its own interior improvements at its own cost and expense, subject to the approval of the Division of State Parks. The premises are leased in their "As Is" condition. In the case of a concession lease, the Division of State Parks will maintain the exterior of the building.

**IMPROVEMENT BOND:**

Equal to the amount of improvements, if any.

RENT WAIVER:

None.

PROPERTY CHARACTERISTICS:

- Utilities – Concessionaire shall pay its fair share of all utilities for the premises, if any, including water, electricity, trash removal and other utilities, regardless of whether or not they are separately metered, as applicable and as determined by the Chairperson.
- Existing Improvements – The premises are leased in their “As Is” condition. The concessionaire shall make all improvements within their space subject to the review and approval of the Division of State Parks. The square footage amounts are subject to verification and/or adjustment as necessary.
- Legal access to property – Staff has verified that there is legal access to each of the Parks.
- Encumbrances – Staff has verified that the following encumbrances:  
Diamond Head State Monument EO2000 Setting aside land for public purposes to the Division of State Parks for Diamond Head State Monument  
Kōke’e State Park EO1509 Setting aside 4,640 acres as a territorial park and forest reserve  
Waimea Canyon State Park EO No. 2209 Setting aside land to the Division of State Parks for addition to Waimea Canyon Park  
Wailua River State Park EO No. 2023 Setting aside land to the Division of State Parks for addition to the Wailua River State Park (affects Wailua Marina Restaurant site) and set aside by EO No. 2423 Setting aside land to the Division of State Parks for addition to the Wailua River State Park (affects ‘Ōpaeka‘a Falls proposed mobile food concession)  
Makena State Park EO4184 Setting aside land for state park purposes  
Hapuna Beach State Recreation Area EO2909 Setting aside land for park and related purposes

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

State Parks believes that this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].



REMARKS:

Seven of the existing concessions locations requested in this submittal are operated by existing permittees pursuant to revocable permits continued by the Board at its December 9, 2011 meeting (Agenda Item E-1). One new concession is proposed at the 'Ōpaeka'a Falls Lookout at the Wailua River State Park. This submittal seeks approval to competitively bid each concession. Three of the proposed operations are mobile vending concessions and the remaining four are for concession leases for existing State owned buildings. State Parks requests approval to offer these properties under five (5) year agreements, except for the Wailua River State Park restaurant concession which would be offered for a fifteen (15) year term, or as determined by the Chairperson, but not to exceed 15 years in term. The breakdown is as follows:

The Diamond Head State Monument concessions will include a concession operated now by the Pepsi Bottling Group to include multiple vending machines along the exterior of the comfort station near the parking lot as well as a mobile concession currently offering plate lunches and beverages near the parking lot. The beverage vending agreement will be bid as a five (5) year concession lease and the mobile food concession agreement will be bid for a five (5) year term as well.

In Kōke'e State Park, The Lodge at Kokee, LLC., manages the lodge which includes the restaurant/gift shop and cabin rentals. The restaurant acts as office for the cabin rentals and provides food and retail options for park visitors. This will be bid as a five (5) year concession lease.

At the Waimea Canyon State Park, a food concession revocable permit was issued to Sukhothai Corporation which sells food items at the lookout. This will be bid as a five (5) year mobile concession agreement.

At the Wailua River State Park, Building B, a restaurant concession operates six (6) days per week. State Parks plans to expend capital improvement funds to make repairs to the building necessary for the continued operation of a new restaurant concession. In a June 18, 2004 Board Meeting (Item E-4), approval was given to publish and award, through a sealed bid process, three, fifteen (15) year leases for all of the then vacant commercial spaces in Building A and the marina restaurant space. The process resulted in no bidders. Staff believes the condition of the building and a minimum up-front investment in improvements of at least \$400,000 may have discouraged bidders. The proposed concession lease would be for a term of fifteen (15) years and the minimum investment would be determined by the prospective concessionaire.

At Makena State Park, Island Inspirations operates a mobile food concession at the parking lot which provides access to both "Big Beach" and "Little Beach". The proposed agreement would be a five (5) year mobile concession agreement.

At Hāpuna Beach State Park, permittee George Mayer operates a food service business out of a small building near parking lot and entrance to the beach park known as "Three Frogs Café". This will be bid as a five (5) year concession lease.

State Parks staff believes these proposed concession leases will result in the highest and best use for the properties. Seven of the eight (8) concession areas are located in Conservation Districts while the Makena State Park location is in the Urban District. There is no construction planned for any of the concessions in this submittal and therefore is no land use as defined in Section 13-5 HAR and Chapter 183C, HRS.

July 27, 2012

**AGENCY REVIEW:**

An advance copy of this submittal was sent to:

<b><u>Agency</u></b>
DLNR - Land Division
DLNR - OCCL
Kauai County Planning Dept.
OHA - Office of Hawaiian Affairs

**RECOMMENDATION:** That the Board:

1. Declare that after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the sale of eight (8) concession agreements via a sealed bid auction covering the subject areas for business and/or commercial purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current concession agreement, or concession lease agreement, as appropriate;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the Chairperson to issue Information for Bidders and delegate to the Chairperson the authority to select the highest bidder and issue the Notice to Proceed for each of the sale of eight (8) concession agreements.

Respectfully Submitted,



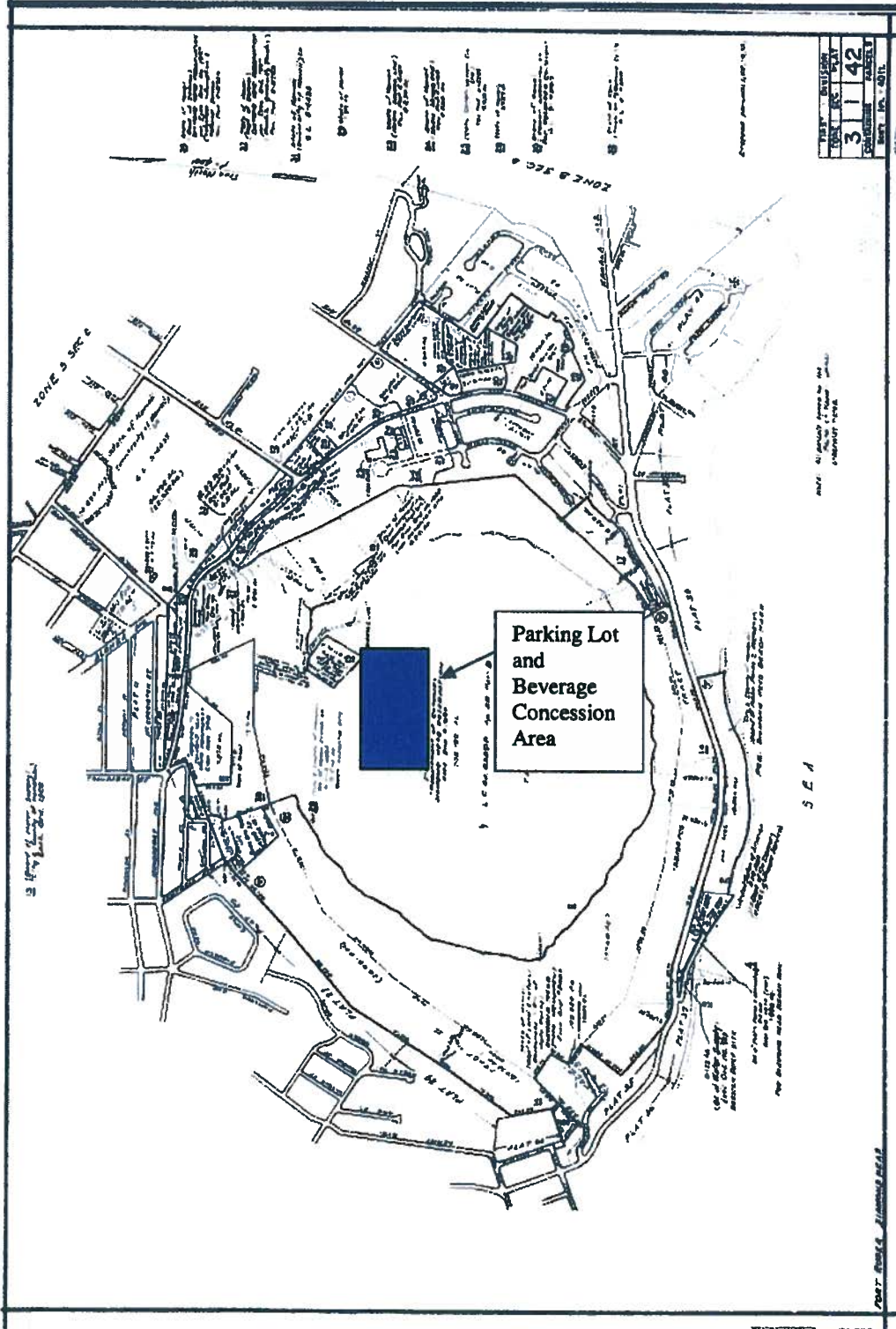
DANIEL S. QUINN  
State Parks Administrator

APPROVED FOR SUBMITTAL:

  
WILLIAM J. AILA, JR., Chairperson

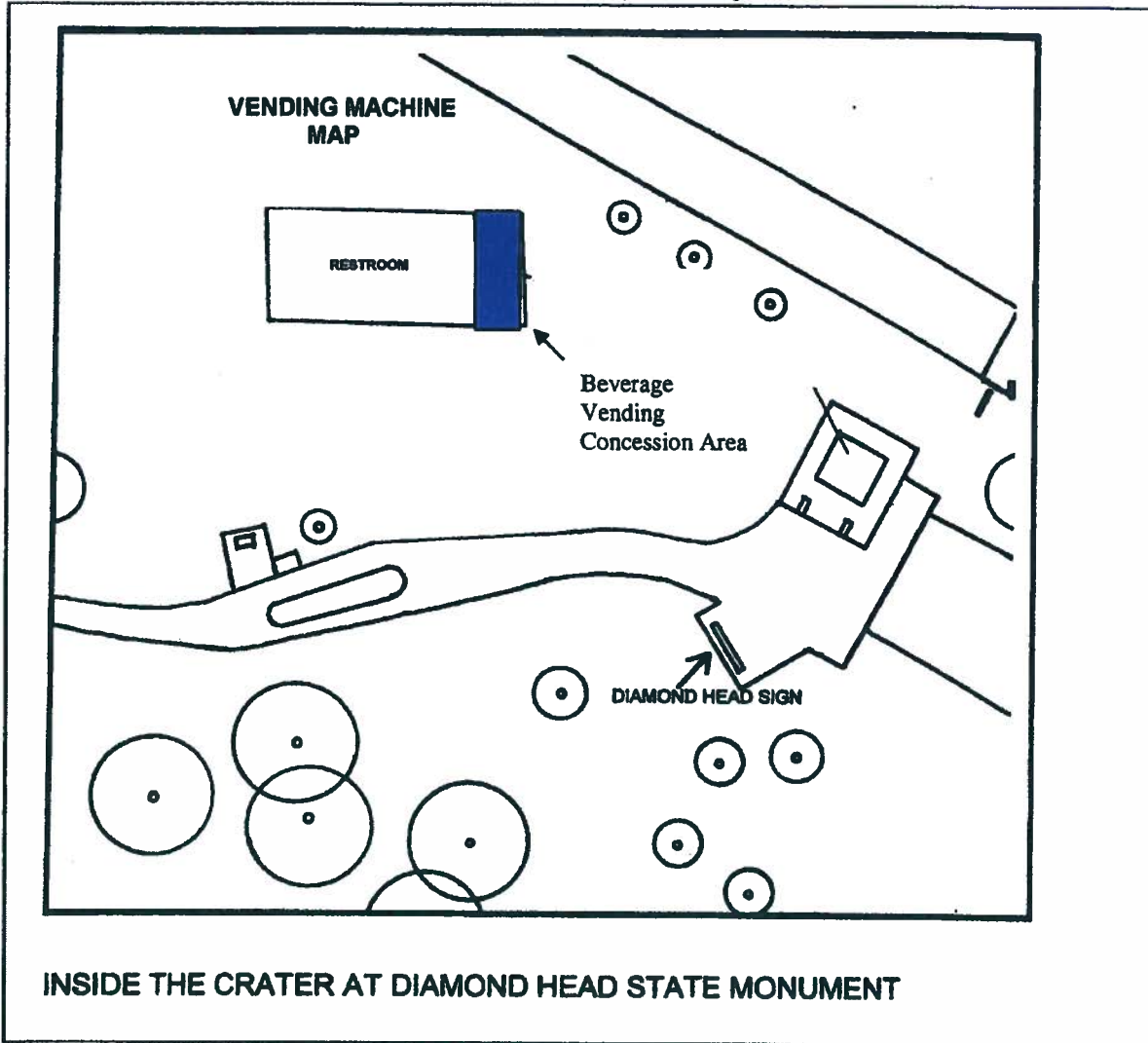
Attachments

Exhibit A - TMK and Map Descriptions  
Diamond Head State Monument - TMK: (1) 3-4-42:006

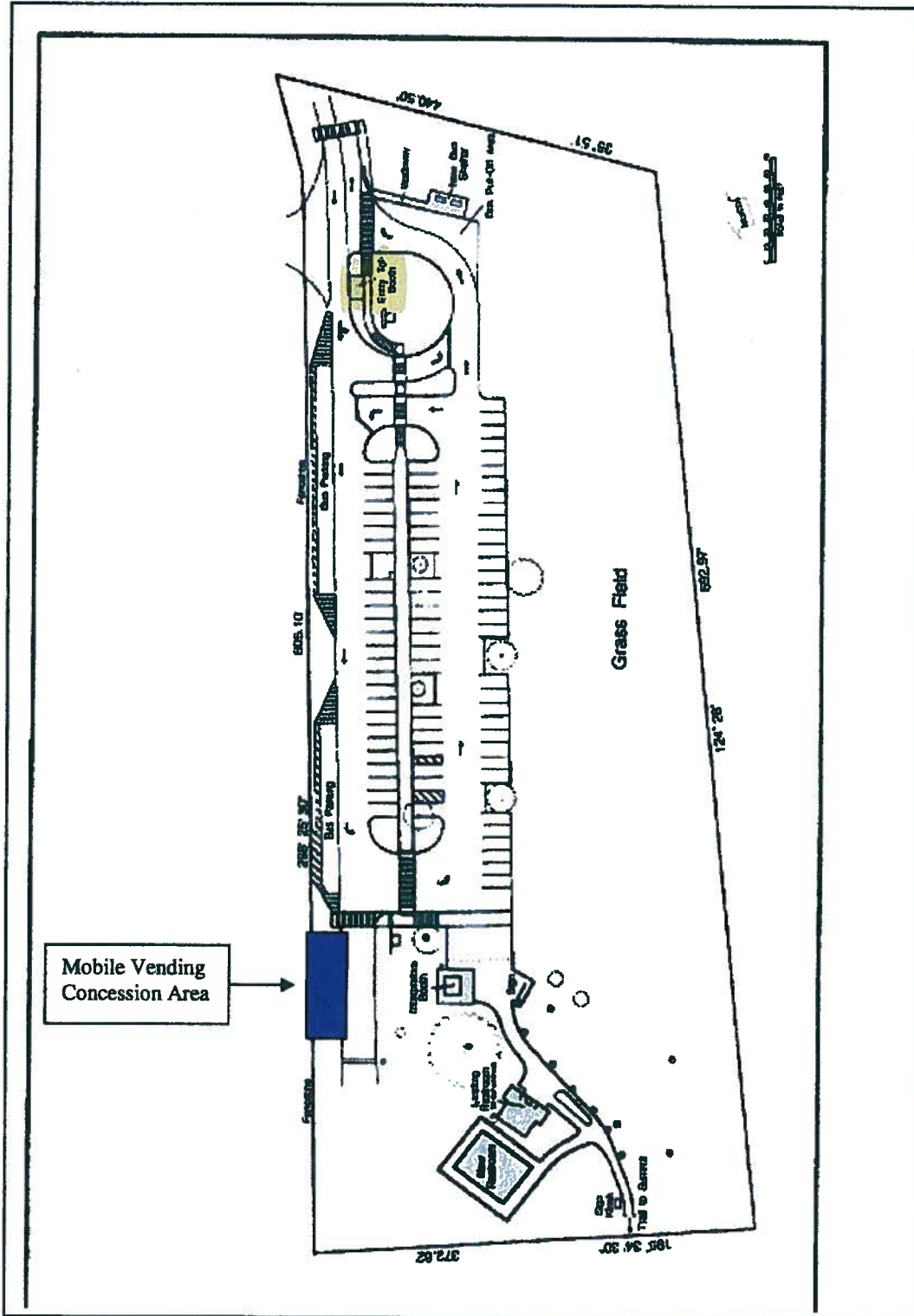


Diamond Head State Monument - Mobile Food Concession Area

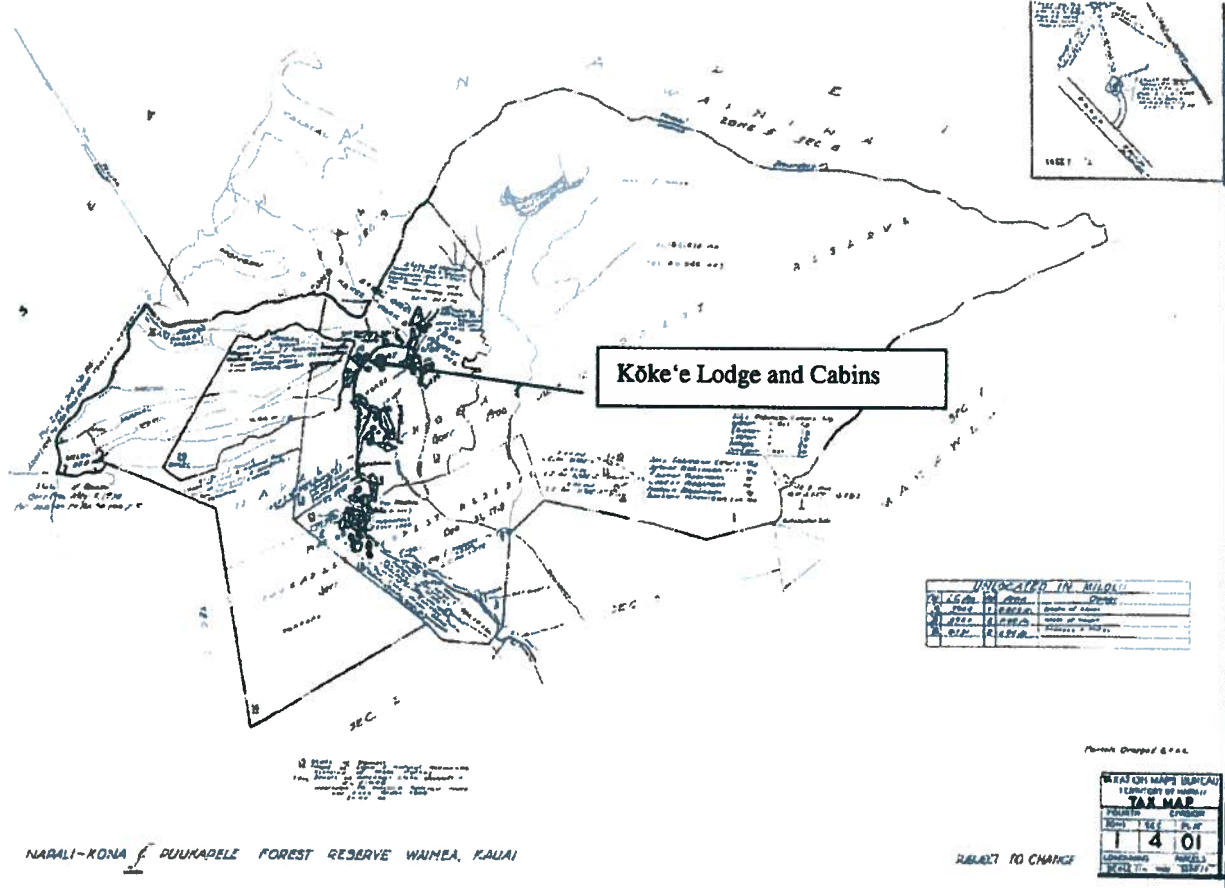
**Diamond Head State Monument - Beverage Vending Concession Area**



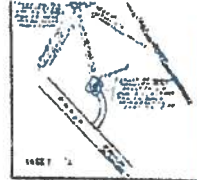
Diamond Head State Park - Mobile Vending Concession Area



Kōke'e State Park - Lodge/Cabin/Caretaker's Concession Area



**Kōke'e Lodge and Cabins**



UNLOCATED IN WILDLIFE	
PLANT	DATE
AREA	CLASS
DATE	REASON

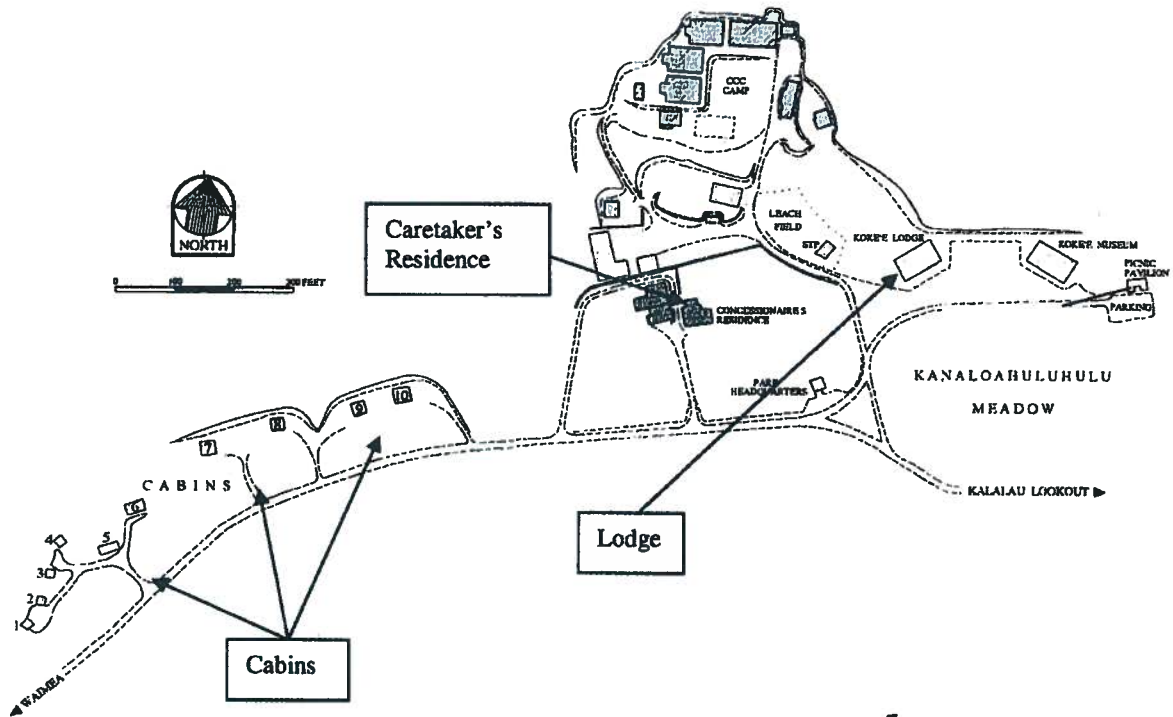
Percent Graded 6.4%

REVISION MAPS (SURFACE)	
TAX MAP	
PLANTED	ERASED
1	4
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REVISION TO CHANGE

NARALI-KONA F. PUKAPELE FOREST RESERVE WAIHEA, KALIAI

July 27, 2012



**KŌKE'E STATE PARK**  
**WAIMEA, KAUA'I**

### Waimea Canyon State Park - Canyon Lookout

***Koke'e and Waimea Canyon State Parks Master Plan and EIS***

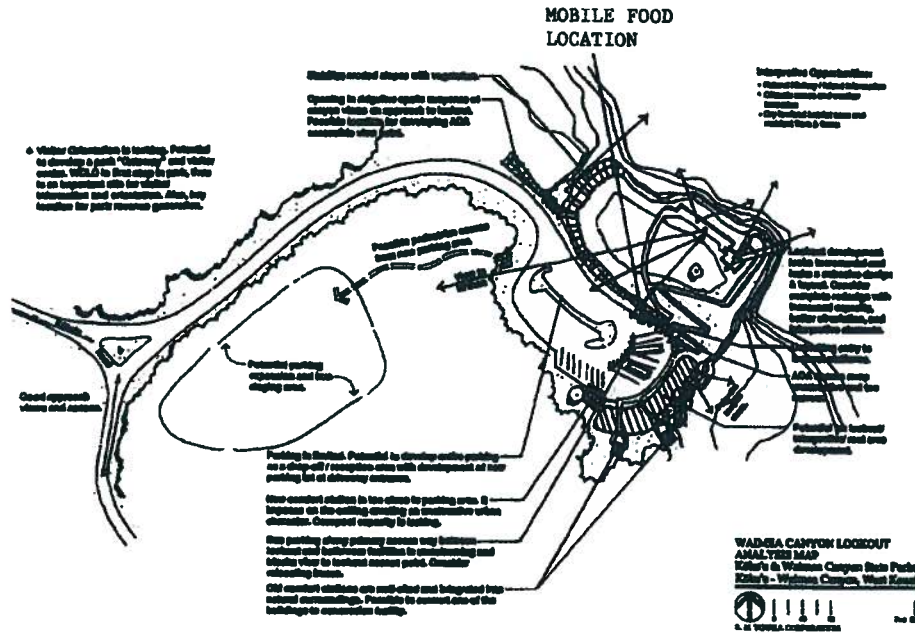
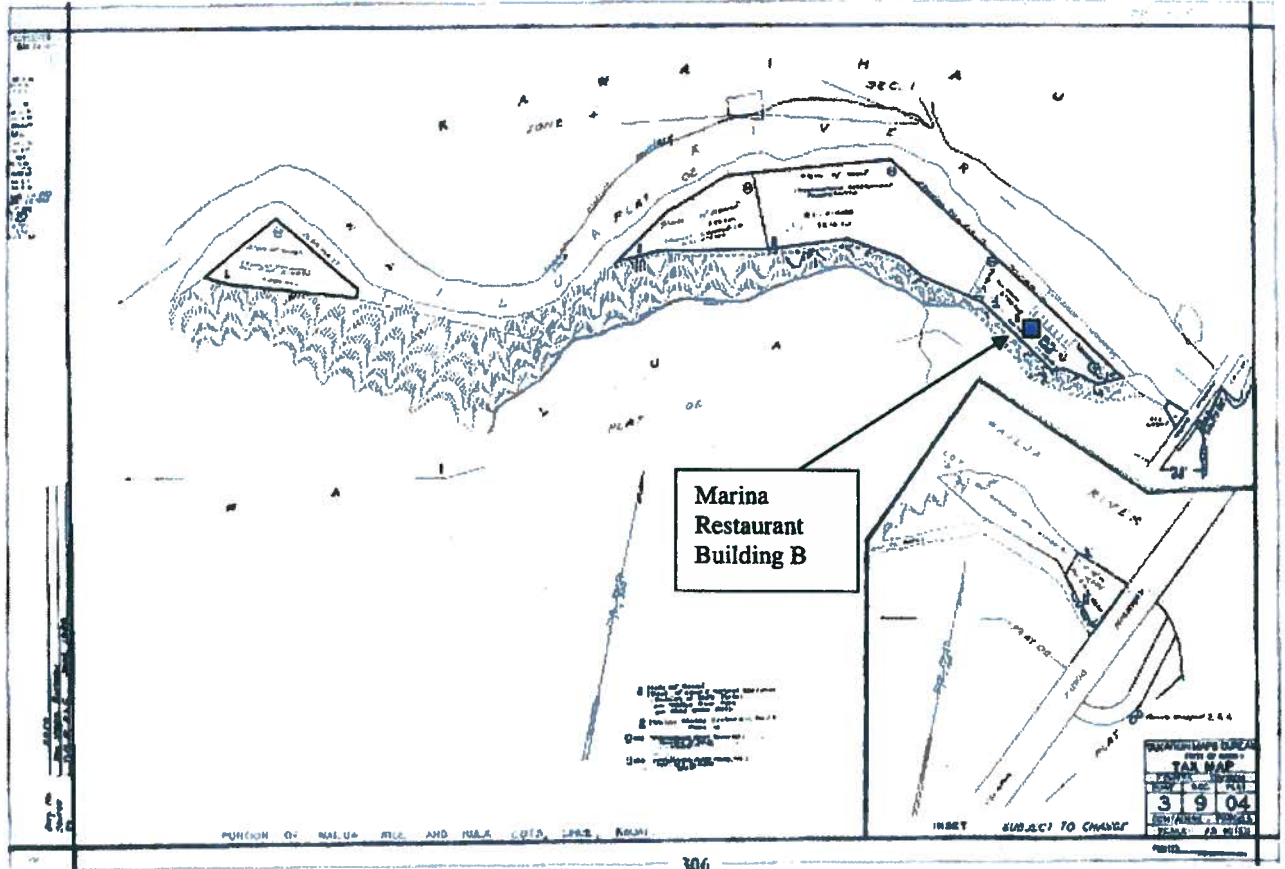


Figure 4-2 - Waimea Canyon Lookout Analysis Map



Wailua River State Park - Wailua Restaurant Concession Area







Hāpuna Beach State Recreation Area - Food Concession Area

