

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

January 9, 2015

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

Oahu

Approval to Issue a Revocable Permit to Bottling Group, LLC. to Operate Up to Five (5) Beverage Vending Machines for Business and/or Commercial Purposes, Diamond Head State Monument, Waikiki, O'ahu, TMK: (1) 3-1-042:006 (por.)

REQUEST:

Request for approval to issue a revocable permit to Bottling Group, LLC. to operate up to five (5) vending machines for Business and/or Commercial Purposes, Diamond Head State Monument, Waikiki, O'ahu TMK: (1) 3-1-042:006 (por.)

LEGAL REFERENCE:

Sections 171-13, 55 and other applicable sections of Chapter 171 and Section 102-2(b)(4), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of State Park lands at the Diamond Head State Monument, identified by Tax Map Key: (1) 3-1-042, portion of Parcel 6, as shown on the attached tax map key labeled Exhibit A.

AREA:

An area of approximately 300 square feet, more or less, as identified on the map entitled "Map of Beverage Vendor Concession Area" attached as Exhibit A.

ZONING:

State Land Use District: Conservation
County of Honolulu CZO: P1/P2, Restricted Preservation and General Preservation.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___ NO X

ITEM E-1

CURRENT USE STATUS:

Vacant and encumbered by Governor's Executive Order No. 2000 to the Division of State Parks for addition to the Diamond Head State Monument Park.

CHARACTER OF USE:

Business and/or commercial use.

TERM:

Month to month commencing January 1, 2015 through December 31, 2015.

COMMENCEMENT DATE:

Upon execution of the revocable permit by the Chairperson; and further provided that the Chairperson may amend the commencement date for good cause.

MONTHLY FEE PAYMENT:

Forty-five and one-half percent (45.5%) of the gross sales of all beverages.

METHOD OF PAYMENT:

Monthly payments shall be due by the 25th day of the following month together with a report indicating the total amount of beverages sold.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached as Exhibit B.

REMARKS:

Pepsi Bottling Group of Hawaii, a Hawaii corporation (Pepsi), who was registered with the Department of Commerce and Consumer Affairs (DCCA) as Pepsi Bottling Group of Hawaii, was granted a Concession Agreement by the Board of Land and Natural Resources (Board) from October 1, 2004 to September 30, 2006 to operate five (5) soft beverage vending machines at Diamond Head State Monument (DHSM). Upon its expiration, the Board issued Pepsi a Revocable Permit (RP) which has been continued each year through December 31, 2014.

Each year when revocable permits are brought to the Board for renewal, staff verifies compliance with current DCCA registration. In this case, Pepsi's registration was not complaint due to ownership/holding company structural changes and therefore, Pepsi's RP renewal was not included with other RP's brought before the Board at the November 14, 2014 meeting (agenda item E-1). In contacting Pepsi regarding this matter, it was determined that because of changes in Pepsi's various holding companies, registration for Pepsi would not be possible. Consequently, the RP was not eligible for renewal and expired on December 31, 2014. The request before the Board in this

submittal is to seek approval for an RP for Pepsi's lawfully registered company, Bottling Group, LLC, until such time as a solicitation is completed for a longer term concession agreement as authorized by the Board at its meeting on July 27, 2012 under agenda item E-2. The issuance of a vending machine Revocable Permit directly to Bottling Group LLC is allowed under HRS 102-2(b)(4) without recourse to competitive bidding requirements.

Pepsi Bottling Group has remitted an average of \$48,000.00 annually to State Parks and is projected to remit \$54,000.00 for the calendar year ending December, 2014. The revenue increase is reflective of the increase in visitors to the park and indicates a well-served purpose for these visitors. The beverage prices are as follows:

<u>Product</u>	<u>Vending Price</u>	<u>Commission Rate</u>
Carbonated and non-carbonated soft drinks	\$2.00	45.5%
Water	\$2.00	45.5%

DISCUSSION:

DHSM is among the most visited State Park with approximately 900,000 kama'āina and visitors from around the world each year. Most visitors come to experience the trail and view from the summit which is often sunny, warm and dry. Having access to cold beverages is both an amenity and health concern. Over the last 10 years, Pepsi has been a good partner in providing beverages at the park and may choose to participate in the competitive bidding process planned for this year. While the bidding process plays out, State Parks recommends the Board authorize Bottling Group, LLC to sell beverages through a revocable permit to provide an important service at the park.

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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 issuance of a revocable permit to Bottling Group, LLC., to sell beverages using vending machines in the area depicted in Exhibit A 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 revocable permit form, as may be amended from time to time;
 - 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 terminate the Revocable Permit to Bottling Group, LLC upon award of a new concession agreement as authorized by the Board at its meeting on July 27, 2012 (item E-2).

Respectfully Submitted,



DANIEL S. QUINN
State Parks Administrator

APPROVED FOR SUBMITTAL:

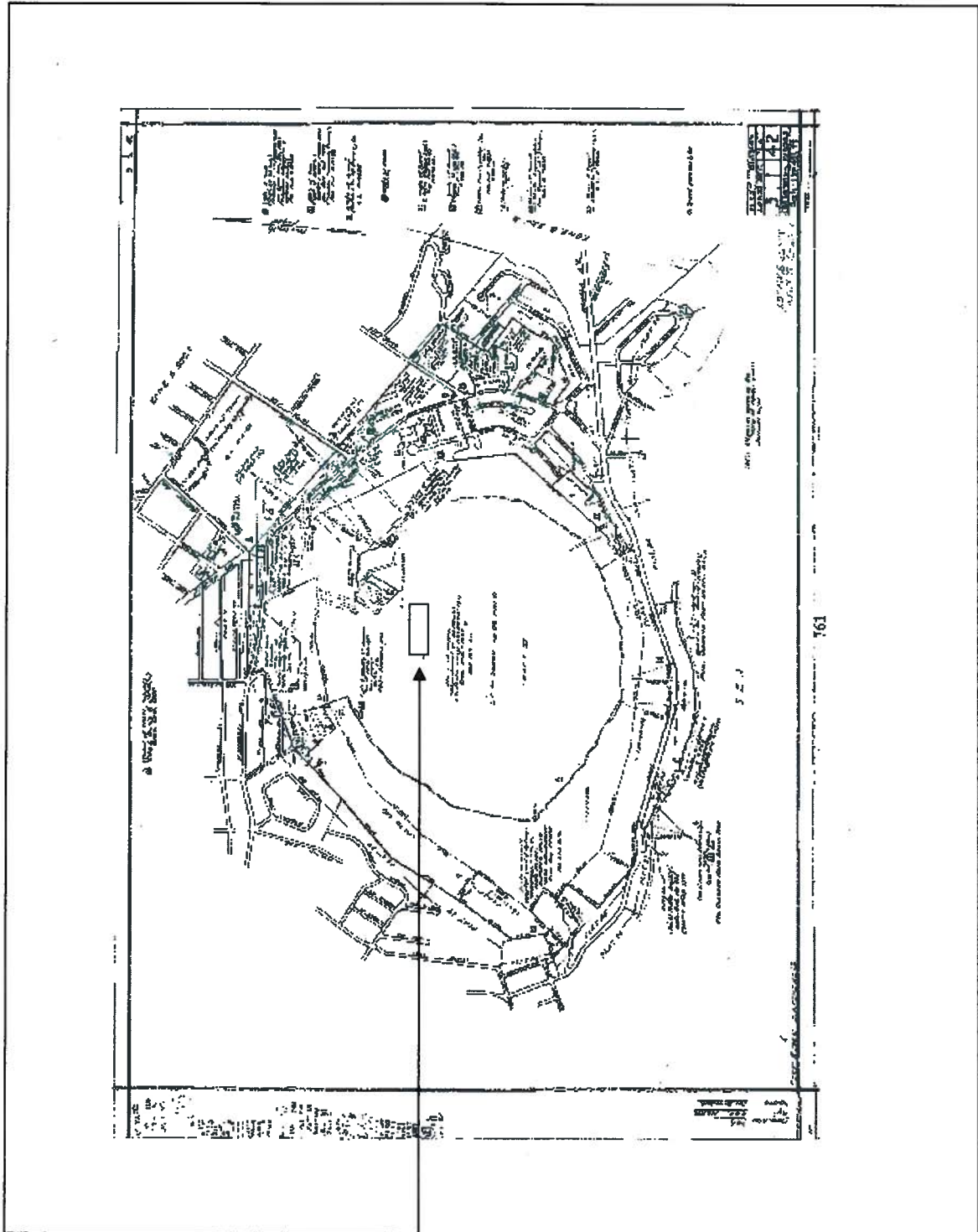


WILLIAM J. AILA, JR., Chairperson

EXHIBIT A

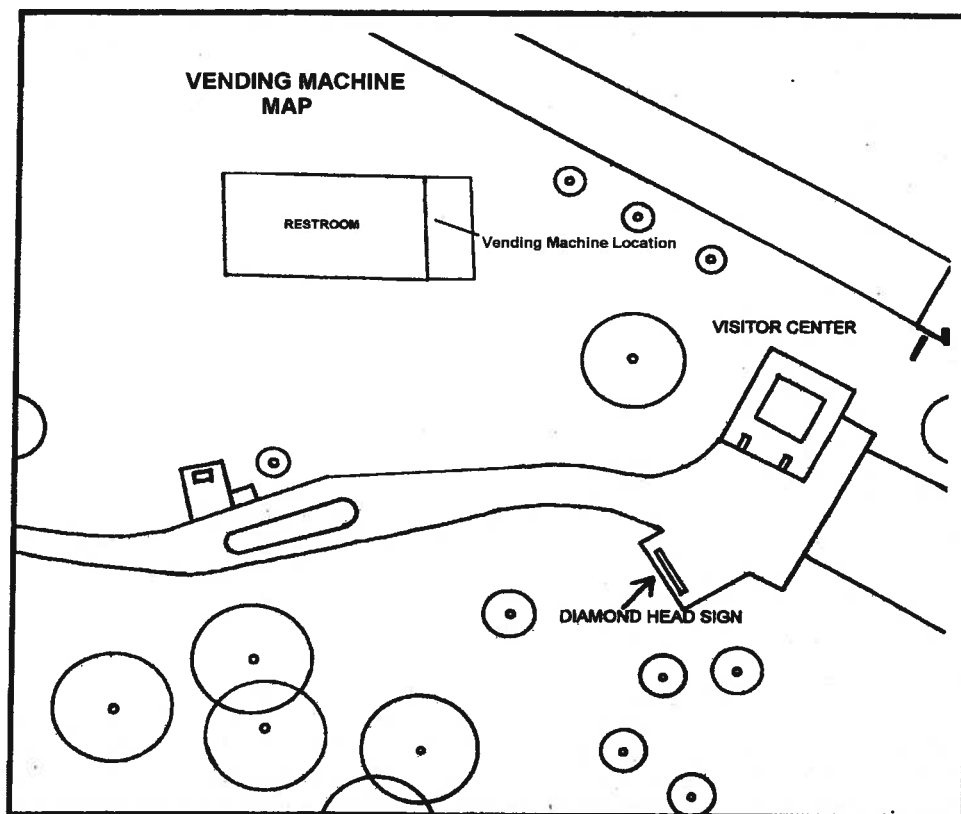
Subject location





Subject area

**MAP OF BEVERAGE VENDOR CONCESSION AREA
AT DIAMOND HEAD STATE MONUMENT**



INSIDE THE CRATER AT DIAMOND HEAD STATE MONUMENT

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR, WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
DIVERSIFIED
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
HAROLD W. HALE RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

- Project Title:** Approval to Issue a Revocable Permit to Bottling Group, LLC. to Operate Up to Five (5) Beverage Vending Machines for Business and/or Commercial Purposes, Diamond Head State Monument, Waikiki, O'ahu, TMK: (1) 3-1-042:006 (por.)
- Project / Reference No.:** N/A
- Project Location:** Diamond Head State Monument
- Project Description:** Issuance of Revocable Permit to Bottling Group, LLC
- Chap. 343 Trigger(s):** Use of State Land
- Exemption Class No.:** In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 which exempts, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing".
- The revocable permits listed in the submittal is for existing uses previously authorized by the Board.
- Consulted Parties:** DLNR - Division of Forestry and Wildlife/DOBOR/Land Division
- Recommendation:** It is recommended that the Board find that this action will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

William J. Aila Jr., Chairperson