

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 11, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 09od-108

Oahu

Sale of Concession by Sealed Bids for Beach Services at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021

REQUEST:

Sale of concession contract by sealed bid for beach services purposes.

LEGAL REFERENCE:

Section 171-56 and Chapter 102, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, identified by Tax Map Key: (1) 2-3-037:021, as shown on the attached map labeled Exhibit A.

AREA:

Concession Stand	144 square feet	
Surfboard Rack	30 square feet	
<u>Storage Area</u>	<u>896 square feet</u>	
Total:	1,070 square feet	as shown on Exhibit B.

ZONING:

State Land Use District:	Urban
City & County of Honolulu CZO:	Public Precinct

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No.

CURRENT USE STATUS:

Encumbered Duke Kahanamoku Beach Concession Contract, Hilton Hawaiian Village, LLC, (HHV), concessionaire. Contract expires on May 31, 2010.

CONCESSION:

SCOPE OF CONCESSION:

The right to operate beach services concession including rental of beach and water sport items and provision of instruction as determined by the Chairperson.

CONTRACT TERM:

Fifteen (15) years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

UPSET BID FOR MONTHLY CONCESSION FEE:

To be determined by appraisal subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Quarterly payments, in advance.

CONCESSION FEE REOPENING

The monthly concession fee shall increase by 10% every five (5) years.

SECURITY DEPOSIT:

Twice the monthly concession fee.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The activities of the proposed concession contract merely change the manner of which the subject State land is disposed. It involves no expansion of the activities. In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operation, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no

expansion or change of use beyond that previously existing."

## REMARKS

The current beach concession contract was sold to C & K Beach Services, Inc. commencing on June 1, 2005 for a term of five (5) years, through sealed bid process. Pursuant to the bankruptcy proceeding petitioned by C & K beach Services, Inc. around 2006, the U.S. Bankruptcy Court entered an order allowing HHV assume the beach concession contract. In view of the forthcoming expiration date of the contract, today's request is to seek the Board's authorization to issue a new concession contract.

While the basic terms are provided in the above, staff is recommending the Chairperson be authorized to prescribe the terms and conditions of the request for bids and the contract document.

### Term

The current concession contract is the first one processed by the Division, which is for a term of five (5) years. Staff believes a longer term will attract more interested parties to the bidding process. Therefore, staff proposes a 15-year term for the new contract.

### Area

There are no changes to the area under the new contract as provided above. However, the concessionaire is required to clean the Duke Kahanamoku Beach as detailed below.

### Scope of Concession

The scope of concession will generally follow the items allowed under the current contract including rental of ocean recreation equipment, beach umbrella, lounge chairs, sale of suntan products, provision of sailing and surfing lesson. Further, retail of foods and beverages are not allowed.

### Regular Clean-up of Duke Kahanamoku Beach

Other than the current contract, Duke Kahanamoku Beach is considered as unencumbered land under the management jurisdiction of the Land Division. Due to the limited resources, the Division's maintenance crew has not scheduled the beach in its regular maintenance schedule. On the other hand, staff notes that most of the customers of the concession are utilizing the said beach. Staff believes regular clean-up of the beach will provide a clean and safe environment for the customers as well as local residents. Therefore, staff suggests making as a requirement for the interested parties to submit a proposal including the method and frequency of the beach clean-up as part of the bid package.

### Business Plan

Applicants shall provide a business plan which shall include, but not limited to, information about marketing and pricing strategy, training of employee, and anticipated revenue.

Bidding Processes:

Chapter 102-2(a) and 171-56, HRS, stipulates any concession contract shall be disposed by sealed bid. Other than the maximum term of the contract is limited to 15 years, there are no other mandatory terms and conditions for the contract in the statutes. Staff believes that other criteria, including the business plan, financial ability are of equal importance to the selection process and should be included in the bid packet.

For the proposed contract, interested parties will be asked to provide information and material pursuant to the terms and conditions of the bid packet as prescribed by the Chairperson. Applications will be brought to the Board to determine the successful bidder.

Staff has solicited comments from other agencies about the issuance of a new concession contract. Division of Aquatic Resources, State Historic Preservation Division, and Department of Hawaiian Home Lands do not have any objection/comment.

Department of Parks and Recreation of the City raised concern about complaints regarding unauthorized beach activities on City's lands, and request any new concession contract be monitored toward compliance issues. The subject location is not close to any City's lands. However, standard condition requiring the concessionaire comply with all applicable federal, state, and county laws, rules, ordinances will be included in the contract document.

Division of Boating and Ocean Recreation requests the proceeds from the proposed be transferred to Boating Special Fund. Staff notes that this issue shall be discussed at the staff level. Overall, DOBOR does not raise objection to the issuance of anew contract.

Department of Health, Office of Conservation and coastal Lands, Department of Planning and Permitting, department of Enterprises Services, and the Office of Hawaiian Affairs have not responded as of the suspense date.

Further, staff recommends the Board authorize the issuance of a revocable permit to HHV commencing from June 1, 2010 to the issuance of the new concession contract. The revocable permit shall be subject to the same terms and conditions of the current concession contract. Staff does not anticipate the effective period of said revocable permit will be long. Therefore, there will be no new revocable permit document issued.

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 probably 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 a concession contract by sealed bid within the subject area for beach services purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

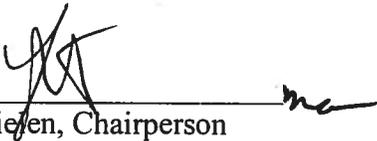
- a. The Chairperson shall be authorized to prescribe the terms and conditions of the request for sealed bids;
  - b. The standard terms and conditions of the most current concession contract form, as may be amended from time to time;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. In the event that the new concession contract is not issued before June 1, 2010, authorize Hilton Hawaiian Village, LLC, continue to utilize the subject area on a month-to-month basis, and further subject to the terms and conditions of the current Duke Kanahamoku Beach Concession Contract until the issuance of the new concession contract.

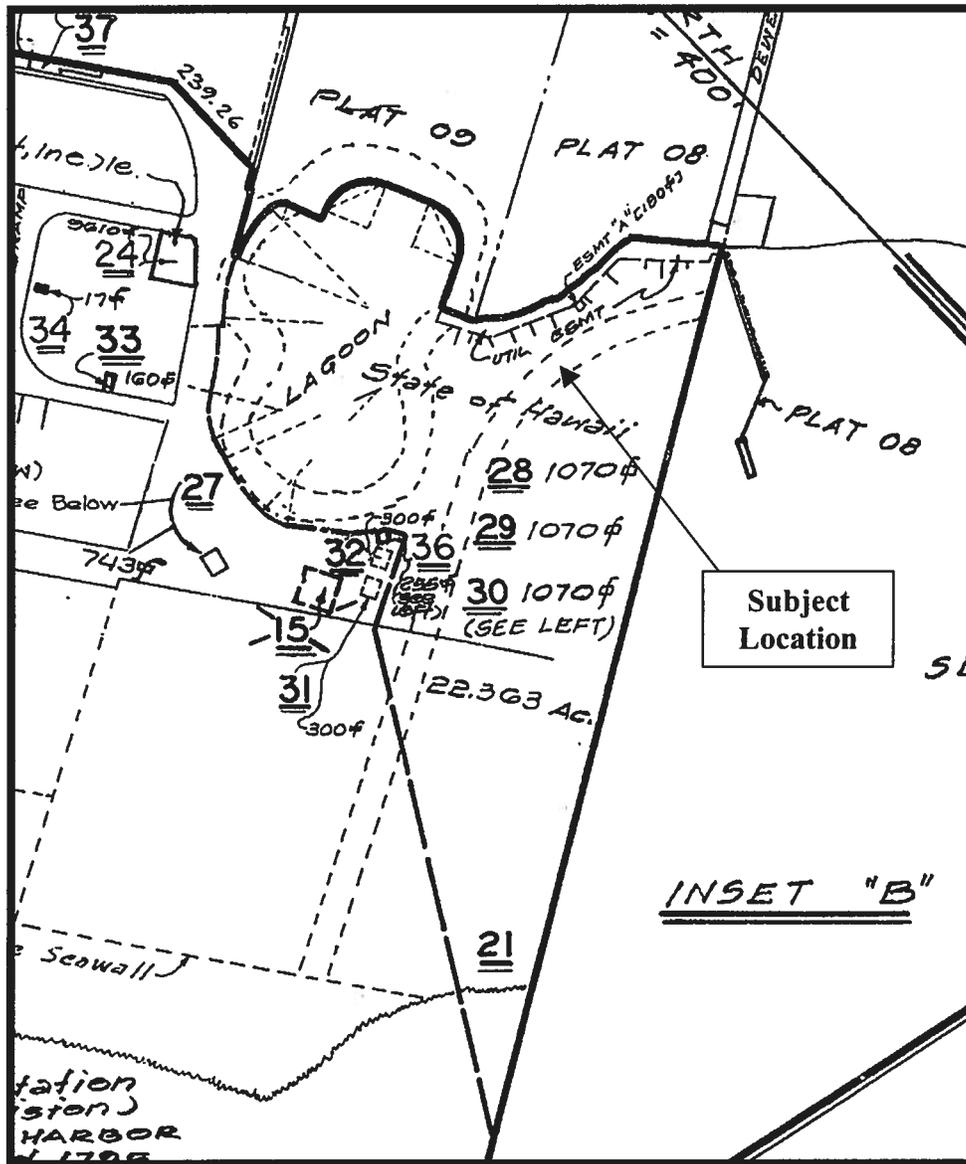
Respectfully Submitted,



Barry Cheung  
District Land Agent

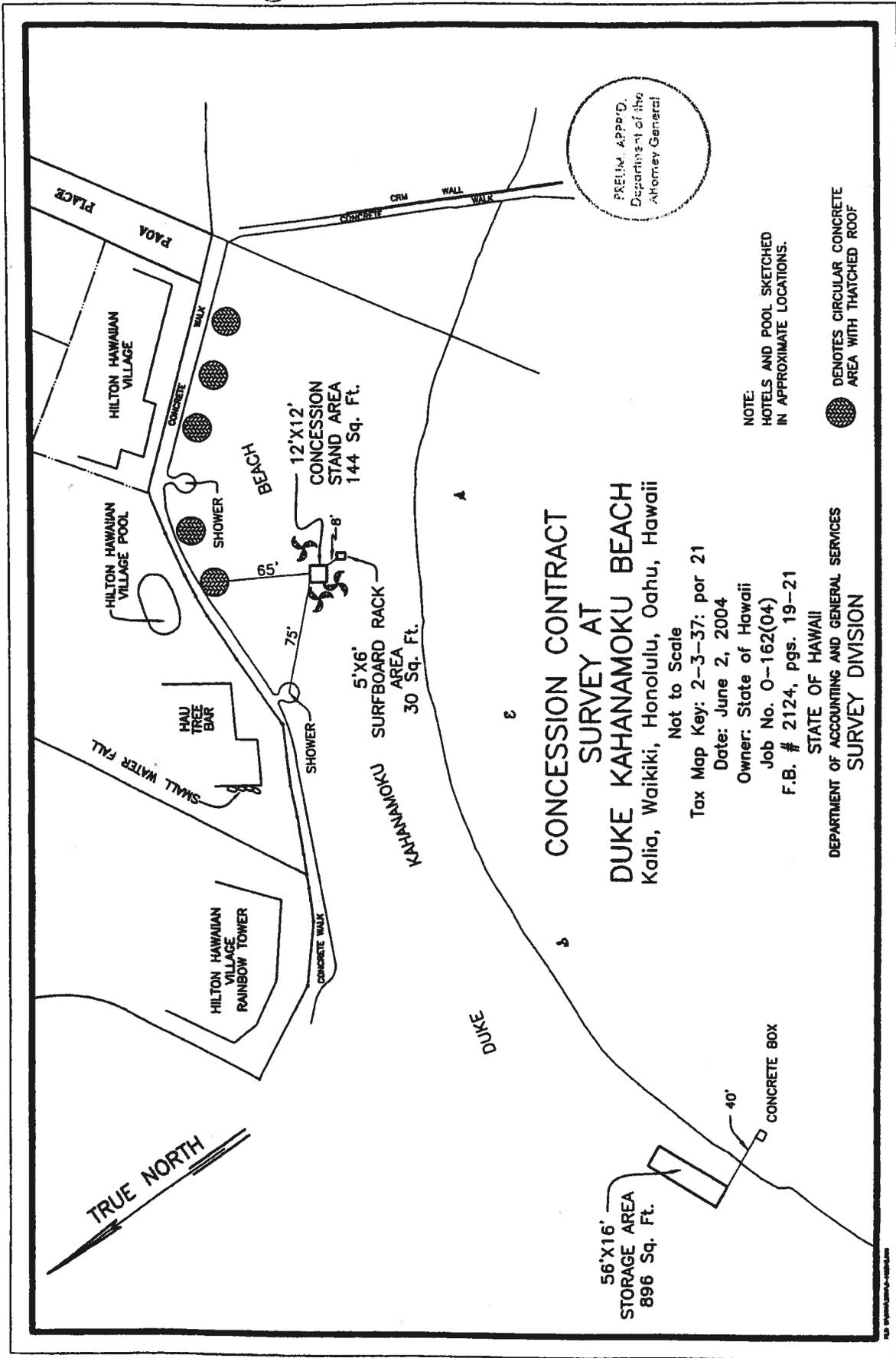
APPROVED FOR SUBMITTAL:

  
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Laura H. Thiesen, Chairperson



TMK (1) 2-3-037:portion of 021

**EXHIBIT A**



PRELIM. APPRD.  
Department of the  
Attorney General

**CONCESSION CONTRACT  
SURVEY AT  
DUKE KAHANAMOKU BEACH**  
Kalia, Waikiki, Honolulu, Oahu, Hawaii

Not to Scale  
Tax Map Key: 2-3-37: por 21  
Date: June 2, 2004  
Owner: State of Hawaii  
Job No. O-162(04)  
F.B. # 2124, pgs. 19-21

NOTE:  
HOTELS AND POOL SKETCHED  
IN APPROXIMATE LOCATIONS.

● DENOTES CIRCULAR CONCRETE  
AREA WITH THATCHED ROOF

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
SURVEY DIVISION

TRUE NORTH