

State of Hawai'i
Department of Land and Natural Resources
Division of State Parks
Honolulu, Hawai'i

April 26, 2013

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

Hawai'i

Request for Approval to Issue a Single Revocable Permit to Adventures In Paradise, Inc., for Commercial Kayak Tour Purposes, Under Terms and Conditions to be Determined by the Chairperson, Ka'awaloa, Kealakekua Bay State Historical Park, Kealakekua, Hawaii.

REQUEST:

The issuance of a revocable permit to Adventures in Paradise, Inc., for commercial kayak tours at Kealakekua Bay State Historical Park.

LEGAL REFERENCE:

Sections 171-55 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Ka'awaloa, Kealakekua, Kiloa, Waipunaula, Kalama 1, 3, 4 and 5, Liloa and Kahauloa 1, South Kona, Hawai'i, identified by Tax Map Keys: (3) 8-1-011:006 (por.), 010 (por.); (3) 8-2-04:15; and seaward of: 8-1-10 and 11; and 8-2-02, 04, 05 and 06, as shown on the attached maps labeled Exhibit A.

ZONING:

State Land Use District:

TMK: (3) 8-2-04:15 is in the Urban District; all other subject parcels are in the Conservation District

County of Hawai'i Zoning:

TMK: (3) 8-2-04:15 is zoned RS-10; all other subject parcels are unplanned

ITEM E-3

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

CURRENT USE STATUS:

Encumbered by Governor's Executive Order 4145 setting aside land for Park and related purposes (covering the Ka'awaloa Flat area) and Governor's Executive Order 3706 setting aside for Kealakekua Bay Marine life Conservation District to be under the control of the Division of Boating and Ocean Recreation of the State of Hawai'i, Department of Land and Natural Resources.

CHARACTER OF USE:

For commercial kayak tours including launching and landing at Ka'awaloa Flat and Nāpo'opo'o landing.

MONTHLY RENTAL:

To be negotiated with the Permittee and subject to the approval of the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached hereto as Exhibit B.

REMARKS:

On May 26, 2006, the Board authorized the issuance of revocable permits (RP's) to four commercial kayak tour operators, including Adventures in Paradise. Adventures in Paradise was not described in the submittal as a corporation, limited liability company or other specific legal entity. On May 30, 2008, the Department of Land and Natural Resources (the "Department"), entered in to revocable permit no. SP0063 with Adventures in Paradise, Inc. who, at the time, was registered with the Department of Commerce and Consumer Affairs (DCCA) as Adventures in Paradise, Inc. and had been incorporated since March 13, 2006.

Since the RP was in force, the Division of State Parks (State Parks) sought the Board's approval each subsequent year to continue the RP under the same terms and conditions pursuant to HRS Section 171-55. At a December 14, 2012 Board meeting, under agenda item E-2, State Parks requested the Board's approval to again continue the RP for the 2013 calendar year for Adventures in Paradise, but incorrectly listed the company as Adventures in Paradise, LLC, not Adventures in Paradise, Inc. pursuant to the existing RP. Staff regrets the error and notes that it was unintentional. Later in December, 2012, Governor's Executive Order No. 4424 added the Nāpo'opo'o landing and the water areas of Kealakekua Bay to the existing State Parks' set aside for Kealakekua necessitating the need to modify the

Adventures in Paradise RP, among others. On January 2, 2013, State Parks, under its authority pursuant to HAR 13-146-13, restricted vessel use of the water areas in the bay essentially stopping kayak tours at Kealakekua Bay. This prohibition included those companies operating under RP's, including Adventures in Paradise, Inc. Since January 2nd, 2013, Adventures in Paradise, Inc. has not operated in Kealakekua Bay in compliance with this restriction.

An additional request in the December 14, 2012 submittal was to authorize the Chairperson to determine terms and conditions needed to modify the terms of the RP's to reflect the change in jurisdiction as mentioned above. During that process, the Department of the Attorney General noted that Adventures in Paradise, Inc. was not in good standing with DCCA and online records indicated that it was involuntarily dissolved on December 2, 2011 due to the failure to file required annual reports going back as far as 2009. The Department of Attorney General advised State Parks an RP could not be consummated due to this situation.

Staff contacted Adventures in Paradise, Inc. president, Geoffrey Hand, to determine why the company was dissolved and was told it was due to a 2009 filing not being accepted by DCCA due to insufficient or unclear information on the form. Mr. Hand advised he would seek to have the company reinstated as it was within the reinstatement window pursuant to HRS Section 414-403. On March 19, 2013, staff received a copy of a certificate of good standing from Mr. Hand, issued by DCCA evidencing Adventures in Paradise, Inc.'s current status.

On April 1, 2013, the two remaining RP holders, Iwa Kalua and Kona Boys, Inc., were authorized to resume kayak tours in Kealakekua Bay pursuant to their new, respective RP's.

DISCUSSION:

The Department of the Attorney General advised the situation of a permittee being involuntarily dissolved and having no legal standing with DCCA is a serious matter and staff respectfully agrees. It was a error which should have been caught on at least two occasions when the permits were continued. Staff apologizes to the Board for this oversight and notes that systems are now in place to minimize the chance of this happening again in the future.

Staff also recognizes the importance of permit holders' strict compliance with DCCA regulation as well as all other requirements of their permits and that Adventures in Paradise's history of compliance (or non-compliance) is relevant to the Board's decision regarding the issuance of this permit.

It has been clear from the outset, however, that Adventures in Paradise, Inc. run by Mr. Hand was the entity intended for the RP and staff notes that in all other aspects of the RP, i.e., operations, payment of fees and reporting history, etc..., Adventures in Paradise, Inc. has been compliant.

As the Board is aware from previous testimony from the RP holders, the restriction of kayak use in Kealakekua Bay on January 2nd, 2013, has impacted their business substantially. In light of this, staff recommends that the additional time necessary to complete and execute

the new RP contemplated in this submittal, and the corresponding loss of revenue for Adventures in Paradise, Inc., should serve as a sanction for this breach of the RP.

Staff recommends approval for the issuance of the revocable permit for Adventures in Paradise, Inc. as described herein.

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 issuance of a revocable permit to Adventures in Paradise, Inc., for commercial kayak tour purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. That the authority be delegated to the Chairperson to determine a start date of the activities authorized in the revocable permit following the restrictions imposed on vessels by the Division of State Parks;
 - b. That authority is delegated to the Chairperson to negotiate other provisions and conditions of the revocable permit as determined by the Chairperson;
 - c. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - d. Review and approval by the Department of the Attorney General; and,
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



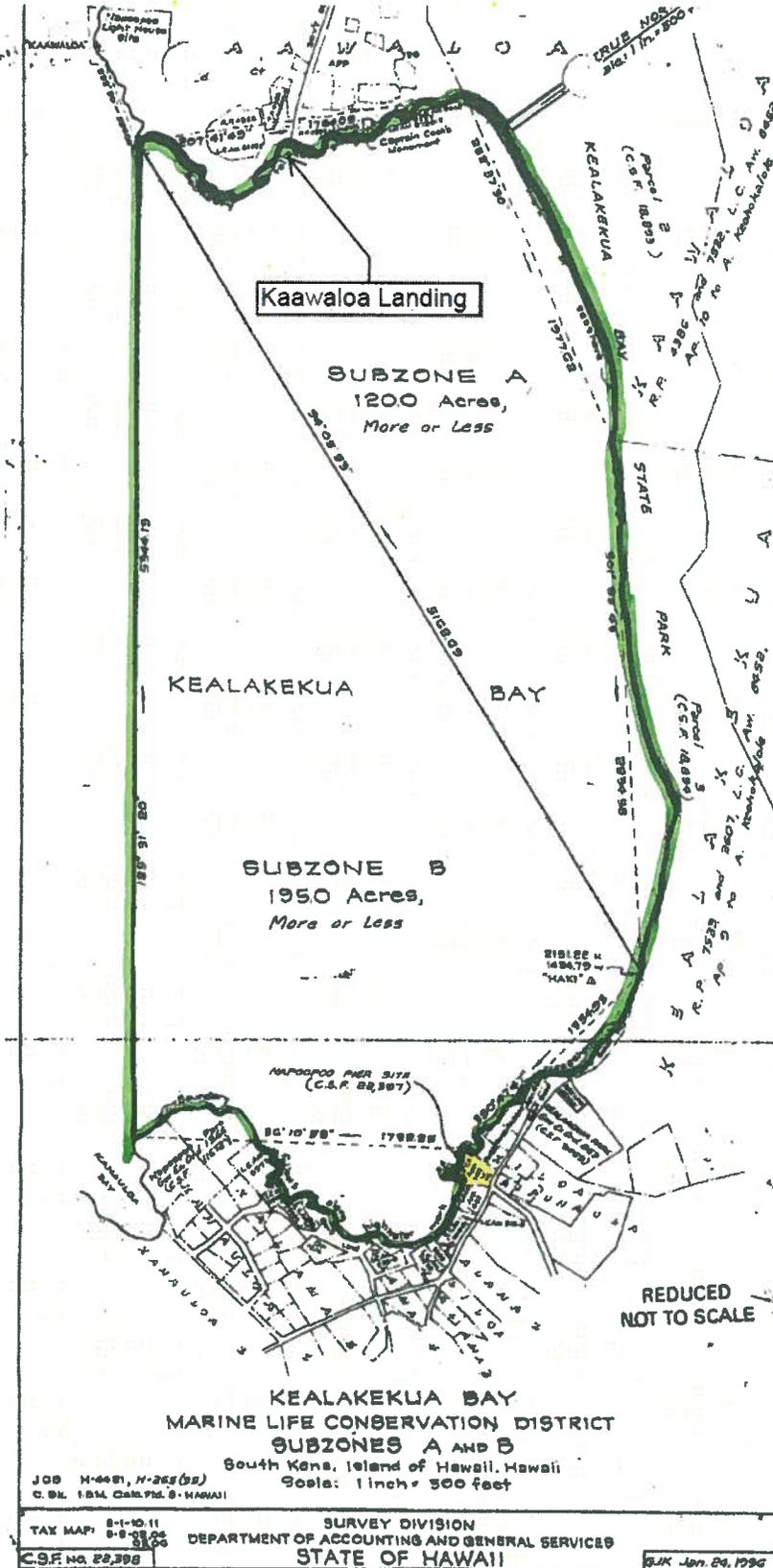
Daniel S. Quinn
Administrator, Division of State Parks

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Exhibit A – Kealakekua Bay Map



Ka'awaloa Flat Map

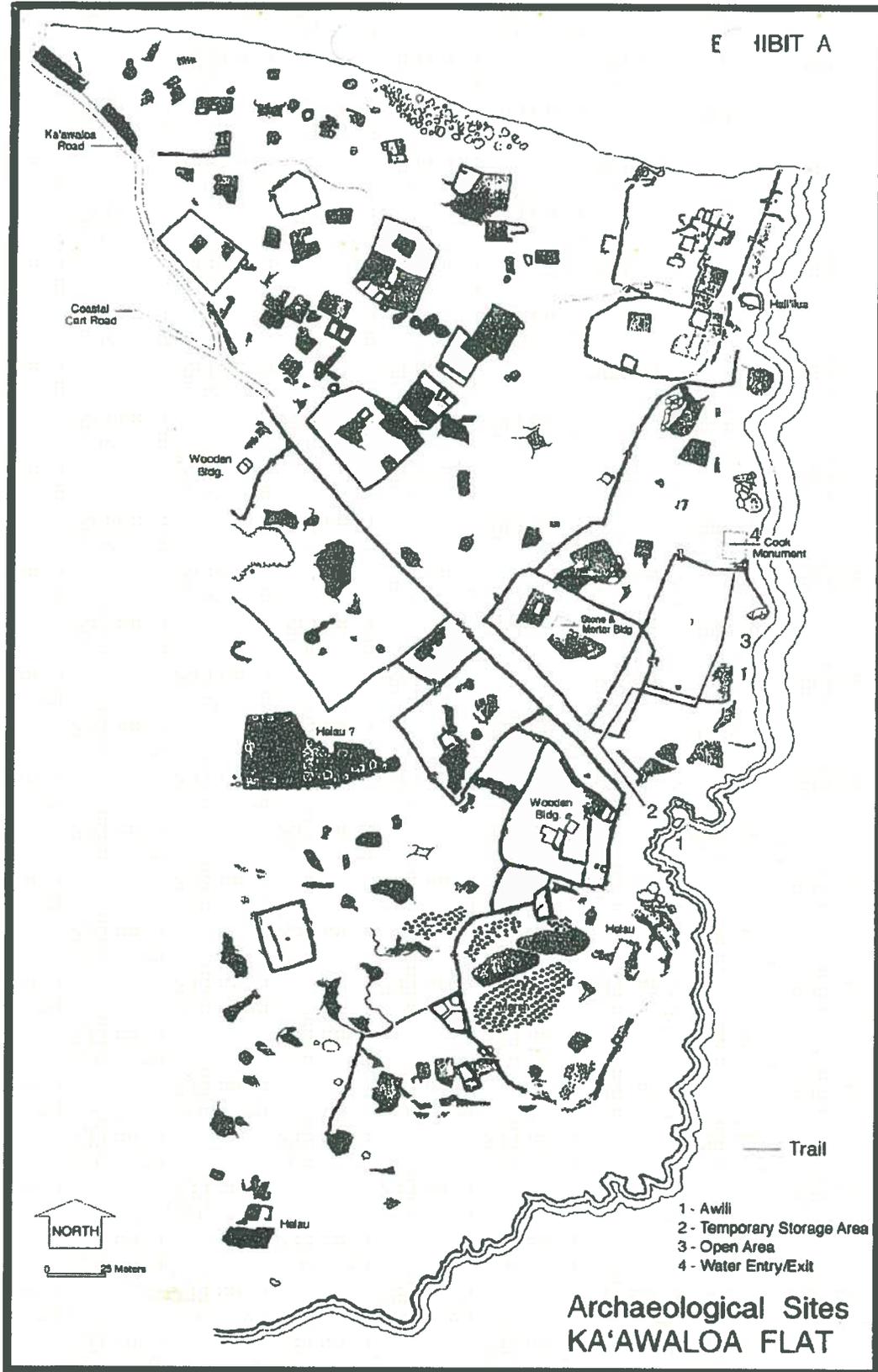


Exhibit B – Exemption Notification

NEIL ABERCROMBIE
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

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR, WATER

AGRICULTURE
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND PROTECTIVE ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHOLAWE ISLAND PRESERVE 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: Request for Approval to Issue a Single Revocable Permit to Adventures In Paradise, Inc., for Commercial Kayak Tour Purposes, Under Terms and Conditions to be Determined by the Chairperson, Ka'awaloa, Kealakekua Bay State Historical Park, Kealakekua, Hawaii.

Project / Reference No.: SP0063 Adventures in Paradise, Inc. Revocable Permit

Project Location: Portion of Government lands situated at Ka'awaloa, Kealakekua, Kiloa, Waipunaula, Kalama 1, 3, 4 and 5, Liloa and Kahauloa 1, South Kona, Hawai'i, identified by Tax Map Keys: (3) 8-2-04:15; and seaward of: 8-1-10 and 11; and 8-2-02, 04, 05 and 06

Project Description: Issuance of Revocable Permit

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation".

Consulted Parties: None.

The proposed exemption applies as this action is simply seeking approval to issue a revocable permit which the Board had previously authorized. The current use of the land and waters is authorized and no long term expansion is expected as a result of this proposed action.

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Recommendation:

That the Board find that this project will probably have minimal or no significant effect on the environment and therefore, is exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson



Date