

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

October 23, 2020

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

Maui

SUBJECT: Request approval to Amend Revocable Permit No. SP0467, Diamond Parking Services, LLC, Permittee, Mākena State Park, Portions of Maluaka, Mooiki, Mooloa, Moouku, Nau, Honuaula, Makawao, Maui, Hawai'i, Tax Map Key: (2) 2-1-006:030 (portion).

The purpose of this amendment is to update the terms of the revocable permit to incorporate the increased fees set in HAR Chapter 13-146, Section 13-146-6 and increase the monthly percentage rent.

APPLICANT:

Diamond Parking Services, LLC

LEGAL REFERENCE:

Hawai'i Revised Statutes Sections 171-6 and 55, as amended. Hawai'i Administrative Rules (HAR) Chapter 13-146, Section 13-146-6 (Fees), as amended.

LOCATION:

Portion of Government Lands of Mākena State Park, Portions of Maluaka, Mooiki, Mooloa, Moouku, Nau, Honuaula, Makawao, Maui, Tax Map Key: (2) 2-1-006 Por: 030 as shown on the map attached as **Exhibit A**.

AREA:

A portion of approximately 87.875 acres of improved and unpaved land

ZONING:

State Land Use District:
County of Maui CZO:

Conservation, Rural
A-2 Apartment, Beach Right-of-Way, OZ Open Zone, PK Park, Proposed Road, R-3 Residential

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by Governor's Executive Orders No. 4178, 4179, 4180, 4181, 4182, 4183, 4184 to be under the control and management of the State of Hawai'i, Department of Land and Natural Resources, Division of State Parks.

BACKGROUND:

The Hawai'i Department of Land and Natural Resources' DSP is responsible for managing the use and protection of all lands, and historical and natural resources within the Hawai'i State Park System, established under Chapter 13-146, Hawaii Administrative Rules (HAR). The new fee schedule in Chapter 13-146 helps improve revenue-generating potential for the Division of State Parks (DSP) to better manage the Hawai'i State Park System that is composed of some of the State's most valuable, scenic, historic, culturally significant, and acclaimed natural and cultural resources.

The purpose of this request is to update the terms of the RP to adjust for DSP's new fee schedule.

REMARKS:

The current revocable permit currently provides for a rent of \$10,000.00 plus 75% of gross revenue per month over \$21,000.00. We are asking the Board to approve a ninety-nine percent (99%) of net operating income for the monthly rent.

Following the adoption of HAR13-146 Increase Fees, in the new fees would result in a windfall for the permit holder without adjustment to the rent.

The adjustment of the terms will help capture the windfall that results from the new fee schedule. Parks has worked with the permittee on a new monthly rent and feels the Board can authorize the change.

The subject RP was issued pursuant to Section 171-55, HRS. The statutory language allows the Board to issue a permit, "... by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State ..." Under the current circumstances, Parks believes that the statute provides grounds for the Board to modify the rent as warranted.

Staff recommends the Board approve a monthly rent of 99% of net operating income for the duration of the terms. The new rent will be effective thirty-days (30) from the approval by the Board. In addition, staff recommends Revocable Permit No. SP0467 incorporate the increased fees set in HAR Chapter 13-146, Section 13-146-6.

RECOMMENDATION: That the Board:

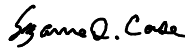
1. Approve the updated Revocable Permit No. SP0467 to incorporate the increased fees set in HAR Chapter 13-146, Section 13-146-6 and;
2. Adjust the rent payable to ninety-nine percent (99%) of net operating income per month.

Respectfully Submitted,



Curt Cottrell, Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Attachments: Exhibit A – DAGS Survey



STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

October 12, 2005

C.&F. N24, 12 1
J.S.S. 1011-1011-A

MAKENA STATE PARK

Mooiki and Mooloa, Makawao, Maui, Hawaii

Comprising the following:-

1. Portions of the Government Land of Mooiki.
2. All of Grant 1441, Apana 1 and 2 to L. L. Torbert, Grant 1483, Apana I to Maaweiki, Grant 1495 to Kukaheku 2nd, Grant 1510 to L. L. Torbert and portions of Grant 1441, Apana 6 to L. L. Torbert and Grant 1484, Apana 2 to Kaleo acquired by the State of Hawaii by FINAL ORDER OF CONDEMNATION, Civil 4709(1) dated August 20, 1987 and recorded in Liber 21165, Pages 668-672 (Land Office Deed S-27642).
3. Portions of Grant 1441, Apana 6 to L. L. Torbert, Grant 1482 to Nahualalaa and Grant 1484, Apana 2 to Kaleo conveyed to the State of Hawaii by Edoki Hui II by Warranty Deed dated September 15, 1988 and recorded in Liber 22353, Page 513 (Land Office Deed S-27720).
4. Portions of Grant 1441, Apana 4 to L. L. Torbert, Grant 148₂ to Nahualalaa conveyed to the State of Hawaii by Makena Beach Group by Warranty Deed dated September 15, 1988 and recorded in Liber 223 53, Page 519 (Land Office Deed S-27719).
5. Portion of Grant 1441, Apana 4 to L. L. Torbert conveyed to the State of Hawaii as follows:
 - A) An undivided eighty-six and one-tenth percent (86.1 %) interest from Seibu Hawaii, Inc. by Exchange Deed dated December 27, 1984 and recorded in Liber 18846, Pages 192-202 (Land Office Deed S-27498).

- B) An undivided thirteen and nine-tenth percent (13.9%) interest from the County of Maui by Quitclaim Deed dated November 12, 1987 and recorded in Liber 21398, Pages 304-308 (Land Office Deed S-27723).
6. Portion of Grant 1498, Apana 2 to Manu conveyed to the State of Hawaii by Makena Beach Investors by deed dated January 11, 1991 and recorded as Document No. 91-013555 (Land Office Deed S-27846) and deed dated September 26, 1994 and recorded as Document No. 94-161178 (Land Office Deed S-28105).

Beginning at the northeast corner of this parcel of land, at the southeast corner of Grant 2481 to Ihuole and Mahiai and on the west side of Keoneoio-Makena Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OLAI" being 1335.31 feet North and 1522.37 feet East, thence running by azimuths measured clockwise from True South:-

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|----|--------------------------|--|
| 1. | 2 ^o 55' 30" | 579.05 feet along the west side of Keoneoio-Makena Road; |
| 2. | 359 ^o 10' 30" | 591.00 feet along the west side of Keoneoio-Makena Road; |
| 3. | 359 ^o 13' 30" | 324.38 feet along the west side of Keoneoio-Makena Road; |
| 4. | 0 ^o 08' 30" | 330.33 feet along the west side of Keoneoio-Makena Road; |
| 5. | 355 ^o 57' | 330.00 feet along the west side of Keoneoio-Makena Road; |
| 6. | 358 ^o 30' | 207.80 feet along the west side of Keoneoio-Makena Road; |

7. 352° 45' 330.00 feet along the west side of Keoneoio-Makena Road;
8. 354° 45' 660.00 feet along the west side of Keoneoio-Makena Road;
9. 87° 11' 12.10 feet along a jog on the west side of Keoneoio-Makena Road;
10. 352° 55' 17.07 feet along the west side of Keoneoio-Makena Road;
11. Thence along the west side of Keoneoio-Makena Road on a curve to the left with a radius of 1030.00 feet, the chord azimuth and distance being:
351° 44' 20" 42.34 feet;
12. 350° 33' 40" 102.00 feet along the west side of Keoneoio-Makena Road;
13. Thence along the west side of Keoneoio-Makena Road on a curve to the right with a radius of 970.00 feet, the chord azimuth and distance being:
351° 33' 25" 33.72 feet;
14. 352° 33' 10" 66.88 feet along the west side of Keoneoio-Makena Road;
15. Thence along the west side of Keoneoio-Makena Road on a curve to the right with a radius of 1170.00 feet, the chord azimuth and distance being:
353° 27' 40" 37.09 feet;
16. 354° 22' 10" 121.18 feet along the west side of Keoneoio-Makena Road;
17. 68° 40' 30" 236.74 feet along Paniaka Government Fish Pond;
18. 338° 50' 247.42 feet along Paniaka Government Fish Pond;
19. 272° 40' 85.00 feet along Paniaka Government Fish Pond;
20. 198° 40' 70.00 feet along Paniaka Government Fish Pond;

21. 168° 30' 110.00 feet along Paniaka Government Fish Pond;
22. 213° 15' 95.54 feet along Paniaka Government Fish Pond;
23. 354° 22' 10' 6.80 feet along the west side of Keoneoio-Makena Road;
24. Thence along the west side of Keoneoio-Makena Road on a curve to the left with a radius of 1030.00 feet, the chord azimuth and distance being:
352° 23' 05" 71.34 feet;
25. 350° 24' 102.00 feet along the west side of Keoneoio-Makena Road;
26. Thence along the west side of Keoneoio-Makena Road on a curve to the left with a radius of 1030.00 feet, the chord azimuth and distance being:
348° 46' 58.72 feet;
27. 347° 08' 104.44 feet along the west side of Keoneoio-Makena Road;
28. 351° 27' 5.64 feet along the west side of Keoneoio-Makena Road;
29. 348° 51' 15.17 feet along the west side of Keoneoio-Makena Road;
30. Thence along the west side of Keoneoio-Makena Road on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being:
357° 22' 38" 13.84 feet;
31. 0° 41' 31.28 feet along the west side of Keoneoio-Makena Road;
32. 77° 03' 213.47 feet along the remainder of Grant 1498, Apana 2 to Manu to the upper reaches of the wash of waves at seashore;

Thence along the upper reaches of the wash of waves at seashore for the next five (5) courses, the direct azimuths and distances between points along said upper reaches of the wash of waves at seashore being:

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|-----|--|---------|---------------|
| 33. | 172° | 47' | 87.00 feet; |
| 34. | 161° | 47' | 173.40 feet; |
| 35. | 145° | 36' | 485.00 feet; |
| 36. | 138° | 30' | 240.68 feet; |
| 37. | 142° | 40' | 89.82 feet; |
| 38. | 267° | 11' | 35.42 feet |
| 39. | Thence along the vegetation line at seashore, the direct azimuth and distance being: | | |
| | 123° | 45' 25" | 2077.48 feet; |

Thence along highwater mark at seashore for the next twelve (12) courses, the direct azimuths and distances between points on said highwater mark at seashore being:

- | | | | |
|-----|------|-----|--------------|
| 40. | 52° | 00' | 210.00 feet; |
| 41. | 106° | 30' | 170.00 feet; |
| 42. | 130° | 20' | 230.00 feet; |
| 43. | 146° | 30' | 180.00 feet; |
| 44. | 182° | 06' | 500.00 feet; |
| 45. | 196° | 18' | 350.00 feet; |
| 46. | 160° | 13' | 200.00 feet; |
| 47. | 206° | 26' | 190.00 feet; |
| 48. | 243° | 43' | 470.00 feet; |
| 49. | 197° | 37' | 160.00 feet; |

50. 250° 10' 280.00 feet;

51. 268° 45' 30" 77.32 feet;

Thence along vegetation line at shoreline for the next ten (10) courses, the direct azimuths and distances between points on said vegetation line at shoreline being:

52. 292° 30' 122.38 feet;

53. 240° 49' 96.03 feet;

54. 297° 29' 89.07 feet;

55. 242° 23' 75.33 feet;

56. 191° 11' 65.03 feet;

57. 280° 28' 108.45 feet;

58. 268° 32' 151.44 feet;

59. 231° 11' 208.18 feet;

60. 217° 15' 30" 549.26 feet;

61. 202° 45' 65.87 feet;

62. 277° 35' 110.00 feet along Grant 3362 to Kukahiko;

63. 356° 45' 53.50 feet along Grant 1693 to W. Duncan;

64. 221° 48' 110.37 feet along Grant 1693 to W. Duncan;

65. 344° 45' 53.00 feet along Grant 3362 to Kukahiko;

66. 343° 34' 10' 12.54 feet along Grant 1987 to Malihini;

67. 54° 37' 20" 62.18 feet along Grant 1692, Ap. 1 to L. Andrews, Jr.;

- 68. 314° 00' 52.80 feet along Grant 1692, Ap. 1 to L. Andrews, Jr. and Grant 3364 to John Brown;
- 69. 340° 00' 92.00 feet along Grant 1692, Ap. 2 to L. Andrews, Jr.;
- 70. 353° 30' 92.00 feet along Grant 1692, Ap. 2 to L. Andrews, Jr., Grant 1696 to J. Sinclair and Grant to 1697 to M. Burns.
- 71. 249° 58' 43.03 feet along Grant 1697 to M. Burns;
- 72. 343° 34' 10" 25.25 feet along Grant 1987 to Malihini;
- 73. 343° 00' 29.00 feet along Grant 1987 to Malihini;
- 74. 275° 15' 76.56 feet along Grant 2481 to Ihuole and Mahiai;
- 75. 266° 15' 386.10 feet along Grant 2481 to Ihuole and Mahiai to the point of beginning and containing an AREA OF 165.725 ACRES, MORE OR LESS.

TOGETHER WITH the above-described parcel of land, all of the submerged lands seaward of the upper reaches of wash of waves, vegetation line and highwater mark at seashore to the Mean Lower Low water mark at seashore.

SUBJECT, HOWEVER, to the following:

1. Easement for Electric Transmission Line in favor of Maui Electric Company, Limited and Hawaiian Telephone Company dated November 8, 1978 and recorded in Liber 13314, Pages 780-786.
2. Easement for Electric Transmission Line in favor of Maui Electric Company, Limited and Hawaiian Telephone Company dated October 14, 1981 and recorded in Liber 16239, Pages 209-243

3. Easements for access to and use of Government Survey Triangulation Station "PUU OLAI" and for water pipelines in favor of Ulupalakua Ranch as ordered by Final Order of Condemnation, Civil 4709(1) and recorded in Liber 21165, Page 672 (Land Office Deed S-27642).

RESERVING, to the State of Hawaii, its successors and assigns the following:

1. Access and use of Government Survey Triangulation Station "PUU OLAI".
2. Perpetual Non-Exclusive Utility Easement.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: t.v<..--

Glenn J. Kodani
Land Surveyor

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Compiled from CSF's 16429,
20929, 21530, 22438, and
other Govt. Survey Records.

