

REF:PB:SL

JAN 15 1997

File No.: OA-2794

Mr. Peter Schall  
Hilton Hawaiian Village Joint Venture  
2005 Kalia Rd.  
Honolulu, Hawaii 96815

Dear Mr. Schall:

Subject: Conservation District Use Application for the Hilton Lagoon Project, Waikiki, Oahu, Hawaii (TMK:2-3-37:21 and submerged land)

This is to inform you that at its January 10, 1997 meeting, the Board of Land and Natural Resources approved the Hilton Hawaiian Village Joint Venture and EnterOcean Groups' application to build a private aquatic recreation facility consisting of an underwater tropical marine environment and seawater intake pipe at Waikiki, Honolulu, Hawaii, subject to the following conditions:

1. The applicants shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules as amended:
2. The applicants shall comply with all applicable Department of Health Administrative Rules;
3. The applicants, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

4. The applicants and their contractors shall coordinate construction activities and installation of the intake and effluent pipes with the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources. DOBOR will require adequate compensation for use of harbor facilities and the adverse impact on the boating public as well as restoration of all harbor roadways, parking lots and facilities to preconstruction conditions. Any damage to harbor facilities resulting from construction of the project shall be repaired by the applicants and their contractors at no cost to the State. Construction and operation of the attraction facility shall not incur additional costs on DOBOR;
5. All conditions imposed under the County Special Management Area Use Permit for this project, shall be observed by the applicants;
6. The routing of the intake and effluent pipes must be such as to minimize disruption of traffic patterns on the Harbor premises and on public use and of the beach and nearshore swimming and surfing areas;
7. Construction methods shall be employed which will not preclude vehicular or pedestrian access to the Harbor facilities and shoreline areas;
8. Construction staging areas, including stockpiled sediment shall be managed to prevent public nuisance or threat to public health, safety and welfare;
9. In the event that seawater discharge into the Ala Wai Boat Harbor creates a significant problem, the applicants shall be responsible for correcting the problem and assisting the lead government agency overseeing the matter;
10. Precaution shall be taken during construction to prevent eroded soils, petroleum products, debris and other contaminants from excessively blowing, flowing or leaching into the Ala Wai Harbor and nearshore waters;
11. The applicants and their contractors/operators shall protect the associated aquatic resources from chemical or biological contamination;
12. The applicants shall use only native species in the exhibits, no coral will be collected from Hawaiian waters, and a cooperative arrangement is maintained with the Waikiki Aquarium. A list of aquatic species shall be provided to the Division of Aquatic Resources upon their request;

13. To ensure that recreational/cultural use of the area is preserved, the applicants and their contractors/operators shall maintain accessible yet safe access to and use of the marine environment to the greatest extent possible during and after construction. Public access to the remainder of the lagoon shall not be impeded or restricted in any way;
14. The intake and effluent pumps shall not be constructed above the existing grade and shall not increase ambient noise levels in the immediate area;
15. The applicants and their contractors/operators shall ensure that water quality in the remainder of the lagoon is improved for public use and enjoyment. The applicants shall continue to conduct periodic dredging of the lagoon;
16. The applicants shall apply for a right-of-entry to State-owned lands utilized within the project area and supply to the Department of Land and Natural Resources, Land Division, appropriate metes and bounds survey description of easement areas on any State-owned lands on which the proposed easement is located;
17. Since this application is for the use of conservation land only, the applicants shall obtain the appropriate authorization through the Land Division, Department of Land and Natural Resources, for the use of State Lands.
18. Any work to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
19. The applicants shall submit four (4) sets of the construction plans and specifications to the Chairperson or his authorized agent for approval with the permit declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with conditions 1-2 and 5 remain the responsibility of the applicant;
20. All mitigation measures set forth in the accepted Final Environmental Assessment for this project are hereby incorporated as conditions of approval;



21. To mitigate impacts on recreation and to ensure public safety, the applicants shall thoroughly consider trenching, installation and backfill operations for the intake and effluent pipes prior to the initiation of construction. All affected government and business entities shall be consulted prior to the initiation of construction to ensure that work will proceed smoothly once it is initiated. The proposed work program shall be posted and advertised in a major local newspaper 30 days prior to initiation of work. The same should be done for the lagoon portion of the project;
22. If possible, dredged material shall be treated within the attraction construction area and not on the beach;
23. Should historic remains such as artifacts, burials, or stone pavings or wall be found during construction, the applicant shall stop work in the area and contact the State Historic Preservation Division immediately, at 587-0046;
24. The applicants shall notify the Department when construction is initiated and when construction is completed;
25. Should the commercial venture fail, the applicant shall continue to operate the new circulation system as well as monitor water quality in conformance with all Department of Health permit conditions;
26. The applicants/operators shall work with the Department on a program for providing public educational use of the facilities at no cost.
27. That in issuing this permit, the Department and Board has relied on the information and data which the permittees have provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
28. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and

29. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies, retain one, and return the other within thirty (30) days.

Should you have any questions on any of these conditions, please feel free to contact Sam Lemmo of our Planning and Technical Services staff at 587-0386.

Aloha,

/S/ MICHAEL D. WILSON

MICHAEL D. WILSON

Receipt acknowledged

\_\_\_\_\_  
Applicant's Signature

Date \_\_\_\_\_

xc: Oahu Board Member  
Oahu Land Agent  
C&C Dept. of Planning  
C&C DLU, DP&R, DPW  
DOH  
Army Corps  
Richard Heaton  
Eric Guinther  
Hilary Maybaum  
Mike Greve

bxc: DOCARE/DAR  
CWRM/Engineering/HPD

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division, Planning and Technical Services Branch  
Honolulu, Hawaii

File No.: OA-2794  
180-Day Exp. Date: 1/12/97

January 10, 1997

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

REGARDING: Conservation District Use Application for the  
Hilton Lagoon Project: A Private Aquatic  
Recreation Facility Including an Underwater  
Tropical Marine Environment and Seawater  
Intake Pipe at Waikiki, Honolulu, Oahu

APPLICANTS: Hilton Hawaiian Village Joint Venture  
2005 Kalia Road  
Honolulu, Hawaii 96815

and

EnterOcean Group  
2045 Kamehameha IV Road  
Honolulu, Hawaii 96815

AGENT: Mr. Eric B. Guinther  
AECOS, Inc.  
970 North Kalaheo Avenue, Suite C300  
Kailua, Hawaii 96734

LANDOWNER: State of Hawaii

LOCATION: Duke Kahanamoku Lagoon and Submerged Lands  
Seaward of the Hilton Hawaiian Village Hotel,  
Waikiki, Honolulu, Oahu

TMK: 2-3-37: 21 and Submerged Lands

AREA OF PARCEL/ 22.36 Acres  
Use: 1.4 Acres (Lagoon = about 60,000 square feet;  
and pipeline = about 1,170 square feet)

SUBZONES: Resource Subzone (Submerged lands) and General  
Subzone (Lagoon)

## DESCRIPTION OF AREA/CURRENT USE:

The project site is located on the Ewa side of Waikiki at the Duke Kahanamoku Lagoon and within submerged lands seaward of the shoreline (Exhibits 1-4). Both the lagoon and submerged lands are owned by the State and lie in the General and Resource subzones of the Conservation District, respectively (Exhibit 5).

Surrounding land uses include high-density urban resort and residential, hotel, commercial. The Ala Wai Boat Harbor is located on the Ewa side of the project. Offshore uses involve a variety of ocean-based recreational opportunities, including the Atlantis Submarines, surfing, swimming and diving.

### History of the Duke Kahanamoku Lagoon:

The Duke Kahanamoku Lagoon is a manmade lagoon constructed in 1955 by Henry J. Kaiser. It was originally part of a planned enlargement of "Crescent Beach," however, the additional beach improvements were never constructed.

Ownership of the lagoon was part of a littoral rights exchange between the abutting property owners, Kaiser and the Paoa Estate, and the Territory of Hawaii. After construction of the lagoon, the ownership passed to the Territory of Hawaii. Today, Hilton has succeeded Kaiser, the Waikikian (JAMI Corporation) has succeeded the Paoa interest, and the State has succeeded the Territory.

The deed covenants (Exhibit 6) for the Paoa property specified that the Territory of Hawaii would preserve the lagoon as a "safe and sanitary" body of water. Additionally, the deed covenants for the Hilton property specified that Hilton would maintain the lagoon for as long as economically practical (Exhibit 7). Should the hotel discontinue maintenance of the lagoon, the State of Hawaii could fill the lagoon, make a flat land area, provide an easement to Hilton, and create a "No Buildings" zone.

### Existing Environment:

The lagoon is approximately four acres in size and about ten to twelve feet deep with a thick layer of silt covering the bottom. Aquatic life is typified by tilapia and large bottom-dwelling stinging jellyfish. Public use of the lagoon is minimal due to the poor water quality and stinging jellyfish.

In the waters off Waikiki Beach, there are no significant coral growths. The most abundant invertebrates on the reef flat are star fish, sea urchins, ghost shrimp, and sea cucumber.

There are no known endangered, threatened, or rare flora or fauna species on the site. Archaeological investigations in the vicinity of the project site have revealed no historic sites.

There are no utilities or easements within the project site. However, electrical, water, and wastewater services are available nearby.

Access to the site is primarily available through Duke Kahanamoku Beach and the Hilton Hawaiian Village grounds.

Seawater presently flows into the lagoon through two pipes that run under Duke Kahanamoku Beach, connecting the lagoon with the nearshore area off the beach. Sea water flows into the lagoon through these (gravity fed) pipes and is pumped out into the Ala Wai Boat Harbor (Exhibit 8). Some of the storm water runoff from the Hilton Hawaiian Village grounds presently enters the lagoon and is pumped into the Ala Wai Yacht Harbor.

The lagoon and surrounding shore area has a Flood Insurance Rate Map designation of AE (EL5). Zone AE is a special flood hazard area inundated by 100-year flood, with base elevations to be 5 feet in this case.

PROPOSED USE:

The applicants propose to create a private aquatic recreational facility designed for entertainment, education, and visitors to Hawaii (Exhibit 9). The attraction will be a replica tropical marine environment contained in a large swim-through aquarium.

Approximately one-third (about 1.4 acres) of the mauka portion of the public lagoon would be used for the project. The remaining two-thirds of the lagoon (about 2.5 acres) would continue to be available to the public.

In addition to the lagoon work, the project also includes the installation of a large seawater intake pipe on submerged lands. The attraction entrance, administration, changing room, and gift shop would be located outside of the Conservation District on Hilton Hawaiian Village property (Exhibit 10).

The Hilton Lagoon attraction would provide visitors with a swim-through experience of an underwater tropical marine environment, including two simulated reef trails, a predator lagoon, and a free-snorkeling area (Exhibit 9). The aquatic environment would support marine fishes and invertebrates. Additionally, the entire project would be landscaped with tropical plants and rock outcroppings.

The dive tour would consist of groups of six snorklers who would be guided through one of two simulated reef trails via a patented



underwater tow vehicle. Participants would hold onto a handrail which positions their heads about 18 inches below water level. They would be pulled at an average velocity of 6 inches per second. The guided experience includes the use of a breathing regulator, mask, waterproof headsets providing programmed information, and an emergency signaling system. Prior to the tour, patrons are required to take hot showers.

Operational Features, Project Schedule, and Cost:

Operational features, project schedule, and cost are as follows:

- \* Number of Visitors Per Hour: Between 80 to 120.
- \* Hours of Operation: 8:30 a.m. to 5:30 p.m. and 6:30 p.m. to 9:30 p.m.
- \* Project Schedule: About 12 to 16 months.
- \* Estimated Cost: About \$16 million.

Lagoon Construction:

Construction of the facility would require the removal of about 9,000 cubic yards of silt from the lagoon bottom (Exhibit 11). The dredged silt material would be dried on site (according to Department of Health guidelines), and later transported to an approved disposal site. The exact location of the stockpiles would be determined at a later date, but occur on the beach adjacent to the lagoon.

After being separated from the remainder of the lagoon by installing a coffer dam, the lagoon bottom would be reshaped and casted in a concrete and steel mat slab. Steel reinforced gunite and synthetic rock would be used to construct the rock formations and artificial substrata.

Sea Water Intake System:

The facility would require a source of clean sea water. This would involve the installation of a new seawater intake system (Exhibits 8 and 12). A seawater intake pipe would extend from the facility pump room to the nearshore breakwater, to an intake point located approximately 170 feet offshore of the existing breakwater structure. A section of the breakwater would need to be dismantled and reassembled to install the intake pipe. The pipe would be designed to maintain low intake velocities (below 0.5 feet per

second) to prevent swimmers or creatures from being sucked into the system.

The existing pumping system would be supplemented by a second system. Additionally, the applicants plan to retain both existing intake pipes. One pipe would be used to balance the water level in the lagoon, and the other would become inoperable. Both existing discharge pipes would also remain and operate independently of the new system. During power failures, the applicant would use emergency generators at the Hilton Hawaiian Village.

#### Marine Environment and Maintenance:

The facility would consist of several different marine environments, including: shore to reef, the reef margin, and beyond the reef. Each of the environments would be populated with marine animals typical of the environment (maximum capacity for fish and invertebrates is approximately 20,000). Typical species to be included would be: rudderfish, mullet, milkfish, goatfishes, butterflyfishes, triggerfishes, surgeonfishes, ulua and papio, kahala, and mahimahi. Selection of these fishes may come from aquaculture or culture research projects, as well as in the wild. However, no rare or sensitive species are proposed for stocking purposes.

The applicant, EnterOcean, has expertise in aquarium design and maintenance. Additionally, the applicants have contacted the Waikiki Aquarium who have agreed to participate in the lagoon project in at least an advisory capacity. The applicants intend to hire a qualified full-time curator to care for and feed the marine life.

#### Water Quality:

Existing water quality in the lagoon is poor. Additionally, the current turnover of water in the lagoon is once in 48 hours with the pumping rate on the order of 4,000 gallons per minute.

The addition of the proposed new pumping and intake seawater system would improve the quality of water entering the lagoon, because seawater would be taken from a source further offshore. Although volume would increase, the turn-over rate of the water would also increase to once in 8 hours, increasing the pumping rate to 15,000 gpm as shown below:

	<u>Existing</u>	<u>Proposed</u>
Water Source:	Poor	Improved
Pumping Rate:	4,000 gpm	15,000 gpm
Turn-over Rate:	48 hrs.	8 hrs.

Approximately 15,000 gpm of sea water (or nearly 22 million gallons per day) from the lagoon is anticipated to be discharged into the Ala Wai Boat Harbor. To accommodate this greater water flow, the applicant proposes to add a second discharge system into the inner part of the Ala Wai Boat Harbor. The increased flow and the constant flow of clean sea water is anticipated to enhance circulation and water quality within the Ala Wai Boat Harbor.

Post-construction water quality monitoring via an accepted plan by the Department of Health would also be performed.

Parking:

The applicants anticipate that the vast majority of Hilton Lagoon users will either come from on-site or walk from nearby hotels. Validated parking would be available at the Hilton Hawaiian Village which contains 1,725 spaces. Additionally, public parking is also available at the nearby Hale Koa Hotel (1,287 stalls), Hawaii Prince Hotel (50 stalls), and Ala Wai Boat Harbor (999 stalls).

Impact Assessment:

Potential adverse impacts associated with this project include short-term construction-related impacts and long-term impacts.

*Short-term construction-related impacts include:*

- Noise Emissions
- Temporary disruption of the use of the ocean recreation area affected by construction, including the area in the immediate vicinity of the sea water intake line.
- Temporary disruption of the recreational and aesthetic values of the lagoon.
- Potential water quality problems associated with dredging and dewatering the lagoon site.
- Temporary increase in traffic due to construction work force and equipment.

The applicants propose to mitigate the short-term impacts by implementing the following measures:

- Compliance with applicable noise quality regulations and the Department of Health's Section 401 Water Quality Certification.
- Use of dewatering plume control devices and systems to control water turbidity.
- Use of traffic control and safety systems.

*Long-term impacts would include:*

- Increased pedestrian and vehicular traffic.
- Increased use of recreational resources by tourists and residents attracted to the area.
- Loss of use by the public of a portion of the lagoon.
- Alteration of the nearshore bottom off Kahanamoku Beach.

However, the applicants claim that the reduction in the area of the lagoon available to the public can be offset by the project's benefits to the State and public. Benefits include:

- Desiltation of lagoon and improved water circulation at no cost to the State.
- Improved beach conditions along the southwest of the lagoon.
- Enhanced recreational value of lagoon resulting in an overall increase in public use of the lagoon waters for swimming and sunbathing.
- Developers would be responsible for maintenance of water quality in the public and private portions of the lagoon.
- The proposed attraction would increase and diversify recreational and educational opportunities for visitors and residents.
- Water quality improvements in the Ala Wai Boat Harbor.
- Employment opportunities.
- State would receive lease rent income and tax income.

- Expansion of the Department of Health's recreational waters monitoring network via the establishment of two water quality monitoring stations.

SUMMARY OF COMMENTS:

The application was referred to the following agencies for review and comment: The U.S. Fish & Wildlife Service, U.S. Army Corps of Engineers, State of Hawaii University of Hawaii Environmental Center, University of Hawaii Water Resources Research Center, Department of Health, Office of Hawaiian Affairs, Office of State Planning, Department of Transportation, Department of Land & Natural Resources: Division of Aquatic Resources, Division of Forestry and Wildlife, Division of State Parks, Water and Land Branch, Land Management Branch, Division of Conservation and Resource Enforcement, Historic Preservation Division, City and County of Honolulu Planning Department, and the Department of Land Utilization. Comments received include the following:

The Division of Forestry and Wildlife, Division of State Parks, Water and Land Development Branch and the City and County Planning Department have no comments or objections to the project.

U.S. ARMY CORPS OF ENGINEERS:

- A. We are currently processing an individual DA Permit for this project. Please contact our Regulatory Section at 438-9258 for further information and refer to file number 950040013/IN95-013.
- B. The flood hazard information provided on page 5 of the environmental assessment is correct.

DEPARTMENT OF HEALTH:

Wastewater Branch:

At this time, we have no objections to the proposed project as domestic wastewater will be discharged into the City sewer system.

All wastewater plans must conform to applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater Systems."



OFFICE OF STATE PLANNING:

Water quality and public access are two important concerns that need to be more thoroughly addressed and resolved before the permit is approved. Since the design and placement of the pumps have not been specifically determined for all alternatives, it is difficult to assess these issues. Large pumps may generate noise that might be considered a nuisance to beachgoers, and its placement may have adverse effects on public use and enjoyment of the lagoon.

In addition, an effective maintenance plan for the lagoon would be important to preserve water quality and assure public access to the use of the lagoon.

DEPARTMENT OF TRANSPORTATION:

We have no objections to the application because it will not affect our transportation facilities.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Division of Aquatic Resources: Comments Dated October 24, 1995:

A review of the Conservation District Use Application (CDUA) - Hilton Lagoon Project leaves the Division of Aquatic Resources with numerous concerns. The report describes one of the partners of this project, the EnterOcean Group as a Honolulu based enterprise comprised of key personnel with long experience in the design, construction and operation of ocean entertainment attractions, but the individuals involved nor their credentials are provided for review. DAR's main concern here is who will be the curator for the biological marine system being proposed? The report states that the qualifications of the curator will include a university degree in the life sciences and experience with a large aquarium curation. Does this mean that the applicant is proposing to hire someone from the local community for this position? This is not a bad idea, as we feel that the curator needs to be familiar with the local species, their interactions with other local species when placed in a closed environment and, of course, the maintenance of these marine animals.

The report makes continuous references to the involvement of the Waikiki Aquarium with various operational aspects of the facility such as the co-operative education and research activities being planned for development, as well as a source for obtaining marine species bred in captivity, however, when I spoke with Waikiki Aquarium curator Bruce Carlson, he said that the extent thus far of

their involvement with the proposed project is that he was aware of the project and has received calls from various people for information pertaining to development of various reports and documents that have had to be produced during the permit process. He has even been asked to consider having the Waikiki Aquarium somehow involved with the operation, but has never been presented with a detailed proposal from the applicant outlining specific areas and in what capacity the Waikiki Aquarium's involvement would be. He continues to allow the applicant to cite the Waikiki Aquarium's interest in the project because he wants to leave the "doors open" until he has something concrete to evaluate.

Because of the experience that I encountered with Bruce Carlson, and the involvement of the Waikiki Aquarium with this project, I would question the statement made in the report which commits the Oceanic Institute to be the major producer of several species of fish (mullet, awa and mahimahi) to be stocked in the facility.

Another concern is that no list of the limu, large invertebrates, Hawaiian coral or sharks and rays proposed for stocking the facility is provided for review.

There is a problem with stocking the facility with Hawaiian coral and live rock. State law prohibits the intentional taking of, breaking or damaging, with a crowbar, chisel or any other implement, any live stony coral from the waters of Hawaii, including any live reef or mushroom coral or any rock or coral to which marine life of any type is visibly attached or affixed.

It is questionable whether the applicant could qualify for a scientific collecting permit to obtain the live coral and live rock, because the facility is basically a "for profit," money making operation with goals and objectives very different than the Waikiki Aquarium, which is education oriented.

In addition to the concern that this project is a money making venture proposing to exploit the marine resources of Hawaii for profit, we are concerned about the survival and growth of the live corals being proposed for the facility. I spoke with Bruce Carlson of the Waikiki Aquarium about the success of maintaining live corals in an enclosed environment. Mr. Carlson says that the Waikiki Aquarium has been successful in maintaining healthy live coral in their displays, but this does not necessarily mean that the EnterOcean Group will experience the same success in the proposed facility.

The situation at the Waikiki Aquarium is significantly different from the one being proposed, in that live coral at the aquarium are maintained and displayed to the public from a tank where the coral is maintained. Visitors view them through a display tank set up at the aquarium. In the proposed project, the visitors are in the water with the live coral, put simply, the visitors are in the aquarium tank with the animals.

There is also a concern with the water quality of the ocean water being pumped into the facility and whether it can maintain live corals. The applicant provides three alternatives for the intake pipeline. The preferred alternative is having a single 36-inch intake pipeline laid in a 600 foot long trench on land, extending from the facility's pump room to the breakwater at the west end of the dredged swimming area, then in a 400 foot trench located just inside the breakwater to, and under, the small hook at the end of the breakwater structure. The section of the breakwater that the pipeline passes under will be dismantled and then reassembled after the pipe is installed. The pipeline will then be installed for about 170 feet along the catamaran channel bottom to the intake.

The report does not detail whether the intake portion of the pipeline will be subsurface, in which case the sand and gravel act as a natural filter, or if it just sits on the bottom pulling the water into the pipeline that empties into the facility. If the latter is true, then there may be some problems during the late spring and summer months when the Waikiki shoreline is subject to large southerly swells. The swells tend to kick up the sediment on the bottom and during these periods, the water is murky and visibility is awful.

If the intake portion of the pipeline is sitting on the bottom, the water being pumped into the facility will not be filtered. It will be laden with sediment. Is the applicant aware of this situation? Is this kind of water going to cause a problem in the facility? In addition to the affect of the sediment laden water on the marine animals stocked in the facility, isn't it going to affect the quality of the underwater experience of the visitors who pay to visit the facility? Won't they be having an under water experience in murky water?

Another question concerning the water quality that one needs to be aware of is, what is meant by "water quality." The applicant mentions numerous times that the water quality in the public portion of the lagoon as well as in the Ala Wai Canal will improve as a result of this project. Clearness of the water is used as a measure of good quality. The clearer the water, the better the

water quality. Well, this might not necessarily be the case. When I spoke with someone from the Water Quality Branch of the Department of Health, he said that even though the discharge water appears to be clear, in this case, the discharge water will probably be carrying additional nutrients from the animals and visitors in the facility. When this water is discharged with either into the public portion of the lagoon or the Ala Wai Canal, the additional nutrients carried in the discharge water could have a negative affect on either or both of these bodies of water.

Comments Dated November 3, 1995:

We are uncertain about the ability of the EnterOcean Group to maintain marine systems like the one being proposed. We recommend that the applicant retain the Waikiki Aquarium either actively or in an advisory capacity.

Limu, large invertebrates, Hawaiian coral, sharks and rays that are being proposed for stocking the facility have not been identified. This list will be required when the applicant files the Scientific Collecting Permit Application.

Current State law prohibits the intentional taking of, breaking or damaging, with a crowbar, chisel or any other implement, any live stony coral from the waters of Hawaii, including any live reef or mushroom coral or any rock or coral to which marine life of any type is visibly attached or affixed. DAR questions the NEED for the applicant to stock the proposed facility with live Hawaiian coral.

Another concern is water quality. The applicant already has information from a field investigation report which makes recommendations for a new water intake system. An intake system capable of supplying water of acceptable quality even under adverse conditions needs to be installed.

Comments Dated February 21, 1996:

DAR is encouraged that the applicant has maintained discussions with the Waikiki Aquarium and kept them abreast of project plans. The applicant has also attempted to establish an association with the Waikiki Aquarium to ensure the success of their animal husbandry operations. To date, no formal contracts detailing the Aquarium's specific involvement or commitment to the proposed attraction have been provided. The agent for the applicant provided a letter from Bruce A. Carlson, Director of the Waikiki Aquarium, illustrating the Waikiki Aquarium's support and

willingness to work with the applicant towards the success of this attraction.

The applicant does not anticipate accidental releases of exotic species from the attraction because only native species will be used.

DAR is still concerned because the applicant still plans to stock the attraction with live marine coral. As pointed out in earlier reviews, current State law prohibits the intentional taking of, breaking, or damaging, with a crowbar, chisel or any other implement, any live stony coral from the waters of Hawaii, including any live reef or mushroom coral or any rock or coral to which marine life of any type is visibly attached or affixed. What is the source of the coral to be displayed?

With the conditions that 1) only native species will be used in the exhibits, 2) no coral will be collected from Hawaiian waters and 3) a cooperative arrangement is maintained with the Waikiki Aquarium, we have no objections to the proposed project.

Land Management Branch:

Comments Dated November 7, 1995:

We recommend that the Chairperson sign the application as landowner of Tax Map Key: 1st/2-3-37: 21 and the submerged lands on the condition that the Division of Land Management (DLM) shall have an opportunity to submit specific comments on the proposal at a later date. Our comments shall address the application as submitted in addition to but not limited to the following:

1. Requirements and conditions necessary for the disposition of a lease by public auction (i.e. - access, service and utility corridors should the successful bidder(s) be other than the applicants, etc);
2. Requirements to monitor the effects of the project on the near-shore waters which shall be funded by the successful bidder(s); and
3. Requirements, whether administrative and/or legislative, which would allow the department to utilize lease rent and/or additional rent revenues from ocean, ocean-related and/or ocean-impacting leases to fund long-term monitoring of our near-shore waters and our off-shore waters to insure sustainability of our ocean resources.



4. Requirements for the amendment to LOD S-13,201 dated September 22, 1955 between the then Territory of Hawaii and Kaiser Community Homes.

Comments Dated November 7, 1995:

We have three primary concerns with the Aquatic Facility. One is that an access and utility easement through the Hilton Hawaiian Village be provided to the State of Hawaii prior to the Public Auction for the sale of a commercial lease for this site. We have established in our consultations with the Boating and Ocean Recreation Division of the Department of Land and Natural Resources that the Ala Wai Boat Harbor cannot hold the additional traffic and parking for this project. The access easement cannot come from the Helipad area and go across Duke Kahanamoku Beach to the site.

Our second concern is that all of the periodic testing of the water quality by the Department of Health that was cited in the Environmental Assessment be functioning should this facility come into operation.

Our third concern is that the water quality of the remainder of the lagoon be improved and that the water in the lagoon be displaced at least twice the current rate. We are also concerned that the dredging and cleaning of the lagoon be done often enough to keep the water and the sand clean for public use.

Engineering Branch:

We have no objections to the Chairperson signing the subject application.

We concur that the project site is designated (see attached FEMA Community Panel Map No. 150001 0120C) as follows:

1. Kahanamoku Beach as Zone AE (EL6).
2. Kahanamoku Lagoon and immediate surrounding shore as Zone AE (EL5).
3. The portion of the Hilton property on which the entrance building will be constructed as Zone AO (Depth 2).

Zone AE is a special flood hazard area inundated by 100-year flood, with base elevations determined to be 5 and 6 feet in these cases. Zone AO is a special flood hazard area described as having flood depths of 1 to 3 feet, with average depth of 2 feet in this case.

The proposed project should follow the FEMA floodplain regulations as well as the City and County of Honolulu's ordinance.

On page 5 of the FEA, the phrase "Federal Insurance Rate Map (FIRM)" should instead read as "Flood Insurance Rate Map (FIRM)."

Division of Boating and Recreation:

The Division of Boating and Ocean Recreation has no objections to the concept of the private aquatic recreation facility as proposed, including use of the harbor basin for the discharge of seawater from the project. However, we wish to ensure that the State receives proper assurances that the proposed project will result in the improvement of the quality of water in the Ala Wai Boat Harbor, and will not violate any of the requirements of the Clean Water Act during the construction phase. The desiltation of 9,000 cubic yards of silt described in Section 2.5.1 of the CDUA is of particular concern with respect to the water quality in the public lagoon and its subsequent discharge into the Ala Wai Boat Harbor.

Another issue to be satisfactorily resolved is the proposed land and storm water runoff described in Sections 2.5.3 and 3.3.3. Since the disposition of the drainage appears to be dependent on further discussions with the Department of Health, we request that DOBOR be provided the opportunity to review and comment on proposed plans to address this issue prior to implementation. We recommend that another condition of the CDU Permit include the requirement for periodic sampling and reporting of water quality within the Ala Wai Boat Harbor as described in Section 6.2.1 in order to verify the water quality prediction contained in this application.

In addition, the negative impact to harbor parking anticipated as a result of the predicted increased use of the public portion of the lagoon has not been satisfactorily addressed. Alternatives and mitigation measures must be provided for this adverse effect on the harbor facilities.

Another primary concern we have pertaining to the proposed project is the use of harbor premises during the construction activities. Figure 10 of the CDUA shows construction access through the harbor for Alternative "B" of the desiltation phase of the project. It is imperative that DOBOR be apprised of the extent and duration of the disruption to harbor operations. We will require adequate compensation for use of harbor facilities and the adverse impact on the boating public and restoration of all harbor roadways, parking lots, etc. to preconstruction conditions impacted by construction equipment. We would prefer that all staging activities in

connection with this development be accomplished through the Hilton Lagoon premises.

Based on our understanding of the proposed project and subject to the above-mentioned concerns, the Division of Boating and Ocean Recreation has no further objections to executing the CDUA as the landowner.

Historic Preservation Division:

A review of our records shows that archaeological inspection of trenches in the vicinity of this proposed project revealed fill soils on top of beach sands. No historic sites were found in these trenches. Therefore, we believe this project will have "no effect" on historic sites.

It is possible that historic sites, including human burials, will be uncovered during routine construction activities. Should this be the case all work in the vicinity must stop and the Historic Preservation Division must be contacted at 587-0047.

CITY AND COUNTY OF HONOLULU

Department of Land Utilization:

Portions of the project are within the special management area and shoreline setback. On January 24, 1996, the City Council adopted Resolution No. 96-03, CD-1, granting a Special Management Area Use Permit and Shoreline Setback Variance for the project. This approval was subject to a number of conditions.

We have enclosed a copy of the approved Resolution. (See Exhibit 13.)

SUMMARY OF APPLICANTS' RESPONSE TO AGENCIES COMMENTS:

The applicants provided response to the agencies' comments. Staff has summarized the comments below.

U.S. ARMY CORPS OF ENGINEERS:

The applicants have received an Army Corp permit which was executed on November 6, 1996.

OFFICE OF STATE PLANNING:

**Noise Impacts of Pumps**

The new pumps will be housed in underground vaults which will eliminate any adverse noise effects on beachgoers and hotel visitors.

A Coastal Zone Management Consistency Determination was issued on June 13, 1996.

DEPARTMENT OF HEALTH:

A 401 Water Quality Certification was issued on October 2, 1996.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Division of Aquatic Resources:

**Credentials of the EnterOcean Group:**

According to AECOS the founder of EnterOcean Group, is also President of BIOS Inc., a Seattle firm with over 15 years of experience in the design and construction management of live marine exhibits.

**Marine Curator:**

No selection has been made at this time. Apparently, discussions have been held with the Waikiki Aquarium towards the involvement of its staff in curatorial maintenance.

**Involvement of the Waikiki Aquarium:**

Refer to Exhibit 14 of the staff report (Bruce Carlson to Richard Heaton of EnterOcean).

**No Listing of Limu, Large Invertebrates, Hawaiian Coral or sharks or rays:**

According to the AECOS, DAR will have control over the number and types of marine animals for the lagoon project through a Scientific Collecting Permit. A list will be provided at the DAR's request. In addition, there is no live coral planned for the facility. Artificial coral would be used.

**Concerns over a "for profit venture:**

According to AECOS, professional collectors may be hired or animals may be purchased. This is yet to be determined.

**Exposure of intake pipe to southerly swells:**

According to AECOS, water quality monitoring was conducted in 1992 off Waikiki Beach in the Catamaran Channel (the general area where the intake would be located). The data indicated that turbidity and suspended solids are fairly low in the late spring and summer, with occasional pulses in the late August and September.

**Effluent (Definition of "water quality").**

The applicants have applied for a National Pollution Discharge Elimination System (NPDES) permit to ensure that effluent characteristics will comply with State water quality criteria.

Division of Boating and Recreation:

**Water Quality Into the Ala Wai Boat Harbor**

*A. During Construction*

Currently, outflow from the lagoon to the Harbor is via a pump. In the event that work within the lagoon (dredging, for example) results in turbid water around the intake pipes, the pump would be turned off. The pump would remain off until the system can be reactivated to discharge only clear water. Both visual and water quality measurements would be used to monitor the discharge water quality. Further, this potential problem is addressed in the applicants' Section 401 Water Quality Certification submitted to the Department of Health.

*B. After Construction*

Regular water quality monitoring of the discharge into the Ala Wai Boat Harbor will occur after construction.

**Storm Runoff**

According to AECOS, no additional storm water would be generated by the project. Adding a second pumping system would increase the turnover rate of water in the lagoon and any storm water that enters the lagoon would be diverted to the Ala Wai Yacht Harbor within approximately 8 hours. Based on a review of water quality data collected during the rainy season, runoff does not substantially alter lagoon water quality.



### **Parking**

The applicants anticipate that most of the attraction's patrons would arrive on foot or by bus. For the visitors who arrive by car, the applicants would encourage them to park at the Hilton Hawaiian Village parking facilities. Visitors arriving by car for purposes of visiting the private portions of the lagoon are projected at 3-4 cars per hour and would receive complimentary parking at the Hawaiian Hilton Village parking structure. Additional facilities are also available at the Hale Koa and Fort DeRussy, the Hawaiian Prince and the Ilikai. Further, the applicants believe that the parking problems at the Ala Wai Boat Harbor can only be solved by discussions between DOBOR and the boat owners who lease space from the State.

### **Construction Access and Staging**

The applicants are not considering using the harbor roads or parking lot for a construction staging area. Some construction access along adjacent harbor roadways may be required. Details will need to be worked out with DOBOR. Construction in the harbor area will be required for the new sea water discharge into the back basin of the harbor.

### **Land Management Branch:**

#### **Access and Utility Easement**

If the lagoon is offered by public bid, Hilton would be reluctant to grant an easement through its hotel property for access to a non-Hilton commercial operation fronting the resort property. They would prefer a negotiated lease in lieu of a lease by public auction.

#### **Water Quality Monitoring Up and Functioning**

Periodic water quality testing will occur as the facility becomes operational per the monitoring plan in the Final Environmental Assessment.

#### **Improved Water Quality in the Public Lagoon**

- Improved water quality in the lagoon will occur via the new intake pipeline. The pipe, located outside the breakwater, will provide a source of higher quality water than the existing nearshore source.

- Additionally, the replacement rate of water will increase nearly fourfold, from a pumping rate of 4,000 gmp to 15,000 gpm.
- Finally, the applicants agree to dredge and clean the lagoon as necessary to ensure that the lagoon is maintained in good condition for public use.

PUBLIC HEARING SUMMARY:

On May 9, 1996, a public hearing was held in Honolulu, Hawaii to solicit comments on the proposed project. Staff provided an oral presentation to the Board and identified the project elements and agency comments.

A Board member had questions about the requirements in Special Management Area Use Permit which states that the applicant shall provide the seawater intake system which allows fresh seawater to bypass the private portion of the lagoon and flow directly to the publicly owned section. However, it was the Boardmember's understanding that the freshwater would come into the private attraction and then go to the public lagoon. The Boardmember asked whether this requires them to have separate source or is it saying there should be a way to bypass the system to send fresh water into the public lagoon with out first going through the private area.

Staff deferred the question for the applicants to answer.

A Boardmember asked staff to provide background information about permits already obtained by the applicants.

Staff was aware of the SMA and Shoreline Setback Variance and also that they were in the process of obtaining the Army Corps permit.

A representative from Hilton Hawaiian Village provided additional background information on the project. The original deed called for Henry Kaiser to maintain the lagoon and to ensure appropriate levels of quality. However, he noted that the existing system is inadequate to maintain proper water quality.

He stated that Hilton purchased the shore from Kaiser. They invested 1.5 million for maintenance of the lagoon. Improvements included: palm trees, beach maintenance, etc... He also noted that today, the maintenance of the lagoon is in excess of \$20,000 a year.

The Hilton representative identified that by the 1980's, Hilton wanted to take another step because the lagoon's appearance became worse and worse. Hilton went through a one year permitting process to obtain the permits required for dredging of the lagoon. However, when they looked at the cost, it was in excess of one million dollars. Consultants also advised them that within two to three years, Hilton would be right back to square one.

The Hilton representative noted that they were looking for alternatives like the attraction. This was good because the attraction would be opened for visitors, locals and free for children and schools for educational purposes.

The Hilton representative felt that parking would not be a problem. Many of the visitors rent cars or use trolley buses which is included in the package tour. The benefit would be the provision of 130 new jobs, many of them would be science related and specifically related to water quality and marine biology and would provide an educational experience for people to learn about the environment and preserve our natural resources. It would add another attraction to Waikiki and maintain its status as a world class tourist destination.

A Boardmember asked the applicant about jobs and what kind of jobs would be created.

The Hilton representative said that jobs would be related to maintenance of the artificial reef and jobs related to water quality monitoring, care of the marine life and testing.

A Boardmember asked about stormweather and hurricanes.

The Hilton representative identified that Hilton modified the original plan because of water coming into the ground floor of the Rainbow tower due to hurricanes. The lagoon became part of the ocean. Hilton built a wall that will tie in directly with the pedestrian walkway that is in front of the Hotel to alleviate the problem of flooding.

An EnterOcean representative identified that the attraction itself would be constructed in an isolated area in which water levels within the attraction would be about 6 feet higher than mean-low-low (mll). He noted that part of the objective is to isolate the entire area from the storm. Another reason is that by elevating the existing water level, the outside would resemble a low rock formation. This would be a way to create a barrier without making it look like a barrier. The whole purpose of the design is to make

it look like a creation of nature.

A Boardmember asked whether dredged coral could be used if they were made available from other projects.

The EnterOcean representative said that they would prefer to have real corals. He believed that over time, real corals would grow in the facility. He added that their system would have a major impact on water quality on the inter-channel of the Ala Wai because the inter-channel of the Ala Wai, at the Diamond Head end, is extremely bad. He identified that the new pumping system would be able to handle 25% of the total flow or about 22 million gallons a day. Presently 5 million gallons a day is pumped into the middle channel of the Ala Wai. They plan to take the other 15 million and pump it into the inter-channel of the boat harbor. Believed that there will be a dramatic improvement in water quality in the inter-channel.

A Boardmember asked if a SMA permit requires a change in pumping strategy.

The EnterOcean representative identified that they talked to the City and County of Honolulu people, who said that, as a back-up system, if necessary, they wanted a by-pass system, so if something went wrong, they could by-pass water and pump it directly into the public section of the lagoon.

The Boardmember asked a question about the nutrient addition in the outflow water.

The AECOS representative noted that one additional permit is the National Pollution Discharge Elimination System Permit (NPDES) which allows discharges according to the Department of Health (DOH) requirements. This would involve monitoring. Water quality would be checked periodically.

A Boardmember asked who would do the checking.

The AECOS representative identified that they would probably do the bulk of the testing and monitoring as an independent testing lab.

The Boardmember asked how much water would be in the lagoon as compared with the big tank at Sea Life Park.

The AECOS representative identified that it was four times the size of the Sea Life Park lagoon. He added that water quality problems are solved by your turnover rate. It is necessary to maintain

certain nutrient levels below a level that would pose a problem, and this is done by a higher turnover rate.

A Boardmember asked how many pounds of fish would be in the attraction.

The AECOS representative identified that there would be about 20,000 fish, but was not sure about pounds of fish.

A member of the Waikiki Neighborhood Board testified. Felt that he project fits well for a Hawaiian sense of place in Waikiki and that without a new tourist attraction why should people continue to come to our fair city.

Another member of the public had reservation about the project. She proposed some mechanisms to make Hilton financially responsible to maintain the quality of the discharge into the Yacht Harbor as long as the project remains present, even though it is a financial failure. Also would like to see the effluent pipes out in front of Duke Kahanamoku Beach. She was concerned about parking. Felt that when the construction site for the Hilton emerges, parking will simply not exist for boat owners. The ideal solution would be gated knolls with parking issued to boat owners. The cheapest solution would be a permitted system similar to the University of Hawaii.

A Representative of the Ilikai Hotel noted that its parking is underutilized and would like to work with Hilton.

A representative of the City and County of Honolulu, Office of Waikiki Development testified believed that the project would have a positive benefit to the community. It would provide educational and employment opportunities in Waikiki. Good for local school children.

A representative of Hawaiian Yacht Club testified in support of the project. Project is consistent with Constitution of Yacht Club.

A member of the public asked why the effluent was being pumped into the Ala Wai and not the ocean.

A representative of Save our Surf questioned recreational uses being impacted by dredging for the intake pipe. He was concerned that the effluent would attract sharks in the nearshore area. There were also economic concerns involving "stolen lands" and suffering of Native Hawaiians because of tourism. Also concerned about natural coastal resources disappearing along this stretch of



shoreline due to private interest/development. Concerned about foreign ownership of Waikiki.

A member of the public was concerned that the Hilton Hawaiian Village has not maintained the lagoon since taking it over from Kaiser. Would like to know what money the State would receive from the new project, where the employees would live and where they would park. Also believes tourists wouldn't use the attraction. Also concerned that the facility would look "gross" if it were operated at night and that no one would come (too expensive). If the attraction was such a great idea, why not build it on private land rather than on State land.

A member of the public identified that she would send in a petition to hold a contested case hearing. Has not seen Hilton do anything to the lagoon in years, no cleaning, no nothing. Believes that the State should take over the lagoon and improve the circulation system. Did not want to look at the attraction in operation at night. Also believed that the cost was too high.

A member of the public has not observed any maintenance of the subject lagoon. Does not want to view the attraction and would prefer that the lagoon be maintained in a natural state.

A member of the public believed that Hilton Hawaiian Village was good about maintaining the lagoon until the last 3-5 years. Was worried about odors from dredging and believes that the project would put her out of business. Didn't believe that it would be a good educational experience. Wants it left alone with more maintenance. Operates lagoon beach service. Believed that the project would put them out of business. There are thousands of Tilapia in the lagoon. What do they plan to do with the fish when they dredge the lagoon?

A Boardmember asked whether people ever go swimming in the lagoon.

The person testified that they swim all of the time and that Hilton should clean it more.

The Boardmember asked the person if they had even seen Hilton drain the lagoon, and how frequently.

The person said that the lagoon had been drained about once every six months, but that had stopped a few years ago.

A representative of Hawaii Visitors Bureau testified in favor of project. Project is needed to serve visitors who come. Need new

attractions for return visitors.

The Director of Waikiki Aquarium testified in support of the project. The project would improve water quality in the lagoon.

A Boardmember asked how much daily feeding would be required for a project of this scale.

The Aquarium representative identified that fish (cold blooded) don't have the same consumption requirements as humans (warm blooded) and that their waste is not hazardous to humans. Noted that the effluent from the Waikiki Aquarium is discharged directly into the ocean and that they are well within the water quality requirements, and they are in AAA waters.

The Boardmember asked how much water was discharged each day.

The Aquarium representative noted that they pump about 400 gallons/minute.

A Boardmember identified that an individual said earlier that outfalls attract sharks.

The Aquarium representative said that if that were the case they would attract sharks at their outfall, and they don't. There are about 2,000 fish in the Waikiki Aquarium. He also mentioned that to get as many fish as needed at the proposed Hilton project, that they should get them from aquaculture facilities, rather than taking them off the reef.

The owner of Superior Tropical Farms specializing in the collection and sale of tropical/ornamental fish, testified in support of the project. Similar to Hawaiian Fishponds where fish were reared in artificial surroundings, primarily for food, but also for pleasure. Must learn from the past. The proposed facility would help relieve pressure on fragile natural reef ecosystems. The facility would allow people to swim with reef fish that cannot be observed at a place like Haunama Bay.

The Director of the Office of Planning, Department of Business, Economic Development and Tourism testified in support of the project. Believe that the attraction will add to Hawaii's visitor industry.

A member of the public was concerned about construction related impacts on users of the Ilikai, the Yacht Harbor, the beach and hotel. Believes that there is a transportation/parking problem.

A member of the public asked that the applicants not displace culture/lifestyle which is so critical to Aloha spirit (i.e., fishers and surfers/canoe paddlers).

A Boardmember asked if the individual was opposed to the project.

The answer was no because there is no reason to oppose something that you have no control over. Feels that their input could help the project in a way that they can all blend-in together.

The Boardmember asked for input from the person in terms of how the project could be improved.

Another member of the public supported the project. Feels that Waikiki does not belong only to the 18,000 people that live there but to the State and its workers. Feels that the water quality in the lagoon has been deteriorating for a long time, not just during the past five years.

A member of the public was concerned about vagrants in the lagoon area.

Another member of the public referred to the attraction as a "fish prison" and incarceration of marine animals.

Another member of the public supported the project. Waikiki needs new visitor attractions. Feels that parking will not be a problem. Project also offers educational opportunities.

A member of the public requested a Contested Case Hearing.

#### ANALYSIS:

Following review and acceptance for processing, the applicant, by letter dated February 2, 1996, was notified that:

1. The proposed uses are identified uses R-6 and G-2 within the Resource (seawater intake pipe) and General (lagoon) subzones of the Conservation District according to Administrative Rules, Title 13, Chapter 5;

Staff further notes that the proposed seawater intake pipe is an identified use under Section 13-5-24 (R-6) of the Resource subzone of the Conservation District, according to the Administrative Rules. However, the proposed use of the lagoon for a commercial attraction is not an identified use according to the Administrative

Rules, but may be processed pursuant to Section 13-5-25, as a use not previously identified in Section 13-5-22, 23, and 24 of the Administrative Rules;

2. A public hearing pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), will be required in that the proposed use is of a commercial nature; and
3. In conformance with Title 11, Chapter 200, of the Hawaii Administrative Rules, a negative declaration was published in the OEQC Bulletin on March 8, 1995, for the proposed project.

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

The objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

On January 24, 1996, the City Council adopted Resolution No. 96-03, CD-1 granting a SMA permit and Shoreline Setback Variance for the project (see Exhibit 13).

#### STAFF ANALYSIS OF AGENCY COMMENTS AND CONCERNS:

Staff has identified several important land use issues relative to this case including: project consistency with the objectives of the Resource and General subzones; water quality, construction impacts and use of the lagoon by a private entity. Issues and comments raised during the public hearing are also considered in the context of Staff's discussion.

#### Aquatic Resource Concerns:

Staff has reviewed DAR's concerns and the applicant's response to their concerns. Many of DAR's concerns focused on the problems of collecting live corals. However, the applicants' noted that there will be no live corals in the facility, only imitation corals. It was also noted by the EnterOcean representative that corals would grow in the facility once it is established.

It is unclear where or how the applicants will obtain the live fish and invertebrates to stock the facility. The EA mentions that the Oceanic Institute will be contracted to grow and supply fishes from their on-going aquaculture programs. Other animals would be

obtained from liscenced collectors around the islands.

A Scientific Collecting permit application would be required should the applicants/operators desire to obtain fish from State waters.

During the public hearing for the project, animal rights were mentioned. However, according to the consultant, the Animal Welfare Act does not take into account cold-blooded animals such as fish and invertebrates. Additionally, the project consultant notes that the lagoon attraction would be large enough so that motile animals will have freedom of movement and all organisms would be provided a good selection of habitat.

In addition, DAR is concerned over the potential for turbidity and suspended solids entering the facility through the proposed intake pipe in the Catamaran channel as a result of the southerly swell. This could have an adverse impact on aquatic life and visitor experiences. The project consultant states that this should not become a significant problem. However, the EA notes that under storm conditions, the water may become too turbid and it may be necessary to temporarily cease operations.

DAR has no objections to the project provided that the applicants use only native species in the aquarium, that no coral will be collected from Hawaiian waters and that a cooperative arrangement is maintained with the Waikiki Aquarium. DAR is concerned that without the proper credentials/expertise in aquarium management, the facility would need to be restocked frequently. This would be considered an unsustainable practice from the perspective of resource management of Hawaii's aquatic ecosystems.

Staff believes that it would be in applicant's best interest to work with the Waikiki Aquarium.

#### Water Quality:

There are concerns regarding effluent discharge into the Ala Wai Yacht Harbor. However, the project consultants believe that the quality of the effluent entering the Ala Wai Yacht Harbor would be an improvement over the existing effluent discharge, because higher quality water would be pumped into the lagoon from offshore. In addition, the lagoon effluent would be monitored for compliance under an NPDES permit. If water quality is demonstrably poor then, measures would be taken to improve it.

Staff agrees that the project would improve water quality in the lagoon and inter-channel of the Yacht Harbor.

Maintenance of the Lagoon:

During the public hearing for the project, several members of the public testified that Hilton had not done a good job of maintaining the lagoon, especially during the last 3-5 years, and that Hilton had used to drain the lagoon periodically. Staff spoke with the AECOS representative who noted that the lagoon could not be drained due to the porous nature of the substrate. However, during extreme low tides they could, in fact, block the intake pipe and maintain pumping into the yacht harbor, thereby, lowering the level of the water considerably. In addition the Hilton representative stated that they spend \$20,000/year in lagoon maintenance.

Use of State-owned Conservation Lands:

Commercial recreational uses of conservation land have been permitted in the past. Staff can refer to several examples of commercial uses allowed; 1) Paradise Park, Sea Life Park, and Waiamea Valley Park. These parks were established in the 1960s and continue to provide visitors and residents with enjoyable experiences with the exception of Paradise Park, which no longer operates an attraction.

Because this facility has been proposed in the shoreline area of Waikiki, there are concerns that an attraction of this nature would cause interference with public enjoyment and cultural use of the State's public trust shoreline resources.

Inasmuch as the facility would be set-back from the shoreline and would not interfere with public access to or along the shoreline, staff believes that it would not interfere with public access to and along the shoreline, nor public enjoyment of the shoreline, after construction is completed. Although public access to the private portion of the lagoon would be restricted to non-paying members of the public, the remainder of the lagoon would remain public.

In addition, the subject intake pipe would not impact recreation as it would be buried in the nearshore area off Duke Kahanamoku Beach and fastened to the bottom of the Catamaran Channel, according to the project consultant. Impacts to aquatic organisms would be minimal.

During the public hearing for the project, concerns were raised about the potential impact of the project on recreational and cultural uses of the shoreline area. Of significant concern to the State/public would be the temporary impacts on recreation during

dredging and excavation activities within the lagoon and within the nearshore waters. Use of the lagoon, the beach and nearshore areas would be curtailed in the immediate vicinity of the excavation. However off-shore uses such as surfing would not be affected.

If the proposed project is approved by the Board, staff believes that the temporary construction impacts could be significant due to the scope of the project and its location and the high numbers of individuals utilizing the area for recreation. However, staff believes that Hilton will not allow construction to continue for too long as this would have a major impact on their hotel guests.

According to the AECOS representative, dredging of the lagoon and construction of the intake and effluent pipes should take from one to two months. The exact procedure for construction needs to be worked-out in consultation with the Department of Health, the DLNR Boating Division, Planning Section, and Oahu District Land Agent.

If the project is approved, the applicants should thoroughly consider trenching, installation and backfill operations for the intake and effluent pipes prior to the initiation of construction. All affected government and business entities should be consulted prior to the initiation of construction to ensure that work will proceed smoothly once it is initiated. The proposed work program should be posted and advertised in the newspaper. The same should be done for the lagoon portion of the project.

In terms of mitigation, staff would prefer that dredged material from the lagoon not be dewatered on the beach if possible.

Parking:

According to the project consultants, the majority of users would come from on-site, or walk from nearby hotels. Other users would arrive by bus via shuttle. For those arriving by private car to visit the attraction, validated parking would be available in the Hawaiian Hilton Village Parking garage which contains 1,725 spaces. Paid parking would also be available at other parking garages in the vicinity of the attraction. If water quality is substantially improved within the public portion of the lagoon, additional users may visit the area thus increasing pressures on existing private and public parking facilities. Staff does not know what the long-term traffic/parking impacts would be on public parking facilities since it is difficult to calculate the frequency/duration of use as a result of the lagoon water being improved. However, Hilton Hawaiian Village should be required to absorb all parking generated for use of the private attraction.

Subzone Consistency:

The land uses for the proposed project include:

1. Pipeline: the pipeline installation within submerged lands is R-6, Marine Construction, (D-1) for marine construction, dredging, filling, or any combination thereof of submerged lands.
2. Lagoon Attraction: the lagoon attraction is G-2, Land Uses Not Previously Identified (D-1) in the Conservation District.

Staff notes that Section 13-2-21(b)(1) (Administrative Rules) relating to standards, requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

Staff notes that there are also secondary issues that must be considered in reviewing use applications including: past board practice, surrounding uses and activities, resource values in and around the site, and the ability to mitigate adverse environmental impacts through the imposition of conditions, etc.

Staff notes that the criteria for the review of applications are established through the administrative rules and practice. The rules identify that the primary purpose of the (G) subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

In terms of subzone review, staff feels that any activity that seeks the use of land within the (G) subzone should be considered in light of whether the use preserves open space and is not urban in nature.

However, in applying a standard of reasonability, staff believes that these considerations should not, a priori, preclude all uses and/or activities that increase use densities or those that could be considered urban in nature.

This is why all applications undergo a case by case review. This requires that, in addition to subzone objectives, each request must be considered on its own merits as the circumstances and locations dictate.



Although the attraction is a commercial venture and would increase use densities and off-site impacts, the applicants do aspire to emulate/imitate a natural aquatic environment. This is in keeping with Conservation objectives and could actually serve to alleviate some pressure on natural aquatic ecosystems around the State like Hanauma Bay. The project would improve water quality in the lagoon and this would benefit the general public by offering recreational opportunities. In addition, the fact the lagoon is not considered a natural aquatic feature, does not eliminate other options for its use.

In terms of open space, the majority of the lagoon would be still be available for use by the public, and with the construction of the new circulation system, water quality would be substantially improved.

However, the deed instrument stipulates that the State should fill the lagoon should "satisfactory maintenance of the lagoon prove to be physically impractical by reason of excessive costs or inability to maintain proper sanitary conditions". The deed further stipulated that lagoon shall then become part of the "No Buildings" portion of the recreation area. However, a recreation area titled "Crescent Beach" was never constructed. The 1955 deed may need to be revised to accommodate the attraction.

If the lagoon were filled, the area could be designated as a "No Buildings" zone and could provide additional shorefront area for the general public to use at no cost. However, staff feels that project would benefit the public by improving water quality in the lagoon and making available a broader range of recreational uses to tourist and the public in the Waikiki area.

In addition, the applicants' have received all other major permits for the project, including a County Special Management Area Use Permit and Army Corp permit. A National Pollution Discharge Elimination System Permit and a State Lease is still required for the project.

Staff can find no significant long-term adverse impacts to the environment, the economy, or society stemming from development of the proposed project provided that all mitigation measures in the permit conditions are observed by the applicants and their contractors/operators.

As such, staff recommends as follows:

RECOMMENDATION:

That the Board of Land and Natural Resources approve the applicants' request to develop a private recreational attraction including a seawater circulation system on State submerged land, in the vicinity of Duke Kahanamoku Beach, at Waikiki, Hawaii, subject to the following conditions:

1. The applicants shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules as amended;
2. The applicants shall comply with all applicable Department of Health Administrative Rules;
3. The applicants, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
4. The applicants and their contractors shall coordinate construction activities and installation of the intake and effluent pipes with the Division of Boating and Ocean Recreation (DOBOR), Department of Land and Natural Resources. DOBOR will require adequate compensation for use of harbor facilities and the adverse impact on the boating public as well as restoration of all harbor roadways, parking lots and facilities to preconstruction conditions. Any damage to harbor facilities resulting from construction of the project shall be repaired by the applicants and their contractors at no cost to the State. Construction and operation of the attraction facility shall not incur additional costs on DOBOR;
5. All conditions imposed under the County Special Management Area Use Permit for this project, shall be observed by the applicants;
6. The routing of the intake and effluent pipes must be such as to minimize disruption of traffic patterns on the Harbor premises and on public use and of the beach and nearshore swimming and surfing areas;

7. Construction methods shall be employed which will not preclude vehicular or pedestrian access to the Harbor facilities and shoreline areas;
8. Construction staging areas, including stockpiled sediment shall be managed to prevent public nuisance or threat to public health, safety and welfare;
9. In the event that seawater discharge into the Ala Wai Boat Harbor creates a significant problem, the applicants shall be responsible for correcting the problem and assisting the lead government agency overseeing the matter;
10. Precaution shall be taken during construction to prevent eroded soils, petroleum products, debris and other contaminants from excessively blowing, flowing or leaching into the Ala Wai Harbor and nearshore waters;
11. The applicants and their contractors/operators shall protect the associated aquatic resources from chemical or biological contamination;
12. The applicants shall use only native species in the exhibits, no coral will be collected from Hawaiian waters, and a cooperative arrangement is maintained with the Waikiki Aquarium. A list of aquatic species shall be provided to the Division of Aquatic Resources upon their request;
13. To ensure that recreational/cultural use of the area is preserved, the applicants and their contractors/operators shall maintain accessible yet safe access to and use of the marine environment to the greatest extent possible during and after construction. Public access to the remainder of the lagoon shall not be impeded or restricted in any way;
14. The intake and effluent pumps shall not be constructed above the existing grade and shall not increase ambient noise levels in the immediate area;
15. The applicants and their contractors/operators shall ensure that water quality in the remainder of the lagoon is improved for public use and enjoyment. The applicants shall continue to conduct periodic dredging of the lagoon;

16. The applicants shall apply for a right-of-entry to State-owned lands utilized within the project area and supply to the Department of Land and Natural Resources, Land Division, appropriate metes and bounds survey description of easement areas on any State-owned lands on which the proposed easement is located;
17. Since this application is for the use of conservation land only, the applicants shall obtain the appropriate authorization through the Land Division, Department of Land and Natural Resources, for the use of State Lands.
18. Any work to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
19. The applicants shall submit four (4) sets of the construction plans and specifications to the Chairperson or his authorized agent for approval with the permit declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with conditions 1-2 and 5 remain the responsibility of the applicant;
20. All mitigation measures set forth in the accepted Final Environmental Assessment for this project are hereby incorporated as conditions of approval;
21. To mitigate impacts on recreation and to ensure public safety, the applicants shall thoroughly consider trenching, installation and backfill operations for the intake and effluent pipes prior to the initiation of construction. All affected government and business entities shall be consulted prior to the initiation of construction to ensure that work will proceed smoothly once it is initiated. The proposed work program shall be posted and advertised in a major local newspaper 30 days prior to initiation of work. The same should be done for the lagoon portion of the project;
22. If possible, dredged material shall be treated within the attraction construction area and not on the beach;


23. Should historic remains such as artifacts, burials, or stone pavings or wall be found during construction, the applicant shall stop work in the area and contact the State Historic Preservation Division immediately, at 587-0046;
24. The applicants shall notify the Department when construction is initiated and when construction is completed;
25. Should the commercial venture fail, the applicant shall continue to operate the new circulation system as well as monitor water quality in conformance with all Department of Health permit conditions;
26. That in issuing this permit, the Department and Board has relied on the information and data which the permittees have provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
27. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and
28. Other terms and conditions as prescribed by the Chairperson.

Respectfully submitted,

  
SAMUEL J. LEMMO  
Staff Planner

Attachments

Approved for Submittal

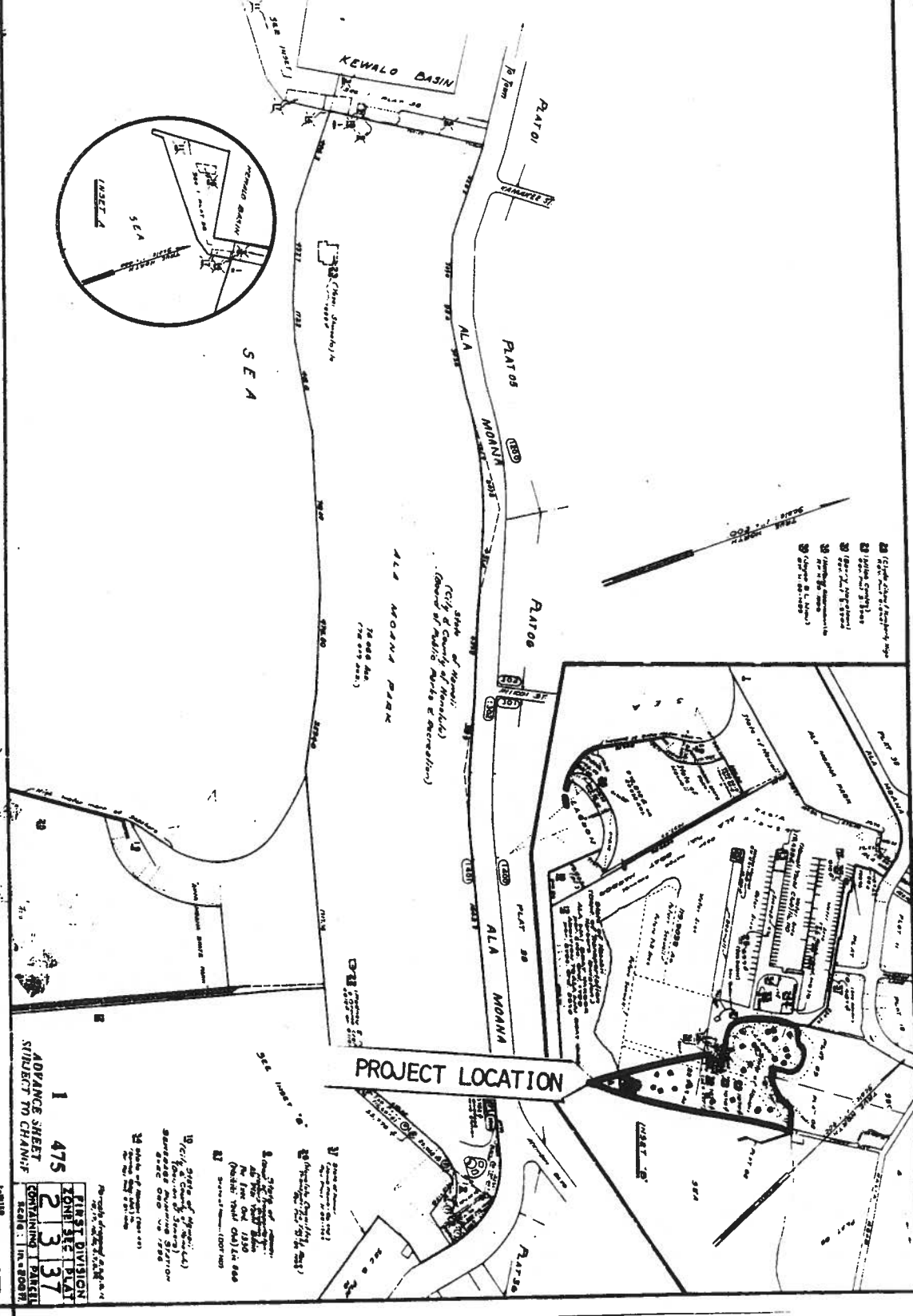
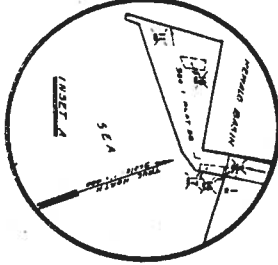
  
MICHAEL D. WILSON, Chairperson  
BOARD OF LAND NATURAL RESOURCES

**EXHIBITS FOR OA-2794**

1. Island Map
2. Tax Map Key
3. Subzone
4. Coastal Zone Map
5. LUC Boundary Interpretation
6. Deed Covenants for Paoa Property
7. Deed Covenants for Hilton (Kaiser) Property
8. Existing and Proposed Sea Water Supply System
9. Proposed Hilton Lagoon
10. Conceptual Floor Plan
11. Lagoon Desiltation Approach
12. Sea Water Intake
13. SMA Permit
14. Waikiki Aquarium Letter to Applicant (Dated 12/29/95)



Orig No 655  
 By DK-LAN  
 Date Survey Dept.



- 1. State of Hawaii
- 2. City of Honolulu
- 3. Department of Public Works
- 4. Department of Planning
- 5. Department of Transportation
- 6. Department of Health
- 7. Department of Water Supply
- 8. Department of Parks and Recreation
- 9. Department of Public Safety
- 10. Department of Public Works

**PROJECT LOCATION**

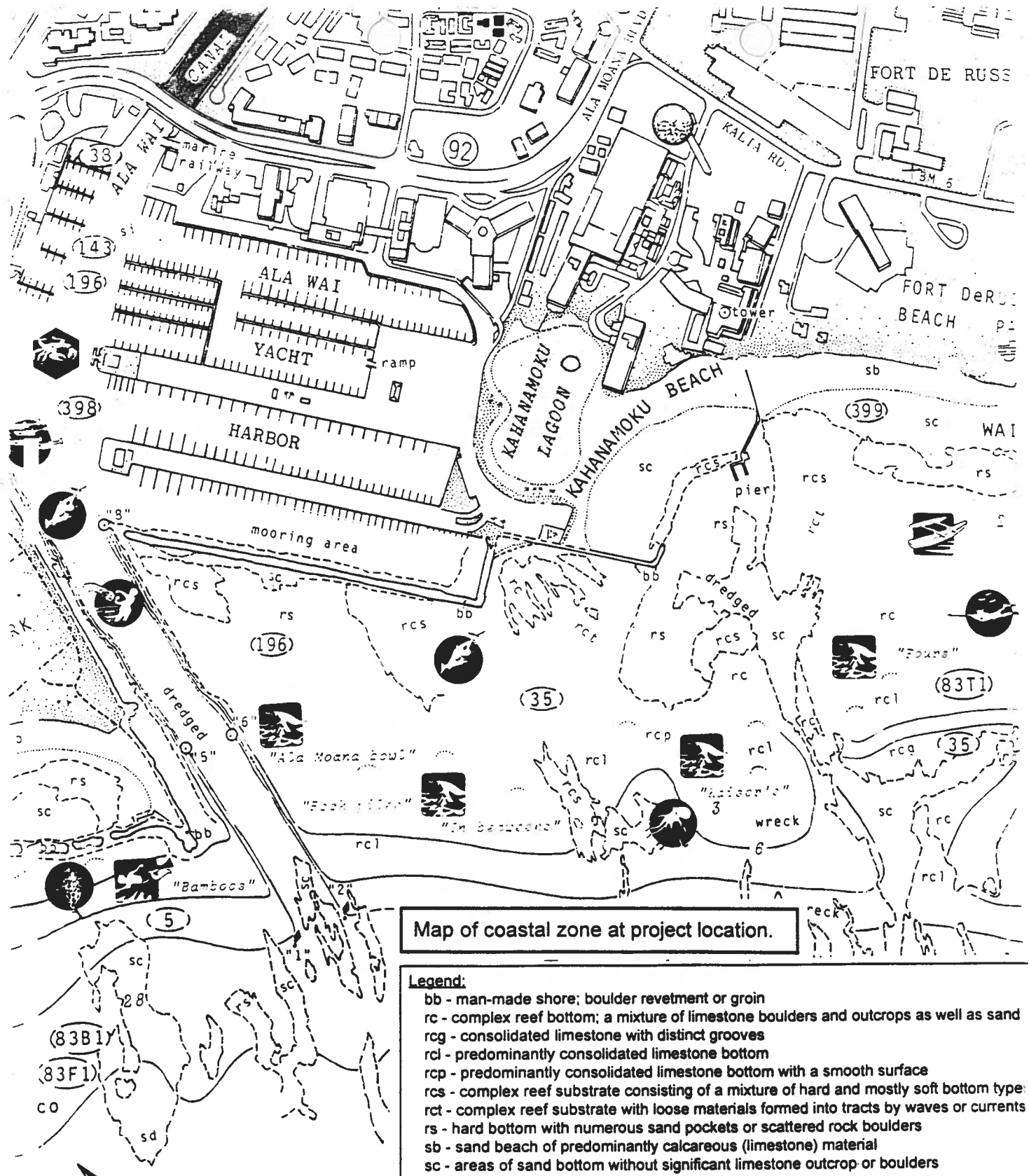
ADVANCE SHEET  
 SUBJECT TO CHANGE  
 1 475

PLAT	2337
SECTION	1
SCALE	1" = 500'

City of Honolulu  
 Department of Public Works  
 Department of Planning  
 Department of Transportation  
 Department of Health  
 Department of Water Supply  
 Department of Parks and Recreation  
 Department of Public Safety  
 Department of Public Works





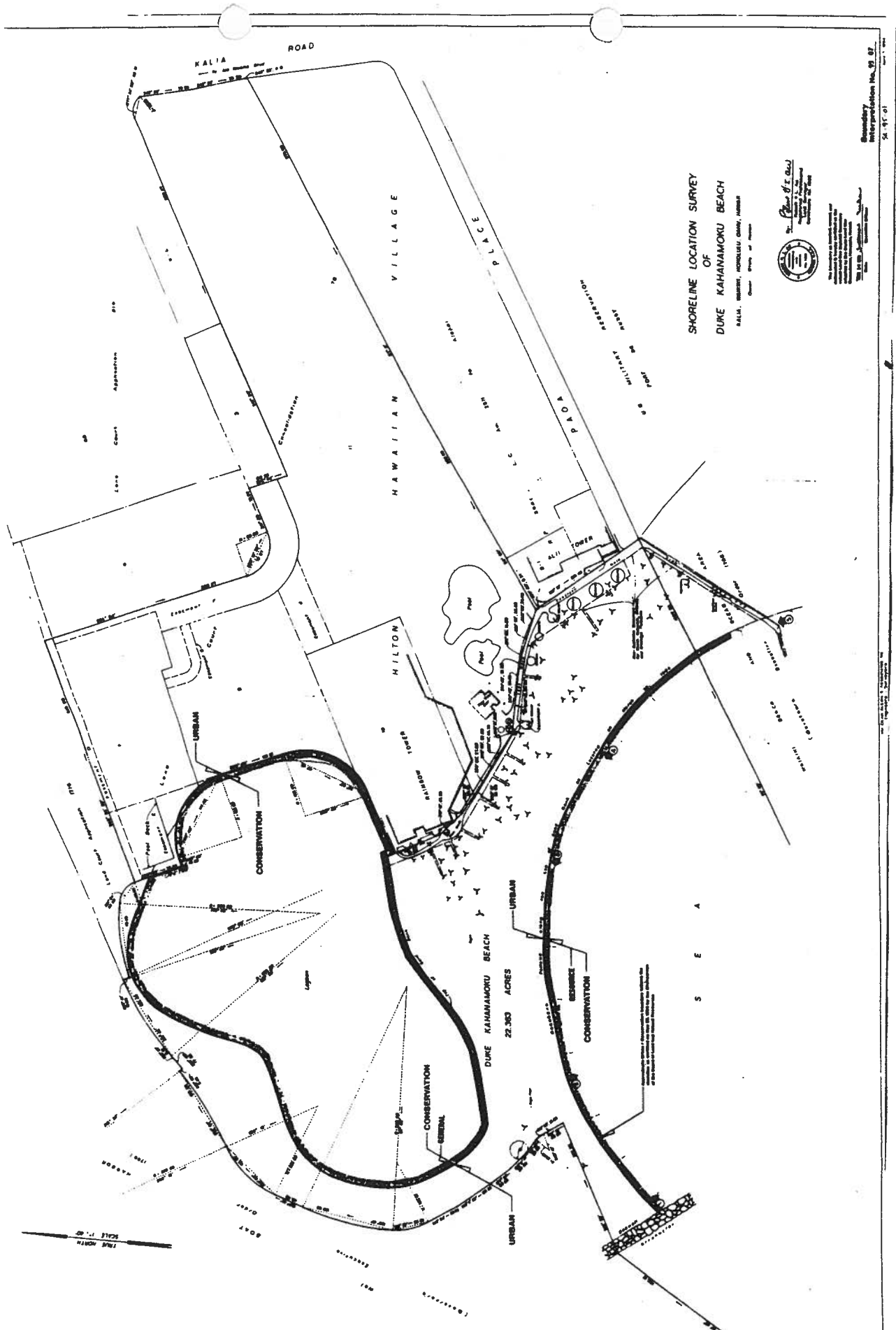


Map of coastal zone at project location.

**Legend:**

- bb - man-made shore; boulder revetment or groin
- rc - complex reef bottom; a mixture of limestone boulders and outcrops as well as sand
- rcg - consolidated limestone with distinct grooves
- rcl - predominantly consolidated limestone bottom
- rcp - predominantly consolidated limestone bottom with a smooth surface
- rcs - complex reef substrate consisting of a mixture of hard and mostly soft bottom type
- rct - complex reef substrate with loose materials formed into tracts by waves or currents
- rs - hard bottom with numerous sand pockets or scattered rock boulders
- sb - sand beach of predominantly calcareous (limestone) material
- sc - areas of sand bottom without significant limestone outcrop or boulders

Source: AECOS, Inc. 1981. Oahu Coastal Zone Atlas. Produced for U.S. Army Corps of Engineers, Pacific Ocean Division, Fort Shafter, Hawaii.



(FIRST ORIGINAL)

INDENTURE AND DEED

THE 3024 PAGE 235

THIS INDENTURE executed this 25<sup>th</sup> day of September, 1955, by and between the TERRITORY OF HAWAII, hereinafter called the "Grantor" and ANNIE AULANI PAGA CLARK, wife of Herman Kahikiena Clark, whose residence and post office address is 347 Keaniani Street, Lanikai, Oahu, Territory of Hawaii, VIOLET LEILANI PAGA COOK, unmarried, whose residence and post office address is 1537-3-2 Wilder Avenue, Honolulu, City and County of Honolulu, said Territory, MELIHUALANI PAGA, unmarried, whose residence and post office address is 1341 Ala Moana Road, Honolulu, City and County of Honolulu, said Territory, FREDERICK HCOLAE PAGA, husband of Madelyn Eleanor Barto Paga, whose residence and post office address is 828 North Judd Street, said Honolulu, MELVIN EDWARD LELIHUALANI PAGA, husband of Lillian Kamakana Paga, whose residence and post office address is 45-451 Makalani Street, Kaneohe, Oahu, said Territory, MALCOLM HULLI-LAUREA PAGA, also known as Clarence Allan Paga, husband of Juanita Ellen Clarke Paga, whose residence and post office address is 1841 Ala Moana Road, said Honolulu, GILBERT HOOHE PAGA, husband of Edna Alden Paga, whose residence and post office address is 1259 Center Street, said Honolulu, HENRY KILASOHE PAGA, husband of Helen Maile Zaller Paga, whose residence and post office address is 601 9th Avenue, said Honolulu, MARY ELLEN KEALOHAPAOOLE PAGA CLARKE, wife of John Mason Clarke, whose residence and post office address is 858 Oneawa Street, said Lanikai, LEON KAPUAHZLANI STERLING, Junior, unmarried, whose residence and post office address is 2937 Kala-kaua Avenue, said Honolulu, WAYNE STACEY PAGA STERLING, husband of Helen Zoocer Sterling, whose residence and post office address

1951 3024 PAGE 236

is 409 Keolu Street, said Lanikai, and LEON KAPPAHELANI STERLING, Senior, unmarried, whose residence and post office address is 1419 Ernest Street, said Honolulu, hereinafter called the "Grantees",

W I T N E S S E T H :

WHEREAS, Grantor has expended considerable sums of money in the development of Waikiki Beach and desires to expend further public funds in said development by constructing an artificial beach and groin in the area seaward of the land hereinafter described; and

WHEREAS, the construction of said public beach and groin would interfere with the littoral rights appurtenant to the land of Grantees abutting said area; and

WHEREAS, Grantor is willing to convey to Grantees that certain area, hereinafter described, provided that Grantees will waive and relinquish all claims for compensation or damages against Grantor heretofore made in connection with Grantees' said property, that Grantees will grant, convey, release and relinquish to Grantor all littoral rights appurtenant to or connected with their said land, that Grantees will agree to the construction of said public beach and groin, and that the owners of other shorelands abutting said area will do all of the same; and

WHEREAS, by Public Law 199, dated August 1, 1955, Chapter 441, 84th Congress, First Session, the Commissioner of Public Lands of the Territory of Hawaii, with the concurrence of the Board of Harbor Commissioners and the approval of two-thirds of the Board of Public Lands and of the Governor of the Territory of Hawaii, is authorized and empowered to convey to the owners of certain shorelands, of whom each Grantee is

one, all or a certain portion of a certain tidelands area described in said Public Law, which tidelands area includes the land hereinafter described as Parcel 1, upon the fulfillment of certain conditions; and

WHEREAS, the Board of Harbor Commissioners, at its meeting held September 21, 1955, has concurred in, and two-thirds of the Board of Public Lands of the Territory of Hawaii, at its meetings held September 2 and 9, 1955, and the Governor of the Territory of Hawaii, have approved the conveyance of said land, and the conditions referred to have been or are fulfilled by this indenture and by one or more indentures of like tenor made by and between the Grantor and the owners of other shorelands abutting on the tidelands area described in said Public Law;

NOW, THEREFORE, for and in consideration of the release and covenants of and the conveyances by the Grantees, hereinafter set forth, the Grantor does hereby give, grant, bargain and sell unto the Grantees, their respective heirs, executors, administrators and assigns, as tenants in common, forever and in fee simple, the following property:

PARCEL 1

Being the area lying westerly of and adjacent to Lot B of Land Court Application 1549.

Situate at Kalia, Waikiki, Honolulu, Oahu, T.H.

Being a portion of the area transferred to the Territory of Hawaii by Presidential Executive Order 1855 dated October 27, 1928.

Being also a portion of the area described in Public Law 199, 84th Congress and approved August 1, 1955.

Beginning at the east corner of this parcel of land, being also the southwest corner of Lot B of Land Court Application 1549, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCE-BOWL" being 10393.91 feet South and 3718.15 feet East, as

1021  
1021  
1021

LW 3024 FM 258

shown on Government Survey Registered Map 4070, and running by azimuths measured clockwise from True South:

1. 63° 24' 30" 310.99 feet along Parcel 2;
2. Thence on a curve to the left with a radius of 35.00 feet, the chord azimuth and distance being: 121° 54' 38.99 feet;
3. Still on a curve to the left with a radius of 300.00 feet, the chord azimuth and distance being: 76° 54' 116.03 feet;
4. 157° 41' 10.00 feet;
5. 239° 53' 406.00 feet to the west corner of Lot B of Land Court Application 1549;

Thence along highwater mark of Lot B of Land Court Application 1549 for the next five (5) courses, the direct azimuths and distances between points of the said highwater mark being:

6. 320° 22' 18.48 feet;
7. 291° 45' 15.75 feet;
8. 297° 01' 22.75 feet;
9. 318° 42' 32.70 feet;
10. 326° 46' 15.03 feet to the point of beginning and containing an Area of 29,374 Square Feet.

Excepting and reserving, however, all littoral rights of whatsoever nature or kind which are or may be thereunto appertaining.

Excepting and reserving therefrom, further, an easement twenty (20) feet wide for the installation underground and below the level of mean lower low water, operation, maintenance, replacement and repair of a culvert connecting the lagoon and Water Area "A" of the Ala Moana Yacht Harbor, both of which are hereinafter mentioned; said easement to be centered on a straight line connecting and crossing courses numbered 3 and 5, not more than 56 feet easterly of course numbered 4, of the above description of Parcel 1, in a location to be later more precisely established by the Grantor.

Together with a perpetual easement over and across courses numbered 2 and 3 of the above description of said parcel and any beach abutting upon said courses, for access to the lagoon hereinafter mentioned; provided, however, that such easement for access shall not include the right to erect or maintain any structure over or upon or to make any excavation in said courses or said beach.

Together, further, with a non-exclusive easement for foot passage, 20 feet wide, save at and near the end thereof commencing at course numbered 4 of the above description of Parcel 1, where it shall be a minimum of 10 feet wide, from said course along, contiguous to and on



the westerly side of the ewa-makai (westerly) segment of the perimeter of the lagoon to the southerly boundary of the recreation area and thence across the lagoon beach to Crescent Beach, all of which are hereinafter mentioned, for access to said Crescent Beach and the sea; provided, however, that such easement shall not include the right to erect or maintain any structure over or upon or to make any excavation in the area covered by such easement.

CDUA 2794  
PAGE 239

TO HAVE AND TO HOLD the same together with all of the rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith with the exceptions and reservations aforesaid, unto the Grantees, their respective heirs, executors, administrators and assigns, as tenants in common, forever.

Grantor and Grantees hereby covenant and agree as follows:

A. That Registered Map No. 4070, dated September 21, 1955, filed in the office of the Surveyor of the Territory of Hawaii, copies of which map have been furnished to the Grantees, has been prepared as an aid to the interpretation of the following covenants and depicts the improvements intended by the parties that are referred to in the following covenants. In the event that changes are hereinafter made in the following covenants by mutual agreement of the Grantor and the Grantees, said changes, in so far as it is possible so to do, shall be depicted on said map and revised copies thereof shall be furnished to the Grantees.

B. Grantor, for itself, its successors and assigns, hereby covenants and agrees with Grantees as follows:

1. Grantor shall, subject to the availability of funds, construct Crescent Beach, the approximate location and configuration of which beach is shown on Registered Map No. 4070, and bordered thereon in yellow. Said beach shall be approximately 150 feet in width, shall be located on the seaward side of the shoreline lying in front of and between Land Court Application 1553 and Dewey Way, shown on said map, and



REC-3021 PAGE 240

... seaward (westerly) from said shoreline, as nearly as practicable as shown on Registered Map No. 4070. The Grantor shall permanently maintain said beach, after its construction, in the general location and configuration shown on Registered Map No. 4070 to the extent that it is able to control the action of natural forces thereupon, and the adjacent swimming area abutting its seaward (southerly) side, which swimming area is shown on Registered Map No. 4070 crosshatched in green, as a public beach and swimming area, so long as and to the extent that appropriations are and may from time to time be available therefor. Grantor shall, within thirteen (13) months of the date hereof, construct that part of Crescent Beach which is shown on Registered Map No. 4070 crosshatched in black and the swimming area adjacent thereto.

2. Grantor shall, subject to the availability of funds, fill the area, marked "Recreation Area" and bordered in pink on Registered Map No. 4070, lying between the above-mentioned Crescent Beach and the southerly side of the Ala Moana Yacht Harbor, with the exception of the lagoon area hereinafter described, to an elevation not exceeding 7.0 feet above mean lower low water (+7.0 M.L.L.W.), save within that portion thereof to be covered by a portion of the lagoon beach, hereafter mentioned, where the grade shall slope to mean low water mark of the lagoon. Except for the portion thereof marked "Proposed Roadway" and shown on Registered Map No. 4070, said filled area shall be used as and for a recreation area, subject to the covenants hereinbelow mentioned.

3. Grantor shall not construct or erect nor permit the construction or erection of any building or structure exceeding elevation 29 feet above the level of mean lower low water (+29.0 M.L.L.W.) on that portion of the recreation area marked

"Buildings Area" and crosshatched with brown lines on Registered Map No. 4070, lying westerly of a line across said recreation area parallel to and 1000 feet southwesterly from course numbered 4 of the description of Parcel 2 conveyed by the Grantor to Kaiser Community Homes and shown on said Registered Map No. 4070, which line is marked "Division Line" and shown on Registered Map No. 4070, and any building or structures erected thereon shall be restricted to yacht clubs, swimming clubs, bath houses, sea-food restaurants and out-buildings incidental thereto and such buildings and structures of a like nature as will contribute to the use of said area as a recreation area. No hotels or apartment houses shall be built nor be permitted to be built thereon.

4. Grantor shall not construct or erect nor permit the construction or erection of any building on that portion of said recreation area, marked "No Buildings Area" on Registered Map No. 4070, lying between the division line referred to in the preceding paragraph, the lagoon hereinafter described, Crescent Beach, and the southerly side of Ala Moana Yacht Harbor nor in the area covered by said lagoon, whether or not the same may be filled at some subsequent date.

5. Grantor shall construct within seven and one half (7-1/2) months from the date hereof and maintain a culvert connecting the sea and the lagoon hereinafter described with not less than two separated outlets from said culvert in the lagoon, and one or more culverts connecting either or both of those portions of the Ala Moana Yacht Harbor marked "Water Area A" and "Water Area B" and crosshatched in orange on Registered Map No. 4070 and the lagoon hereinafter described, with not less than two separated inlets to said culvert or culverts in the lagoon for the purpose of permitting adequate

ENCLOSURE 241

UMK3024 MAR 24 2

water circulation through said lagoon. Grantor shall within three (3) months thereafter install, operate and maintain, or be responsible to the Grantees for the installation, operation and maintenance of, necessary pumps and valves to provide circulation of water through said lagoon adequate to keep the same clean and sanitary at all times.

6. Grantor shall construct within seven (7) months hereafter and shall maintain a suitable chain link fence along such portion of course numbered 5 of the above description of Parcel 1 as Grantees shall designate upon request of Grantor.

7. Grantor shall, within nine and one-half (9-1/2) months from the date hereof, construct a sand beach not less than seventy-five (75) feet in width (save where the same abuts the proposed roadway shown on said Registered Map No. 4070 in which segment said beach may be narrower) contiguous to and around the exterior of the perimeter of the lagoon hereinafter described in approximately the manner shown for said beach, marked "Lagoon Beach" and colored in blue on said Registered Map No. 4070, and shall cover the floor of said lagoon with sand for a width of not less than seventy-five (75) feet contiguous to and around the interior of the perimeter of said lagoon. Upon request of the Grantees, made within the period mentioned above, the Grantor shall widen that portion of the lagoon beach abutting upon courses numbered 2 and 3 of the above description of Parcel 1 by extending the same across said courses into the lagoon to the distance requested by the Grantees, but not beyond the prolongation in a westerly direction across the lagoon of course numbered 1 of the above description of Parcel 1.

8. Grantor shall within six and one half (6-1/2)

months of the date hereof dredge and construct a lagoon with surrounding lagoon abutments, or be responsible to the Grantees for the dredging and construction of, said lagoon and lagoon abutments. The lagoon shall be dredged to a depth of not less than 7.7 feet (-7.7 M.L.L.W.) and not more than 12 feet (-12.0 M.L.L.W.), shall be in the approximate location and configuration shown on said Registered Map No. 4070 as "Lagoon" and colored in green thereon. Said lagoon shall be of a maximum length, in an easterly-westerly direction, of 650 feet and a maximum width, in a northwesterly-southeasterly direction, of 450 feet. The perimeter of said lagoon, as shown on said Registered Map No. 4070 except along the northwesterly segment of the same near the proposed roadway represents the mean low water mark of the same.

The abutments around the exterior perimeter of said lagoon shall be composed of fill evenly sloped from the perimeter of said lagoon to a level of not more than 6 feet above mean lower low water (+6.0 M.L.L.W.) at a distance of not more than 75 feet from said perimeter (or at the southerly line of the proposed roadway where the same is closer than 75 feet to said perimeter) and thence at the same level for an additional distance of 50 feet (except to the extent that the full additional distance of 50 feet cannot be obtained within the limits imposed by the southerly line of the proposed roadway and the southerly courses, numbered 13 through 15, of the description of Parcel 2, shown on Registered Map No. 4070 and conveyed to Kaiser Community Homes).

C. Grantees, jointly and severally, for themselves and their respective heirs, executors, administrators and assigns, hereby covenant and agree with Grantor as follows, these covenants to run with the land described as Parcel 1 hereinabove:

1163024 P&M 2/13

10021 214

1. Grantees consent to the construction of said Crescent Beach, recreation area, lagoon and lagoon beach hereinabove mentioned.

2. Grantees shall, on or before completion of the lagoon and lagoon abutments by the Grantor, fill or cause to be filled the area described in Parcel 1 hereinabove to the approximate grade of the Grantees' property adjoining it on the easterly side, save the area thereof to be covered by a portion of the lagoon abutments.

D. It is mutually covenanted and agreed, by the Grantor and Grantees, as above, that:

(1) In the event that satisfactory maintenance of the lagoon proves to be physically impracticable by reason of excessive costs or inability to maintain proper sanitary conditions therein, the foregoing covenant numbered B-5 shall be terminated and the Grantor shall have no further obligation with respect thereto.

In such event, the Grantor shall, however,

(a) Fill the lagoon and lagoon beach to the grade of the surrounding properties. The lagoon shall then become a part of the "No Buildings" portion of the recreation area, and the easement hereinabove granted for access to the lagoon shall become an easement for access to said recreation area.

(b) Convey to the Grantees, their respective heirs, executors, administrators or assigns a non-exclusive easement for foot passage, 20 feet wide, from courses numbered 2 and 3 of the above description of Parcel 1 to Crescent Beach, for access to said beach and the sea; provided, however, that said easement shall not

include the right to erect or maintain any structure over or upon or to make any excavation in the area covered by said easement. The mauka (easterly) boundary of said easement shall be a straight line connecting the junctions of courses numbered 1 and 2 of the above description of Parcel 1 and of courses numbered 1 and 2 of the description of Parcel 2, as shown on said Registered Map No. 4070, conveyed by the Grantor to Kaiser Community Homes and the projection of said line across the lagoon beach to Crescent Beach.

1963024  
1963024

- (c) Convey to the Grantees, their respective heirs, executors, administrators or assigns, the easement hereinabove excepted and reserved by the Grantor, through Parcel 1, for underground culverts.

Upon conveyance of said new easement by the Grantor, mentioned in subparagraph D(1)(b) hereinabove, the Grantees will reconvey to the Grantor the 20-foot wide easement along the awa-makai (westerly) segment of the perimeter of the lagoon, hereinabove granted to them for access to Crescent Beach and the sea.

(2) That certain agreement known as the Waikiki Agreement, entered into on October 19, 1923, between Grantor and various property owners, including Grantees' predecessors in title, said agreement being recorded in the Bureau of Conveyances of the Territory of Hawaii in Book 1047, Pages 176-202, and noted on Transfer Certificate of Title No. 47,212 issued to the Grantees, is hereby and herewith terminated as between the Grantor and Grantees.

11/13/24 PAGE 246

(3) Grantor's obligation to perform those covenants under B above as to which a time limit for performance is stated shall be subject to its ability to perform the same with funds currently available therefor, to-wit, the sum of ONE-HUNDRED AND FORTY THOUSAND DOLLARS (\$140,000.00).

And in consideration of the foregoing conveyance by and cove<sup>as</sup>nts of the Grantor, the Grantees hereby give, grant, bargain, sell, convey, release and relinquish unto Grantor, its successors and assigns, any and all littoral rights appurtenant to the following shoreline property of the Grantees, bordering on the land described as Parcel 1 above:

Any and all littoral rights appurtenant to Lot B, area 45,105 square feet, as shown on Map 1 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 1549, being a portion of the land described in Transfer Certificate of Title No. 47,212 issued to the Grantees.

TO HAVE AND TO HOLD the same together with all rights and privileges belonging or appertaining thereto unto the Grantor, its successors and assigns, forever.

And Grantees for themselves and their respective heirs, executors, administrators, and assigns do hereby remise, release and forever discharge Grantor, its successors and assigns of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature to, against or in connection with the property of Grantees, hereinabove described,

the littoral rights of which are hereinabove conveyed by the Grantees to the Grantor, heretofore claimed or existing, in law or equity, which the Grantees have had by reason of any matter, cause or thing whatsoever having been done or omitted to be done by the Grantor.

AND, for the consideration aforesaid, HERMAN KAHIKIENA CLARK, husband of Annis Aulani Paoa Clark, MADELYN ELEANOR BARTO PAOA, wife of Frederick Hoolae Paoa, LILLIAN KAMAKANA PACA, wife of Melvin Edward Lilikalani Paoa, JUANITA ELLEN CLARKE PAOA, wife of Malcolm Hulilaukea Paoa, EDNA ALDEN PAOA, wife of Gilbert Hoochie Paoa, HELEN MAILE ZALLER PAOA, wife of Henry Kalaeone Paoa, JOHN MASON CLARKE, husband of Mary Ellen Kealoha-pauole Paoa Clarke, and HELEN BOOZER STERLING, wife of Wayne Stacey Paoa Sterling, do hereby remise, release and quitclaim unto the Grantor all of their right, title and interest, by way of dower, curtesy, community property, or otherwise in and to any and all littoral rights appurtenant to Lot B, area 45,105 square feet, as shown on Map 1 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 1549, being a portion of the land described in Transfer Certificate of Title No. 47, 212.

IN WITNESS WHEREOF, the TERRITORY OF HAWAII has caused these presents to be duly executed by Marguerite K. Ashford, its Commissioner of Public Lands, and countersigned by Samuel Wilder King, Governor of Hawaii, A. D. Castro, Chairman, Board of Public Lands of the Territory of Hawaii, and Ben E. Mutter, Chairman, Board of Harbor Commissioners, pursuant to the authority so to do in them vested by the foresaid Public Law 199, dated August 1, 1955, Chapter 441, 84th Congress, First Session, and all other laws enabling them so to do, and ANNIE AULANI PAOA

11113024  
MAY 24 1957



IFF 3024 PAGE 248

CLARK, HERMAN KAHIKIENA CLARK, VIOLET LEILANI PAOA COCK,  
KELIHOALANI PAOA, FREDERICK HOOLAS PAOA, MADELYN ELEANOR  
BARTO PAOA, MELVIN EDWARD LILIKALANI PAOA, LILLIAN KAWAKANA  
PAOA, MALCOLM HULILAUKEA PAOA, JUANITA ELLEN CLARKE PAOA,  
GILBERT HOCHIE PAOA, EDNA ALDEN PAOA, HENRY KALAEONE PAOA,  
HELEN MAILE ZALLER PAOA, MARY ELLEN KEALOHAPAUOLE PAOA  
CLARKE, JOHN MASON CLARKE, LEON KAPUAHELANI STERLING, JUNIOR,  
WAYNE STACEY PAOA STERLING, HELEN BOOZZER STERLING, and LEON  
KAPUAHELANI STERLING, SENIOR, have hereunto set their hands  
on the day and year first above written.

TERRITORY OF HAWAII

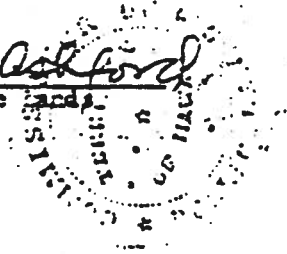
By *Lawrence R. Ashford*  
Commissioner of Public Lands

COUNTERSIGNED:

*Jammal Wilder King*  
Governor, Territory of Hawaii

*[Signature]*  
Chairman, Board of Public Lands

*Ben C. Hutter*  
Chairman, Board of Harbor  
Commissioners



APPROVED AND FORW  
*Lawrence R. Ashford*  
Special Agent in Charge

*Annie Aulani Paoa Clark*  
Annie Aulani Paoa Clark

*Herman Kahikiena Clark*  
Herman Kahikiena Clark

*Violet Leilani Paoa Cook*  
Violet Leilani Paoa Cook

*Kelihoalani Paoa*  
Kelihoalani Paoa

I hereby certify that the letter "o" was deleted and the letter "l" inserted on line 45, page 4, and also the letters "an" was inserted on line 7, page 12 before execution and acknowledgment.

*[Signature]*  
Notary Public

Frederick Koolae Paoa  
Frederick Koolae Paoa

Madelyn Eleanor Barto Paoa  
Madelyn Eleanor Barto Paoa

Melvin Edward Lilikalani Paoa  
Melvin Edward Lilikalani Paoa

Lillian Kamakana Paoa  
Lillian Kamakana Paoa

Malcolm Hulilaukea Paoa  
Malcolm Hulilaukea Paoa

Juanita Ellen Clarke Paoa  
Juanita Ellen Clarke Paoa

Gilbert Hoonie Paoa  
Gilbert Hoonie Paoa

Edna Aiden Paoa  
Edna Aiden Paoa

Henry Kaliseone Paoa  
Henry Kaliseone Paoa

Helen Maile Galier Paoa  
Helen Maile Galier Paoa

Mary Ellen Kealohapauole Paoa Clarke  
Mary Ellen Kealohapauole Paoa Clarke

John Mason Clarke  
John Mason Clarke

Leon Kapuahelani Sterling, Junior  
Leon Kapuahelani Sterling, Junior

Wayne Stacey Paoa Sterling  
Wayne Stacey Paoa Sterling

Helen Boozer Sterling  
Helen Boozer Sterling

Leon Kapuahelani Sterling, Senior  
Leon Kapuahelani Sterling, Senior

PH 3024 MAR 249

150024 PAGE 250

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 11<sup>th</sup> day of October, 1955, before me personally appeared MARGUERITE K. ASHFORD, COMMISSIONER OF PUBLIC LANDS, to me known to be the person who executed the foregoing instrument and acknowledged to me that she executed the same as her free act and deed as COMMISSIONER OF PUBLIC LANDS of the Territory of Hawaii and that she executed the same on behalf of the Territory of Hawaii.

Rayne R. Bruner  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

My commission expires 12/31

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared ANNIE AULANI PAOA CLARK and HERMAN KAHIKIENA CLARK, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Walter J. Tinsley  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

My commission expires MAR. 15, 1953

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 26<sup>th</sup> day of September, 1955, before me personally appeared VIOLET LEILANI PAOA COOK, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Walter J. Tinsley  
Notary Public, First Judicial  
Circuit, Territory of Hawaii

My commission expires MAR. 15, 1953

I hereby certify that the letter "o" was deleted and the letter "i" inserted on line 45, page 4, and also the letters "an" was inserted on line 7, page 12 before execution and acknowledgment.

Rayne R. Bruner  
Notary Public

TERRITORY OF HAWAII  
CITY AND COUNTY OF HONOLULU } SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared KELIHOALANI PAOA, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

1955-3024 PAGE 251



Karel J. Danneberg  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

My commission expires MAR. 15, 1958

TERRITORY OF HAWAII  
CITY AND COUNTY OF HONOLULU } SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared FREDERICK HOOLAB PAOA and ~~FREDERICK FLEMMER~~ ~~PAOA~~, to me known to be the persons described in and who executed the same as <sup>his</sup> their free act and deed.



Karel J. Danneberg  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

My commission expires MAR. 15, 1958

TERRITORY OF HAWAII  
CITY AND COUNTY OF HONOLULU } SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared MELVIN EDWARD LILIKALANI PAOA and LILLIAN KAMAKANA PAOA, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



Karel J. Danneberg  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

My commission expires MAR. 15, 1958

1883024 PAGE 252

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared MALCOLM HULILAUKEA PAOA and JUANITA ELLEN CLARKE PAOA, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Walter J. Tawala  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.  
My commission expires MAR. 15, 1958

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared ~~OSCAR~~ ROCKIE PAOA and EDNA ALDEN PAOA, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that ~~they~~ <sup>she</sup> executed the same as <sup>her</sup> their free act and deed.

Walter J. Tawala  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.  
My commission expires MAR. 15, 1958

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared HENRY KALABONE PAOA and HELEN MAILE ZALLER PAOA, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Walter J. Tawala  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.  
My commission expires MAR. 15, 1958

TERRITORY OF HAWAII  
CITY AND COUNTY OF HONOLULU } SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared MARY ELLEN KEALOHAPAOLE PAOA CLARKE and JOHN MASON CLARKE, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



Walter J. Pua  
Notary Public, First Judicial  
Circuit, Territory of Hawaii  
My commission expires MAR. 15, 1958

UM#3024 MAR 25 53

TERRITORY OF HAWAII  
CITY AND COUNTY OF HONOLULU } SS.

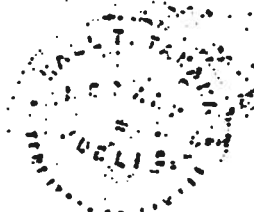
On this 25<sup>th</sup> day of September, 1955, before me personally appeared LEON KAPUAHELANI STERLING, JUNIOR, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.



Walter J. Pua  
Notary Public, First Judicial  
Circuit, Territory of Hawaii  
My commission expires MAR. 15, 1958

TERRITORY OF HAWAII  
CITY AND COUNTY OF HONOLULU } SS.

On this 25<sup>th</sup> day of September, 1955, before me personally appeared WAYNE STACEY PAOA STERLING and HELEN BOOZER STERLING, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



Walter J. Pua  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.  
My commission expires MAR. 15, 1958

3024 MAR 254

TERRITORY OF HAWAII }  
CITY AND COUNTY OF HONOLULU } SS.

On this 15<sup>th</sup> day of September, 1955,  
before me personally appeared LEON KAPUAHELANI STERLING,  
SENIOR, to me known to be the person described in and who  
executed the foregoing instrument, and acknowledged that he  
executed the same as his free act and deed.



Kare J. [Signature]  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.  
MAR. 15, 1958  
My commission expires \_\_\_\_\_

SS. I hereby certify that the letter "o" was deleted  
and the letter "l" inserted on line 48, page 4, and  
also the letters "an" was inserted on line 7, page 12  
before execution and acknowledgment.

TERRITORY OF HAWAII }  
CITY AND COUNTY OF HONOLULU }

On this 26<sup>th</sup> day of September, 1955, before me  
personally appeared GILBERT HECHE PAGA, to me known to be the person described  
in and who executed the foregoing instrument, and acknowledged that he executed  
the same as his free act and deed.



Helen H. Darnell  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.  
My Commission expires Nov. 14, 1958

TERRITORY OF HAWAII }  
CITY AND COUNTY OF HONOLULU } SS.

On this 26<sup>th</sup> day of September, 1955, before me  
personally appeared MADELYN ELEANOR BARTO PAGA, to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged that  
she executed the same as her free act and deed.



Helen H. Darnell  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.  
-20-  
My Commission expires Nov. 14, 1958.

Entered of Record OCT 18 1955 at 10:18 o'clock A.M.  
and compared. Mark W. Muckstein Registrar of Conveyances.

By [Signature] Clerk

(SECOND ORIGINAL)

INDENTURE AND DEED

THIS INDENTURE executed this 22<sup>nd</sup> day of September, 1955, by and between the TERRITORY OF HAWAII, hereinafter called the "Grantor", and KAISER COMMUNITY HOMES, a California corporation authorized to do business in the Territory of Hawaii, having its principal place of business and post office address at 14418 Chase Street, Suite B, Panorama City, California, and its office in said Territory at 2005 Kalia Road, Honolulu, Hawaii, hereinafter called the "Grantee",

W I T N E S S E T H:

WHEREAS, Grantor has expended considerable sums of money in the development of Waikiki Beach and desires to expend further public funds in said development by constructing an artificial beach and groin in the area seaward of the land hereinafter described; and

WHEREAS, the construction of said public beach and groin would interfere with the littoral rights appurtenant to the lands of Grantee abutting said area; and

WHEREAS, Grantor is willing to convey to Grantee that certain area, hereinafter described, provided that Grantee will waive and relinquish all claims for compensation or damages against Grantor heretofore made in connection with Grantee's said property, that Grantee will grant, convey, release and relinquish to Grantor all littoral rights appurtenant to or connected with its said lands, that Grantee will agree to the construction of said public



beach and groin, and that the owners of other shore lands abutting said area will do all of the same; and

WHEREAS, by Public Law 199, dated August 1, 1955, Chapter 441, 84th Congress, First Session, the Commissioner of Public Lands of the Territory of Hawaii, with the concurrence of the Board of Harbor Commissioners and the approval of two-thirds of the Board of Public Lands and of the Governor of the Territory of Hawaii, is authorized and empowered to convey to the owners of certain shore lands, of whom the Grantee is one, all or a certain portion of a certain tidelands area described in said Public Law, which tideland area includes the land hereinafter described as Parcel 2, upon the fulfillment of certain conditions; and

WHEREAS, the Board of Harbor Commissioners, at its meeting held September 21, 1955, has concurred in, and two-thirds of the Board of Public Lands of the Territory of Hawaii, at its meeting held September 9, 1955, and the Governor of the Territory of Hawaii, have approved the conveyance of said land, and the conditions referred to have been or are fulfilled by this indenture and by one or more indentures of like tenor made by and between the Grantor and the owners of other shore lands abutting on the tidelands area described in said Public Law;

NOW, THEREFORE, for and in consideration of the release and covenants of and the conveyance by the Grantee, hereinafter set forth, the Grantor does hereby give, grant, bargain and sell unto the Grantee, its successors and assigns, forever and in fee simple, the following property:

PARCEL 2

Being the area lying westerly of and adjacent to Land Court Application 314, situate at Kalia, Waikiki, Honolulu, Oahu, Territory of Hawaii,

Being a portion of the area transferred to the Territory of Hawaii by Presidential Executive Order 1856 dated October 27, 1928.

Being also a portion of the area described in Public Law 199, 84th Congress and approved August 1, 1955.

Beginning at an "→" cut in face of seawall, at the south corner of this parcel of land, being also the west corner of Land Court Application 1653, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 10981.46 feet South and 3555.61 feet East, as shown on Government Survey Registered Map 4070, and running by azimuths measured clockwise from True South:-

*POINT #1  
Indicated on  
Map*

*Course 1  
Course 2  
Course 3*

*Course 4  
Course 5*

*Course 6  
Course 7*

1. 151° 56' 75.00 feet;
2. 241° 36' 99.00 feet;
3. Thence on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being: 200° 45' 141.42 feet;
4. 155° 45' 99.81 feet;
5. Thence on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being: 110° 45' 141.42 feet;
6. 65° 45' 15.00 feet;
7. 135° 45' 75.00 feet;
8. 243° 24' 30" 310.99 feet along Parcel 1;

Thence along highwater mark of Land Court Application 314 for the next four (4) courses, the direct azimuths and distances between points along said highwater mark being:

9. 325° 00' 35.00 feet;
10. 334° 10' 125.00 feet;
11. 336° 15' 189.00 feet;
12. 334° 00' 93.42 feet to a "†" cut in top of stonewall;

- |     |         |  |
|-----|---------|--|
| 13. | 61° 39' | 60.00 feet along Land Court Application 1653 to a 2½" pipe in concrete;  |
| 14. | 61° 46' | 67.74 feet along Land Court Application 1653 to a spike in face of seawall;  |
| 15. | 61° 58' | 273.88 feet along face of seawall along highwater mark of Land Court Application 1653 to the point of beginning and containing an Area of 2.722 acres. |

Excepting and reserving, however, all littoral rights of whatsoever nature or kind which are or may be thereunto appertaining.

Together with a perpetual easement over and across courses numbered 2 to 7, inclusive, of the above description of said parcel and any beach abutting upon said courses, for access to the lagoon hereinafter mentioned; provided, however, that such easement for access shall not include the right to erect or maintain any structure over or upon or to make any excavation in said courses or said beach.

And also an easement over and across the makai (westerly) boundaries of the following parcels of land for access to Crescent Beach, hereinafter mentioned, and the sea:

Lot 3, area 82,478 square feet, shown on Map 2 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application 264, being a portion of the land described in Transfer Certificate of Title No. 61,396;

The land registered in Land Court Application 624, area 79,596 square feet, shown on Map 2 of said Application filed in said office, being a portion of the land described in Transfer Certificate of Title No. 61,396; and

*THE EASEMENT  
ADDITIONAL  
TO THE  
COURSES  
DESCRIBED  
HEREIN*

The land registered in Land Court Application No. 1653, area 83,309 square feet, shown on Map 1, filed in said office, being a portion of the land described in Transfer Certificate of Title No. 61,396.

Provided, however, that said easement for access shall not include the right to erect or maintain any structure over or upon or to make any excavation in said Crescent Beach or the sea.

TO HAVE AND TO HOLD the same together with all of the rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, its successors and assigns forever.

GRANTOR and GRANTEE hereby covenant and agree as follows:

A. That Registered Map No. 4070 dated September 21, 1955, filed in the Office of the Surveyor of the Territory of Hawaii, copies of which map have been furnished to the Grantee, has been prepared as an aid to the interpretation of the following covenants and depicts the improvements, intended by the parties that are referred to in the following covenants. In the event that changes are hereinafter made in the following covenants by mutual agreement of the Grantor and the Grantee, said changes, insofar as it is possible so to do, shall be depicted on said map and revised copies thereof shall be furnished to the Grantee.

*Reference to map indicated  
changes will be made on map*

B. Grantor, for itself, its successors and assigns, hereby covenants and agrees with Grantee as follows:

1. Grantor shall subject to the availability of funds construct Crescent Beach, the approximate location and configuration of which beach is shown on Registered Map No. 4070, and bordered thereon in yellow. Said beach, shall be

approximately 150 feet in width, shall be located on the seaward side of the shoreline lying in front of and between Land Court Application 1653 and Dewey Way, shown on said map, and run seaward (westerly) from said shoreline, as nearly as practicable as shown on Registered Map No. 4070. The Grantor shall permanently maintain said beach after its construction in the general location and configuration shown on Registered Map No. 4070, to the extent that it is able to control the action of natural forces thereupon, and the adjacent swimming area abutting its seaward (southerly) side, which swimming area is shown on Registered Map No. 4070 crosshatched in green, as a public beach and swimming area so long as and to the extent that appropriations are and may from time to time be available therefor. Grantor shall within six (6) months after completion of performance by Grantee under covenants C 2 and C 3 hereof, construct that part of the said Crescent Beach as is shown on Registered Map No. 4070 crosshatched in black and adjacent swimming area.

2. Grantor shall subject to the availability of funds fill the area, marked "Recreation Area" and bordered in pink on Registered Map No. 4070, lying between the above-mentioned Crescent Beach and the southerly side of the Ala Moana Yacht Harbor, with the exception of the lagoon abutments, hereinafter described, within the recreation area, to an elevation not exceeding 7.0 feet above mean lower low water, (+7.0 M.L.L.W.). Except for the portion thereof marked "Proposed Roadway" and shown on Registered Map No. 4070, said filled area shall be used as and for a recreation area, subject to the covenants hereinbelow mentioned.

3. Grantor shall not construct or erect nor permit the construction or erection of any building or structure

exceeding elevation 29 feet above the level of mean lower low water (+29.0 M.L.L.W.) on that portion of the recreation area marked "Buildings Area" and crosshatched with brown lines on Registered Map No. 4070, lying westerly of a line across said recreation area parallel to and 1000 feet westerly from course numbered 4 of the description of Parcel 2 hereinabove, which line is marked "Division Line" and shown on Registered Map No. 4070, and any building or structures erected thereon shall be restricted to yacht clubs, swimming clubs, bath houses, sea-food restaurants and outbuildings incidental thereto and such buildings and structures of a like nature as will contribute to the use of said area as a recreation area. No hotels or apartment houses shall be built nor be permitted to be built thereon.

4. Grantor shall not construct or erect nor permit the construction or erection of any building on that portion of said recreation area, marked "No Buildings Area" on Registered Map No. 4070, lying between the Division Line referred to in the preceding paragraph, the lagoon hereinafter described Crescent Beach, and the southerly side of Ala Moana Yacht Harbor, nor in the area covered by said lagoon, whether or not the same may be filled at some subsequent date.

5. Grantor shall construct, within sixty (60) days of the commencement by the Grantee of the construction of the lagoon and lagoon abutments hereinafter mentioned, and maintain a culvert connecting the sea and the lagoon hereinafter described, with not less than two separated outlets from said culvert in the lagoon, and one or more culverts connecting either or both of those portions of the Ala Moana Yacht Harbor marked "Water Area A" and "Water Area B" and crosshatched in orange on Registered Map No. 4070 and the lagoon hereinafter

described, with not less than two separated inlets to said culvert or culverts in the lagoon, for the purpose of permitting adequate water circulation through said lagoon.

6. Grantor shall permit Grantee to maintain said lagoon and culverts and any beach within and around the perimeter of said lagoon to the extent that the same are located upon land owned by the Grantor.

7. Grantor shall, within three (3) months after the completion by the Grantee of the lagoon and lagoon abutments hereinafter mentioned, construct a sand beach not less than 75 feet in width (save where the same abuts the Proposed Roadway shown on said Registered Map No. 4070 in which segment said beach may be narrower) contiguous to and around the exterior of the perimeter of the lagoon hereinafter described in approximately the manner shown for said beach, marked "Lagoon Beach" and colored in blue on said Registered Map No. 4070, and shall cover the floor of said lagoon with sand for a width of not less than 75 feet contiguous to and around the interior of the perimeter of said lagoon.

8. Grantor shall, within two (2) weeks of the date hereof or the execution of a similar indenture and deed by the owners of Lot B, Land Court Application No. 1549 (whichever date is later), furnish the Grantee final engineering plans and specifications for the dredging and construction of the lagoon and lagoon abutments to be dredged and constructed by the Grantee, hereinafter mentioned.

9. Grantor shall permit Grantee to install and maintain electric power lines under lands of the Grantor in the vicinity of said lagoon in locations to be mutually agreed upon for the purpose of furnishing electric power for the pumps to be maintained by Grantee, as hereinafter provided.

C. Grantee, for itself, its successors and assigns, hereby covenants and agrees with Grantor as follows, these covenants to run with the land described as Parcel 2, hereinabove:

1. Grantee consents to the construction of said Crescent Beach, recreation area, lagoon and lagoon beach, hereinabove or hereinafter mentioned. Grantee also consents to the demolition and removal of the pier shown and marked "Pier" on Registered Map No. 4070, in the filling and construction of said Crescent Beach.

2. Grantee shall within six (6) months after the Grantor has furnished it with final engineering plans and specifications therefor dredge and construct a lagoon and lagoon abutments in accordance with said plans and specifications. The lagoon shall be dredged to a depth of not less than 7.7 feet (-7.7 M.L.L.W.) and not more than 12 feet (-12.0 M.L.L.W.), and shall be in the approximate location and configuration shown on the attached map as "Lagoon" and colored in green thereon. Said lagoon shall be of a maximum length, in an easterly-westerly direction, of 650 feet and a maximum width, in a northwesterly-southeasterly direction, of 450 feet. The perimeter of said lagoon, as shown on said Registered Map No. 4070 except along the northwesterly segment of the same near the proposed roadway, represents the mean low water mark of the same. The abutments around the exterior perimeter of said lagoon to be constructed by the Grantee shall be composed of fill evenly sloped from the perimeter of said lagoon to a level of not more than 6 feet above mean lower low water (+6.0 M.L.L.W.) at a distance of not more than 75 feet from said perimeter (or at the southerly line of the proposed roadway where the same is closer than 75 feet to said



perimeter) and thence at the same level for an additional distance of 50 feet (except to the extent that the full additional distance of 50 feet cannot be obtained within the limits imposed by the southerly line of the proposed roadway and the southerly courses, numbered 13 through 15, of the above description of Parcel 2).

3. Grantee shall, within the period mentioned next above, fill the area described in Parcel 2 hereinabove to the approximate grade of the Grantee's properties adjoining it on the easterly and southerly sides of the same, save within the area thereof to be covered by a portion of the lagoon beach, where the grade shall slope to mean low water mark of the lagoon. Any material dredged in constructing said lagoon in excess of that necessary for constructing the lagoon abutments may be used by Grantee for the purpose of filling Parcel 2 and for the purpose of filling Parcel 1 if permitted by the owners thereof.

4. The Grantee, within one (1) month after completion of performance by Grantor under covenants B 5 and B 7 hereof, shall install and thereafter, subject only to the provisions of paragraph D 1, hereinbelow, shall perpetually operate and maintain necessary pumps and valves, to be situated on the property of the Grantor in locations mutually agreed upon, to provide circulation of water in said lagoon adequate to keep the same clean and sanitary at all times.

D. It is mutually covenanted and agreed by the Grantor and Grantee, that:

1. In the event that satisfactory maintenance of the lagoon proves to be physically impracticable by reason of excessive costs or inability to maintain proper sanitary conditions therein the foregoing covenants numbered B 5, B 6, and C 4 shall be terminated and the Grantor and Grantee

shall have no further obligation with respect thereto.

In such event, the Grantor shall, however,

- (a) Fill the lagoon and lagoon beach to the grade of the surrounding properties. The lagoon shall then become a part of the "No Buildings" portion of the recreation area, and the easement hereinabove granted for access to the lagoon shall become an easement for access to said recreation area.
- (b) Convey to the Grantee, its successors and assigns a non-exclusive easement for foot passage 20 feet wide from the junction of courses numbered 7 and 8 of the description of Parcel 2, hereinabove described, along, contiguous to and on the westerly side of courses numbered 1 to 7, inclusive, of said description of Parcel 2, hereinabove described, for access to Crescent Beach and the sea; provided, however, that said easement shall not include the right to erect or maintain any structure over or upon or to make any excavation in the area covered by said easement.

2. That certain agreement known as the Waikiki Agreement entered into on October 19, 1928, between Grantor and various property owners, including Grantee's predecessors in title, said agreement being recorded in the Bureau of Conveyances of the Territory of Hawaii in Book 1047, Pages 176-202, and not on Transfer Certificate of Title Nos. 58110 and 61396 issued to the Grantee, is hereby and herewith terminated as between the Grantor and Grantee.

3. Grantor's obligation to perform those covenants under B, above, as to which a time limit for performance is stated shall be subject to its ability to perform the same

with funds currently available therefor, to wit, the sum of One Hundred Forty Thousand Dollars (\$140,000.00).

And in consideration of the foregoing conveyance by and covenants of the Grantor, the Grantee hereby gives, grants, bargains, sells, conveys, releases and relinquishes unto Grantor any and all littoral rights appurtenant to the following shoreline properties of the Grantee, bordering on the land described as Parcel 2 above and upon a portion of Crescent Beach

1. Any and all littoral rights appurtenant to Lot 85, area 344,453 square feet, as shown on Map 3 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 314 of John Fna Estate Trustees, being all of the land described in Transfer Certificate of Title No. 58,110 issued to the Grantee.

2. Any and all littoral rights appurtenant to Lot 3, area 82,473 square feet, as shown on Map 2 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 264 of Frances Tasmania Bickerton, being a portion of the land described in Transfer Certificate of Title No. 61,396 issued to the Grantee.

3. Any and all littoral rights appurtenant to that certain parcel of land being all of the land registered in Land Court Application No. 624 of Sophie Cressaty, area 79,596 square feet, as shown on Map 2 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with said Land Court Application, being a portion of the land described in Transfer Certificate of Title No. 61,396, issued to the Grantee.

4. Any and all littoral rights appurtenant to that certain parcel of land being all of the land registered in Land Court Application No. 1653 of Associated Hotels (Hawaii) Limited, area 23,309 square feet, as shown on Map 1 filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with said Land Court Application, being a portion of the land described in Transfer Certificate of Title No. 61,396 issued to the Grantee.

Excepting and reserving, however, from the conveyance of any and all littoral rights under items 2, 3 and 4 above, a perpetual easement for access across the makai (westerly) boundaries of the lands described therein for access to Crescent Beach and the sea; but without including as part of said easement the right to erect or maintain any structure over or upon or to make any excavation in said Crescent Beach abutting said makai boundaries or the sea; said easement being the same easement hereinabove granted by the Grantor to the Grantee.

TO HAVE AND TO HOLD the same together with all rights and privileges belonging or appertaining thereto unto the Grantor, its successors and assigns, forever.

And Grantee for itself, its successors and assigns does hereby remise, release and forever discharge Grantor, its successors and assigns of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature to, against or in connection with the property of Grantee, hereinabove described, the littoral rights of which are hereinabove conveyed by the Grantee to the Grantor, heretofore claimed or existing, in law or equity, which the Grantee has had by reason of any matter, cause or

thing whatsoever having been done or omitted to be done by the Grantor.

IN WITNESS WHEREOF, the TERRITORY OF HAWAII has caused these presents to be duly executed by Marguerite K. Ashford, its Commissioner of Public Lands, and countersigned by Samuel Wilder King, Governor of Hawaii, A. D. Castro, Chairman, Board of Public Lands of the Territory of Hawaii, and Ben E. Hutter, Chairman, Board of Harbor Commissioners, pursuant to the authority so to do in them vested by the aforesaid Public Law 199, dated August 1, 1955, Chapter 441, 84th Congress, First Session, and all other laws enabling them so to do, and KAISER COMMUNITY HOMES has caused these presents to be executed and its corporate seal to be hereunto affixed by its proper officer in that behalf duly authorized, on the day and year first above written.

TERRITORY OF HAWAII

By Marguerite K. Ashford  
Commissioner of Public Lands

Grantor

KAISER COMMUNITY HOMES

By Henry Kaiser  
Its Chairman of the Board

Grantee

COUNTERSIGNED:

Samuel Wilder King  
Governor, Territory of Hawaii

A. D. Castro  
Chairman, Board of Public Lands

Ben E. Hutter  
Chairman, Board of Harbor Commissioners

APPROVED AS TO FORM

Clinton R. Ashford  
Special Counsel to the Commissioner of Public Lands

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS:

On this 28th day of September, 1955, before me personally appeared MARGUERITE K. ASHFORD, COMMISSIONER OF PUBLIC LANDS, to me known to be the person who executed the foregoing instrument and acknowledged to me that she executed the same as her free act and deed as COMMISSIONER OF PUBLIC LANDS of the Territory of Hawaii and that she executed the same on behalf of the Territory of Hawaii.

Peggie R. Spencer  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

My commission expires 1-25-57

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS:

On this 22nd day of September, 1955, before me appeared HENRY J. KAISER to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Board of KAISER COMMUNITY HOMES and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said HENRY J. KAISER acknowledged said instrument to be the free act and deed of said corporation.

George K. H. Lee  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

My commission expires 8/1/59

CONSENT AND PARTIAL RELEASE BY MORTGAGEES

KNOW ALL MEN BY THESE PRESENTS:

That we, JEROME ZUCKER, husband of Byung Ok Zucker, of Honolulu, City and County of Honolulu, Territory of Hawaii, and LILLIAN ZUCKER and ROSE ZUCKER, both unmarried, of New York City, New York, the mortgagees of:

(1) Lot 3, area 82,478 square feet, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 264 of Francis Tasmania Bickerton; and

(2) An area of 79,596 square feet, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 824 of Sophie Gressaty; and

(3) An area of 83,309 square feet, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 1653 of Associated Hotels (Hawaii), Limited;

Being all of the land described in Transfer Certificate of Title No. 61,396 issued to Kaiser Community Homes, the Grantee named in the attached and foregoing Indenture and Deed, under that certain Mortgage dated June 6, 1955, filed in said Office of the Assistant Registrar as Document No. 175,340 and noted on said Transfer Certificate of Title No. 61,396, for consideration received, do hereby remise, release and discharge from the lien of said

mortgage any and all littoral rights appurtenant to the properties described in said mortgage, and any accretion thereto, and do hereby consent to the execution of the attached and foregoing Indenture and Deed; provided, however, that this partial release and consent shall not in any wise affect the right, title and interest held by them in and to the remainder of the property described in said mortgage nor authorize nor be deemed to authorize any other or further conveyance of the same, or any part thereof, without the release thereof and consent thereto by the Mortgagees.

IN WITNESS WHEREOF, the Mortgagees have hereunto set their hands this 30 day of September, 1955.

JEROME ZUCKER  
LILLIAN ZUCKER  
ROSE ZUCKER

By J. Russell Cades  
J. Russell Cades  
Their Attorney in Fact

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS:

On this 30th day of September, 1955, before me personally appeared J. RUSSELL CADES, to me personally known, who being by me duly sworn, did say that he is the Attorney in Fact for JEROME ZUCKER, LILLIAN ZUCKER and ROSE ZUCKER, duly appointed under three Powers of Attorney dated March 3, 1953, May 9, 1955 and May 9, 1955, respectively, filed in the office of the Assistant Registrar of the Land Court of the Territory of Hawaii as Documents Nos. 179416, 175335 and 175334, respectively, which Powers of Attorney are now in full force and effect; that the foregoing instrument was executed by said J. RUSSELL CADES in the names and on behalf of JEROME ZUCKER, LILLIAN ZUCKER and ROSE ZUCKER as their Attorney in Fact, and he acknowledged that he executed the same as the free act and deed of said JEROME ZUCKER, LILLIAN ZUCKER and ROSE ZUCKER.

Frieda H. Robert  
Notary public, First Judicial  
Circuit, Territory of Hawaii

My commission expires 6-30-57



CONSENT AND PARTIAL RELEASE BY MORTGAGEE

KNOW ALL MEN BY THESE PRESENTS:

That OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA, a California corporation duly licensed to do business in the Territory of Hawaii, whose Honolulu address is Beretania and Piikoi Streets, Honolulu, City and County of Honolulu, Territory of Hawaii, the mortgagee of Lot 85, area 344,453 square feet, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 314, being all of the land described in Transfer Certificate of Title No. 58,110 issued to Kaiser Community Homes, the Grantee named in the attached and foregoing Indenture and Deed, under that certain Mortgage dated May 24, 1954, and that certain Correction Mortgage dated June 22, 1954, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii as Documents Nos. 161,494 and 162,837, respectively, and noted on said Transfer Certificate of Title No. 58,110, for consideration received, does hereby remise, release and discharge from the lien of said Mortgage and Correction Mortgage any and all littoral rights appurtenant to said Lot 85 and any accretion thereto and does hereby consent to the execution of the attached and foregoing Indenture and Deed; provided, however, that this partial release and consent shall not, in any wise, affect the right, title, and interest held by it in and to the remainder of the property described in said Mortgage and Correction Mortgage nor authorize nor be deemed to authorize any other or further conveyance of the same, or any part thereof, without the release thereof and consent thereto by the Mortgagee.



IN WITNESS WHEREOF, the Mortgagee has caused these presents to be executed by its proper officers thereunto duly authorized this 3rd day of October, 1955.

OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA, a California Corporation

By [Signature]  
A. M. Burke Its Vice President

By [Signature]  
Thomas S. Hession Its Assistant Secretary

STATE OF CALIFORNIA )  
 ) SS:  
COUNTY OF LOS ANGELES )

On this 3rd day of October, 1955, before me appeared A. M. Burke and Thomas S. Hession, to me personally known, who, being by me duly sworn did say that they are the Vice President and Assistant Secretary, respectively, of OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA, a California corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said A. M. Burke and Thomas S. Hession

STATE OF CALIFORNIA } ss.  
COUNTY OF LOS ANGELES }

(FOREIGN)

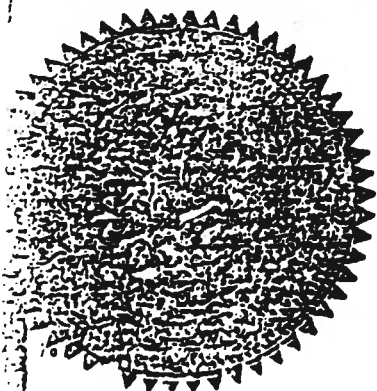
I, HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, which

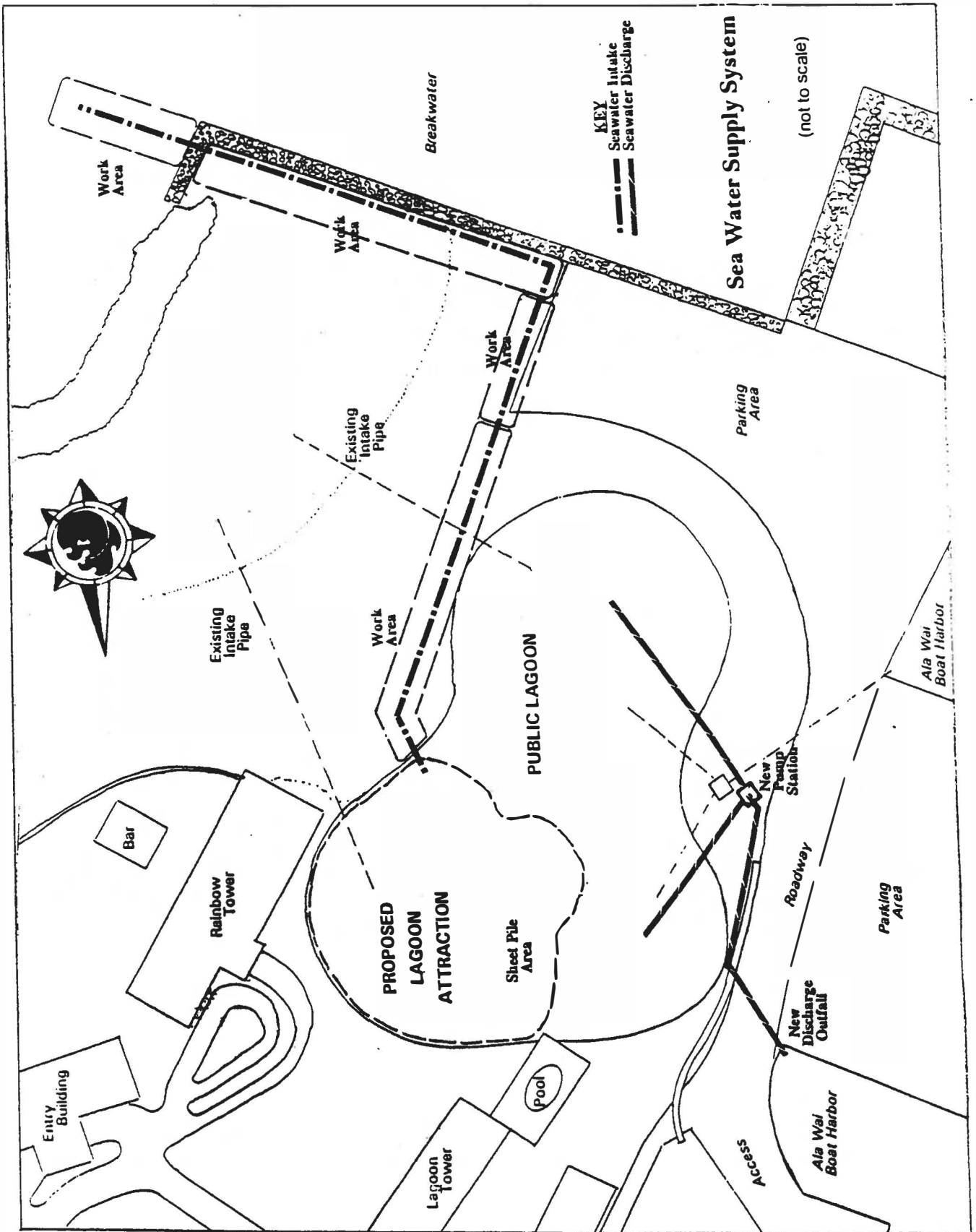
Court is a Court of Record, having by law a seal do hereby certify that [Signature]

whose name is subscribed in the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public in and for Los Angeles County, duly commissioned and sworn and residing in said County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments of writing to be recorded in said State, to take depositions and affidavits, and to administer oaths and affirmations, and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk; I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature, and further that the annexed instrument is executed and acknowledged according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles.

this 3 day of Oct - 1955  
[Signature]  
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles





STRUCTURE  
 PLANNING  
 DESIGN  
 CONSTRUCTION  
 & MANAGEMENT  
 2845 Kaimukohala IV  
 Suite 200  
 Honolulu, Hawaii  
 96819  
 Phone: (808) 841-7415  
 Fax: (808) 841-2004

**SITE PLAN  
 ALTERNATE 1**

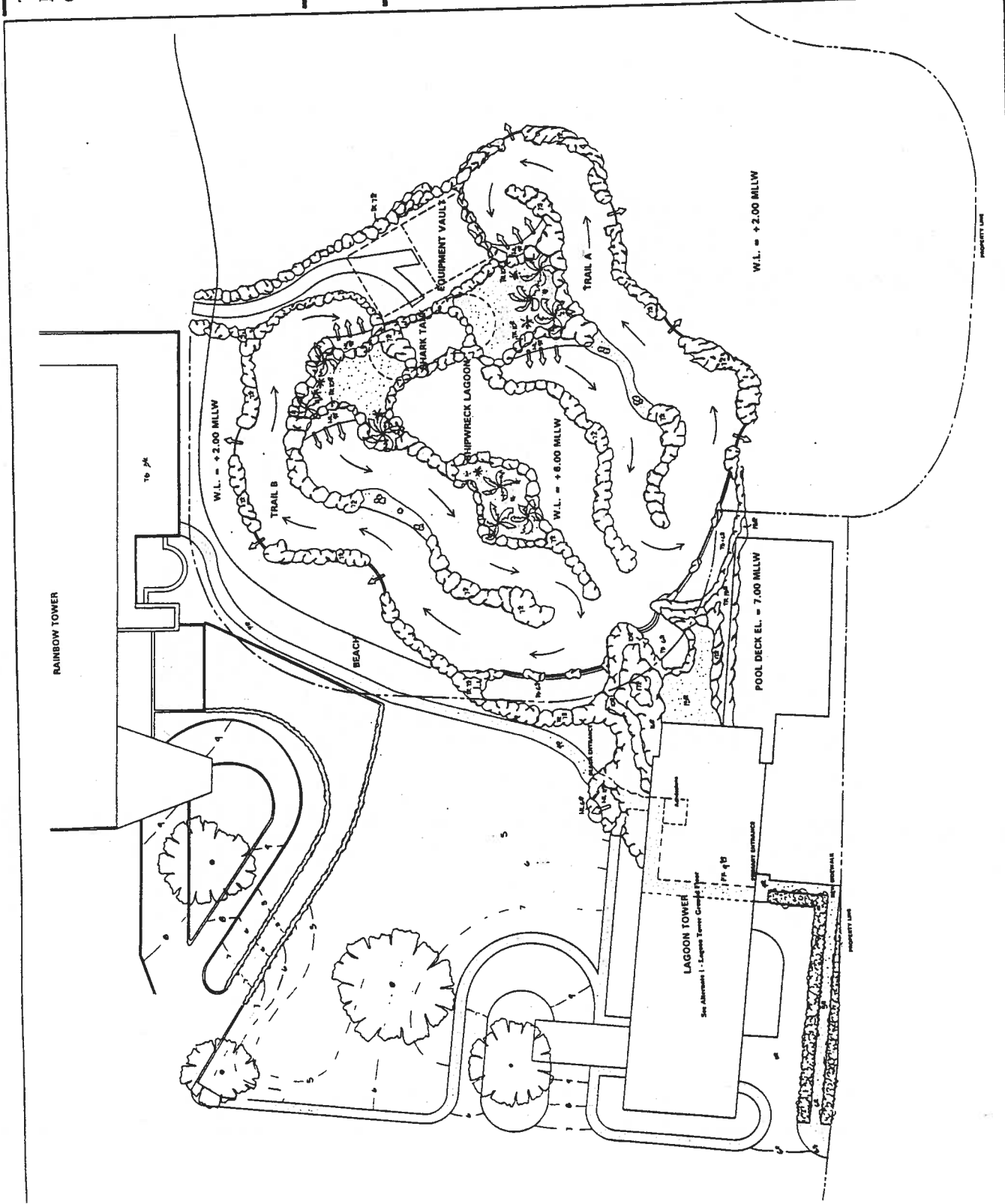
**HILTON  
 LAGOON**

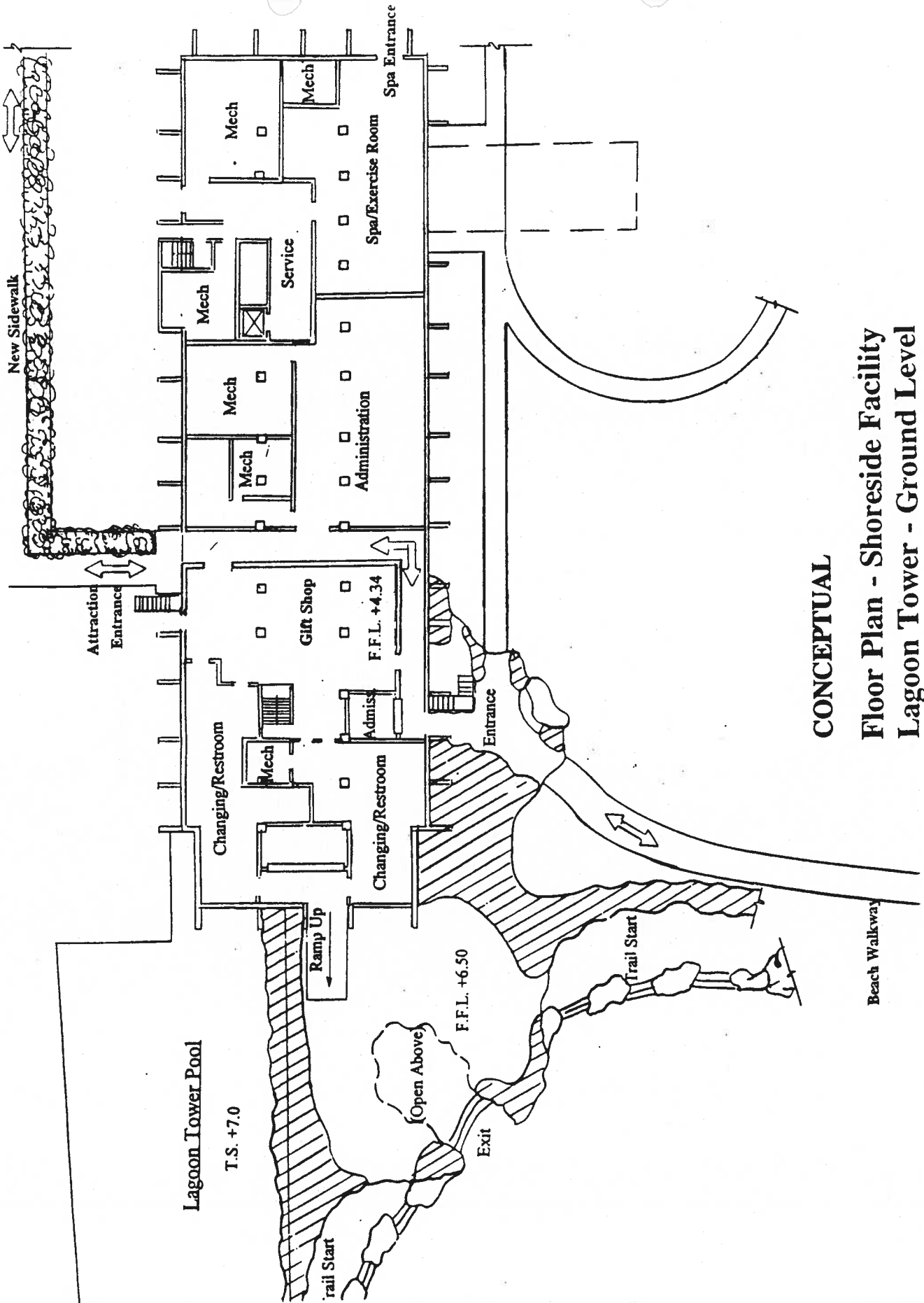
HYDROLOGIC:  
 ▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲

DATE: 11/10/99  
 SCALE: 1" = 30'  
 DRAWN BY: G. GAY  
 CHECKED BY: [Signature]  
 SHEET NO. 10

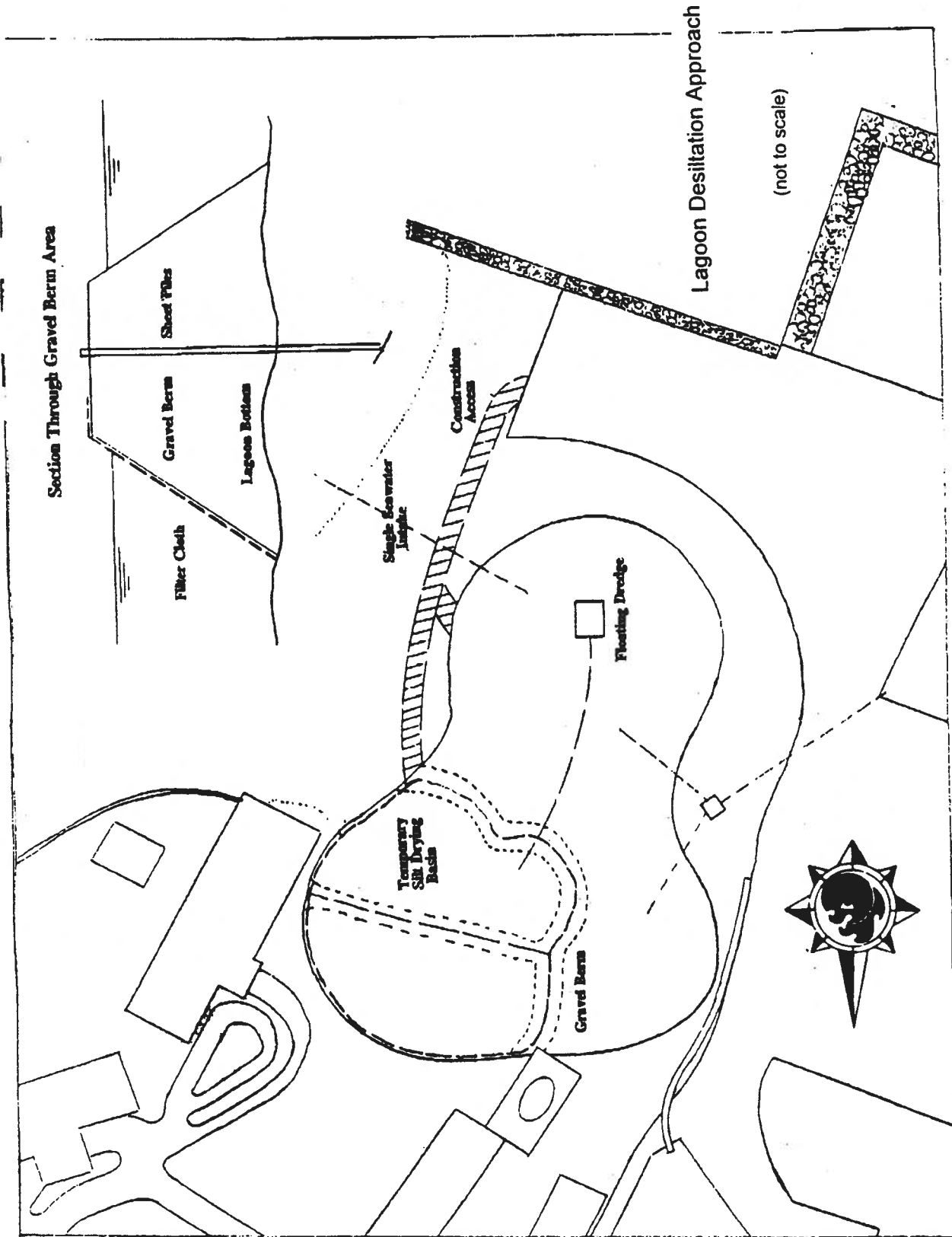


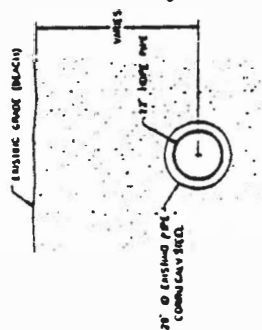
SHEET TITLE:  
 SHEET NUMBER:



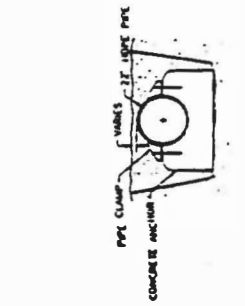


**CONCEPTUAL**  
**Floor Plan - Shoreside Facility**  
**Lagoon Tower - Ground Level**

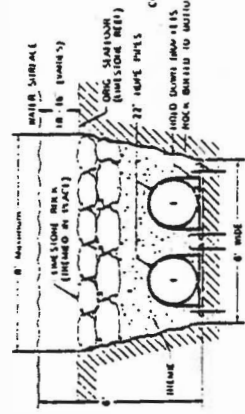




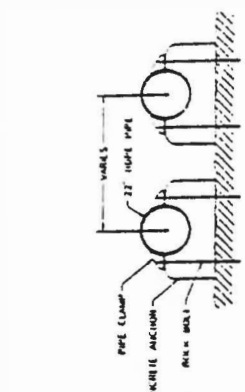
SECTION A-A  
SCALE 1" = 2'



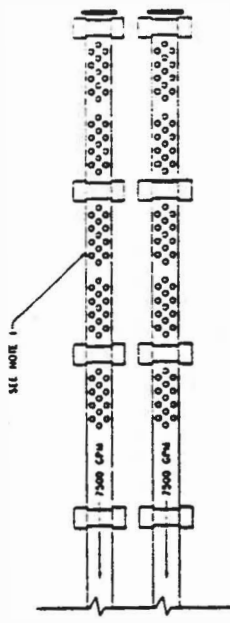
SECTION B-B  
SCALE 1" = 2'



SECTION C-C  
SCALE 1" = 2'



SECTION D-D  
SCALE 1" = 2'



NOTE 1. THE SEAWATER INTAKE WILL BE DESIGNED TO POSE NO DANGER TO SWIMMERS AND SCUBA DIVERS. FLOW VELOCITIES WILL BE KEPT LOW TO PREVENT SWIMMING FROM BEING STUCK ON THE INTAKE. IF THEY ACCIDENTALLY OR PURSUITFULLY COVER THE INTAKE.

DETAIL 1 SEAWATER INTAKE  
SCALE 1" = 4'

THE ENHANCED GROUP		DATE	
HILTON HAWAIIAN LAGOON		DRAWN BY	
SEA WATER INTAKE		CHECKED BY	
PIPE SECTIONS & DETAILS		DATE	
NO. OF SHEETS	1 OF 1	NO. OF SHEETS	1 OF 1
NO. OF SHEETS	1 OF 1	NO. OF SHEETS	1 OF 1
NO. OF SHEETS	1 OF 1	NO. OF SHEETS	1 OF 1

RECEIVED  
DEPT. OF LAND UTILIZATION  
HONOLULU  
**RESOLUTION**

GRANTING A SPECIAL MANAGEMENT AREA USE PERMIT  
AND SHORELINE SETBACK VARIANCE FOR  
HILTON LAGOON AQUATIC RECREATIONAL FACILITY.

WHEREAS, the Department of Land Utilization (DLU) on November 6, 1995, accepted the application of Hilton Hawaiian Village Joint Venture and The EnterOcean Group, Inc., herein referred to as the Applicants, for a Special Management Area Use Permit (SMP) and Shoreline Setback Variance (SV) to construct an aquatic recreational facility and other improvements located at the Duke Kahanamoku Lagoon in Waikiki and identified as Tax Map Keys 2-3-37: 21, 2-6-08: 34 and 2-6-09: 01 (Reference Numbers 95/SMA-016 and 95/SV-005); and

WHEREAS, on December 11, 1995, the DLU held a public hearing which was attended by thirteen people; and

WHEREAS, on December 26, 1995, within ten (10) working days after the close of the public hearing, the DLU, having duly considered all evidence and reports of said public hearing and the review guidelines as established in Sections 25-3.1 and 25-3.2, Revised Ordinances of Honolulu (ROH), Chapter 23, ROH and 205-A Hawaii Revised Statutes (HRS), completed its report and transmitted its findings and recommendation of approval to the Council; and

WHEREAS, the City Council, having received the findings and recommendation of DLU on December 26, 1995, and at its meeting of January 24, 1996, having duly considered all of the findings and reports on the matter, approved the subject application for an SMP and SV with the conditions enumerated below; now, therefore,

**BE/ IT RESOLVED** by the Council of the City and County of Honolulu that an SMP and SV be issued to the Applicants under the following conditions:

- A. Prior to implementation of the project, the Applicants must meet the requirements and obtain approval of all government agencies normally required for such projects.
- B. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls) are encountered, the Applicants shall stop work and contact the State Department of Land and Natural Resources, Historic Preservation Division at 587-0047 immediately. Work in the immediate



## RESOLUTION

area shall be stopped until the Division is able to assess the impact and make further recommendations for mitigative activity.

- C. The project must receive construction permits within two years of the date of this permit. Failure to obtain construction permits within this period shall render this permit null and void, provided that the Director of Land Utilization may extend this period if the Applicants demonstrate good cause.
- D. Construction shall be in general conformity with the plans on file with the Department of Land Utilization and in accordance with the Land Use Ordinance. Any change in the size or nature of the project which has a significant effect on coastal resources addressed in Chapter 25, ROH, Chapter 23, ROH and Chapter 205-A HRS, shall require a new application. Any change which does not have a significant effect on coastal resources shall be considered a minor modification and therefore permitted under this resolution, upon review and approval of the Director of Land Utilization.
- E. The Applicants shall maintain the public portion of the lagoon in a manner that allows recreational use of this feature. Prior to initiating commercial operations within the Hilton Lagoon, the Applicants shall submit a maintenance plan to the State Department of Health and DLU for review and approval. This plan shall address maintenance of water quality and include provisions for maintenance dredging within the public lagoon. This plan may be modified from time to time in order to ensure that the public recreational amenity is adequately maintained.
- F. In order to ensure that water quality within the public portion of the lagoon as well as surrounding nearshore areas can be adequately maintained, the Applicants shall do the following:
  - 1. Provide the seawater intake system which allows fresh seawater to bypass the private portion of the lagoon and flow directly into the public portion of the lagoon;
  - 2. Fund and perform recreational monitoring activities, in accordance with State Department of Health water quality specifications and which meet recreational

## RESOLUTION

standards for marine waters, at the two State monitoring locations in the public portion of the lagoon where such recreational monitoring activities are now being performed, provided that this condition shall not be deemed to preclude any other State or federal agency from requiring the Applicants to fund and perform additional monitoring activities; and

3. Fund and perform all activities necessary to improve the water quality of the Ala Wai Yacht Harbor, as may be required by the State Department of Health or any other State or federal agency in connection with the project.
- G. Prior to obtaining construction permits, the Applicants must provide the DLU with evidence that the project will meet the requirements of Section 7.10 "Flood Hazard District" of the Land Use Ordinance (LUO).
- H. The Applicants shall cease operation of the aquatic recreational facility on a daily basis by 10 p.m.
- I. The Applicants shall submit to the Department of Land Utilization, for review and approval prior to application for any building permits, a plan detailing how the Applicants propose to return the entire Duke Kahanamoku Lagoon to public use in the event the Applicants discontinue operation of the aquatic recreational facility and/or abandon that facility; provided that the plan shall be in accordance with any lease document or land use permit granted by the State of Hawaii to the Applicants for the portion of the Duke Kahanamoku Lagoon in which the aquatic recreational facility is situated.

# RESOLUTION

BE IT FINALLY RESOLVED by the Council of the City and County of Honolulu that the Clerk be and is directed to transmit copies of this resolution to Mr. Patrick T. Onishi, Director of Land Utilization; Mr. Randall Fujiki, Director and Building Superintendent, Building Department; Mr. Michael D. Wilson, Director, State Department of Land and Natural Resources, Historic Preservation Division, P. O. Box 621, Honolulu, Hawaii 96809; and Ms. Hilary Maybaum, Project Manager, AECOS, Inc., 970 N. Kalaheo Avenue, Suite C300, Kailua, Hawaii 96734.

INTRODUCED BY:

John DeSoto (BR)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Councilmembers

DATE OF INTRODUCTION:

January 3, 1996

Honolulu, Hawaii

(OCS/011096/pn)

-4-

## CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

I hereby certify that the foregoing RESOLUTION was adopted by the COUNCIL OF THE CITY AND COUNTY OF HONOLULU on the date and by the vote indicated to the right.

ATTEST:

*Genevieve G. Wong*  
- GENEVIEVE G. WONG  
CITY CLERK

*John DeSoto*  
JOHN DeSOTO  
CHAIR AND PRESIDING OFFICER

Dated 1/24/96

ADOPTED MEETING HELD			
1/24/96			
	AYE	NO	A/E
BAINUM			
FELIX			
HANNEMANN			
HOLMES		X	
KIM			
MANSHO			
MIRIKITANI		X	
YOSHIMURA			
DeSOTO			
	7	2	0

Reference

Report No. Z-21

**Resolution No.**

96-03  
CD1



December 29, 1995

Richard Heaton  
EnterOcean Group  
2045 Kam IV Road  
Suite 200  
Honolulu, HI, 96819

Dear Richard,

I am pleased to hear that the Hilton Lagoon renovation project is proceeding, and that you have kept us abreast of the plans. Dieter Huckestein met with me on several occasions in the past asking my opinion of this project and I always gave him a positive response. The Hilton Lagoon has needed a "make-over" for a long time and your plans for a swim-through experience for visitors is probably the best approach for a viable and cost-effective new operation.

Any facility maintaining live animals will require expert management which is difficult to find in Hawaii -- there are not many people trained both in the maintenance of large water-features as well as the care of delicate tropical marine organisms. Most of the individuals with that kind of training are either employed at the Waikiki Aquarium or at Sea Life Park. Given our proximity to the Hilton Hawaiian Village, some sort of association with the Waikiki Aquarium would seem desirable and perhaps mutually beneficial. I would be happy to discuss options with you to help ensure the success of your animal husbandry operations. We do have certain philosophical and ethical concerns regarding the care and treatment of captive animals as a member of the American Zoo and Aquarium Association, and also as a department of the University of Hawaii. And, please understand that we do not have a large staff and sharing resources may therefore be difficult for us. However, assuming that the technical and philosophical issues are not major, we certainly have the expertise here to ensure the success of the animal husbandry operations.

I look forward to meeting with you during the coming year on this project. Best wishes for the New Year to you and your staff from all of us at the Waikiki Aquarium!

Sincerely yours,

Bruce A. Carlson  
Director

University of Hawaii-Manoa • Waikiki Aquarium • 2777 Kalanikaʻe Avenue • Honolulu, HI 96815  
(808) 923-9741 • FAX: (808) 923-1771

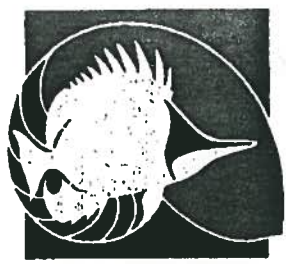
The University of Hawaii is an Equal Opportunity/Affirmative Action Institution



RECEIVED

37 FEB 19 A 9: 08

February 17, 1997



# WAIKIKI AQUARIUM

Peter Schall, Managing Director  
Hilton Hawaiian Village  
& Area General Manager of Hawaii  
Hilton Hawaiian Village  
2005 Kalia Road  
Honolulu, HI, 96815

Mike,  
Kind (c) FYI  
Also - thanks for your  
offer to help us with  
the AML program! Hope  
we get the grants.  
*[Signature]*

Dear Peter,

I just finished reading the article in the Chamber of Commerce "Voice of Business" (Feb. 17 edition) about your Lagoon project with EnterOcean Group. This reminded me that I have been meaning to contact you for quite some time. I have tried to attend the hearings and present testimony on your behalf, although I know that I missed several meetings (including the most recent one) having been out of town. However, I understand that the permit process has proceeded very favorably and that you should be able to proceed with construction in the not-to-distant future - congratulations!

One item that I remember from one of the hearings that I attended concerned the Waikiki Aquarium. After I presented my testimony I recall someone from DLNR mentioning that the Lagoon project was supposed to involve the Waikiki Aquarium as a condition of the permit. I am not certain what our involvement is supposed to entail but perhaps we should get together sometime to discuss this. I have been contacted on a few occasions over the years by Richard Heaton for a list of fishes that might be suitable for the lagoon, and I was involved years ago in some of the original design concepts, but that has been the sum total of our involvement to-date.

My recollection of the DLNR permit condition was to provide some protection for the Waikiki Aquarium and our school & community education programs in the event that our attendance and revenue decline due to competition from the Lagoon project. Our education program is more than 20 years old and is widely recognized for its standards of excellence, but, as a non-profit organization this program does not generate enough revenue to cover salaries and expenses - these costs are borne by admission revenues.

I will be in Palau on business from February 19 - 26 (they too are interested in building an aquarium!). Please let me know if you would like to get together for a discussion sometime after I return.

Sincerely yours,

*[Signature]*

Bruce A. Carlson  
Director

University of Hawaii-Manoa    Waikiki Aquarium    2777 Kalakaua Avenue    Honolulu, HI 96815  
(808) 923-9741    FAX: (808) 923-1771

RECEIVED  
DIVISION OF  
LAND MANAGEMENT  
FEB 20 12 28 PM '97