

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

June 9, 2017

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

PSF No.: 17KD-039

Kauai

Issuance of Right-of-Entry Permit onto Unencumbered State Beach Land to Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club for Beach Cleaning and Maintenance, Stream Mouth Maintenance, Storm Maintenance and Leveling of Recreational Areas; Kalapaki Beach, Kalapaki, Lihue, Kauai, Tax Map Key: (4) 3-5-002:seaward of 002.

APPLICANT:

Essex House Condominium Corporation, a foreign profit corporation dba Kauai Marriott Resort & Beach Club (Applicant).

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kalapaki, Lihue, Kauai identified as Tax Map Key: (4) 3-5-002:seaward of 002., as shown on the attached Exhibit A.

AREA:

1 acre, more or less.

ZONING:

State Land Use District:	Conservation
County of Kauai CZO:	Urban

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Cleaning and Maintenance of Kalapaki Beach and Nawiliwili Stream.

TERM OF RIGHT-OF-ENTRY:

June 1, 2017 to May 31, 2018.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See attached Exhibit B.

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 51, which states the "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

REMARKS:

Applicant has been issued a right-of-entry permit every year since 1999 for beach cleaning and maintenance of Kalapaki Beach fronting the Kauai Marriott Resort and Beach Club. Maintenance includes leveling of the beach volleyball courts that are used by the public and hotel guests, the stream mouth Nawiliwili Stream whenever it is blocked during storm surges or meanders north creating a hazard to beach users. Maintenance of Nawiliwili Stream mouth is necessary since the stream is privately owned.

Applicant has maintained the unencumbered State beach land without cost to the State. Accordingly, staff is recommending the right-of-entry be issued at gratis.

Comments were solicited from:

State Agencies:

DOH	Comments attached (Exhibit C)
DLNR – Historic Preserv.	No response
DLNR – OCCL	No Objections. OCCL recommends that any beach leveling is completed to a depth no greater than one foot and that sand shall not be piled more than one foot above existing grade.
OHA	No response

County Agencies

County Planning	No Objections. The County of Kauai, Planning Department's Sea Grant Agent feels that the overgrowth in the stream contributes to the problem of blockage of the stream mouth and recommends that the overgrowth be removed by hand and not by equipment.
Parks & Recreation	No response
Public Works	No response

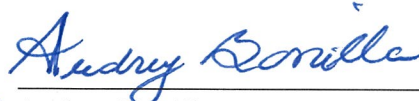
On August 23, 2013, under Item D-2, the Board approved the issuance of the right-of-entry to Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club for the term of October 1, 2013 to September 30, 2014 with two additional one-year periods. No extensions were issued for periods covering October 1, 2015 to October 30, 2016.

Staff is requesting the Board to authorize the Chairperson to approve one year extensions of the Right-of-Entry as necessary at the Chairperson's discretion.

RECOMMENDATION: That the Board

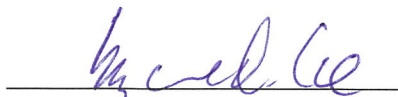
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a right-of-entry permit to Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
  - C. The Chairperson is authorized to issue extensions as required for additional one-year periods at the Chairperson's discretion.

Respectfully Submitted,



 Audrey Bonilla  
Acting Land Agent

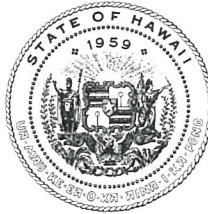
APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson



KAUAI MARRIOTT RESORT and BEACH CLUB  
KALAPAKI BEACH  
TMK: (4) 3-5-002:seaward 002





**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of Right-of-Entry Permit to Essex House Condominium dba Kauai Marriott Resort & Beach Club for Beach Cleaning and Maintenance, Stream Mouth Maintenance, Storm Maintenance and Leveling of Recreational Areas

Project Number: PSF No. 17KD-039

Project Location: Kalapaki Beach, Lihue, Kauai, Tax Map Key: (4) 3-5-002:seaward of: 002.

Project Description: Issuance of Right-of-Entry Permit to Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 51, which states the "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

In the past, permits were issued for similar type of events on the beach in this area, which have resulted in no known significant impacts to the natural and environmental resources in the area. As such staff believes that the proposed event would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

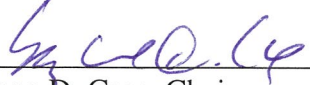
**EXHIBIT B**

Consulted Parties:

DOH  
DLNR – Historic Preservation Division  
DLNR – OCCL  
OHA  
County of Kauai Planning Division  
County of Kauai Parks & Recreation Division  
County of Kauai Public Works Department

Recommendation:

It is anticipated that this request will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson

  
\_\_\_\_\_  
Date

9/25/11  
D-9  
DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
KAUAI DISTRICT HEALTH OFFICE  
3040 UMI STREET  
LIHUE, HAWAII 96766

JANET M. BERREMAN, M.D., M.P.H.  
DISTRICT HEALTH OFFICER

April 26, 2017

Audrey Bonilla, Acting Land Agent  
State of Hawaii  
Department of Land and Natural Resources  
Land Division  
3060 Eiwa Street, Room 208  
Lihue, Hawaii 96766

Dear Ms. Bonilla,

SUBJECT: Request for Issuance of Right-of-Entry for Beach Cleaning and Maintenance, Stream Mouth Maintenance, Storm Maintenance and Leveling of Recreational Areas.

LOCATION: TMK: (4) 3-5-002: seaward of 002

APPLICANT: Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club

Reference No.: **17KD - 039**

We have reviewed the subject proposal and have the following environmental health concern to offer for your consideration at this time.

The Department of Health (DOH), Clean Water Branch (CWB) has reviewed the subject document and offers these comments. Please note that our review is based solely on the information provided in the subject document and its compliance with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at:

<http://health.hawaii.gov/epo/files/2013/05/Clean-Water-Branch-Std-Comments.pdf>

1. Any project and its potential impacts to State waters must meet the following criteria:

**EXHIBIT "C"**



- a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
  - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
  - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
2. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55).

For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for a NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit coverage, you must submit the applicable form ("CWB Individual NPDES Form" or "CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-Permitting Portal website located at: <https://eha-cloud.doh.hawaii.gov/epermit/>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

3. If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch (Tel: 835-4303) regarding their permitting requirements.

Pursuant to Federal Water Pollution Control Act [commonly known as the "Clean Water Act" (CWA)], Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may **result** in any discharge into the navigable waters..." (emphasis added). The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40 of the Code of Federal Regulations, Section 122.2; and Hawaii Administrative Rules (HAR), Chapter 11-54.

4. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
5. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:

- a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source of irrigation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disrupted, storm water cannot be relegated as a waste product of impervious surfaces. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of State waters, like community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bioengineering of drainage ways must be identified in the planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.
  - b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g. minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.
  - c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge groundwater to revitalize natural hydrology, and treat storm water which is to be discharged.
  - d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
  - e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Particular consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.
6. National Pollutant Discharge Elimination System (NPDES) permit coverage is required for pollutant discharges into State surface waters and for certain situations involving storm water (HAR, Chapter 11-55).
- a. Discharges into Class 2 or Class A State waters can be covered under an NPDES general permit only if all of the NPDES general permit requirements are met. Please see the DOH-CWB website (<http://health.hawaii.gov/cwb/>) for the NPDES general permits and instructions to request coverage.
  - b. All other discharges into State surface waters (including discharges from Concentrated Animal Feeding Operations) and discharges into Class 1 or Class AA State waters require an NPDES individual permit. To request NPDES individual permit coverage, please see the DOH-CWB forms website located at: <http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/forms/>



- c. NPDES permit coverage for storm water associated with construction activities is required if your project will result in the disturbance of one (1) acre or more of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. NPDES permit coverage is required before the start of the construction activities.

Land disturbance includes, but is not limited to clearing, grading, grubbing, uprooting of vegetation, demolition (even if leaving foundation slab), staging, stockpiling, excavation into pavement areas which go down to the base course, and storage areas (including areas on the roadway to park equipment if these areas are blocked off from public usage, grassed areas, or bare ground).

7. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
8. Noise will be generated during the construction and demolition phase of this project. The applicable maximum permissible sound levels as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control", shall not be exceeded unless a noise permit is obtained from the Department of Health.
9. Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR, Chapter 11-60.1, "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
10. A copy of the plans, construction schedule and/or written measures that is required to be submitted by the contractor (DUST CONTROL MEASURES/PLANS) should also be sent to the Department of Health for monitoring purposes.
11. The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, Hawaii Administrative Rules (HAR), Chapter 11-58.1, "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

If you have any questions, please visit our website at: <http://health.hawaii.gov/cwb/>, or contact the Engineering Section, CWB, at (808) 586-4309.

Should you have any questions, please call me at 241-3323.

Sincerely,

A handwritten signature in blue ink that reads "Gerald N. Takamura". The signature is written in a cursive style with a long horizontal flourish at the end.

Gerald N. Takamura, Chief  
District Environmental Health Program

DTT