

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

August 10, 2018

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

GL S-5844

Hawai'i

Consent to Mortgage with Estoppel Certificate, General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, and 46

APPLICANT AND REQUEST:

WHR LLC, requesting consent to mortgage from Wells Fargo National Bank Association, Mortgagee, in an amount not to exceed \$50,000,000.

LEGAL REFERENCE:

Chapter 171, HRS, including but not limited to sections 171-6, and -22; terms and conditions of the subject lease.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46, as shown on the attached map labeled Exhibit A.

AREA:

68.926 acres (net area after exclusions), more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Hotel and golf course purposes.

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2071.

ANNUAL RENTAL:

\$580,270.44 minimum base rent, or 2% of gross revenues, whichever is greater, due in semi-annual payments.

USE OF LOAN PROCEEDS:

Lessee WHR LLC (Lessee) has substantially completed its renovations to the Grand Naniloa Hotel Hilo. Lessee desires to refinance its construction loan with a new \$50 million mortgage on the leasehold premises. The loan proceeds will be used in part to pay off the construction loan in the amount of approximately \$18.5 million and an equipment financing loan in the amount of approximately \$2 million. Despite several requests from staff, Lessee has declined to provide details on what it intends to do with the balance of the loan proceeds (approximately \$29.5 million).

BACKGROUND:

Construction Mortgage Consent, Estoppel Certificate and Status of Hotel Renovations

At its meeting of May 22, 2015, under agenda Item D-6, as amended, the Board of Land and Natural Resources (Board) consented to Lessee's mortgage of the leasehold interest in the subject property in the amount of up to \$20,000,000 to finance the renovation of the Grand Naniloa Hotel Hilo, and approved the Board's issuance of an Estoppel Certificate/Forbearance Agreement (Estoppel Certificate) to facilitate the loan from lender/mortgagee Hall Hilo, LLC. The Board amended the staff submittal in part by requiring the completion of the Mauna Kea and Mauna Loa Towers by March 31, 2016, and the Kilauea Tower by December 31, 2016.

On July 29, 2015, Lessee posted Performance and Payment Bond No. 800014335 in the amount of \$11,374,887 for "Hotel renovation, including rooms, common areas, kitchen, deferred maintenance, and golf course improvements", with Hall Hilo, LLC and the State of Hawaii named as additional obligees under the bond.

At its meeting of January 27, 2017, under agenda Item D-3, the Board approved Lessee's request to enter a financing agreement with Access Point Financial, Inc. to facilitate the financing of furniture, fixtures and equipment at the hotel up to a total amount of \$2,000,000. In that submittal, staff apprised the Board that Lessee did not complete the Mauna Kea and Mauna Loa Tower renovations by March 31, 2016, and did not complete the Kilauea Tower renovations by December 31, 2016, but had made significant progress on the renovations.

Specifically, staff reported that while renovations to the lobby area were substantially complete as of March 31, 2016, the lower level lobby area was not substantially complete

until approximately May 5, 2016. The Mauna Kea and the Mauna Loa Tower renovations were not substantially completed until September 2016. Lessee published a notice of completion for the renovation work on August 26 and September 2, 2016. As of January 27, 2017, Lessee had received certificates of occupancy for the hotel lobby, lower level lobby, Crown Room, guest rooms in the Mauna Kea and Mauna Loa Towers, and a number of commercial spaces in the hotel. On November 10, 2016, the hotel had a soft opening as the Grand Naniloa Hotel Hilo - a Double Tree by Hilton. Further, staff relayed Lessee's intention to achieve substantial completion of the restaurant and Kilauea Tower in January or February 2017.

County of Hawaii Notice of Violations

The staff submittal for the Board meeting of January 27, 2017, agenda Item D-3, also explained that Lessee had made considerable investments in the renovations and in curing the County of Hawaii Notice of Violation (NOVs) that had previously been issued for the property. Based on communications with the County of Hawaii Department of Public Works, Building Division, dated December 23, 2016, the County considers the NOVs for the hotel towers, lobby, and restaurant (basically all improvements located makai of Banyan Drive) to be technically resolved.¹ The NOVs that remain unaddressed relate to the golf course on the mauka side of Banyan Drive, including an unpermitted roof attachment to the golf cart storage and electrical distribution for two outlets, and an unpermitted lean-to-roof attachment to the maintenance building.²

Mechanic's Lien Applications

The staff submittal for the meeting of January 27, 2017, agenda Item D-3, also explained that when Lessee published its notice of completion with respect to the hotel renovations, two mechanic's lien applications were filed against Lessee and other entities (including the State) in the Circuit Court of the Third Circuit relating to renovation work performed:

Claimant	Mechanic's Lien No.	Date Filed	Amount
Lincoln Builders LLC	M.L. No. 16-1-0003	10/07/16	\$754,743.00 plus reasonable attorneys' fees and costs, and interest
Clifford Okinaga	M.L. No. 16-1-0004	10/24/16	\$75,501.40 plus reasonable attorneys' fees and costs, and interest

The above lien applications were referred to the Department of the Attorney General (AG) for handling. The AG relates that the State has been dismissed as a party in the Lincoln Builders case. The remaining parties have agreed to a stay of the mechanic's lien

¹ There are still open permits for building, electrical and plumbing work for the hotel renovations, some of which are intended to resolve NOVs. But because the correct permits have been pulled to remedy the NOVs, the County views the NOVs as resolved for its purposes.

² There is a separate NOV from the County Planning Department dated June 18, 2018 regarding a Special Management Area violation that is discussed in the Remarks section below.

action pending mediation. The AG further indicates that the Okinaga case was settled and dismissed with prejudice by stipulation filed October 24, 2016. Accordingly, there is technically no default under the terms of the lease resulting from the lien applications.

Reduction of Improvement Bond

By several letters sent in 2016 and 2017, Lessee requested that the improvement bond in the amount of \$11,374,887 be reduced to \$3,000,000. In support of its request dated September 6, 2017, Lessee explained that the restaurant and Kilauea Tower renovations were substantially complete as of July 2017, and the original bond amount was no longer required. Lessee explained it was waiting for final County of Hawaii approvals to close the applicable permits, receive certificates of occupancy and begin using the areas. Lessee also provided a letter dated July 25, 2017 from its lender, Hall Hilo, LLC, indicating the lender had authorized the bond surety to reduce the bond to \$3,000,000, explaining that there was less than \$3,000,000 in bondable work remaining. Furthermore, Lessee reported that its general contractor secured lien waivers from its subcontractors on the project, thereby reducing the possibility of lien claims being asserted against the project.

On August 11, 2017, the Hawaii District Land Office conducted a site inspection of the restaurant and Kilauea Tower. The inspection report that resulted was provided to the Department's engineering consultant on the hotel renovations, Brown and Caldwell. The consultant stated in an email dated August 14, 2017 that it has no concern with the requested bond reduction, and provided an updated Opinion of Approximate Probable Construction Completion estimating the remaining value of the contracted renovation work at \$2,301,915.39. On August 25, 2017, Lessee published a notice of completion regarding the Kilauea Tower in the Hawaii Tribune-Herald, indicating a second publication date scheduled for September 1, 2017. No new lien applications were filed in response to the published notice of completion.

Based on Lessee's request and staff's substantiation of Lessee's assertions regarding the status of renovations, on September 14, 2017, the Chairperson authorized the reduction of the bond to \$3,000,000.

REMARKS:

Lessee now desires to refinance the original construction loan in the amount of approximately \$18.5 million and the equipment financing loan in the amount of approximately \$2 million with a new loan in the amount of \$50 million. Despite several requests from staff, Lessee has declined to provide details on what it intends to do with the balance of the loan proceeds (approximately \$29.5 million). Although lessees seeking mortgage consents typically explain what they intend to do with the loan proceeds, there is no legal requirement in the mortgage consent statute that they do so. The statute provides:

§171-22 Consent to mortgage. Whenever under this chapter or under any lease, license, permit, or other instrument issued by the board of land and natural resources, consent of the State is required as a condition

precedent to the mortgage of, or the creation of a security interest in public land, the chairperson of the board may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under this chapter to lease, own, or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, the Department of Veterans Affairs, the Small Business Administration, the United States Department of Agriculture, or any other federal agency and their respective successors and assigns, or any lending institution authorized to do business in the State or elsewhere in the United States; provided that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

Notwithstanding any provision in this chapter to the contrary, in leases or sales for residential purposes, the board may waive or modify any restrictions of the lease or sale or any restrictions contained in any such lease or sale if the waiver or modification is necessary to enable any of the aforementioned federal agencies or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the land or the leasehold interest; provided any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration or the United States Department of Agriculture. [L 1962, c 32, pt of §2; am L 1963, c 189, §1; am L 1965, c 239, §13; Supp, §103A-22; HRS §171-22; am L 1985, c 50, §1; ree L 1986, c 252, §1; am L 1997, c 258, §5; am L 2017, c 12, §1]

Because there is no statutory requirement that Lessee explain its intended use of the approximately \$29.5 million in loan proceeds, staff is bringing the mortgage request to the Board for consideration. However, staff has suggested that Lessee be prepared to answer any questions the Board members may have on the use of the loan proceeds.

Lessee reports that the hotel renovations are now all substantially completed. Staff has confirmed that certificates of occupancy for the Kilauea Tower and the restaurant space in the Mauna Kea Tower known as "Hula Hulas" were issued on August 21, 2017 and September 22, 2017, respectively. Staff conducted an inspection of the Kilauea Tower and restaurant on August 1, 2018. A copy of the inspection report is attached as Exhibit B.

The Lessee is current with the lease rent, insurance and performance bond. As discussed above, there are several outstanding violations with the County of Hawaii Department of

Public Works, Building Division, from the previous lessee that have been either corrected or are currently being resolved to the satisfaction of the County building inspectors and the State.

Additionally, on June 18, 2018, the County Planning Department issued an NOV regarding construction of a deck along the shoreline and development without a Special Management Area (SMA) assessment. See Exhibit C attached. The NOV alleges that a newly constructed composite material type deck with stairs was observed near the shoreline of the premises on May 25, 2018. The NOV ordered the removal of the deck and restoration of the premises by July 17, 2018. The NOV also imposed a \$2,000 fine.

On July 17, 2018, Lessee filed an appeal of the NOV, a copy of which is attached as Exhibit D. In its appeal, Lessee explains that deck was intended as a temporary structure for a July 4, 2018 party on the hotel grounds that was open to the public. Lessee adds that the offending deck or platform has been removed as of the date of the appeal, and asks the County of Hawaii Board of Appeals to waive the fine. Lessee's appeal is pending.

An estoppel certificate typically includes a representation by the lessor that the lessee is not in default under the lease. In the present case, the estoppel certificate will need to note the unpaid claim of Lincoln Builders LLC in the amount of \$754,743.00 plus reasonable attorneys' fees and costs, and interest, as well as any uncured County of Hawaii NOV's.

RECOMMENDATION: That the Board:

1. Consent to the mortgage between WHR LLC, Mortgagor, and Wells Fargo National Bank Association, Mortgagee, subject to the following:
 - a. The loan proceeds shall be used in part to refinance the original construction loan in the amount of approximately \$18.5 million and the equipment financing loan in the amount of approximately \$2 million. The Lessee shall maintain records of the refinancing of these loans that may be inspected by the Department;
 - b. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Consent to the issuance of an estoppel certificate under the terms and conditions cited above, and further subject to the following:
 - a. The standard terms and conditions of the most current estoppel certificate form, as may be amended from time to time;

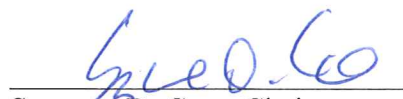
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

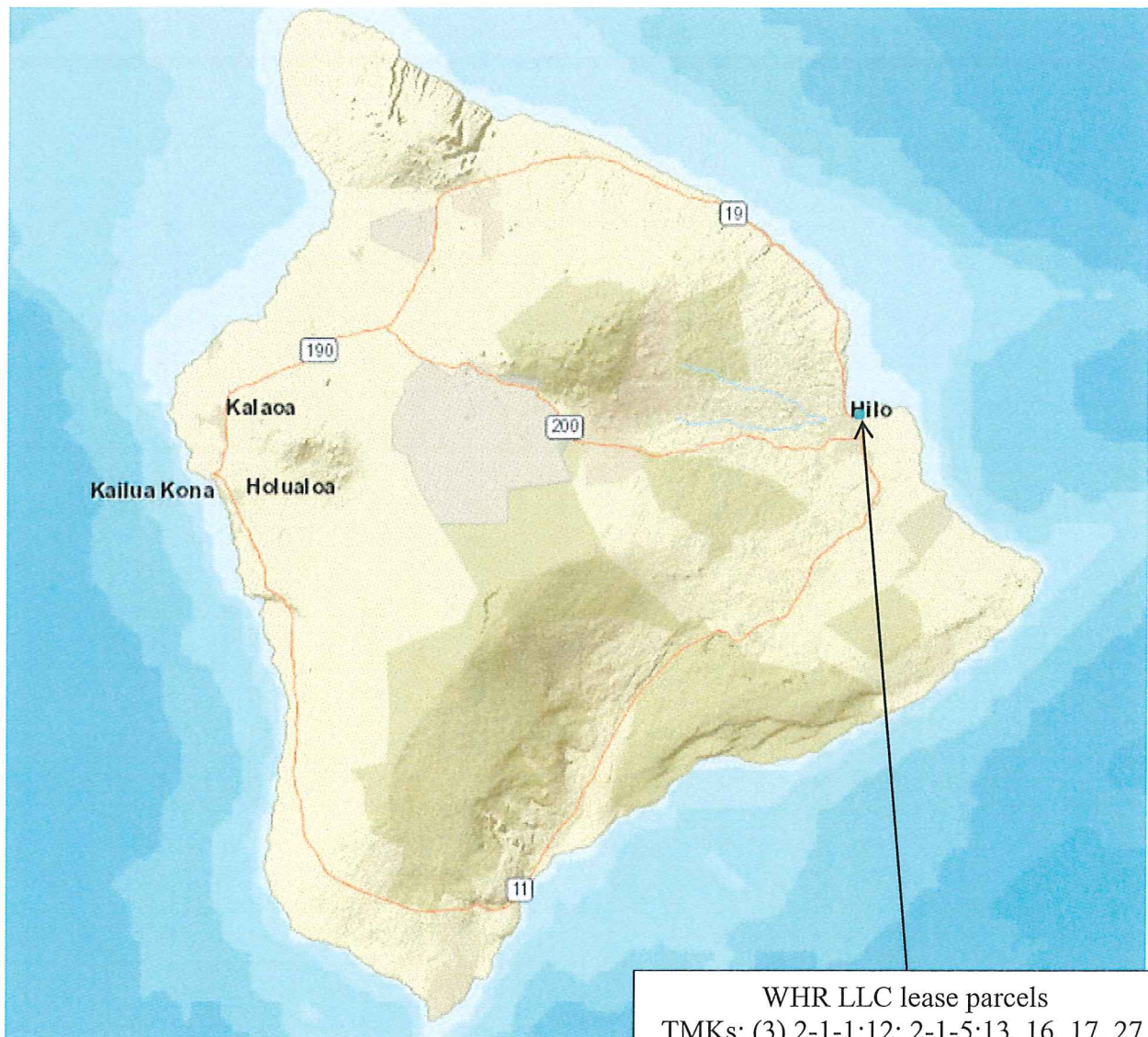


Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

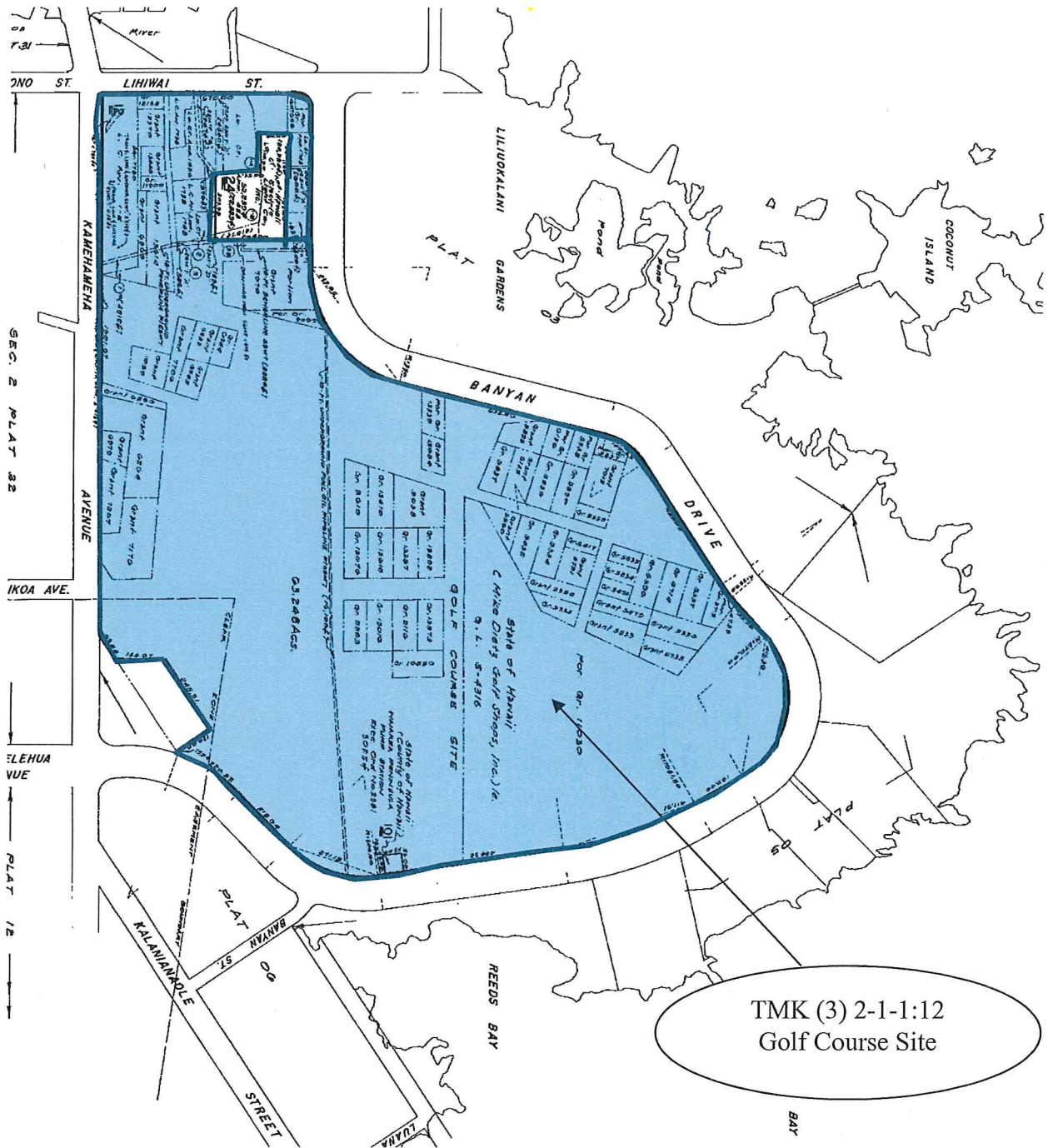


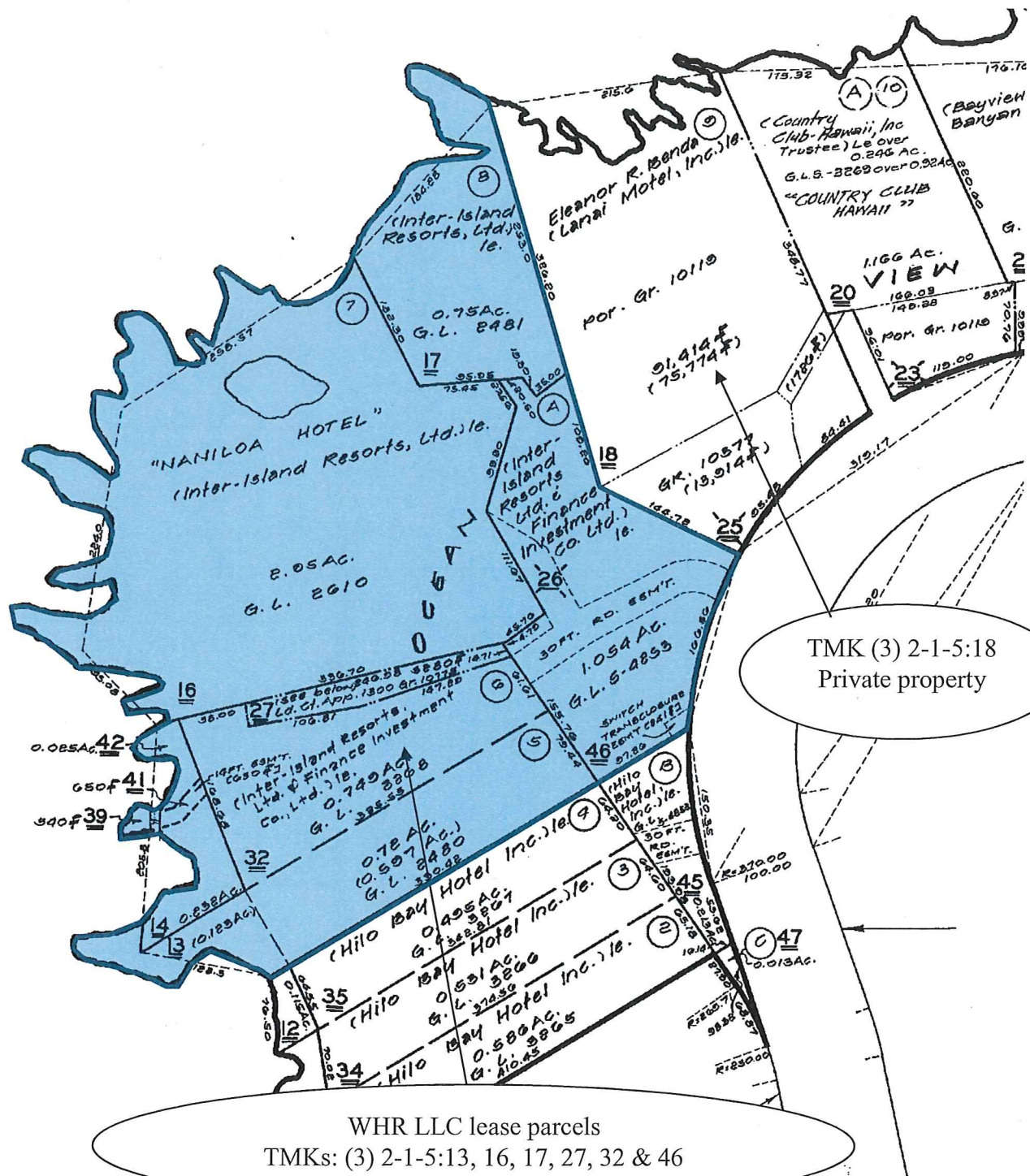
Suzanne D. Case, Chairperson



WHR LLC lease parcels
TMKs: (3) 2-1-1:12; 2-1-5:13, 16, 17, 27,
32 & 46

EXHIBIT A





INSPECTION REPORT (Supplemental)
Commercial/Industrial/Resort/Other Business

General Information

Document Number: GLS 5844 or RPS _____ Character of Use Hotel & Hotel Related Uses
Inspection Date: August 1, 2018 Inspection Time: 1:30 p.m. Land Agent: Gordon Heit

TENANT INFORMATION

Name: WHR LLC. Home Phone: _____
Address: 93 Banyan Drive Business Phone: _____
Hilo, Hawaii 96720 Fax: _____
Contact Person: Ed Bushor / Stuart Miller Contact Phone: 808-268-1903
808-365-2665 (cell)

SITE INFORMATION

TMK: 3rd/2-1-1:12, 2-1-05:13,16,17,27,32,46 Area: 70.125 acres
Site Address: Waiakea, South Hilo, Hawaii

FISCAL INFORMATION

ITEM	N/A	CURRENT= COMPLIANCE	DEFAULT = NON-COMPLIANCE	COMMENTS
Rent			X	\$580,270.44 annual rent (\$290,135.22 due 8/01/18)
Liability Insurance		X		\$2,000,000 aggregate \$1,000,000 per occurrence
Fire Insurance		X		\$37,322,059 aggregate
Bond		X		Performance Bond - \$1,160,540.88 Improvement Bond \$3,000,000 (phase II & III)
Mortgage		X		\$20,000,000

FIELD INSPECTION RESULTS (refer to Field Inspection Worksheet)

ITEM	N/A	COMPLIANCE	NONCOMPLIANCE	COMMENTS
Subleases		X		
Improvements		X		Compliant with respect to hotel improvements
Premises		X		Landscape areas are well kept
Character of Use		X		Hotel / Resort use Golf course and related uses

Field Inspection Worksheet
Commercial/Industrial/Resort/Other Business

File Review

LICENSES/PERMITS/CONSENTS

ITEM	DLNR Approval Docs in File			COMMENTS/NOTES/LISTS
	N/A	YES	NO	
Subletting		X		attach copy of list or map if applicable
Improvement Construction Buildings		X		note deadlines for % completion Projects have all been completed.
Improvement Construction Other structures/misc.	X			note deadlines for % completion 9-hole golf course in good condition. Structures and parking lot are in need of repair. To date, no plans have been submitted for improvements to the clubhouse or driving range.

Field Inspection

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
SUBLEASES				Consent to Sublease(s) Hawaii Performance Partners, LLC dba KapohoKine Adventures Neighborhood GP, LLC (PV system)
Consent approved		X		
Use adheres to lease purpose		X		
IMPROVEMENTS				
<u>Buildings/Residences:</u> roof		X		
paint		X		
exterior		X		
interior		X		
<u>Structures:</u> roads				
walkways				
fencelines				
others				
PREMISES				
clean, sanitary, orderly				
appropriate storage/use of hazardous materials				

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
CHARACTER OF USE adheres to lease purpose		X		To be used solely for hotel and hotel-related uses (including retail, restaurant, banquet, commercial office, and spa facilities), but excluding condominium or hotel condominium uses. The golf course parcel TMK (3) 2-1-01:12 shall be used for golf course and golf course related uses (including clubhouse, restaurant and bar, cart barn and driving range) and other recreational and parking uses..
Other: Building plans and permits				On file

There are 3 main towers on property used for hotel occupancy. Mauna Loa Tower (12 story), Mauna Kea Tower (10 story) and Kilauea Tower (6 story).

Supplemental inspection. Construction update – 8/1/18.

All construction work has been completed within the hotel property.

- Work is finished on the Kilauea Tower. According to Stu Miller, all rooms are furnished and ready for occupancy. Certificate of Occupancy from County Building Division has been provided.
- The restaurant is fully functional and open for service. Certificate of Occupancy from County Building Division has been provided.



POOLSIDE ENTRANCE TO RESTAURANT



RESTAURANT BAR



MEETING/BANQUET ROOM



DINING ROOM



KITCHEN AREA



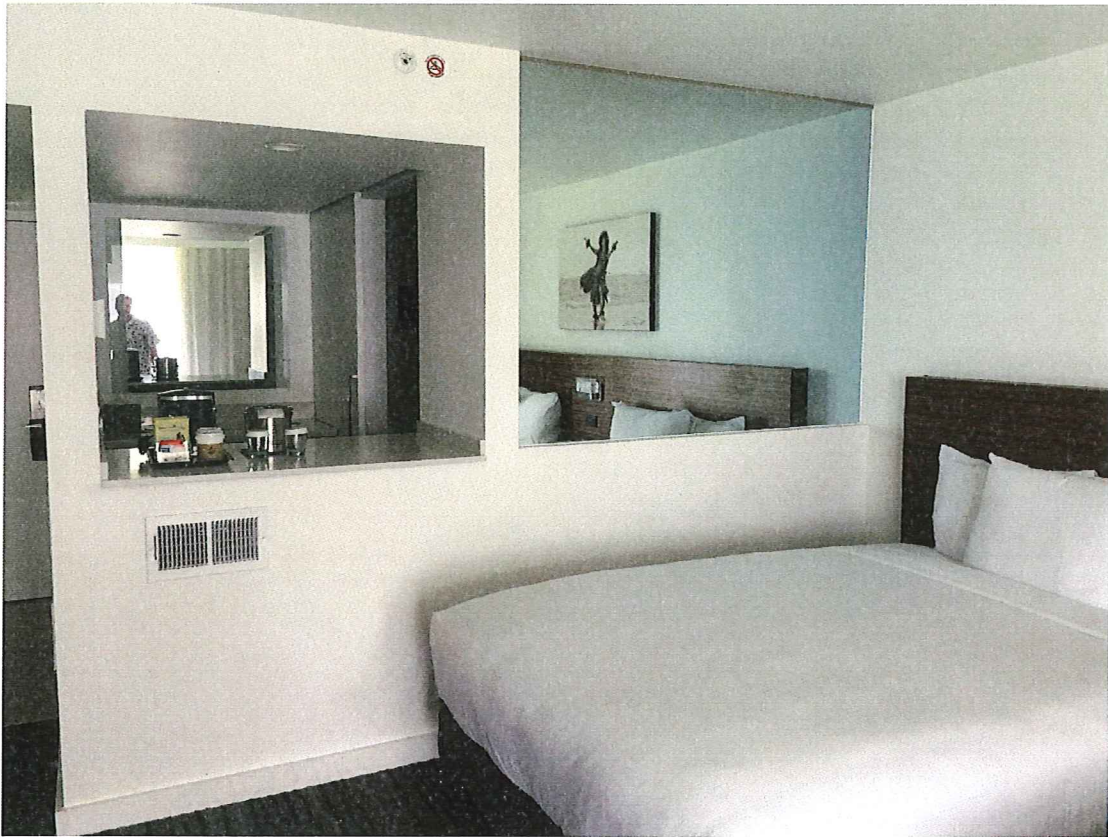
KITCHEN AREA



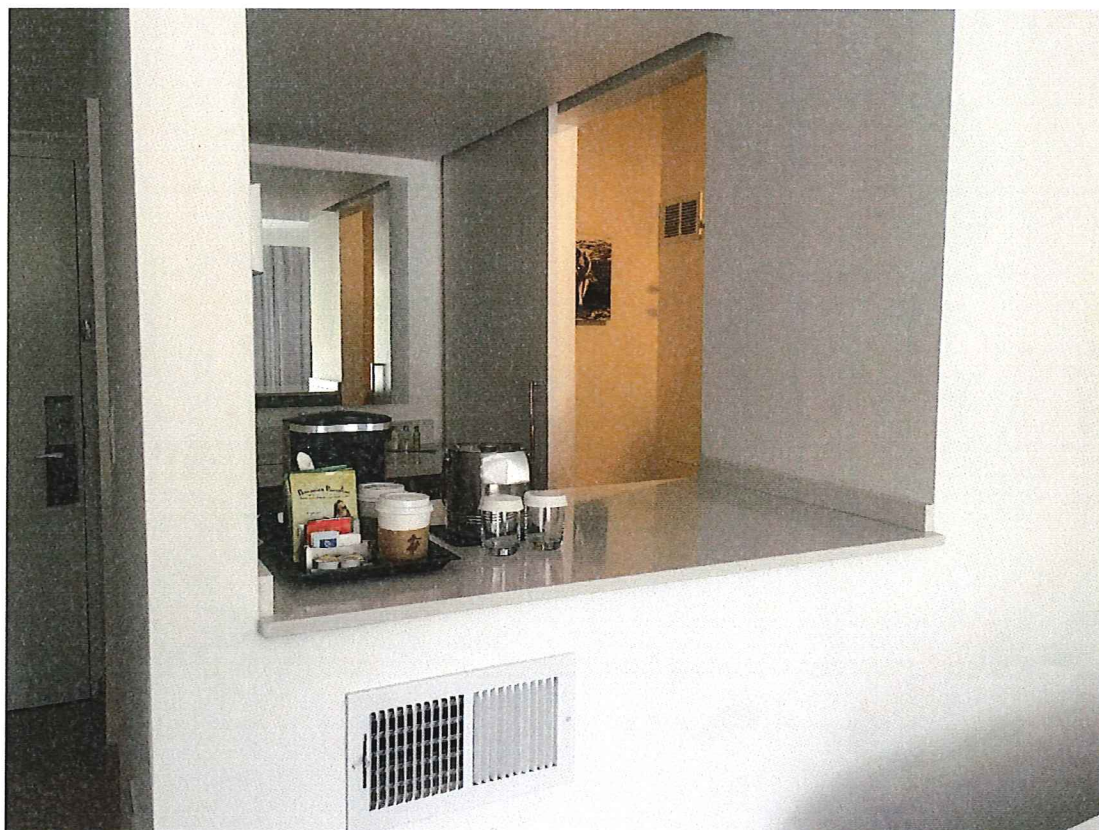
KILAUEA TOWER GUEST ROOM



KILAUEA TOWER GUEST ROOM



KILAUEA TOWER GUEST ROOM



KILAUEA TOWER GUEST ROOM

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawaii 2018 JUN 10 P 12:28

PLANNING DEPARTMENT RECEIVED
LAND DIVISION
HILO, HAWAII

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

CERTIFIED MAIL SIGNATURE CONFIRMATION RESTRICTED DELIVERY
7015 3010 0001 8963 4804

June 18, 2018

WHR LLC
1050 Bishop Street, Suite 530
Honolulu, Hawaii 96813-4210

Dear Lessee:

SUBJECT: Notice of Violation and Order

**Complaint: Construction of a Deck along the Shoreline and Development
without a Special Management Area (SMA) Assessment**

File No.: ZCV 2018-047E

TMK: (3) 2-1-005:016, Hilo, Hawaii

The County of Hawaii, Planning Department received a complaint on February 22, 2018, stating that a deck has been constructed along the shoreline of the above subject property.

INSPECTION

On May 25, 2018, our staff, along with Mr. George Applegate and Mr. Alan Leonard conducted an inspection of the unpermitted deck and observed the followings:

1. A newly constructed composite material type deck with stairs, which are built within the shoreline setback area.
2. The deck at the closest measurement to the upper reaches of the wash of waves is approximately one foot, seven inches away.
3. The measurement from the ground to the top of the deck floor is approximately twenty nine inches high.

FINDINGS

Our initial investigation based on a complaint has revealed the following:

1. **Subject Property:** 93 Banyan Drive.

2. **Land Area:** Approximately 128,502 square feet.
3. **State Land Use:** Urban (U).
4. **County Zoning:** Resort-Hotel (V-7.5).
5. **Land Owner:** State of Hawaii.
6. **Special Management Area:** The property is located within the Special Management Area and our records do not indicate a SMA Assessment Application was submitted prior to construction of the deck.
7. Exhibit A-C, attached photos depicts the unpermitted deck in proximity to the ocean.

PLANNING COMMISSION (PC) RULE 9 SPECIAL MANAGEMENT AREA

9-4 Definitions:

- (a) "Assessment" means an evaluation by the Department of a proposed use, activity, or operation to determine whether a Special Management Area use permit is required.
- (e) "Development" means any of the following uses, activities, or operations on land or in or under water within the Special Management Area:
 - (1) "Development" includes the following:
 - (A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - (E) Construction, reconstruction, demolition, alteration of the size of any structure.

9-8 Permits required for development:

- (a) No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.
- (b) No State or County Agency authorized to issue permits within the Special Management Area shall authorize any development unless approval is first received in accordance with this rule.

9-10 Assessment:

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed

use, activity or operation will: a) exceed \$500,000 in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.

PLANNING DEPARTMENT (PD) RULE 11 SHORELINE SETBACK

11-3 Definitions:

- (i) "Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the vegetation growth, or the upper limit of debris left by the wash of the waves, which has been certified by the Board of Land and Natural Resources in accordance with its rules.
- (j) "Shoreline setback area" shall include all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this rule extends seaward of the shoreline, then the term "shoreline setback area" shall include the entire structure.
- (k) "Shoreline setback line" means that line established by the Planning Department running inland from and parallel to the certified shoreline at a horizontal plane.
- (l) "Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

11-6 Structures and Activities Prohibited within the Shoreline Setback Area.

- (b) All structures and activities which do not qualify under section 11-7(a) through (c).

11-7 Structures or Activities Permitted within the Shoreline Setback Area.

- (a) The following structures or activities may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department:
 - (5) A structure or activity permitted through the issuance of a shoreline setback variance from the Planning Commission;

VIOLATIONS

Planning Commission Rule 9-8(a) by constructing a Deck within Special Management Area without first obtaining a SMA permit and Planning Department Rule 11-6(b) by not securing written clearance from the Planning Department prior to constructing the deck within the shoreline setback area.

ORDER

You are hereby ordered to take the following corrective action(s) at your own expense by the deadline date of July 18, 2018, to comply with the Notice of Violation and Order.

1. Submit or provide the County of Hawaii, Planning Department with evidence of the following:
 - a. Submittal of a Special Management Assessment Application for the unpermitted deck constructed on the property. Further, include a Certified Shoreline Survey, approved by the State of Hawaii. A shoreline setback variance may be required, which will include the preparation of an environmental assessment or;
 - b. Dismantle the deck and remove all material out from the 40' shoreline setback area of the subject property.
 - c. Restore any vitiated portion of the land to its original, as was prior to the construction of the deck.
 - d. Provide a written description, with a site plan for the dismantling of the deck. Include any anticipated impacts which may occur during dismantling of the deck. Provide any Best Management Practices which will be utilized for the corrective measures listed.
 - e. Contact the Planning Inspector listed below and arrange for an inspection of your property.
 - f. Any other plans or information required by the Director.
2. **You are hereby imposed a civil fine of \$2,000.00** by violating Planning Commission rule 9-8(a) and Planning Department rule 11-6(b) for the unpermitted construction of the deck within the shoreline setback area.
3. Payment of fines may be made by cash, cashier's check, or money order. **Personal checks are not accepted.** Make cashier's check or money order payable to the County Director of Finance.

"Any civil fine provided under this rule may be imposed by the circuit court or the Director after an opportunity for a hearing under Chapter 91, HRS."

Upon satisfactory compliance with all conditions of the above order, we may close the complaint with no further action.

GENERAL INFORMATION

What happens if you do not correct the violation?

A violation that is not corrected by the **deadline date** may be assessed daily fines.

Can you appeal this Notice of Violation?

Yes. In accordance with Section 6-9.2 (a) of the Hawai'i County Charter, the Board of Appeals is authorized to hear and determine any appeal from the final decisions of the Planning Director.

1. An appeal shall be in writing, in the form prescribed by the Board of Appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the Board of Appeals with the proof of service.
2. The appellant, landowner(s) if not the appellant, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the Board of Appeals.

For your convenience, we have enclosed the County of Hawaii Board of Appeals General Petition for Appeal of Decisions by Planning Director form.

Address the Appeal to: Board of Appeals
101 Pauahi Street, Room 3
Hilo, HI 96720

Due Date for Appeal:

The appeal must be received within thirty (30) calendar days from the date of receipt of this Notice of Violation and Order. An appeal to the Board of Appeals shall not stay the provisions of the Director's "Order" pending the final decision of the Board of Appeals. The appeal must be made in accordance with the Board of Appeals Rules of Practice and Procedures or it may result in the dismissal of the appeal.

What happens if I lose my appeal?

The assessment and accumulation of fines does not stop when you file for an appeal. If the Board of Appeals denies your appeal then you will be required to pay your fines from the day the fines began to the date the violation(s) has been corrected which must be verified by the Planning

Department. You can also take corrective action as described in this letter and stop the daily fines, while appealing. If you do not take corrective action, daily fines will continue to accrue incrementally. Should you acquire the services of an attorney/counsel representation, you are required to also submit a letter of consent with your response letter authorizing the County to correspond and respond to the attorney/counsel representation.

Can I get a time extension to have more time to correct the violation?

If you know you cannot complete the corrective action by the deadline date, you may want to submit a "request for a time extension" before the deadline date. **Include all of the following information with your request:**

1. Describe what you have accomplished prior to requesting this time extension.
2. The amount of additional time necessary to complete the corrective action.
3. The name and telephone number of the person assisting you in this effort.
4. The date in which you expect the violation to be fully corrected.

The submission of a time extension request does not guarantee the approval of the request nor does it extend your right to appeal.

If your time extension is denied, daily fines will continue to accrue from the date as described above and until the violation is corrected. If approved, the daily fines will be delayed until the new deadline date.

Please be informed, the deck may require a building permit from the County of Hawaii, Department of Public Works, Building Division. As a courtesy we have provided the telephone number (808) 961-8331.

Should you have any SMA questions on this matter, please contact SMA Planner, Esther Imamura at 961-8139 or Planning Inspector, Mark Iwamoto at 961-8151.

Sincerely,



MICHAEL YEE
Planning Director

MI:nci

\\COH33\planning\public\Enforcement\TMK Files\ZONE 2\2-1-005-016\NOVHiltonNaniloa.doc

WHR LLC
Page 7
June 18, 2018

Encl forms: 1. County of Hawai'i Board of Appeals General Petition for Appeal of Decisions
by Planning Director
2. County of Hawai'i Special Management Area Use Permit Assessment
Application

cc: Jeff Darrow, Manager
Esther Imamura, Planner
Amy Self, Corporation Counsel
Michael Kagami, Corporation Counsel

Gordon Heit
Department of Land and Natural Resources
Land Division
75 Aupuni Street Rm. 204
Hilo, HI 96720

George Applegate
Leadership and Community Relationship Consultant
93 Banyan Drive
Hilo, HI 96720



Exhibit A

Picture depicts the deck at the closest proximity to the shoreline area.

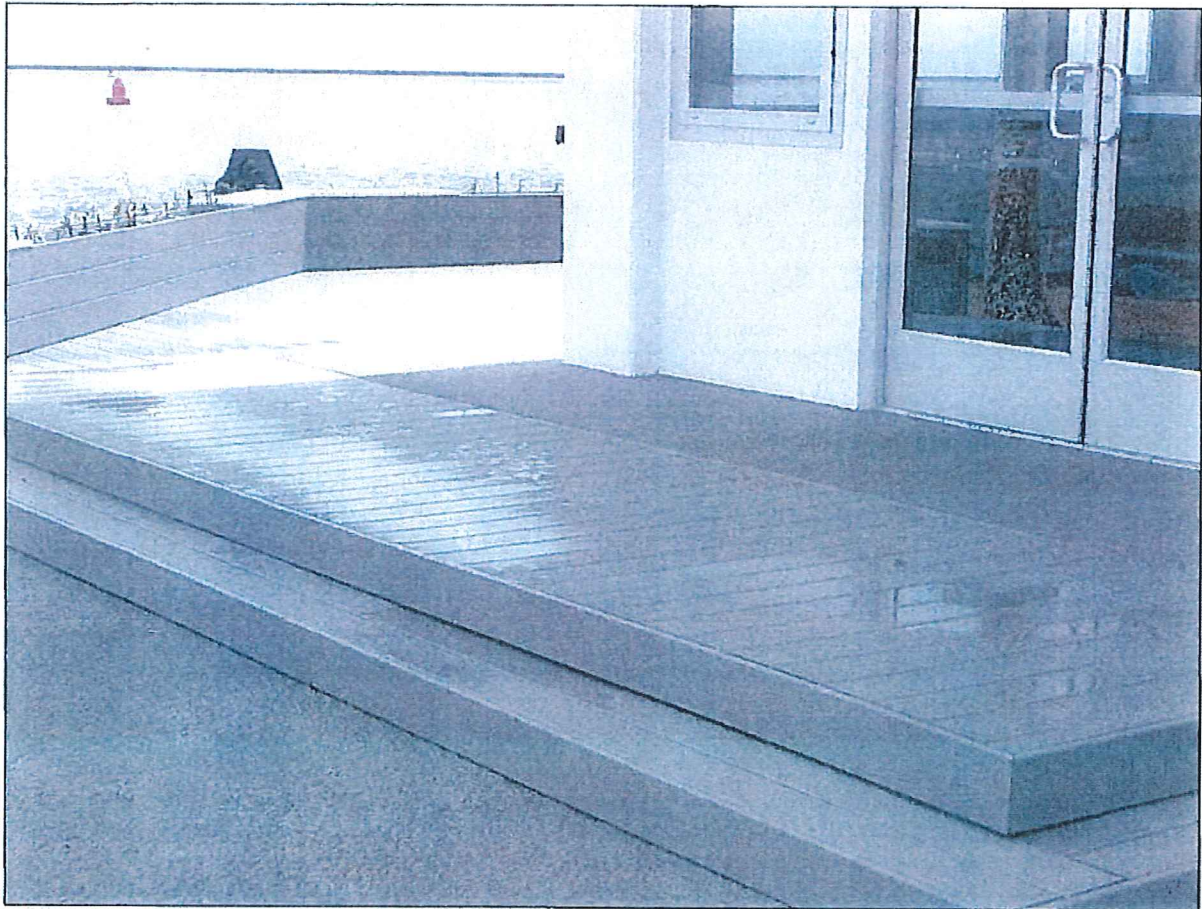


Exhibit B

Picture depicts wrap around deck and stairs, in the rear of Hula Hulas restaurant and bar.



Exhibit C
Picture depicts the deck and proximity of the shoreline.



County of Hawai'i

BOARD OF APPEALS

Aupuni Center • 101 Pauahi, Suite 3 • Hilo, Hawai'i 96720
(808) 961-8288 • Fax (808) 961-8742

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR

(Type or legibly print the requested information. See instructions attached.)

TYPE OF PETITION:

- ☒ Appeal of Planning Director's Decision
☐ Appeal of Public Works Director's Decision

APPELLANT: WHR LLC

APPELLANT'S SIGNATURE: _____

DATE: JUL 17 2018

ADDRESS: 1050 Bishop Street, Suite 530. Honolulu Hawaii 96813-4210

TELEPHONE: _____ (EMAIL): stuart@towerdevcon.com

APPELLANT'S INTEREST IN THE PROPERTY: _____

Lessee under General Lease S-5844

APPELLANT'S NATURE OF APPEAL AND REQUEST: Please see attached letter - Appeal from Planning Director's Notice of Violation and Order, File No. ZCV 2018-047E, dated June 18, 2018

LAND OWNER: State of Hawaii Department of Land and Natural Resources

TAX MAP KEY: (land in question) (3) 2-1-005-016 AREA OF PROPERTY: approx. 128, 502 sq ft

STATE LAND USE DESIGNATION: Urban (U) COUNTY ZONING: Resort-Hotel (V-7.5)

STREET ADDRESS OF PROPERTY: 93 Banyan Drive, Hilo, Hawaii

APPELLANT'S REPRESENTATIVE: Michael Lam/Case Lombardi & Pettit TITLE: Attorney

REPRESENTATIVE'S SIGNATURE: _____ DATE: JUL 17 2018

REPRESENTATIVE'S ADDRESS: 737 Bishop Street, Suite 2600, Honolulu, Hawaii 96813

TELEPHONE: (808)547-5400 (EMAIL): mll@caselombardi.com

☒ See instructions attached.

EXHIBIT D

CASE LOMBARDI & PETTIT

A LAW CORPORATION

Celebrating **130** YEARS
1888 - 2018

Lissa H. Andrews
David G. Brittin
James M. Cribley
Stacey W.E. Foy
Adelbert Green
Michael L. Lam
Dennis M. Lombardi†
Michael R. Marsh
Jon M.H. Pang
Ted N. Pettit, Ph.D.
Lauren R. Sharkey
Mark G. Valencia
Nancy J. Youngren
John D. Zalewski

† A Law Corporation
Daniel H. Case (1925-2016)

PACIFIC GUARDIAN CENTER, MAUKA TOWER
737 BISHOP STREET, SUITE 2600
HONOLULU, HAWAII 96813-3283

TELEPHONE: (808) 547-5400
FACSIMILE: (808) 523-1888

Michelle J. Chapman
Matthew A. Cohen
Mark J. Driessen
Harrison K. Goo
Lisa K. Johnson
Jana M. Naruse
Stephanie M. Segovia
Ellen A. Swick

Of Counsel
John R. Dwyer, Jr.
Gregory M. Hansen
Frederick W. Rohlfing III

July 17, 2018

County of Hawaii
Board of Appeals (the "Board")
Aupuni Center
101 Pauahi, Suite 3
Hilo, Hawaii 96720

Attention: Chairperson Arne Werchick

Re: Appeal from Notice of Violation and Order of Planning Director
File No.: ZCV 2018-047E
TMK: (3) 2-1-005-016
Property: Grand Naniloa Hotel Hilo (the "Hotel")

Chairperson Werchik and Members of the Board of Appeals:

This firm represents WHR LLC, ("WHR"), the named party in the above-referenced matter. A copy of the Notice of Violation and Order, dated June 18, 2018 (the "Notice"), is attached to this letter as Exhibit 1. Respectfully, WHR contends that the violations cited in the Notice reflect an incorrect application of Planning Commission and Planning Department Rules and should be reversed. As explained below, WHR requests that the fine imposed by the Notice be waived.

WHR does not dispute that a temporary platform and stage was placed on the ground makai of the Hula Hulas restaurant, on the grounds of the Hotel as described in the Notice and as depicted in Exhibits A - C to the Notice (as described and depicted, the "Platform"). The Platform "floated" on existing rock formations. See the letter from Koa Architects, attached hereto as Exhibit 2 (the "Architect's Letter").

As an interim matter, WHR has removed the offending platform. Please see the four photographs of the site as of Tuesday, July 17, 2018, attached to this letter as Exhibit 3, which show the area cleared and restored to its original condition. Based on the removal of the Platform, WHR requests that the fine be waived.

The Platform was a removable construction built in sections and was always intended to be removed and temporary. It was installed to serve as a deck and stage for a community event for the July 4, 2018 holiday. WHR will store the removed Platform for future events, to be constructed in accordance with County rules.

WHR has undertaken the removal of the Platform as a good-faith effort, without waiver of its rights to appeal the determinations of the Notice and without admitting any improper action.

WHR does not dispute that Hotel is within the Special Management Area ("SMA"), or that the Platform was within a few feet of the upper reaches of the wash of the waves.

WHR contends that the placement of the Platform did not affect beach processes or artificially fix the shoreline, and did not interfere with public access or public views to and along the shoreline.

The Notice does not make a finding that Platform was permanent in nature, or any finding contrary to the Platform being a temporary placement.

The Platform was not "Development" within the meaning of the Planning Commission Rules.

The Notice cites County of Hawaii Planning Commission Rules of Practice and Procedure (the "PC Rules") Rule 9-8(a), which states as follows: "*No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.*" However, the Platform was not "development" within the meaning of the PC Rules Rule 9.

According to PC Rule 9-4(e)(2)(P), the term "development" specifically excludes "*non-structural improvements to existing commercial structures.*" The Hotel is an existing commercial structure and the Platform was a temporary construction that provided no structural support to the Hotel.

That is, the Platform was a non-structural improvement to the Hotel and falls within the PC Rule Rule 9-2(e)(2)(P) exclusion from the development prohibited in the SMA. Therefore, the construction of the Platform did not violate PC Rules Rule 9-8(a).

The Platform was not a "structure or activity" within the meaning of the Planning Department Rules.

The Notice cites County of Hawaii Planning Department Rules of Practice and Procedure ("PD Rules") Rule 11-6(b), which defines "*Structures and Activities Prohibited within the Shoreline Setback Area*" to include "*All structures and activities which do not qualify under section 11-7(a) through (c).*"

"Structure" is not defined by the PD Rules, except to include, but not be limited to, *"any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment."* PD Rules Rule 11-3(l). The Platform does not fall within the foregoing list.

Under rules of statutory construction, when a legislative body expresses things through a list that includes both general words and specific words, a reviewing authority should assume that "the general words should be construed to embrace only objects similar in nature to those objects enumerated by the specific words." *Holi v. AIG Hawaii Ins. Co., Inc.*, 113 Hawaii 196, 204 (App. 2007) (discussing the rule of *ejusdem generis*).

Applying the foregoing rule to PD Rules Rule 11-3(l), in order to fall within the definition of "structure," an object must be similar in nature to a "building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment." One similarity between the items listed in PD Rules Rule 11-3(l) is that all of the items are permanent in nature. Therefore, temporary structures and temporary construction is not a "structure" within the meaning of PD Rules Rule 11. The Architect's Letter also confirms that the Platform was not intended to be a "structure" within the meaning of PD Rules Rule 11-3(l).

It is clear that temporary structures must be excluded from the definition provided by PD Rules 11-3(l) because otherwise recreational structures like camping tents and picnic canopies would require a permit from the Planning Department. Camping tents and picnic canopies may require permits, but not from the Planning Department.

Like camping tents and picnic canopies, the Platform was a temporary construction that served as a stage for a special event. Temporary construction does not fall within the meaning of "structure" as provided by PD Rules Rule 11. Therefore, the construction of the Platform was not a "structure" and was not prohibited by PD Rules Rule 11-6(b).

The Platform would have met the standard for a "minor structure determination" and was therefore not prohibited in the Shoreline Setback Area.

As noted above, PD Rules Rule 11-6(b) defines *"Structures and Activities Prohibited within the Shoreline Setback Area"* to include *"All structures and activities which do not qualify under section 11-7(a) through (c)."* One category of structures that qualifies for permission is defined by PD Rules 11-7(a)(4): *"a minor structure or activity approved in accordance with Section 11-8."* That is, a minor structure or activity that would qualify for approval in accordance with PD Rules Rule 11-8 is not prohibited in the Shoreline Setback Area by PD Rules Rule 11-6(b).

PD Rules 11-8 provides that a *"minor structure . . . shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline."*

As noted above, and as supported by Exhibits A - C of the Notice, the Platform did not affect beach processes or artificially fix the shoreline, and did not interfere with public access or public views to and along the shoreline.

The Platform would have been eligible for a minor structure determination and was therefore permissible in the Shoreline Setback Area. Therefore, the construction of the Platform did not violate PD Rules Rule 11-6(b).

WHR does not dispute that it has not yet requested the Planning Department to determine that the Platform is, or would have been, a minor structure pursuant to PD Rules Rule 11-8.

We thank the Board for the opportunity to present WHR's position as it relates to the construction of the Platform and the violations cited in the Notice. As (i) the Platform was not "development" of the SMA, (ii) the Platform was not a "structure," and (iii) the Platform did not affect beach processes, artificially fix the shoreline, or interfere with beach access or public views; the Platform was not in violation of either PC Rules Rule 9-8(a) or PD Rules Rule 11-6(b). Accordingly, the violations cited in the Notice should be reversed. Furthermore, as WHR has promptly removed the Platform and restored the area to its previous condition, WHR requests that the fine imposed by the Notice be waived.

Pursuant to the petition instructions in furtherance of County of Hawaii Board of Appeals Rules of Practice and Procedure ("Board Rules"), Rule 8-11(d), a list of all property owners within 300 feet of the Hotel is included as Exhibit 4 to this letter. In accordance with that rule, proof of service of notice of the Board's hearing on this matter to such persons will be provided to the Board not less than 20-days before the hearing. Additionally, copies of the certified mailing receipts, which will be postmarked as of the date of this letter, to Planning Director Yee and Land Agent Heit are enclosed as Exhibit 5.

Very truly yours,

CASE LOMBARDI & PETTIT



Michael L. Lam

MLL/MAC

Exhibits

cc: Client (w/Exhibits, via email)
Michael Yee, Planning Director (w/Exhibits, via certified mail)
Gordon Heit, DLNR Land Division (w/Exhibits, via certified mail)
Russell Tsuji, DLNR Land Division (w/Exhibits, via email)

2971445

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E

Exhibit 1

Copy of Notice of Violation and Order, dated June 18, 2018

625844

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokulani Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawaii

PLANNING DEPARTMENT RECEIVED
LAND DIVISION
HILO, HAWAII

East Hawai'i Office
101 Puuahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

CERTIFIED MAIL SIGNATURE CONFIRMATION RESTRICTED DELIVERY
7015 3010 0001 8963 4804

June 18, 2018

WHR LLC
1050 Bishop Street, Suite 530
Honolulu, Hawaii 96813-4210

Dear Lessee:

SUBJECT: Notice of Violation and Order

Complaint: Construction of a Deck along the Shoreline and Development without a Special Management Area (SMA) Assessment

File No.: ZCV 2018-047E

TMK: (3) 2-1-005:016, Hilo, Hawaii

The County of Hawaii, Planning Department received a complaint on February 22, 2018, stating that a deck has been constructed along the shoreline of the above subject property.

INSPECTION

On May 25, 2018, our staff, along with Mr. George Applegate and Mr. Alan Leonard conducted an inspection of the unpermitted deck and observed the followings:

1. A newly constructed composite material type deck with stairs, which are built within the shoreline setback area.
2. The deck at the closest measurement to the upper reaches of the wash of waves is approximately one foot, seven inches away.
3. The measurement from the ground to the top of the deck floor is approximately twenty nine inches high.

FINDINGS

Our initial investigation based on a complaint has revealed the following:

1. Subject Property: 93 Banyan Drive.

2. **Land Area:** Approximately 128,502 square feet.
3. **State Land Use:** Urban (U).
4. **County Zoning:** Resort-Hotel (V-7.5).
5. **Land Owner:** State of Hawaii.
6. **Special Management Area:** The property is located within the Special Management Area and our records do not indicate a SMA Assessment Application was submitted prior to construction of the deck.
7. Exhibit A-C, attached photos depicts the unpermitted deck in proximity to the ocean.

PLANNING COMMISSION (PC) RULE 9 SPECIAL MANAGEMENT AREA

9-4 Definitions:

- (a) "Assessment" means an evaluation by the Department of a proposed use, activity, or operation to determine whether a Special Management Area use permit is required.
- (e) "Development" means any of the following uses, activities, or operations on land or in or under water within the Special Management Area:
 - (1) "Development" includes the following:
 - (A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - (E) Construction, reconstruction, demolition, alteration of the size of any structure.

9-8 Permits required for development:

- (a) No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.
- (b) No State or County Agency authorized to issue permits within the Special Management Area shall authorize any development unless approval is first received in accordance with this rule.

9-10 Assessment:

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed

use, activity or operation will: a) exceed \$500,000 in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.

PLANNING DEPARTMENT (PD) RULE 11 SHORELINE SETBACK

11-3 Definitions:

- (i) "Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the vegetation growth, or the upper limit of debris left by the wash of the waves, which has been certified by the Board of Land and Natural Resources in accordance with its rules.
- (j) "Shoreline setback area" shall include all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this rule extends seaward of the shoreline, then the term "shoreline setback area" shall include the entire structure.
- (k) "Shoreline setback line" means that line established by the Planning Department running inland from and parallel to the certified shoreline at a horizontal plane.
- (l) "Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

11-6 Structures and Activities Prohibited within the Shoreline Setback Area.

- (b) All structures and activities which do not qualify under section 11-7(a) through (c).

11-7 Structures or Activities Permitted within the Shoreline Setback Area.

- (a) The following structures or activities may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department:
 - (5) A structure or activity permitted through the issuance of a shoreline setback variance from the Planning Commission;

VIOLATIONS

Planning Commission Rule 9-8(a) by constructing a Deck within Special Management Area without first obtaining a SMA permit and Planning Department Rule 11-6(b) by not securing written clearance from the Planning Department prior to constructing the deck within the shoreline setback area.

ORDER

You are hereby ordered to take the following corrective action(s) at your own expense by the deadline date of July 18, 2018, to comply with the Notice of Violation and Order.

1. Submit or provide the County of Hawaii, Planning Department with evidence of the following:
 - a. Submittal of a Special Management Assessment Application for the unpermitted deck constructed on the property. Further, include a Certified Shoreline Survey, approved by the State of Hawaii. A shoreline setback variance may be required, which will include the preparation of an environmental assessment or;
 - b. Dismantle the deck and remove all material out from the 40' shoreline setback area of the subject property.
 - c. Restore any vitiated portion of the land to its original, as was prior to the construction of the deck.
 - d. Provide a written description, with a site plan for the dismantling of the deck. Include any anticipated impacts which may occur during dismantling of the deck. Provide any Best Management Practices which will be utilized for the corrective measures listed.
 - e. Contact the Planning Inspector listed below and arrange for an inspection of your property.
 - f. Any other plans or information required by the Director.
2. **You are hereby imposed a civil fine of \$2,000.00** by violating Planning Commission rule 9-8(a) and Planning Department rule 11-6(b) for the unpermitted construction of the deck within the shoreline setback area.
3. Payment of fines may be made by cash, cashier's check, or money order. **Personal checks are not accepted.** Make cashier's check or money order payable to the County Director of Finance.

"Any civil fine provided under this rule may be imposed by the circuit court or the Director after an opportunity for a hearing under Chapter 91, HRS."

Upon satisfactory compliance with all conditions of the above order, we may close the complaint with no further action.

GENERAL INFORMATION

What happens if you do not correct the violation?

A violation that is not corrected by the **deadline date** may be assessed daily fines.

Can you appeal this Notice of Violation?

Yes. In accordance with Section 6-9.2 (a) of the Hawai'i County Charter, the Board of Appeals is authorized to hear and determine any appeal from the final decisions of the Planning Director.

1. An appeal shall be in writing, in the form prescribed by the Board of Appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the Board of Appeals with the proof of service.
2. The appellant, landowner(s) if not the appellant, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the Board of Appeals.

For your convenience, we have enclosed the County of Hawaii Board of Appeals General Petition for Appeal of Decisions by Planning Director form.

Address the Appeal to: Board of Appeals
101 Pauahi Street, Room 3
Hilo, HI 96720

Due Date for Appeal:

The appeal must be received within thirty (30) calendar days from the date of receipt of this Notice of Violation and Order. An appeal to the Board of Appeals shall not stay the provisions of the Director's "Order" pending the final decision of the Board of Appeals. The appeal must be made in accordance with the Board of Appeals Rules of Practice and Procedures or it may result in the dismissal of the appeal.

What happens if I lose my appeal?

The assessment and accumulation of fines does not stop when you file for an appeal. If the Board of Appeals denies your appeal then you will be required to pay your fines from the day the fines began to the date the violation(s) has been corrected which must be verified by the Planning

Department. You can also take corrective action as described in this letter and stop the daily fines, while appealing. If you do not take corrective action, daily fines will continue to accrue incrementally. Should you acquire the services of an attorney/counsel representation, you are required to also submit a letter of consent with your response letter authorizing the County to correspond and respond to the attorney/counsel representation.

Can I get a time extension to have more time to correct the violation?

If you know you cannot complete the corrective action by the deadline date, you may want to submit a "request for a time extension" before the deadline date. **Include all of the following information with your request:**

1. Describe what you have accomplished prior to requesting this time extension.
2. The amount of additional time necessary to complete the corrective action.
3. The name and telephone number of the person assisting you in this effort.
4. The date in which you expect the violation to be fully corrected.

The submission of a time extension request does not guarantee the approval of the request nor does it extend your right to appeal.

If your time extension is denied, daily fines will continue to accrue from the date as described above and until the violation is corrected. If approved, the daily fines will be delayed until the new deadline date.

Please be informed, the deck may require a building permit from the County of Hawaii, Department of Public Works, Building Division. As a courtesy we have provided the telephone number (808) 961-8331.

Should you have any SMA questions on this matter, please contact SMA Planner, Esther Imamura at 961-8139 or Planning Inspector, Mark Iwamoto at 961-8151.

Sincerely,



MICHAEL YEE
Planning Director

WHR LLC
Page 7
June 18, 2018

Encl forms: 1. County of Hawai'i Board of Appeals General Petition for Appeal of Decisions
by Planning Director
2. County of Hawai'i Special Management Area Use Permit Assessment
Application

cc: Jeff Darrow, Manager
Esther Inamura, Planner
Amy Self, Corporation Counsel
Michael Kagami, Corporation Counsel

Gordon Heit
Department of Land and Natural Resources
Land Division
75 Aupuni Street Rm. 204
Hilo, HI 96720

George Applegate
Leadership and Community Relationship Consultant
93 Banyan Drive
Hilo, HI 96720



Exhibit A
Picture depicts the deck at the closest proximity to the shoreline area.

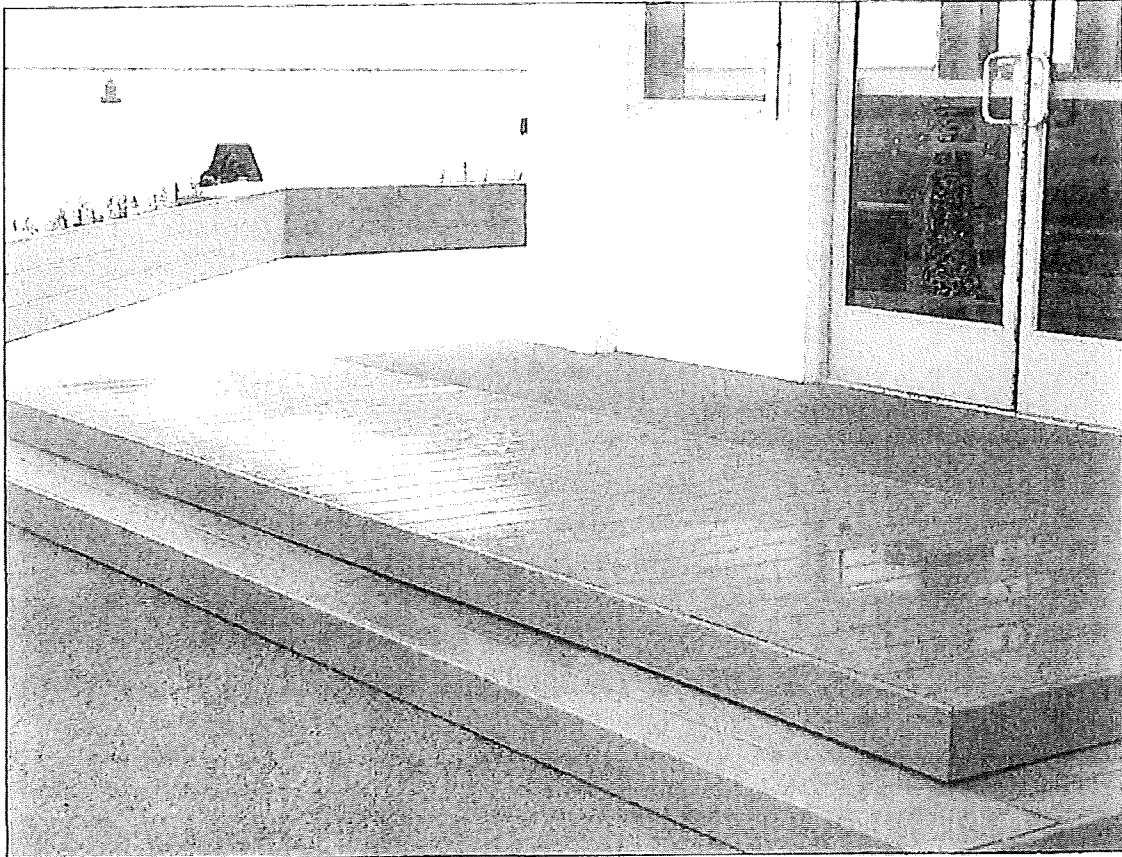


Exhibit B
Picture depicts wrap around deck and stairs, in the rear of Hula Hulas restaurant and bar.

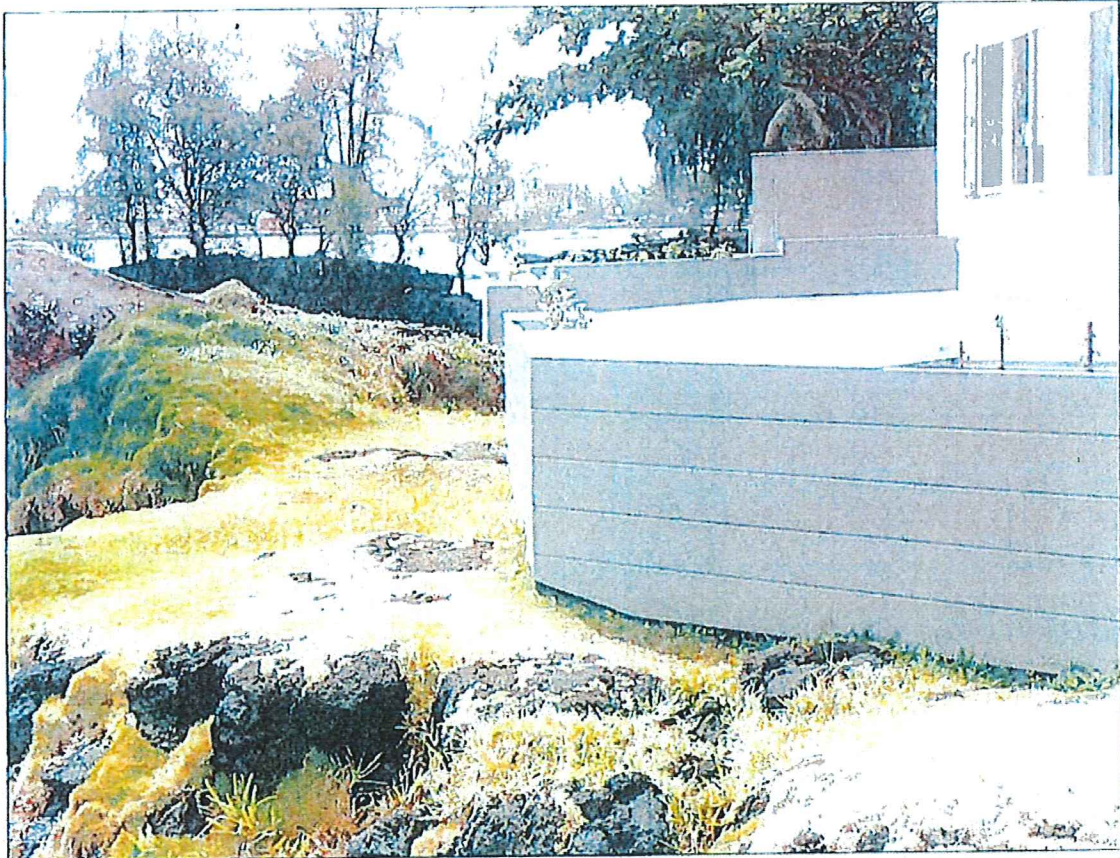


Exhibit C
Picture depicts the deck and proximity of the shoreline.

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E

Exhibit 2
Architect's Letter

www.koarchitects.com • tel 808-217-6707 • fax 866-507-1638
65-1285C Kawaihae Road Kamuela, HI 96743



REQUEST FOR TIME EXTENSION & STAY OF SHORELINE SETBACK NOV CIVIL FINE

To: County of Hawaii Planning Department
From: WHR LLC c/o Matthew Kilgore AIA

Re: Naniloa Hotel, 93 Banyan Drive
File: ZCV 2018-047E
TMK: 2-1-005-016

To Whom It May Concern:

Please allow our team 60 days time extension to address this issue.

1. The Lessee has removed the planter boxes along the edges to further facilitate lateral shoreline access
2. The amount of additional time necessary to complete corrective action-60 days requested
3. Architect assisting with this effort Matthew Kilgore AIA (808) 217-6707
4. The date in which we expect the violation to be fully corrected-October 1, 2018

Per Planning Department (PD) Rule 11 Shoreline Setback
11-3 Definitions:

(l) "Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

It was/is the Lessee's intention to install the temporary stages placed along the northern edge of the existing waterfront restaurant to facilitate public and hotel guest lateral shoreline access in a safer manner than was previously available. The shoreline lateral access through this area had been hazardous due to wave action and slippery wet rocks and the Lessee is trying to facilitate safer shoreline lateral access over the wet rocks. The temporary stages are bolted and float together over the lava rock. There has been no alteration/ disturbance to the lava rocks or any permanent foundation placed. The stages were bolted together in small section so they are movable and not fixed to the ground.

The temporary stages in our reckoning do not qualify as "structure" due to the fact the stages do not exceed the building code criteria thresholds of:

1. Structures over 4'-0" in height
2. Decks 30" or more in height above surrounding terrain

Please feel free to call me if I can be of further help in resolving this matter.



Proud members of the American Institute of Architects and US Green Building Council



EXHIBIT "2"

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E

Exhibit 3

Photos showing removal of offending construction and restoration of area to its previous state
Photos A-D

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E
Exhibit 3 Photo 1 of 4



Exhibit 3-A
Photo A

EXHIBIT "3"

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E
Exhibit 3 Photo 2 of 4

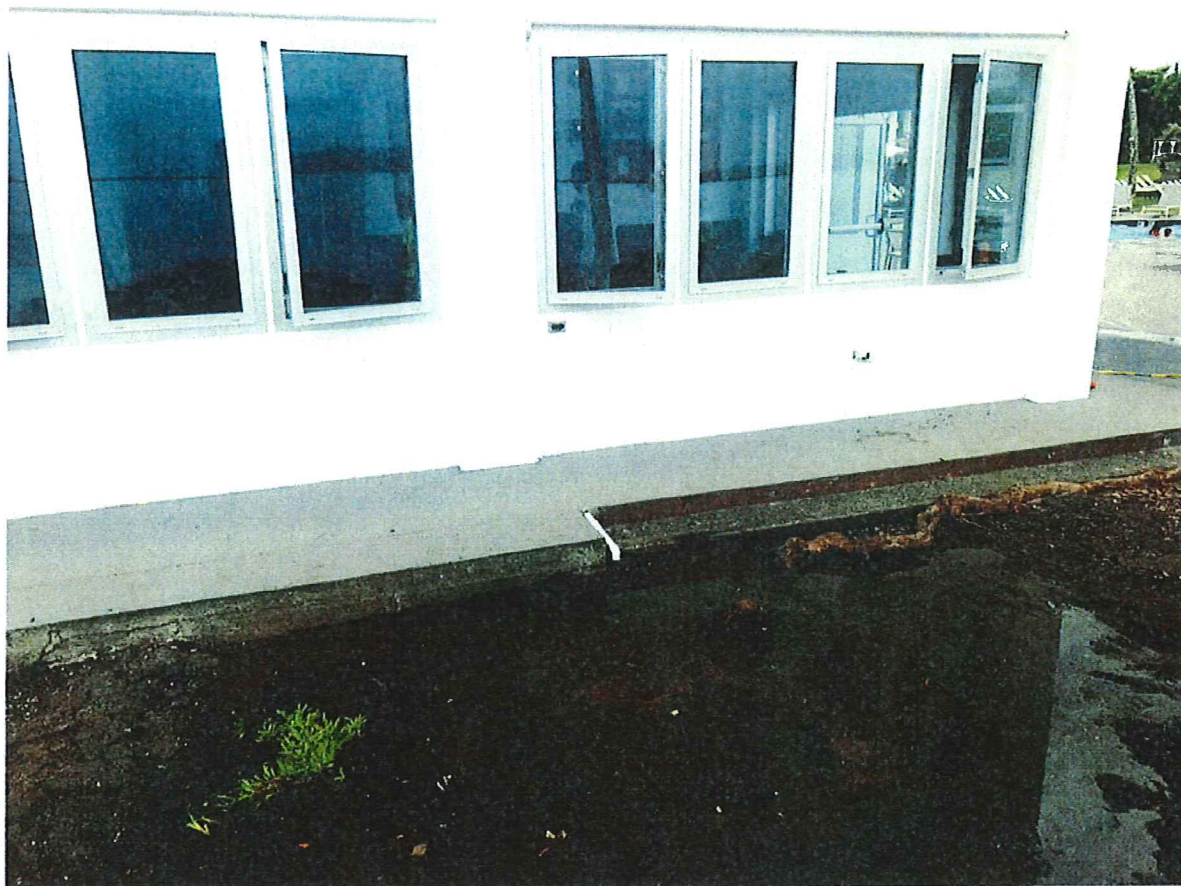


Exhibit 3-B
Photo B

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E
Exhibit 3 Photo 3 of 4



Exhibit 3-C
Photo C

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E
Exhibit 3 Photo 4 of 4



Exhibit 3-D
Photo D

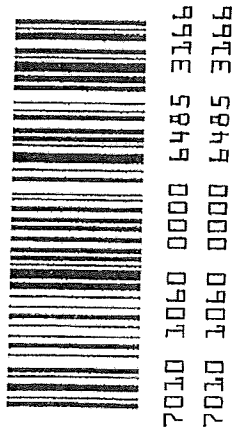
End of Exhibit 3

Exhibit 4
List of Property Owners within 300 feet of the Hotel

	Parcel Address	Tax Map Key	Owner's Name	Owner's Mailing Address
1.	1713 Kamehameha Ave.	(3) 2-1-005:012	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
2.	n/a	(3) 2-1-005:013	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
3.	n/a	(3) 2-1-005:017	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
4.	99 Banyan Drive	(3) 2-1-005:018	Louis B. Blissard Trust	Thornton, Marian Rose Benda, TTEE
5.	121 Banyan Drive	(3) 2-1-005:020	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
6.	n/a	(3) 2-1-005:027	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
7.	n/a	(3) 2-1-005:032	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
8.	n/a	(3) 2-1-005:033	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
9.	87 Banyan Drive	(3) 2-1-005:034	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
10.	n/a	(3) 2-1-005:035	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
11.	n/a	(3) 2-1-005:045	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813
12.	n/a	(3) 2-1-005:046	State of Hawaii Department of Land and Natural Resources	1151 Punchbowl Street Honolulu, HI 96813

County of Hawaii Board of Appeals
Appeal of WHR LLC
File No. ZCV 2018-047E

Exhibit 5
Certified mailing receipts to
Planning Director Yee, and
Land Agent Heit



U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE

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Street, Apt. No.,
or PO Box No. 75 Aupuni Street, Room 204
City, State, ZIP+4[®] Hilo, HI 96720

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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Gordon Heit
Department of Land and Natural Resources
Land Division
75 Aupuni Street, Room 204
Hilo, HI 96720

2. Article Number (Transfer from service label)
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X ☐ Agent ☐ Addressee

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Sent To Michael Yee - East Hawai'i Office Street, Apt. No., or PO Box No. 101 Pauahi Street, Suite 3 City, State, ZIP+4 Hilo, Hawaii 96720	
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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">■ Complete Items 1, 2, and 3.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: Michael Yee East Hawai'i Office 101 Pauahi Street, Suite 3 Hilo, Hawaii 96720	B. Received by (Printed Name) C. Date of Delivery
2. Article Number (Transfer from service label) 7010 1060 0000 6485 3159	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
9590 9402 3083 7124 4780 38	3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery ed Mail <input type="checkbox"/> Signature Confirmation Restricted Delivery ed Mail Restricted Delivery (\$500)