

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

November 9, 2018

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

PSF No.: 17OD-083

OAHU

Amend Prior Action of September 14, 2018, Item D-13 - Issuance of Right-of-Entry Permits for Beach Activities to be held on October 16 and 17, 2018; and Issuance of Revocable Permit for Recreational and Maintenance Purposes; Resorttrust Hawaii, LLC, Applicant; Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023:041.

The Amendment is Seeking Approval from the Board Regarding the Issuance of the Revocable Permit.

BACKGROUND:

The subject request was approved as amended by the Board at its meeting on September 14, 2018, under agenda item D-13. The requested two (2) right-of-entry permits were approved. Nevertheless, due to the oral request for contested case hearing made by Mr. David Kimo Frankel on the issuance of the new revocable permit at the meeting, the Board deferred its decision pertaining to the issuance of the revocable permit. A copy of the submittal is attached as **Exhibit A-1**.

Under a separate item on today's agenda, staff is recommending the Board deny the request for contested case hearing. Upon approval of the staff recommendation, i.e. denial of the petition for a contested case hearing, staff recommends the Board amend its prior action of September 14, 2018, Item D-13 by authorizing the issuance of the requested revocable permit in accordance with the recommendations described in Exhibit A-1, which are repeated below.

RECOMMENDATION: That the Board amend its prior action of September 14, 2018, Item D-13 to:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

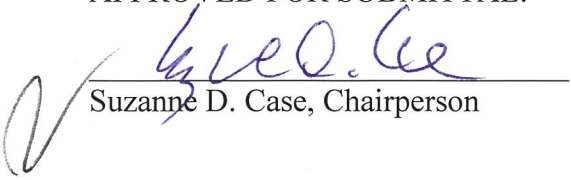
2. Authorize the issuance of a revocable permit to Resorttrust Hawaii, LLC covering the subject area for recreational and maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - B. Permittee shall maintain, at its own costs, the beach located seaward of the revocable permit area:
 - 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.
3. Termination of RP 7849 upon issuance of the requested revocable permit.
4. All other terms and conditions in the September 14, 2018 approved submittal to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

AMENDED

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

September 14, 2018

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

PSF No.: 17OD-083

OAHU

Issuance of Right-of-Entry Permits for Beach Activities to be held on October 16 and 17, 2018; and Issuance of Revocable Permit for Recreational and Maintenance Purposes; Resorttrust Hawaii, LLC, Applicant; Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023:041.

APPLICANT:

Resorttrust Hawaii, LLC ("RTH"), a domestic limited liability company.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of Government lands situated Waialae, Honolulu, Oahu, identified by Tax Map Key: (1) 3-5-023:041 (the hatched area) and the beach situated makai of such hatched area as shown on the map labelled as **Exhibit 1**.

AREA:

Right-of-Entry ("ROE")

October 16, 2018	2,309 square feet
October 17, 2018	<u>7,651 square feet</u>
Total:	9,960 square feet

Revocable Permit ("RP")

The hatched area shown on Exhibit 1, which is 1,280 acres, more or less¹, including 5,153.5 square feet thereof allowing placement of improvements and equipment described below.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: Resort (for abutting property)

EXHIBIT "A-1"

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 14, 2018 Co.

¹The area was generated from a computer program, and it did not go through any land survey process.

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7849, Resorttrust Hawaii, LLC, Permittee, for recreational and maintenance purposes at a monthly rental of \$1,281.60 effective from January 1, 2018.

CHARACTER OF USE:

ROE Corporate event purposes.

RP Recreational and maintenance purposes limited to storage area, cabana hale, cabana tent, beach shower, tower caddy, outside seating area, hammock, trash can, beach chair storage, clam shell lounge, beach chair set up for 4 or 6, and outrigger canoes storage, as described in Applicant's request letter described below.

COMMENCEMENT DATE/TERM:

ROE

- (a) From 3:00 p.m. to 12:00 a.m. on October 16, 2018 (Tuesday).
- (b) From 6:00 a.m. to 9:00 p.m. on October 17, 2018 (Wednesday).

RP

The requested revocable permit shall commence upon the termination of RP 7849, as described below.

MONTHLY RENTAL for RP:

To be determined by an independent appraiser at the cost of the applicant, subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT for RP:

Twice the monthly rental.

RENTAL for ROE:

\$996 (One-time payment, based on 10¢ per square foot per day.)

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule (“HAR”) Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on 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, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing”, 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”. See **Exhibit 2**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO
Registered business name confirmed:	YES <u> x </u>	NO
Applicant in good standing confirmed:	YES <u> x </u>	NO

JUSTIFICATION FOR REVOCABLE PERMIT:

A land disposition is needed to regulate the hotel’s improvements and activities at the subject location, and a revocable permit is able to meet this objective as supported by the following justifications.

- A. Site issues make property unsuitable for public auction lease:
 - No legal vehicular access.
 - Irregular shape.
 - The requested location and other portions of State unencumbered lands in the vicinity are not legally subdivided lots.

- B. Since RTH became the owner of the hotel around 2014, its representative approached the Land Division discussing the possibility of obtaining an easement for some of the hotel’s activities and improvements. RTH published a draft environmental assessment (“DEA”) pursuant to Chapter 343, HRS in the summer of 2017, but decided to withdraw the DEA in August 2017 due to community concerns and maintain the current revocable permit.

REMARKS:

Location

The subject beach area was built at the cost of the private property owners and tenants around 1963 pursuant to Permit No. 1164 dated August 13, 1962 issued by the Department of Transportation, Harbors Commissioners.

At its meeting on January 25, 1963, under agenda item F-23, the Board approved the request from the private property owners and tenants to create the beach. Subsequently, an agreement dated February 15, 1963 between the Board of Land and Natural Resources and the private parties, was signed and recorded at the Bureau of Conveyances on January

27, 1967 in Book 5568, page 249.

Since 1968, revocable permits were issued to the adjoining hotel owners and they are shown in the table below.

RP No.	Date	Area (sq. ft.)	Purposes
4220	October 1, 1968	6,250	Recreational
6317	March 1, 1986	32,860	Recreational purposes and maintenance of State land
6903	November 1, 1993	40,460	Recreational purposes and maintenance of State land
7430	May 1, 2007	40,460	Recreational and maintenance purposes
7849	July 1, 2016	40,460	Recreational and maintenance purposes

Staff notes that when the Board considered the request for a revocable permit to Kahala Hilton Co., Inc. at its meeting on February 28, 1986, item F-1-d (**Exhibit 3**), the board submittal noted that “[t]he area requested by the applicant is entirely above the shoreline which is indicated by the growth of existing vegetation. Makai of the shoreline or vegetation line is a wide, sandy beach area which is extremely used by the general public on a regular basis.” Eventually, RP 6903 was issued to Kahala Hilton Co., Inc.

For the purpose of discussion, staff would like to divide the subject State lands, further identified as TMK (1) 2-5-023:041 into two portions.

1. The RP Area, i.e. the hatched area on Exhibit 1, which is the portion of State lands between the makai boundary of the hotel and mauka of the shoreline certified in 2016. Majority of the RP area is presently landscaped;
2. Kahala Beach, which is the sandy beach area makai of the 2016 certified shoreline described above.

Staff believes a clarification of the subject area is significant in view of the community’s concerns described in the following paragraphs.

Community’s Concerns

In the past few months, the Department received multiple complaints from the community through emails, letters, or phone calls regarding unauthorized commercial activities at the Kahala Beach. Per the complainants, these unauthorized commercial activities are not permissible under the terms and conditions of RP 7849 currently held by RTH. Therefore, the Board should not renew RP 7849 and authorize enforcement actions, e.g. fines, termination of RP. Letter dated June 23, 2018 from Sierra Club of Hawaii is attached as **Exhibit 4**, with the following issues raised by the community:

- Surfing and stand-up paddle lessons;
- Presetting beach chairs

- Reducing public access to the beach
- Unauthorized improvements on the beach
- Wedding ceremonies on the beach
- Serving alcohol on State lands
- Illegal mooring of catamaran in the water

Upon receipt of the complaints, multiple staff of the Land Division inspected the Kahala Beach on different dates, and the following is a summary of the outcome of those site inspections.

- In one occasion, staff noticed that there was an employee of the beach concession talking to a couple, believed to be the guests of the hotel, on the sandy beach. Staff was not sure if the exchange was pertaining to any surfing lesson or solicitation for such lesson. Nevertheless, we informed the hotel through its counsel, and we were told that the hotel stopped any beach activities involving its beach concessionaires and its employees on the sandy beach.
- During those site visits, there was no sighting of presetting beach chairs on the Kahala Beach, but there were beach chairs with umbrellas and the cabanas placed on the RP area.
- Previously, there was a sandy path over portions of the RP area. RTH recently modified the landscaping of the RP area by, among other improvements, converting the sandy path into grassy area. However, staff did not experience any blocking or reducing of public access onto the RP Area and the Kahala Beach during the site visits.
- Regarding serving alcohol on State lands, staff contacted the investigator of the Liquor Commission and confirmed that the investigator's office has visited the location and did not find any violation under the liquor license. However, the investigator will continue to monitor the situation.
- In the complaints, there were photos showing wedding planner(s) preparing portions of the RP Area for a wedding ceremony. Staff brought this issue to RTH and reiterated that a wedding ceremony without prior approval is not permissible. For the Board's reference, RTH is currently asking for a beach right-of-entry for wedding and corporate receptions on the RP Area. Staff will discuss this request later in this submittal.
- Staff brought to the RTH's attention the mooring of the catamaran in the water off the hotel. We were told that the hotel does not own the catamaran. Staff will coordinate with the Division of Boating and Ocean Recreation for any appropriate follow-up action.

In addition to the concerns raised in Exhibit 4, Land Division also received a copy of a letter dated August 2, 2018 (**Exhibit 5**) from the Department of Health, Clean Water Branch regarding a damaged discharge pipe releasing cooling water near the shoreline. Before the receipt of the letter from DOH, staff also received a phone call on August 10, 2018 from the Chief Engineer of the hotel inquiring steps and process required to conduct the repair work. The hotel was requested by DOH to respond within 30 calendar days to provide a response. Staff understands the discharge pipe is a component of the facilities

that house the dolphin and other fishes on the hotel’s property, and staff is planning to work with the hotel on process/authorization for the forthcoming repair.

The community also wants to share with the Board a violation by a company running the canoe and surfboard activity through the swimming zone designated by the §13-256-89, HAR. “Waiālae-Kahala Restricted Area”. Emails between the DOBOR and the company are attached as **Exhibit 6**.

RTH Request for RP

RTH, through its counsel, has prepared a detailed letter (**Exhibit 7**) with photos explaining the different aspects of the situation at the subject location. RTH is requesting the Board’s clarification of the purpose of the RP which would allow placing of 40 items on the RP Area and their particulars are tabulated below.

Item	Reference on the map	Dimensions (ft)		Area	Count	Total Area (sq ft)
KOKK Storage Area	1	14	40	560	1	560
Cabana Hale	2	8	9	72	1	72
Cabana Tent	3-6, 10-15	10	10	100	10	1000
Beach Shower	7	8	8	64	1	64
Tower Caddy	8	2	6	12	1	12
SSG Seating Area	9	71	27	1917	1	1917
Hammock	16	13	4.5	58.5	1	58.5
Trash Can	17, 38-40	2	4	8	4	32
Beach Chair Storage	18	18	26	468	1	468
Clam Shell Lounges	19-31	5	6	30	13	390
Beach Chairs Setup 4 Chairs	32,34,36	12	7	84	3	252
Beach Chairs Setup 6 Chairs	33,35	8	7	56	2	112
Outrigger Canoes Storage	37	9	24	216	1	216
					40	5153.5

RTH’s counsel also agreed with the Division’s comment that the character of use in the revocable permits at the subject location, which “recreational and maintenance” is too vague. It creates ambiguity in terms of possible enforcement actions. Therefore, RTH requests the Board agree to amend the permissible use of RP 7849 to include the specific items described on map marked as Exhibit I-A of Exhibit 7.

The area [5,000+ square feet] noted above is relatively small comparing to the total acreage of the RP Area, which is about 1.28 acres. Public access over the area was always required in the previous revocable permits issued to the respective hotel owners. Staff notes from previous revocable permit files that there were some past incidents when public access was challenged or even blocked. Nevertheless, RTH is fully aware of the significance of this

requirement and promise to continue to comply with this requirement in the requested revocable permit, if approved by the Board.

On the ground, there is a continuous stretch of landscaped area along the Kahala Beach from Diamond Head side to Koko Head direction maintained by RTH. As a result, depending on the exact location, it may be difficult to distinguish whether an individual is physically standing on the hotel property or the State land [RP Area]. RTH has installed some signs showing the public access, for example, see Exhibit G of the Exhibit 7. As mentioned in the same Exhibit 7, a representative of RTH has been attending the neighborhood board meetings to share the available information from the hotel side.

Currently, RTH maintains the RP Area as well as the Kahala Beach as part of its operations. RTH agrees to continue maintaining the Kahala Beach pursuant to the requested RP, if approved. Staff supports the continuance by RTH in the maintenance of the Kahala Beach, as it is technically considered as unencumbered State lands and the Division's limited land maintenance resources are largely devoted to the stream maintenance and overgrown vegetation.

Land Division does not have any objection to the requested RP, subject to an appraisal procured at RTH's cost to determine the monthly rental.

Right-of-Entry

RTH advised the staff that they had stopped taking reservations for events planned on State lands, immediately after they were advised by the State about the prohibition of such events without prior approval. However, there were two reservations booked prior to RTH stopping the practice of taking reservations. RTH is asking the Board to authorize two (2) right-of-entry permits for the periods mentioned above, for corporate events. The request together with maps for the respective locations are attached as **Exhibit 8²**.

Staff believes these events are similar to prior approvals from the Board on beach event activities, fireworks displays etc. Therefore, staff has no objection to the requested ROE subject to the terms and conditions described above.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Recently, Land Division asked other government agencies for comments on the renewal of Oahu RPs scheduled to take effect on January 1, 2019 upon approval from the Board under separate request on today's agenda. RP7849, the current one, is on the list. Therefore, staff did not solicit another round of comments on the requested RP.

Other materials

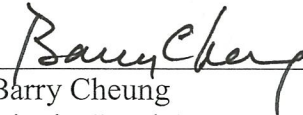
Testimonies received for August 24, 2018 Board meeting and other letters received from community regarding the subject matter are attached as **Exhibit 9**.

² By letter dated August 17, 2018, RTH amended its request by withdrawing December 29, 2018 from the request.

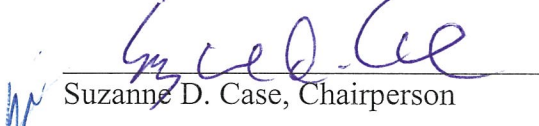
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to Resorttrust Hawaii, LLC covering the subject area for recreational and maintenance purposes 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 revocable permit form, as may be amended from time to time;
 - B. Permittee shall maintain, at its own costs, the beach located seaward of the revocable permit area:
 - 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.
3. Termination of RP 7849 upon issuance of the requested revocable permit.
4. Authorize the issuance of a right-of-entry permit to Resorttrust Hawaii, LLC covering the subject area for beach activities purposes 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.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

Land Board Meeting: September 14, 2018;
D-13: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: September 14, 2018; D-13: Approved as amended.

Approved as amended. The Board approved the Right-of-Entry Permits; deferred on the Issuance of a new or amended Revocable Permit pending receipt of David Frankel's petition for a contested case. The Board noted the current Revocable Permit shall to continue at least through December 31, 2018.

EXHIBIT 1



EXHIBIT 1

EXHIBIT 2

EXEMPTION NOTIFICATION

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

Project Title: Issuance of right-of-entry permit for beach activities on October 16 and 17, 2018; and revocable permit for recreational and maintenance purposes.

Reference No.: PSF 17OD-083

Project Location: Waialae, Honolulu, Oahu, TMK (1) 3-5-023:041.

Project Description: Issuance of right-of-entry permit for beach activities on October 16 and 17, 2018; and issuance of revocable permit for recreational and maintenance purposes.

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

Exemption Class No.: In accordance with HAR Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on 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, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", 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".

Cumulative Impact of Planned Successive Actions in Same Place Significant? No, similar right-of-entry permits occur at the same location from time to time. Clean up is required after the events, staff believes that there would be no significant cumulative impact.

In addition, staff does not believe there would be significant cumulative impact from the requested revocable permit. Similar activities were authorized since the issuance of the first revocable permit in 1986, and similar approvals were transferred to the respective hotel owners pursuant to other revocable permits for the same purpose. The area under the subject request is similar to the current revocable permit held by the applicant.

Action May Have Significant Impact on The requested area is a portion of State beach visited by tourists and residents, and it is heavily impacted by human activity.

Particularly Sensitive
Environment?

activity. Public access across the requested area is maintained by the Kahala Hotel staff. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

Consulted with Office of Conservation and Coastal Lands who has no objections to the subject request and concurs with the exemption for an environmental assessment.

Analysis:

The Board has permitted similar activities at the subject location in the past. The proposed activity is of a similar type and scope of beach activities that periodically occurred and continues to occur on this beach areas. Such activities have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation:

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

EXHIBIT 3

February 28, 1986

REVOCABLE PERMIT

OAHU

KAHALA HILTON CO., INC.

LOCATION & AREA

Government land at Waialae-Iki, Honolulu, Oahu, being portion of the beach land between the shoreline and the seaward property line of the Kahala Hilton Hotel as shown on the map labeled Land Board Exhibit "A" and appended to the basic file.

Area: Approximately 32,860 sq. ft.

ZONING

State Land Use Commission: Urban
City and County of Honolulu CZC: Resort

PURPOSE

Recreational purposes and the maintenance of State land

COMMENCEMENT DATE

March 1, 1986

MONTHLY RENTAL

\$855.00

COLLATERAL SECURITY DEPOSIT

\$1,710.00

LIQUIDATED DAMAGES

\$171.00

LAND TITLE STATUS

Sub-section 5(b) lands

TAX CLEARANCE

A tax clearance from the State Tax Office and the City and County of Honolulu Finance Department shall be obtained by the permittee and filed with our Land Management Division prior to the use and occupancy of the area.

OTHER TERMS & CONDITIONS

Terms and conditions of the standard revocable permit form including such other terms and conditions as may be prescribed by the Chairperson.

ITEM F-1-d

f
EXHIBIT 3

REVOCABLE PERMIT

February 28, 1986

KAHALA HILTON CO., INC.

REMARKS

The area requested by the applicant is entirely above the shoreline which is indicated by the growth of existing vegetation. Makai of the shoreline or vegetation line is a wide, sandy beach area which is extremely used by the general public on a regular basis.

It is the desire of the applicant to use the subject area to enhance the beach frontage of the Kahala Hilton Hotel and to serve as a buffer zone between the sandy beach area and the hotel facilities. The applicant has no intention to bar public access to its grounds from the beach area. Presently, they at no cost to the State, clean and maintain the beach and vegetative areas, provide refuse disposal receptacles and permit public use of a cold water shower and drinking fountain at beach side.

6,250 sq. ft. of the requested approximate 32,860 sq. ft. is presently encumbered under Revocable Permit No. S-4220 to the applicant for recreational purposes; i.e., surf board rack (64 sq. ft.), volleyball court (3,786 sq. ft.), badminton court (1,525 sq. ft.), and walkway (825 sq. ft.). The current rental for Revocable Permit No. S-4220 is \$161.00 per month or \$0.026 per sq. ft. per month, which when multiplied against 32,860 sq. ft. would yield the monthly rental recommended herein.

If the Board approves the applicant's request, staff recommends that the existing Revocable Permit No. S-4220 to the applicant be cancelled.

RECOMMENDATION

The Board:

- A. Authorize the cancellation of Revocable Permit No. S-4220 to Kahala Hilton Co., Inc. effective February 28, 1986.
- B. Authorize the issuance of a revocable permit to the applicant covering the above-described area under the terms and conditions listed above, which are by this reference incorporated herein and, in addition, to the following:
 1. No commercial activity will be allowed on the premises
 2. No structures of any kind will be permitted on the premises except with the prior written approval of the Department
 3. the general public shall be permitted access to the sandy beach area and be permitted to use the permit premises for beach related recreational activities
 4. other terms and conditions the Chairperson may prescribe.

EXHIBIT 4



SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. *Cherish the Earth.*

June 23, 2018

BLNR Chair Suzanne Case
P.O. Box 621
Honolulu, HI 96809

Dear Chair Case,

We wish to bring to your attention the Kahala Hotel's impermissible commercial uses of state lands and waters. Before the BLNR considers whether to renew revocable permit number S-7849 to Resorttrust Hawaii LLC, the BLNR needs to (1) investigate and take action into violations of the revocable permit; (2) investigate and take action into other violations by Resorttrust within nearby state land and waters; (3) assess and charge for the true value of this land; and (4) consider whether it would be appropriate to incorporate alternative language into any revocable permit if it chooses to renew the RP. A photograph from Resorttrust's withdrawn environmental assessment provides some context. The area covered by the RP is outlined in pink, makai of the hotel.

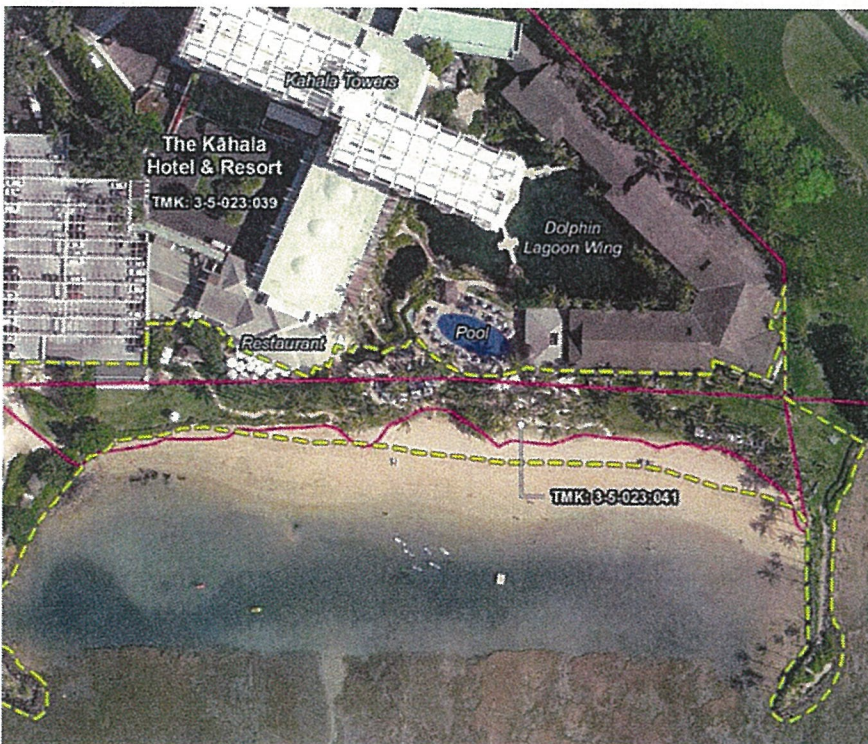


Figure 6: Site Map

The Kāhala
The Kāhala Hotel & Resort

EXHIBIT "4"

This next photograph shows the high tide line (or “shoreline”) on one of the king tide days in 2017:



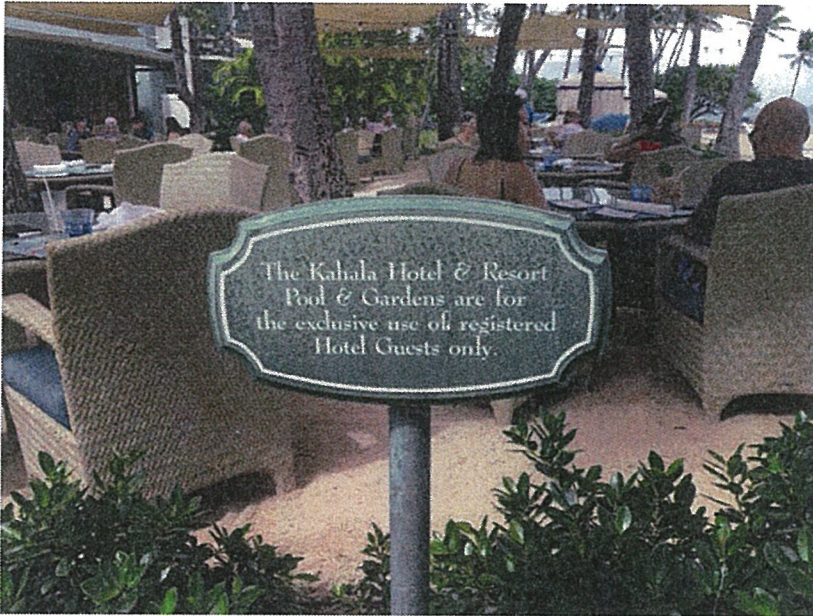
Violations of RP S-7849

RP S-7489 allows Resorttrust Hawaii LLC the right to occupy and use state owned ceded land at TMK (1) 3-5-023:041 “for the following specified purposes **only: recreational and maintenance purposes.**” (paragraph A1). As is readily apparent from only a cursory investigation, the Kahala Hotel, Resorttrust engages in, and facilitates, the following commercial activities on state owned ceded land:

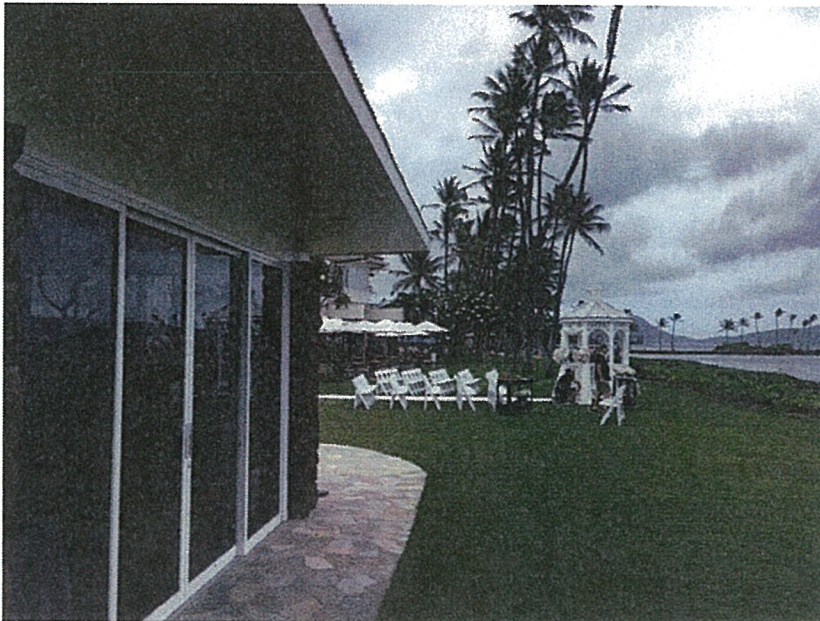
- a restaurant and bar
- weddings and wedding events
- surf lessons
- alcohol sales and consumption
- beach chair and cabana rentals

During daylight hours, more than half of TMK (1) 3-5-023:041 is occupied by chairs, tables, cabanas, pre-set beach chairs, and a wedding gazebo (on wheels) that make more than half the parcel inaccessible to members of the public and is being exclusively used to generate profits by Resorttrust Hawaii LLC. On king tide days, which will only occur more frequently with sea level rise, there is almost no room for members of the public.

The Seaside Grill is located in the middle of the land covered by RP S-7489. While the restaurant's kitchen appears to be on private land, the portion of the restaurant in which customers sit, eat and drink is on TMK (1) 3-5-023:041. Resorttrust has cordoned off a portion of the state parcel for use as an outdoor dining area for exclusive use of hotel guests. The general public is excluded from using this area. This commercial restaurant use of state land is **not** "recreational." See the photograph below (taken May 26, 2018).



Weddings and wedding events also take place on TMK (1) 3-5-023:041. See the photograph below (taken May 26, 2018):

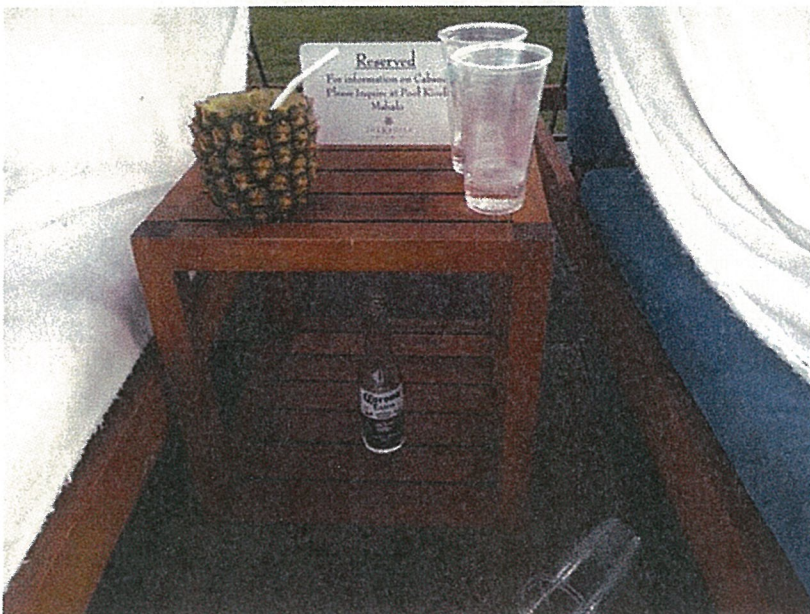


The Kahala Hotel's website, <https://www.kahalaresort.com/Romance-Weddings/Wedding-Packages>, sells a wedding package for \$7,100, which includes an "Ocean front" ceremony, "Up to 40 Chiavari chairs" and "Amplification system" and "Exclusive use of The Kahala Hotel & Resort property for wedding photography" The "*Ceremony package includes one hour use of the ceremony site. Ceremony package does not include guest rooms. All ceremony package prices are valid through December 31, 2018.*"

Resorttrust has placed cabanas and lounge chairs for rent within TMK (1) 3-5-023:041:



(taken May 26, 2018)



(taken June 15, 2018)

The Kahala Hotel charges \$165 to use a cabana tent for the day.
<https://www.kahalaresort.com/Experiences/Pool-Beach>.

Resorttrust also preset beach chairs on the sandy beach makai of TMK (1) 3-5-023:041 in violation of condition B17, but recently stopped that practice.

Not only is Resorttrust engaged in private commercial uses of public land, it has also impermissibly placed structures on public land. Paragraph 17 and HRS chapter 205A prohibit any “improvements” on this land without authorization from both the BLNR and the city. HRS §§ 205A-28 and -44(b) requires a special management area permit (use permit or minor permit) and a shoreline setback variance for structures placed near the shoreline. As far as we can tell, the pavers placed underneath the cabanas, and the cabanas themselves (pictured above), which have been there permanently for months, have never received any authorization from the BLNR or the City. Nor has the storage cabinet (pictured below).



Illegal Activities Near TMK (1) 3-5-023:041

Although technically not within TMK (1) 3-5-023:041, Resorttrust appears to be violating the law on state land and state waters nearby in several ways.

First, it conducts additional weddings and wedding events on state owned land just east of, and adjacent to, TMK (1) 3-5-023:041 without paying the DLNR anything and without authorization. *See* HAR § 13-221-35.



(taken May 26, 2018)

Second, it (or its contractors) stores beach chairs and a canoe used for commercial purposes on the state-owned land just east of TMK (1) 3-5-023:041 without paying the DLNR anything and without authorization. *See* HAR §§ 13-221-35 and 13-221-14



(taken on June 15, 2018)

Third, it (or its contractor) launches and operates a canoe in an area exclusively designated for swimming in violation of HAR § 13-256-89(b)(2).



Fourth, it releases pollutants from a point source along the shoreline without a permit from the Department of Health. Its permit is for discharges much further off-shore.

Fifth, it has hosted a commercial sailing canoe that has been illegally moored and that fails to abide by HAR § 13-256-89.



(taken April 27, 2018)

Improper Valuation of the land

We do not believe that commercial use of public beachfront property is appropriate. The Kahala Hotel's commercial activities occupy far too much public land at the expense of the general public. Public recreational use is the most appropriate use of this land. As the Hawai'i Supreme Court held:

Under public trust principles, the State as trustee has the duty to protect and maintain the trust property and regulate its use. Presumptively, this duty is to be implemented by devoting the land to actual public uses, *e.g.*, recreation. Sale of the property would be permissible only where the sale promotes a valid public purpose.

State by Kobayashi v. Zimring, 58 Haw. 106, 121, 566 P.2d 725, 735 (1977).

Nevertheless, if the BLNR decides that the Kahala Hotel should be able to maximize its profits through the commercial use of this beachfront land, the BLNR must charge far more than it is currently collecting. Resorttrust Hawaii LLC is owned by a multi-billion dollar multinational corporation. This corporation pays only \$1,244 per month for the ability to use this state land. It makes far more than that in a single day (in fact, in a single hour) – and can afford to pay much, much more. Compare, for example, how much money the City generates from concessions on city-owned land at Hanauma Bay. The snorkel concession pays the City more than \$150,000 per month. The shuttle concession pays approximately \$3,000 per month. The food concession pays more than \$30,000 per month. And the gift shop concession pays more than \$20,000 per month. The City is generating more than \$200,000 per month – while the DLNR is earning \$1,244. The City is bringing in 160 times more revenue on less land.

The BLNR should also know that although paragraph A6 requires Resorttrust Hawaii LLC to pay real property taxes for the premises, the City has not charged property taxes for use of the property and Resorttrust has not paid property taxes for use of this land.

Additional conditions

Curiously, while the RP, by its own terms, expires on June 30, 2018 (paragraph B1), the staff at Land Management has taken the position that the RP expires at the end of the calendar year. This discrepancy makes no sense. In any case, if the BLNR decides that renewal of RP S-7849 is in the public interest, it must decide whether it wishes to allow commercial uses of this land (over our objection).

If so, the RP should include the following additional conditions:

- The Permittee shall install an easily-identifiable pathway, at least five-feet wide, that crosses this parcel and is open to public use. The pathway must be demarcated on the eastern and western ends of the parcel signs saying "Public Access" with lettering at least two-inches high visible to those approaching the Premises.

- In exchange for this RP, Resorttrust LLC shall allow the public (not including any employees or contractors) to park for free in ten parking spaces within the Kahala Hotel property between the hours of 5:00 a.m. and 11:00 p.m. daily.
- Monthly rent in the sum of \$200,000.

If the BLNR agrees that commercial use of this prime beachfront land is inappropriate, the RP should include the following additional conditions:

- The Permittee is prohibited from using TMK (1) 3-5-023:041 for any commercial use or using it to facilitate any commercial use makai of the parcel. Prohibited commercial uses of this parcel and the area makai of the parcel include, but are not limited to: any restaurant and bar, or restaurant or bar services; weddings and wedding events; surf lessons; fishing tours; alcohol sales and consumption; beach chair rentals; cabana rentals; stand-up paddle board rentals; kayak rentals; and rentals of any type of watercraft.
- The Permittee shall ensure that its employs, permittees and contractors comply with the terms of this permit and shall be responsible for any violations. Thus, for example, the Permittee may not allow a surf school or wedding service to operate on its property that uses, or crosses, this parcel.
- The Permittee shall not, ~~without the prior written approval of the Chairperson of the Board~~ place improvements within the Premises, and/or preset beach equipment or ~~conduct surf instruction~~ within the public beach fronting the Premises.
- Permittee shall not engage in any activity that facilitates commercial activity in the ocean, including, but not limited to, surf instruction, canoe tours, and fishing tours, within the public beach or waters fronting the Premises.
- The Permittee shall install signs on the eastern and western ends of the parcel signs saying "Public Welcome" with lettering at least two-inches high, visible to those approaching the Premises.

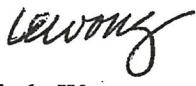
Conclusion

The Kahala Hotel has been and is using state land and waters in ways that appear to violate revocable permit number S-7849 as well as administrative rules. We ask you to investigate these claims and to take vigorous enforcement action. Please let us know of any citations you issue. We can provide additional photographs and eye witness testimony. Please consider these issues as you decide whether to renew the revocable permit. Although we oppose the commercial use of this land and the state waters, if you are going to allow Resorttrust to continue to profit off of public land at the public's expense, fulfill your fiduciary duty by charging the resort far more than you have been. If you are going to renew the revocable permit, please consider the additional conditions we have drafted.

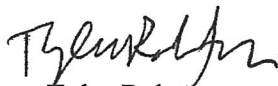
Aloha,



Dave Raney



Linda Wong



Tyler Ralston



Jim Nicolay



Martha Townsend
Director, Sierra Club of Hawai'i¹

copy Barry Cheung

Resorttrust Hawaii LLC c/o
Paracorp Incorporated
1136 Union Mall Ste 301
Honolulu, Hawaii 96813

Resorttrust Hawaii LLC
5000 Kahala Ave
Honolulu, Hawaii 96816

¹ This letter is also sent pursuant to HRS § 607-25

EXHIBIT 5

DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

08003EBT.18

August 2, 2018

CERTIFIED MAIL NO.
RETURN RECEIPT REQUESTED
7017 0660 0001 1844 7389

Mr. Gerald Glennon
General Manager
Resorttrust Hawaii, LLC
5000 Kahala Avenue
Honolulu, Hawaii 96816

RECEIVED
LAND DIVISION
2018 AUG 13 PM 2:43
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Glennon:

**Subject: National Pollutant Discharge Elimination System (NPDES)
Kahala Hotel and Resort
Honolulu, Island of Oahu, Hawaii
Permit No. HI 0021890**

The Department of Health (DOH), Clean Water Branch (CWB) is providing this correspondence as a notice of a potential violation of your National Pollutant Discharge Elimination System (NPDES) Permit No. HI 0021890. On July 3, 2018, the DOH-CWB received a complaint that the Kahala Hotel and Resort's (Facility) discharge pipe was damaged and releasing cooling water near the Facility's shoreline. A review of DOH records indicate that on July 21, 2016, the DOH-CWB conducted a Compliance Evaluation Inspection of the Facility. During the July 21, 2016 inspection, the DOH-CWB observed a crack in the Outfall 001 discharge pipe. As documented in a DOH inspection report, the Facility Representative stated that a consultant had been retained to repair the discharge pipe.

Section 9 of the Standard NPDES permit conditions requires the Permittee to properly operate and maintain all systems of treatment and controls used by the Permittee. As such, you must properly maintain the Facility's discharge pipe as required by your NPDES permit. Failure to make appropriate and adequate corrective actions may elicit an enforcement action.

Within 30 calendar days of this letter, please provide a response addressing the concerns detailed in this notice. In your response, include actions planned or taken to correct the deficiency and a date certain for completion of corrective actions.

EXHIBIT "5"

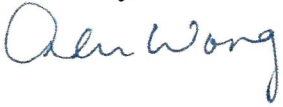
Mr. Gerald Glennon
August 2, 2018
Page 2

08003EBT.18

Please be aware that the Hawaii Revised Statutes, Chapter 342D-30, provides for penalties of up to \$25,000 per day per violation. The DOH reserves its right to seek full penalties for any violations.

Should you have any questions, please contact Ms. Bobbie Teixeira of the Enforcement Section, CWB, at (808) 586-4309.

Sincerely,

A handwritten signature in cursive script that reads "Alec Wong".

ALEC WONG, P.E., CHIEF
Clean Water Branch

BT:na

EXHIBIT 6

Statts, Meghan L

From: Statts, Meghan L
Sent: Thursday, July 12, 2018 9:58 AM
To: 'Hans Hedemann'
Subject: RE: storing of canoe Kahala Hotel

Hans,

I do not oversee the land portion. You would have to check with the hotel.

Meghan

From: Hans Hedemann [mailto: [REDACTED]]
Sent: Thursday, July 12, 2018 9:29 AM
To: Statts, Meghan L < [REDACTED] >
Subject: Re: storing of canoe Kahala Hotel

Hi Megan,

Storing of the canoe at the Kahala resort hotel is fine where it always been under the Milo tree at the far end east side , it's in line with beach chair placing, if that's not ok please advise.

Thank you,
Hans

On Thu, Jul 12, 2018, 8:30 AM Hans Hedemann < [REDACTED] > wrote:

Ok , got it,
thanks

On Thu, Jul 12, 2018, 8:29 AM Statts, Meghan L < [REDACTED] > wrote:

That is correct. See the copy of the HAR that shows the designated and restricted swimming zone only.

Meghan Statts
Oahu District Manager

On Jul 12, 2018, at 8:27 AM, Hans Hedemann < [REDACTED] > wrote:

Aloha Megan,

Thank you for your email , I will make sure we use the erea high lighted in yellow that you sent for our tours, to just confirm that the swimming erea is prohibited to surf boards, canoe and stand up paddle boards even if they are rented out to guests of the hotel ?

Hans Hedemann

On Thu, Jul 12, 2018, 6:57 AM Statts, Meghan L < [REDACTED] > wrote:

Aloha Hans,

I have received a complaint about your company violating Hawaii Administrative Rule 13-256-89. The complaint is that you are running your canoe and surfboards through a designated swimming zone. I have attached the HAR section and map that shows you the location of the restricted areas. I have highlighted the area that you have to use to enter the ocean waters. You cannot enter the restricted swimming zone at any time.

Please email me back with a response and to confirm that you have received this email.

Mahalo,

Meghan Statts

Oahu District Manager

Boating and Ocean Recreation

808- [REDACTED]

EXHIBIT 7

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

DIRECT DIAL NO.
808.523.2557 (JAL)
808.523.2532 (JTY)

JLIM@CARLSMITH.COM
JTY@CARLSMITH.COM

OUR REFERENCE NO.:
067396-00006

August 6, 2018

VIA HAND DELIVERY

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

RECEIVED
DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII
210 AUG -6 PM 3
R.L.

Re: Request for Amendment to Revocable Permit for Use of State Land in
Waialae, Honolulu, Oahu, Tax Map Key No. (1) 3-5-023: 041

Dear Chairperson Case and Members of the Board:

We represent Resorttrust Hawaii, LLC ("**RTH**"), the owner and operator of The Kahala Hotel & Resort (the "**Hotel**"). RTH is the permittee under Revocable Permit No. S-7849 ("**RP 7849**"), which grants RTH the right to use approximately 40,460 square feet of State-owned land (as shown on the map attached to RP 7849) (the "**Premises**") for recreational and maintenance purposes. RTH became the permittee as of June 8, 2016. However, there is a long history of the Hotel holding a revocable permit for the Premises.

The portion of State-owned land subject to RP 7849 (designated by Tax Map Key No. (1) 3-5-023: 041) (the "**State Parcel**") was created by the original developers of the Hotel (Kahala Hilton Hotel Company, Inc.) in 1964, and done pursuant to approvals from the Department of Land and Natural Resources ("**DLNR**") and the State of Hawaii Department of Transportation. It is important to note that the State Parcel does not include the sandy beach that fronts the State Parcel. The public beach is not part of the State Parcel and is not the subject of this request.

I. BACKGROUND OF DEVELOPMENT OF STATE PARCEL

In 1962, the State of Hawaii Department of Transportation Harbors Division issued a permit authorizing the Kahala Hilton Hotel to create a beach in proximity to the Waialae-Kahala Golf Course. Next, the Board of Land and Natural Resources ("**BLNR**") unanimously approved the Kahala Hilton's request to improve the beachfront, entirely at the expense of the Kahala Hilton, by dredging and filling the area, importing sand to construct the beach, and to construct

two small islets and two groins.¹ The BLNR described the agreement with the Kahala Hilton Hotel as being "similar to the Outrigger Canoe Club agreement" but the "no-structure clause in the Outrigger Canoe Club agreement [was] deleted from this agreement." *See* BLNR Minutes, Item F-23, Jan. 25, 1963.

As a result of the work by Kahala Hilton, a sandy beach and swimming lagoon were created for the use and enjoyment of the public, and a new parcel of State property (the State Parcel), located between the beach and the Hotel property, was created. Now, 50 years later, the Hotel remains a special location outside of Waikiki that has served as one of Hawai'i's premier destination luxury resort since 1964. The Kahala Hotel & Resort has hosted guests including all of the last eight Presidents of the United States, Queen Elizabeth, the Emperor and Empress of Japan, as well as entertainment, sports, corporate and political celebrities. The Hotel has proudly been the home of exceptional Hawaiian entertainment from the likes of Danny Kaleikini, who played there for 30 years, as well as Jimmy Borges and Betty Lou Taylor, luminaires of jazz in Hawaii and beyond. The Hotel boasts some 500 employees, and it is thanks to their hard work and aloha that the Kahala Hotel & Resort remains renowned for impeccable service and gracious Hawaiian hospitality.

II. BACKGROUND OF USE OF STATE PARCEL

Revocable Permits had been issued to the Kahala Hilton Hotel for portions of the State Parcel for years, but it was in 1986 that the BLNR first approved the issuance of a Revocable Permit to the Kahala Hilton for the entirety of the State Parcel. The Hotel requested the Revocable Permit to enhance the beach frontage, and also to serve as a buffer zone between the sandy beach area and the Hotel. The BLNR noted with approval that, at no cost to the State, the Hotel cleaned and maintained both the beach and the State Parcel fill land, and provided refuse disposal receptacles and permitted the public to use the cold water shower and drinking fountain that was on the State Parcel. A Revocable Permit for recreational and maintenance purposes has been issued to the Hotel for the entirety of the State Parcel Premises ever since.

Over the decades, the State Parcel has been used in conjunction with Hotel operations, and portions of the beach fronting the State Parcel has also been enjoyed by Hotel guests. Hukilaus were held at the beachfront, and luaus, parties, weddings, and other important events were held on the State Parcel. *See* historical photos enclosed as **Exhibit A**. Public access to the beach fronting the State Parcel and the Hotel is from the end of Kahala Avenue along the west side of the Hotel parking structure. Shoreline access is also provided laterally, along the public shoreline from Waialae Beach Park.

¹ As properly permitted reclaimed land created with the approval of government authorities, under HRS § 171-53(b), the BLNR is authorized to value such reclaimed land as if it were still submerged land.

RTH acquired the Hotel late in 2014 and shortly thereafter began talking with DLNR staff about converting RP 7849 into a non-exclusive easement, and formalizing the right to hold weddings and other commercial events on the State Parcel. At that time, the Hotel also wanted to increase its private/commercial activities by adding a third wedding venue to the State Parcel, and the Hotel also sought permission to pre-set chairs and Cabana Tents on portions of the sandy beach, and install tiki torches along the two groins. The Hotel's plans were first presented to the public through a Draft EA and without prior discussion. The community was strongly against the proposed grant of easement, believing it was a gateway to potential unrestrained use of the State land and a means of excluding the public from State land. *See e.g.*, Rich Turbin ltr. dated July 27, 2017, enclosed as **Exhibit B**. In response to these community concerns, the Hotel asked the DLNR to withdraw the Draft EA by letter dated August 14, 2017.

At that point, the Hotel also started to talk with the community and Neighborhood Board members, and requested the opportunity to provide "Kahala Updates" at each meeting of the Waialae-Kahala Neighborhood Board. Representatives from the Hotel have attended and spoke at every Neighborhood Board meeting since September 2017. At the June 19, 2018 meeting of the Wai`alae-Kahala Neighborhood Board meeting, Chair Turbin passed the gavel to the Neighborhood Vice Chair to make personal statements, where Mr. Turbin "gave a lot of appreciation to the Kahala resort for their cooperation" and stated that "He feels that the hotel is doing a good job and likes the relationship between the [Neighborhood] Board and the hotel. He would like the conversation to continue between all parties." *See* Wai`alae-Kahala Neighborhood Board June 19, 2018 meeting minutes. RTH is honored and humbled to report that the dialog has generated a lot of mutual good will and a better understanding of community concerns.

III. **REVOCABLE PERMIT S-7849**

RP 7849 was issued for "recreational and maintenance purposes." RTH, as did prior owners of the Hotel, views the recreation and maintenance rights granted under RP 7849 as allowing recreational uses that would normally be associated with the operations of the Hotel, such as the placement of clamshell lounge chairs ("**Loungers**") and Cabana Tents for Hotel guests, as well as storage of those items. These types of uses have been ongoing for decades. *See* enclosed as **Exhibit C** photos of the State Parcel from 1996 and 2000.

RTH also understood that materials similarly related to recreational uses, such as other seating, hammocks, a beach shower, a towel caddy, and the storage of recreational aquatic equipment, as permitted as recreational uses under RP 7849. After all, what would be the purpose of the Hotel paying for a Revocable Permit, insuring the State Parcel, and maintaining the State Parcel and no cost to the State, if that Revocable Permit did not authorize any greater rights to the Hotel than otherwise permitted to the public at large?²

² The Hotel spends approximately \$27,420 a year on landscape maintenance and beach grooming (\$2,285/month), plus \$25,600 a year on tree trimming within the State Parcel (coconut, plumeria,

The term "recreational" in RP 7849 means something, but it is not defined within RP 7849. The Oxford dictionary defines the word "recreational" to mean "Relating to or denoting activity done for enjoyment when one is not working." The Honolulu Land Use Ordinance defines the term "outdoor recreational facilities" as:

permanent facilities for active outdoor sports and recreation, other than golf courses. Typical uses include: parks, playgrounds, botanical gardens, golf driving ranges, tennis courts, riding stables, academies and trails, and recreational camps.

The Kauai County Zoning Code defines "Outdoor Recreation" as:

uses and facilities pertaining primarily to recreation activities that are carried on primarily outside of structures.

The Hawaii County Zoning Code provides the following definition for "Amusement and recreation facility, major outdoor:"

a permanent facility providing outdoor amusement and entertainment, including theme and other types of amusement parks, stadiums, skateboard parks, go-cart and automobile race tracks, miniature golf and drive-in theaters.

The Maui County Zoning Code defines "Outdoor Recreation" as:

leisure time activities and areas and accessory structures designed primarily for recreational activity in the open air. Examples of leisure time activities include, but are not limited to, hiking, fishing, hunting, clay shooting, camping, picnicking, equestrian activities, paragliding and hang gliding, skateboarding, rollerblading, and mountain biking. Examples of accessory structures and facilities include, but are not limited to, restrooms, play courts, swimming pools, play arboretums, greenways, botanical gardens, petting zoos, and paint gun and archery ranges. Golf courses are not included.

While there may not be one uniform definition of the term "recreational," it is clear that in the context of permitted land uses, "recreational" authorizes far more intensive than mere access to property.

false kamani, hau, milo, silver buttonwood). These costs are in addition to the monthly payment to the State of \$1,281.60 paid directly to the State for RP 7849, and additional fees that the Hotel spends for insurance required under RP 7849.

RP 7849 (and all prior Revocable Permits issued to the Hotel) could hardly be a valid contract if the Hotel did not receive consideration for the funds it pays to the State. Clearly RP 7849 authorizes something more than access rights because Hotel guests and employees, as do all members of the public, already have rights to access the State Parcel and the beach, with or without RP 7849 being issued to the Hotel.

Notwithstanding RTH's interpretation of what is allowed through the terminology of "recreational," the years of past practice at the Hotel, and the actions of BLNR/DLNR allowing such uses to continue as long as the public was not prevented from accessing the State Parcel or the beach,³ it has come to our attention over the past year that the potential ambiguity inherent in the term "recreational and maintenance purposes" is generating contention within certain factions of the community. This contention is unfairly harming the Hotel's reputation as a long-standing and responsible member of the community. The Hotel is now being accused by some of violating the terms of RP 7849. It is unclear why some are attacking the Hotel and RTH, when, in fact, RTH has taken significant steps to reduce its use of the State Parcel and the public beach.

IV. CORRECTIVE ACTIONS BY RESORTTRUST HAWAII / THE KAHALA HOTEL & RESORT

The unprecedented corrective actions that RTH has taken over the past year substantially reduce the Hotel's use of the State Parcel and the beach.

- The Hotel has cleared the beach entirely of pre-set chairs and Cabana Tents and Loungers. *See* photos taken in 2018 attached as **Exhibit D**. In fact, some members of the public who make use of the beach have expressed disappointment that the chairs they had come to expect over the years are no longer available for use. The Hotel has explained that due to certain opposition groups, the Hotel can no longer provide such amenities.
- The Hotel recently removed the gazebo and tile platform fronting the gazebo from the State Parcel. The gazebo and platform were in place at the Diamond Head side of the State Parcel for years, long before RTH purchased the Hotel, and had been used for weddings for years. Those items have been removed.

³ Over the years, under prior ownership, there were allegations that the Hotel tried to prevent the public from accessing the beach fronting the State Parcel. There were also complaints about beach chairs, cabanas and other beach equipment permanently occupying the sandy beach. Examples of the beach being occupied under prior ownership are shown in the photos provided as **Exhibit F**. RTH acknowledges that members of the public have full rights to access the beach fronting the State Parcel in the same manner that they can access all State-owned beach areas. Furthermore, RTH acknowledges that RP 7849 does not authorize pre-setting of Beach Chairs, Loungers or Cabana Tents on the sandy beach.

- The Hotel removed the trellis that was located on the Koko Head side of the State Parcel and had been used occasionally for weddings for several years.
- Related to the prior wedding activities, the Hotel has repurposed an area within the Hotel property that is now used for weddings. *See* photo of wedding area provided as **Exhibit E**. In connection with these efforts, the Hotel had custom-fabricated portable gazebos that are brought out for outdoor weddings held on the Hotel property as needed.
- Earlier this year, the Hotel underwent a multi-million-dollar renovation of Hoku's and The Veranda. That renovation work included a full renovation of the lawn within the State Parcel, including the removal of potential tripping hazards from the hau tree roots.
- The Hotel created an informal grassy pedestrian access way along the makai border of the State Parcel to address community concerns that there be a discernible pedestrian access way within the State Parcel for those times when high tide makes access along the beach more difficult. *See* photo enclosed as **Exhibit G**. The pathway was a result of discussions with members of the community. Discussions regarding the pathway are on-going.
- The Hotel installed a 14" x 26" sign reading "Welcome Public Access" at the Diamond Head end of the State Parcel in an effort to make it clear that the public is welcome to freely traverse the State Parcel. *See id.*
- The Hotel has informed all of its vendors that no surf or similar lessons can be conducted on the beach. The Hotel does provide opportunities for guests to take surf, stand-up paddleboard, kayak and paddleboard yoga lessons, and the opportunity to experience a Hawaiian sailing canoe with Austin Kino. However, none of the related recreational equipment is stored on the beach, and any instruction is given either on Hotel property or in the water.
- All Hotel staff have been instructed that everyone, Hotel guests and the general public, has full rights to traverse the State Parcel and the public beach.
- The shoreline public access from Kahala Avenue has been improved with new "Shoreline Access" signage at both the mauka and makai entrances to the public access. *See* photos enclosed as **Exhibit H**.

It is hoped that these unparalleled actions on the part of the current Hotel ownership demonstrate to the BLNR that RTH is sincerely engaged in trying to make the Kahala Hotel & Resort a truly welcoming place for the community as well as Hotel guests. RTH is also taking this step to request an amendment to RP 7849 to remove the ambiguities in that agreement so

that, going forward, all parties, including the public, have an unambiguous understanding of what is permitted under RP 7849. RTH makes this request without any prejudice to its position regarding what is allowed under the "recreational and maintenance" authority granted in RP 7849.

V. **REQUEST FOR AMENDMENT ADDRESSING EXISTING ENCROACHMENTS**

The Hotel does not want to change long-standing practices at the Hotel (over various ownership) and is not seeking to increase the level of Hotel-related activities outside of the Hotel property, and that has been RTH's commitment to the Wai`alae-Kahala Neighborhood Board. Nevertheless, while the Premises has been used for Hotel-related recreational purposes for years, a Revocable Permit for "recreational and maintenance purposes" may not be the most appropriate form of an agreement for this unique property.

The recreational and maintenance encroachments that the Hotel keeps on the State Parcel fall into four categories: (1) storage; (2) restaurant seating; (3) outdoor seating; and (4) shower and recreational facilities. The Map and photos enclosed as **Exhibit I-A and I-B** provide a listing of the specific uses (identified by numbers 1 through 40), the location of said uses on the State Parcel, and photographs of the noted areas keyed by letters A through M. In addition to these uses, the Hotel has identified a possible minor roofline encroachment.

1. **Storage of Recreational Items.**

The encroachments in this category are the KOKK Storage Area (Map item 1), the Beach Chair Storage Area (Map item 18), and the Outrigger Canoe Storage Area (Map item 37). These storage areas total approximately 1,244 sq. ft.

The KOKK Storage Area is fenced for aesthetics and holds excess outdoor seating, recreational equipment, tiki torches and other outdoor items. The portion within the State Parcel contains approximately 560 sq. ft. Photos of the KOKK Storage Area are enclosed as **Exhibit J**. The Beach Chair Storage Area is not fenced and is used to hold the lighter Beach Chairs that are brought out to the beach at the request of Hotel guests. The Beach Chair Storage Area utilizes approximately 468 sq. ft. A photo of the Beach Chair Storage Area is enclosed as **Exhibit K**.

The Outrigger Canoe Storage Area consists of an entirely open area of ground at the Koko Head end of the State Parcel, and utilizes approximately 1,244 sq. ft. Currently this area is identified for use by the Outrigger Canoe, but the particular ocean-related recreational equipment could change over time.⁴ A photo of the Outrigger Canoe Storage Area is enclosed as **Exhibit L**.

⁴ RTH fully understands that such recreational equipment cannot be stored on the beach, and that no lessons can be given on the beach. This is clear under the language in RP 7849, which states that "Permittee shall not, without the prior written approval of the Chairperson or the Board . . .

2. Restaurant Seating.

The encroachment in this category consists solely of moveable outdoor seating at the Seaside Grill (item 9). Unlike the other areas within the Seaside Grill, this area, consisting of approximately 1,917 sq. ft. does not have a constructed floor surface of flagstone. Instead, the surface is packed sand. This is an open-air area without roofing, but has coverage from sail cloth suspended between the palm trees. This area has been used for open-air dining since approximately 1998 and was developed by the Kahala Mandarin Oriental Hawaii. The Hotel intends to continue use of this area for table-side food and beverage service. RTH understands that it cannot provide alcohol service within the State Parcel. A photo of the Restaurant Seating Area is enclosed as Exhibit M.

3. Outdoor Seating.

The encroachments in this category are Cabana Tents (Map items 3 - 6 and 10 - 15), Loungers (Map items 19 - 31), Beach Chairs (Map items 32 - 36), and a Hammock (Map item 16). These portable outdoor seating options total approximately 1,812.5 sq. ft. (including the hammock). None of these outdoor seating options are permanent structures; each can be freely moved from the locations identified on the enclosed map (however, some of these recreational amenities can be cumbersome for a single person to move). While the specific placement of these outdoor seating items may be altered, the general location and amount of space utilized will remain relatively constant.

At times in the past, under prior and current ownership, the Hotel has placed Cabana Tents, Loungers and Beach Chairs on the beach at the request of Hotel guests and allowed those items to remain on the beach overnight, sometimes for multiple days at a time. However, the Hotel now better understands the distinction between the public beach and the State Parcel and has removed all such items from the beach area. The Hotel is not requesting BLNR approval to retain, long-term, Cabana Tents, Loungers or Beach Chairs on the beach. The Hotel understands that such pre-setting on the beach is not authorized. Through this request, the Hotel is requesting an amendment to RP 7849 to clarify that the Hotel's recreational Cabana Tents, Loungers and Beach Chairs are authorized to remain on the State Parcel under RP 7849. Four photos showing these seating options within the Diamond Head and Koko Head portions of the State Parcel are enclosed as Exhibit N.

4. Shower and Recreational Facilities.

There are four encroachments in this category: the Cabana Hale (Map item 2), the Beach Shower (Map item 7), the Towel Caddy (item 8), and four Trash Cans (Map items 17, 38 - 40). In total, these items use approximately 180 sq. ft.

preset beach equipment or conduct surf instruction within the public beach fronting the Premises." However, there is no suggestion that the recreational RP intended to prevent the use of the State Parcel for ocean-related recreational equipment and lessons.

The Cabana Hale is an open-work wooden structure with a foundation and shake roof of approximately 72 sq. ft. This area is used for shaded seating and massage services, and three to four kayaks are stored against the Cabana Hale. Photos of the Cabana Hale are enclosed as **Exhibit O**.

The Beach Shower is within an area of approximately 64 sq. ft. and is open to Hotel guests and the public. A photo of the Beach Shower is provided as **Exhibit P**.

The Towel Caddy is a simple cabinet that utilizes approximately 12 sq. ft. and holds towels for use by Hotel guests. A fresh water station sits on top of the Towel Caddy. A photo of the Towel Caddy cabinet is provided as **Exhibit Q**.

Each Trash Can occupies an area of approximately 8 sq. ft. The Trash Cans are distributed throughout the State Parcel. The Hotel empties these Trash Cans daily. A photo of a Trash Can is enclosed as **Exhibit R**.

5. **Roof Overhang**

The Hotel has reason to believe that a small portion of the roof of the Kahala O Ke Kai room may overhang the State Parcel. The foundation of the structure and the walls are wholly within the Hotel property, as is the flagstone area abutting the structure. But a strip of the roofline may encroach over the State Parcel. Should it be determined that there is an encroachment, RTH respectfully requests the Board's permission to retain this *de minimis* structure position discrepancy as currently configured.

VI. **CONCLUSION**

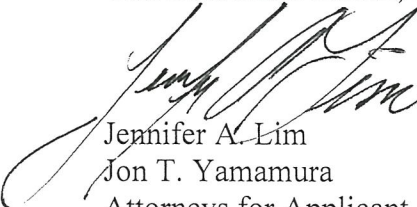
RTH is aware that the DLNR will soon be presenting a package of Oahu Revocable Permits to the BLNR for review and possible renewal in August or September. RTH hopes that this request can be addressed as part of that bulk renewal process, so that RP 7849 gets renewed and additional language is incorporated into RP 7849 that more clearly describes the Hotel-related recreational uses described herein. However, should the DLNR's review of this request extend beyond the date of the anticipated BLNR's hearing on the Oahu Revocable Permit renewals, RTH respectfully requests that the DLNR include RP 7849 in its current form with the Oahu package, with the understanding that the language in RP 7849 may be amended later, as a result of this request. We make this request to be included in the package of Oahu renewals to avoid the possibility of the current term of RP 7849 running out (the current term ends December 31, 2018), with the associated obligation to insure the State Parcel, before final action on the amendment of RP 7849.

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
August 6, 2018
Page 10

Thank you for your time and consideration of this matter, please feel free to contact us should you have any further questions or require additional information on the foregoing.

Sincerely,

CARLSMITH BALL, LLP



Jennifer A. Lim
Jon T. Yamamura
Attorneys for Applicant

Enclosures

cc: The Kahala Hotel & Resort
4851-0752-7022.6.067396-00006

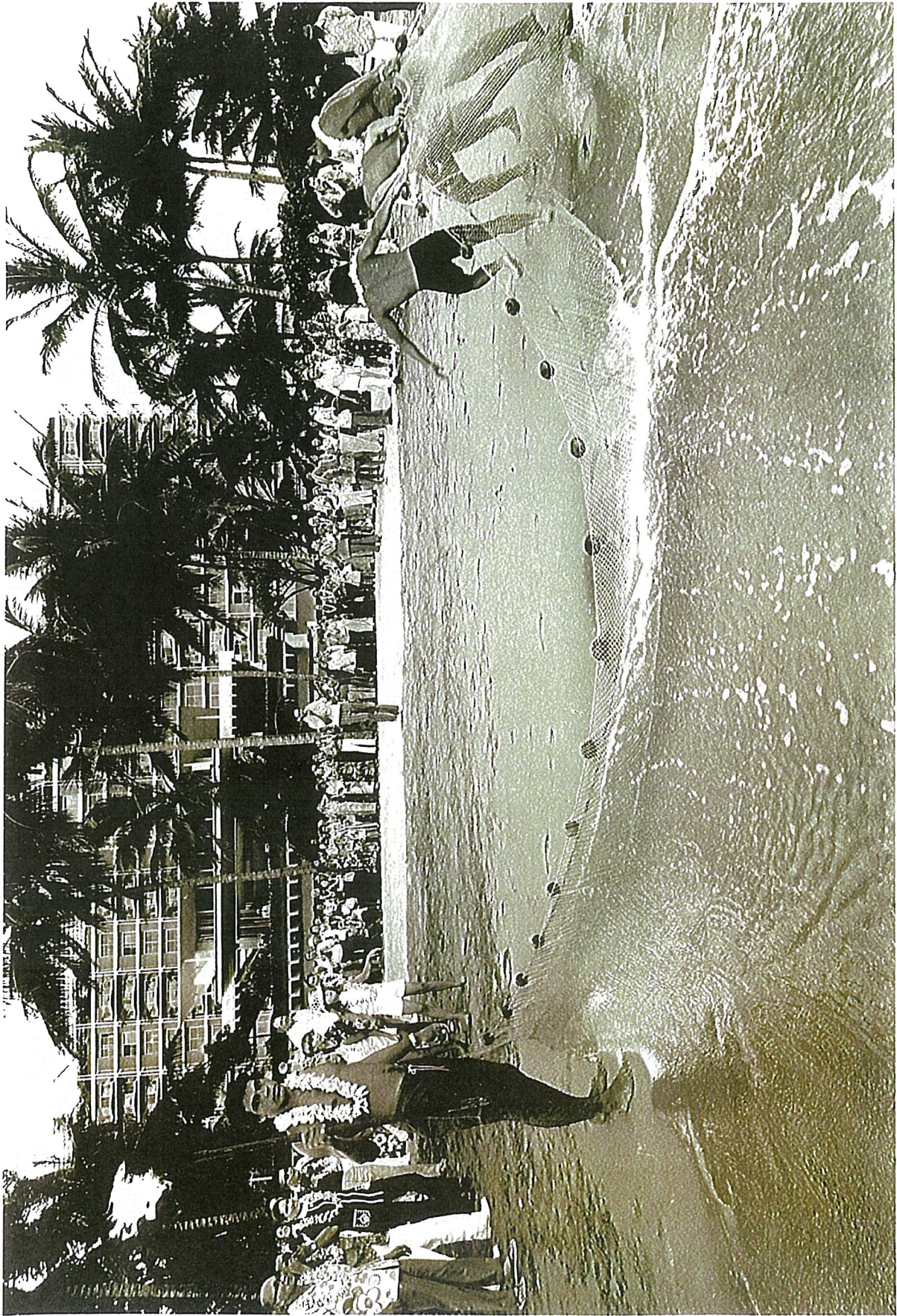


Exhibit A

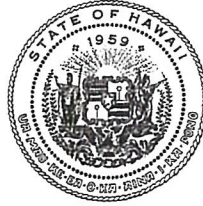








DAVID Y. IGE
GOVERNOR OF HAWAII



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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 3, 2017

Ref: 17OD-083

Ms. Jennifer Lim and Mr. Jon Yamamura
Carlsmith Ball LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

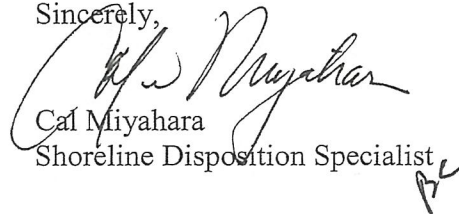
Dear Ms. Lim and Mr. Yonamura:

Subject: Kahala Hotel and Resort Beach Enhancement, Draft Environmental
Assessment

We enclose the letter dated July 27, 2017 from Mr. Richard Turbin, Chair of the Waialae-Kahala Neighborhood Board No. 3 for your information.

If you have any questions, please feel free to contact us at 587-0430.

Sincerely,


Cal Miyahara
Shoreline Disposition Specialist

Enclosure

Exhibit B

TURBIN • CHU • HEIDT RECEIVED
ATTORNEYS AT LAW AND DIVISION

RICHARD TURBIN
richturbin@turbin.net
RAI SAINT CHU
raisaintchu@turbin.net
JANICE D. HEIDT
jheidt@turbin.net

A LAW CORPORATION

2017 JUL 31 AM 11:01

Suite 2730, Mauka Tower
Pacific Guardian Center
737 Bishop Street
Honolulu, Hawaii 96813

Phone: (808) 528-4000
Fax: (808) 599-1984

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

July 27, 2017

Donna Wong, Executive Director
Hawaii's Thousand Friends
300 Kuulei Road, Unit A #281
Kailua, HI 96734

Sierra Club of Hawaii
P.O. Box 2577
Honolulu, HI 96803

Rafael Bergstrom, Administrator
Oahu Chapter
Surfrider Foundation
P.O. Box 283092
Honolulu, HI 96828

The Nature Conservancy of Hawaii
923 Nuuanu Avenue
Honolulu, HI 96817

Suzanne Case, Chairperson
State of Hawaii Department of Land & Natural
Resources
1151 Punchbowl Street
Honolulu, HI 96813

Kathy K. Sokugawa, Acting Director
City and County of Honolulu
Department of Planning and Permitting
650 South King Street
Honolulu, HI 96813

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

2017 JUL 28 PM 12:13

RECEIVED

Re: Kahala Hotel and Resort Proposed Easement

Ladies & Gentlemen:

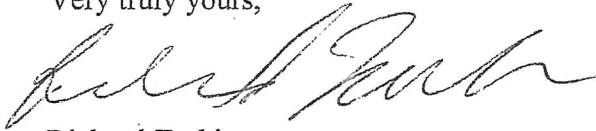
The Waiialae-Kahala Neighborhood Board passed the enclosed Resolution at its July 20, 2017 meeting regarding the proposed easement requested by the Kahala Hotel and Resort.

Our Neighborhood Board would appreciate that you do everything possible to assist us in accomplishing the goals of our resolution and not permit an easement to be given to the Kahala Hotel and Resort. As you know, an easement is a property right and such an action would no doubt infringe on the public's right to access the beach and create a very grave and disturbing precedent which would compromise the public's right to access many of the most attractive beaches in the State of Hawaii.

Donna Wong, et al.
Re: Kahala Hotel and Resort Proposed Easement
July 27, 2017
Page 2 of 2

Thank you for your attention to this matter.

Very truly yours,



Richard Turbin
Chair, Waiālae-Kahala Neighborhood Board No. 3

Enclosure

cc: Governor David Ige
Mayor Kirk Caldwell
Councilmember Trevor Ozawa
Representative Bertrand Kobayashi
Representative Mark Hashem
Senator Stanley Chang
Honolulu Star-Advertiser
Hawaii News Now
KITV
KHON
Civil Beat
Hawaii Public Radio

Waialae-Kahala Neighborhood Board No. 3 Resolution of July 20, 2017
Re: Kahala Hotel and Resort Easement

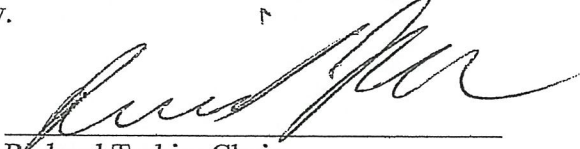
Be it resolved that the Waialae-Kahala Neighborhood Board No. 3 requests that the Kahala Hotel and Resort agree to reopen the Comment Period for its Draft Environmental Assessment for an additional period up to and including September 27, 2017, because appropriate entities such as this Neighborhood Board, the Sierra Club, and the Surfrider Foundation were not timely notified regarding said Comment Period.

Be it also resolved that the Waialae-Kahala Neighborhood Board No.3 requests that a representative of the Kahala Hotel and Resort attend the Neighborhood Board meeting scheduled for October 19, 2017 and make a presentation. If application for the easement will be made earlier than October 19, 2017, then said presentation is requested at the Neighborhood Board meeting scheduled for September 21, 2017.

Be it also resolved that the Waialae-Kahala Neighborhood Board No. 3 is opposed to the granting of an easement to a portion of Kahala Beach fronting the Kahala Hotel and Resort.

Be it also resolved that representatives of the Waialae-Kahala Neighborhood Board No. 3 shall meet with appropriate representatives of the Department of Land and Natural Resources of the State of Hawaii and its Board to express the position of the Neighborhood Board regarding said easement.

This Resolution shall be transmitted to appropriate public officials, agency representatives, and others in the community.



Richard Turbin, Chair
Waialae-Kahala Neighborhood Board No. 3



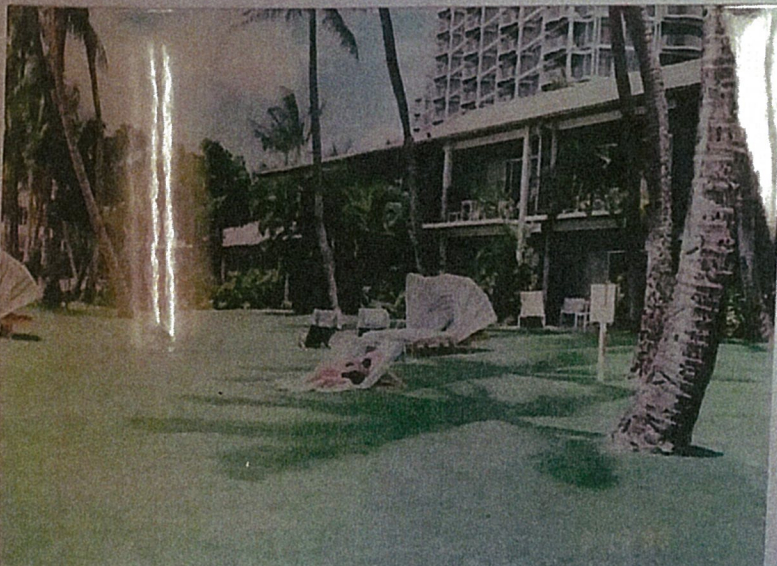
0

SIGN NO. 55

THE SIGN LOCATION
IS CONSISTANT W/
PHOTOS # 19, 20 (6-19-96)



1



2

Exhibit C

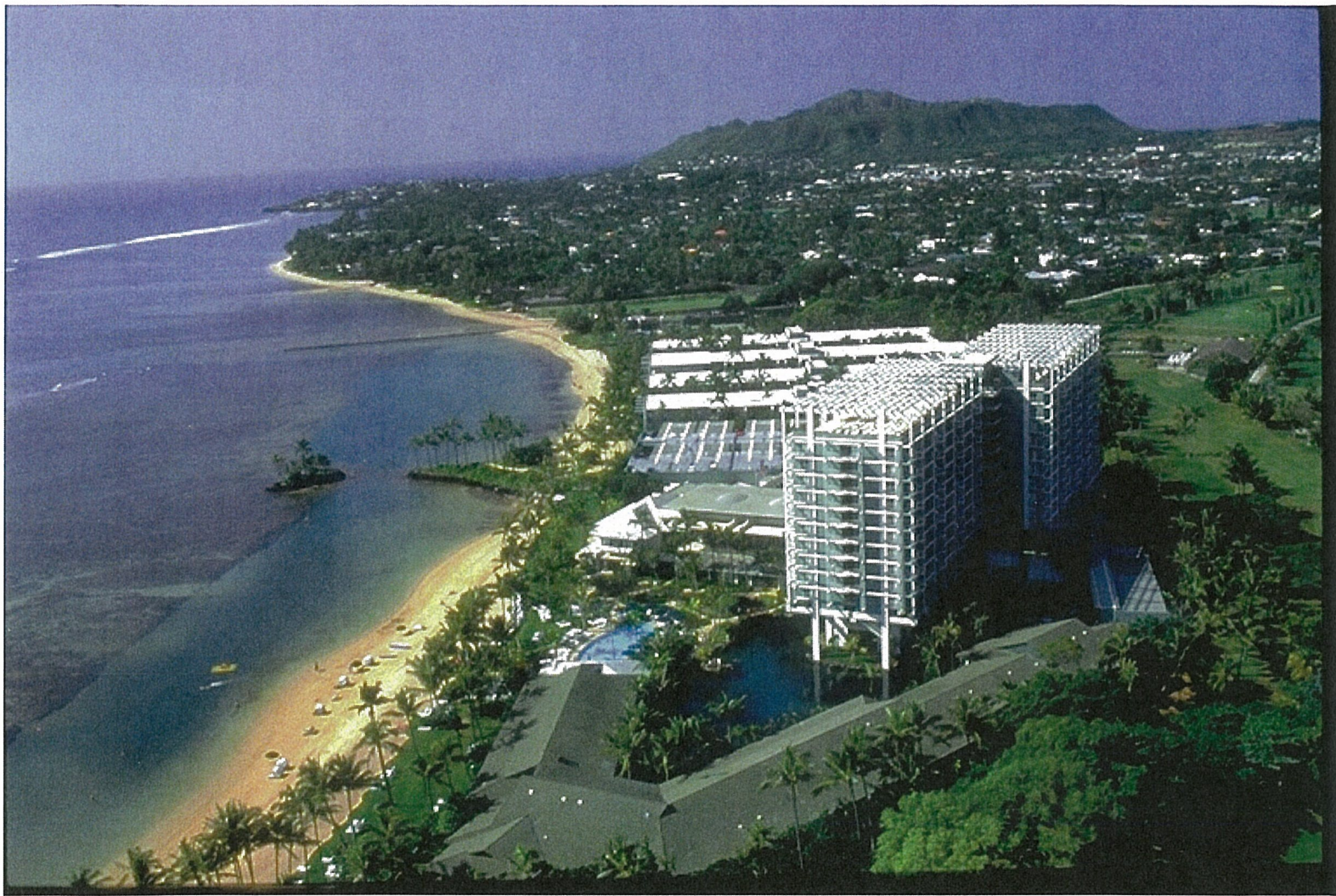




Exhibit D









Exhibit E









Exhibit F

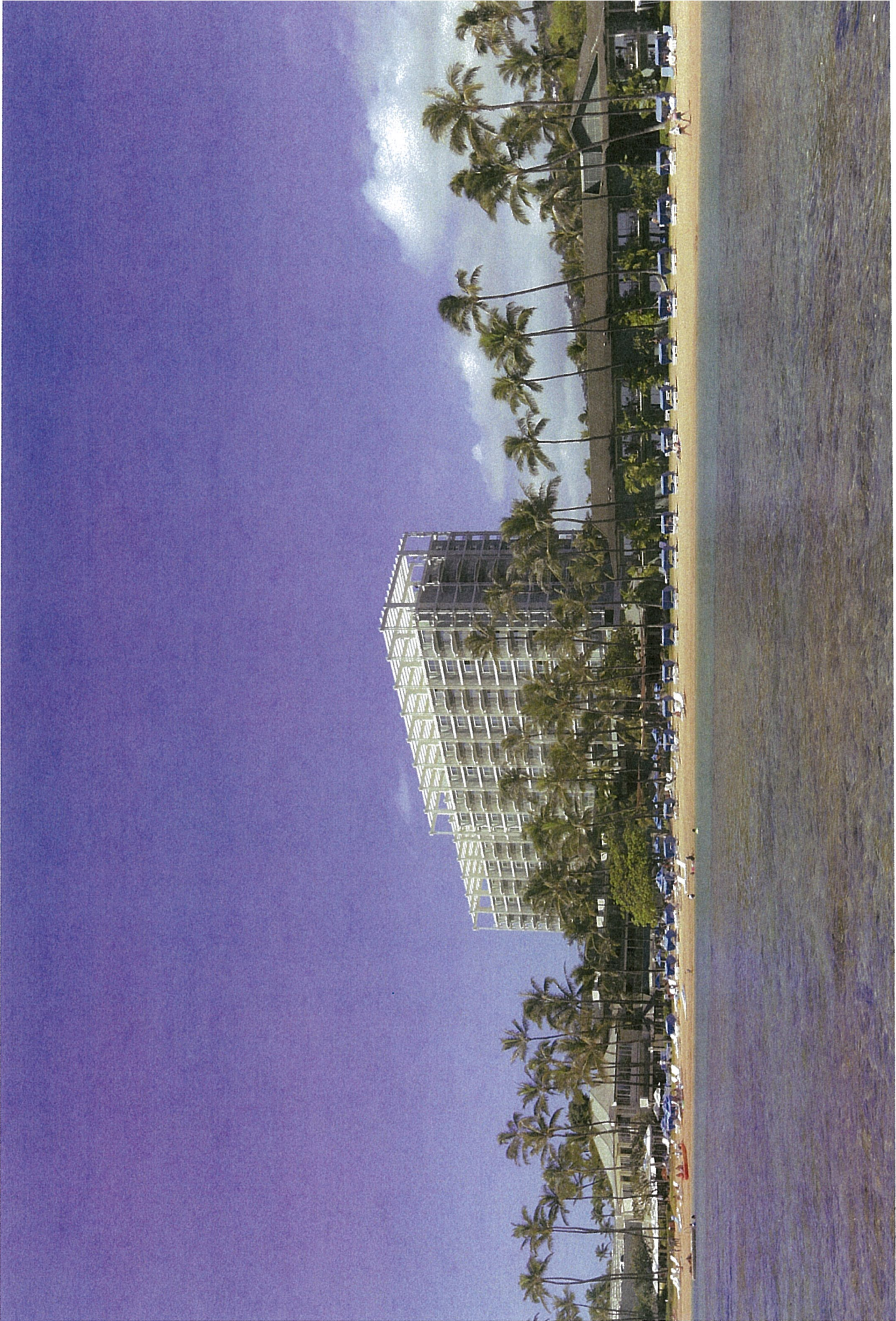




Exhibit G



Shoreline Public Access Signage Makai Side

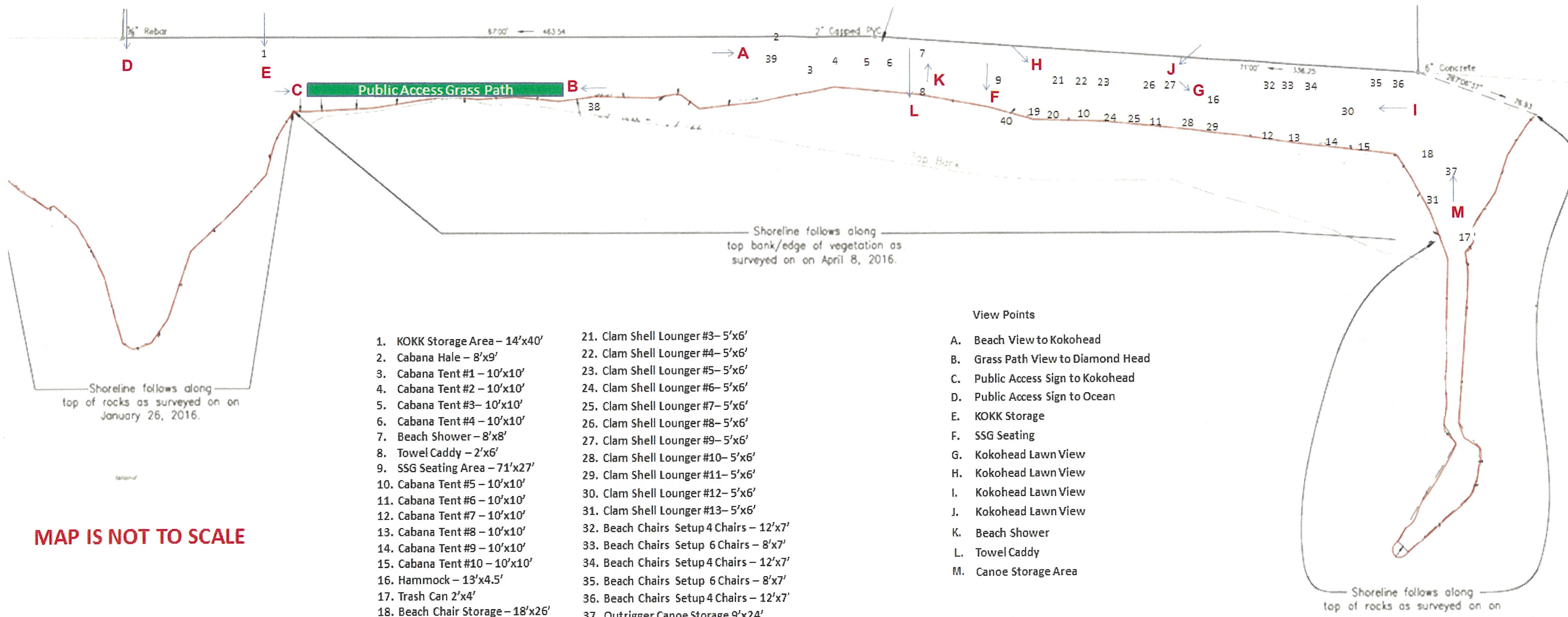


Exhibit H



Shoreline Public Access - Mauka Side





- 1. KOKK Storage Area – 14'x40'
- 2. Cabana Hale – 8'x9'
- 3. Cabana Tent #1 – 10'x10'
- 4. Cabana Tent #2 – 10'x10'
- 5. Cabana Tent #3 – 10'x10'
- 6. Cabana Tent #4 – 10'x10'
- 7. Beach Shower – 8'x8'
- 8. Towel Caddy – 2'x6'
- 9. SSG Seating Area – 71'x27'
- 10. Cabana Tent #5 – 10'x10'
- 11. Cabana Tent #6 – 10'x10'
- 12. Cabana Tent #7 – 10'x10'
- 13. Cabana Tent #8 – 10'x10'
- 14. Cabana Tent #9 – 10'x10'
- 15. Cabana Tent #10 – 10'x10'
- 16. Hammock – 13'x4.5'
- 17. Trash Can 2'x4'
- 18. Beach Chair Storage – 18'x26'
- 19. Clam Shell Lounger #1 – 5'x6'
- 20. Clam Shell Lounger #2 – 5'x6'

- 21. Clam Shell Lounger #3 – 5'x6'
- 22. Clam Shell Lounger #4 – 5'x6'
- 23. Clam Shell Lounger #5 – 5'x6'
- 24. Clam Shell Lounger #6 – 5'x6'
- 25. Clam Shell Lounger #7 – 5'x6'
- 26. Clam Shell Lounger #8 – 5'x6'
- 27. Clam Shell Lounger #9 – 5'x6'
- 28. Clam Shell Lounger #10 – 5'x6'
- 29. Clam Shell Lounger #11 – 5'x6'
- 30. Clam Shell Lounger #12 – 5'x6'
- 31. Clam Shell Lounger #13 – 5'x6'
- 32. Beach Chairs Setup 4 Chairs – 12'x7'
- 33. Beach Chairs Setup 6 Chairs – 8'x7'
- 34. Beach Chairs Setup 4 Chairs – 12'x7'
- 35. Beach Chairs Setup 6 Chairs – 8'x7'
- 36. Beach Chairs Setup 4 Chairs – 12'x7'
- 37. Outrigger Canoe Storage 9'x24'
- 38. Trash Can 2'x4'
- 39. Trash Can 2'x4'
- 40. Trash Can 2'x4'

- View Points**
- A. Beach View to Kokohead
 - B. Grass Path View to Diamond Head
 - C. Public Access Sign to Kokohead
 - D. Public Access Sign to Ocean
 - E. KOKK Storage
 - F. SSG Seating
 - G. Kokohead Lawn View
 - H. Kokohead Lawn View
 - I. Kokohead Lawn View
 - J. Kokohead Lawn View
 - K. Beach Shower
 - L. Towel Caddy
 - M. Canoe Storage Area

MAP IS NOT TO SCALE

Viewpoint "A" Beach View to Koko Head



Exhibit I-B

Viewpoint "B" Grass Path View to Diamond Head



Viewpoint "C" Public Access Sign View to Koko Head



Viewpoint "D" Shoreline Public Access Signage Looking Makai



Viewpoint "E" KOKK Storage Area Looking Makai



Viewpoint "F" SSG Seating Area



Viewpoint "G" Koko Head Lawn



Viewpoint "H" Koko Head Lawn Looking Makai



Viewpoint "I" Koko Head Lawn Looking Toward Diamond Head



Viewpoint "J" Koko Head Lawn Looking Makai



Viewpoint "K" Beach Shower Looking Mauka



Viewpoint "L" Towel Caddy Cabinet Looking Makai



Viewpoint "M" Canoe Storage Area Looking Mauka





Photo of KOKK Storage Area.

Stored items include, clamshells, beach chairs, recreational equipment, tiki torches for banquets.

The red outlines the portion of the KOKK Storage Area that is on the State Parcel.



Beach Chair Storage Area

Exhibit K



Outrigger Storage Area

Exhibit L



Restaurant Seating Area



Exhibit N









Cabana Hale

Exhibit O



Exhibit P



Exhibit Q



Trash Can (at Koko Head end of property)

Exhibit R

EXHIBIT 8

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

DIRECT DIAL NO.
808.523.2557 (JAL)
808.523.2532 (JTY)
808.523.2594 (TJY)

JLIM@CARLSMITH.COM
JTY@CARLSMITH.COM
TYAMASHIRO@CARLSMITH.COM
August 13, 2018

OUR REFERENCE NO.:
067396-00006

VIA HAND DELIVERY

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Re: Update to Application for Right of Entry Permit for Events on State Land in Waialae, Honolulu, Oahu, Tax Map Key No. (1) 3-5-023: 041

Dear Chairperson Case and Members of the Board:

We are writing on behalf of ResortTrust Hawaii, LLC, the owner and operator of The Kahala Hotel & Resort (the "Hotel") to supplement and revise our letter dated July 25, 2018 requesting a Right-of-Entry permit ("ROE") permitting certain events to take place on the State-owned parcel identified as Tax Map Key No. (1) 3-5-023: 041 (the "Application").

The chart starting at the bottom of page 1 of the Application inadvertently listed incorrect estimated square footage measurements for the G1, G2, and W2 event sites. The chart should read as follows:

#	Date	Hours (including set up and breakdown)	Nature of Event	Size of Event (in approximate square feet); Location
1.	October 16, 2018	3:00 p.m. - 12:00 a.m.	Corporate/Non-wedding	G1 site; <u>2,309</u> sf
2.	October 17, 2018	6:00 a.m. - 9:00 p.m.	Corporate/Non-wedding	G2 site; <u>7,651</u> sf
3.	December 29, 2018	10:00 a.m. - 12:00 p.m.	Wedding	W1 site; <u>1,624</u> sf

Also, to assist in your review, attached are site plans for each of the above listed proposed events. The site plans depict the anticipated layout of each event (i.e., the location of seating, tables, portable gazebo, food and beverage stations, etc.). As further clarification, the event on October 16, 2018 will involve dinner service and live entertainment at the G1 site. The event on

Request withdrawn by RTH's letter dated 8/17/18 att'd at the back.

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

EXHIBIT "B"

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
August 13, 2018
Page 2

October 17, 2018 will involve food service (barbeque lunch, ice cream, etc.) at the G2 site. The wedding event on December 29, 2018 involves the wedding ceremony with seating for guests. The reception dinner will not be held on the State property. We hope this information is helpful to your review.

Thank you for your time and consideration of this matter, please feel free to contact us should you have any further questions or require additional information on the foregoing.

Sincerely,

CARLSMITH BALL, LLP



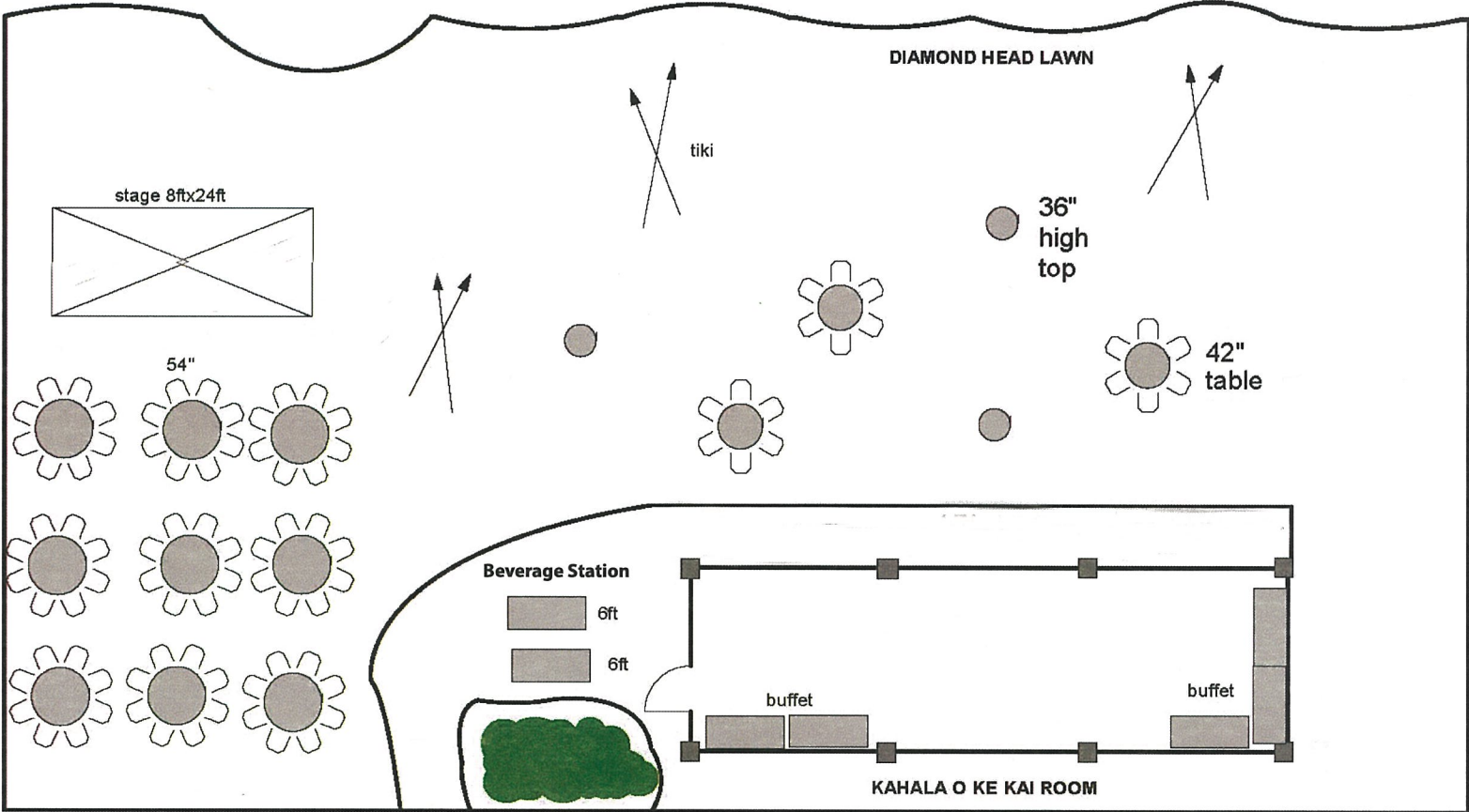
Jennifer A. Lim
Jon T. Yamamura
Toby J. Yamashiro
Attorneys for Applicant

Enclosures

cc: The Kahala Hotel & Resort
4839-8763-4032.1.067396-00006

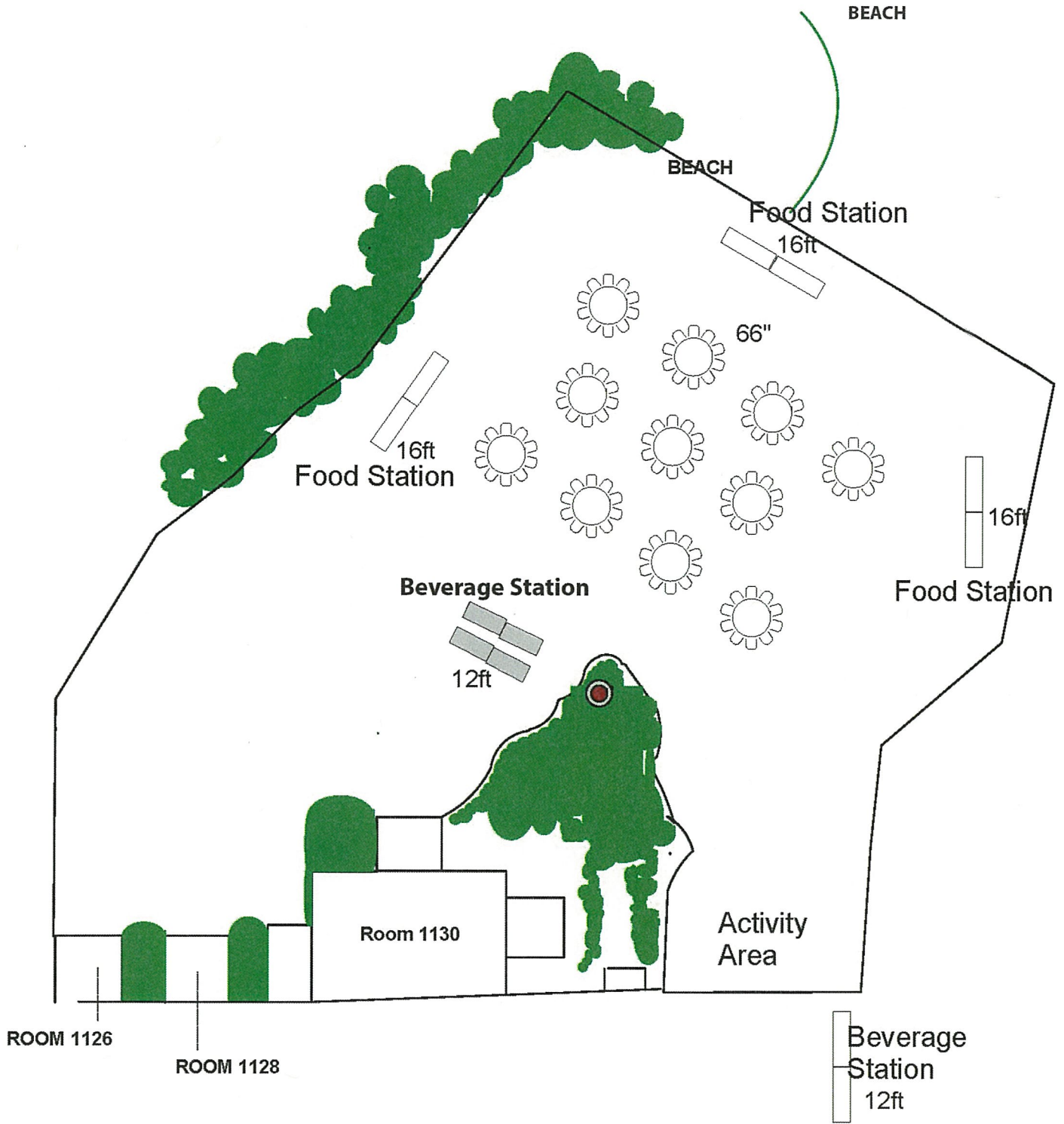
Dinner Buffet 10-16-2018

BEACH



KAHALA O KE KAI

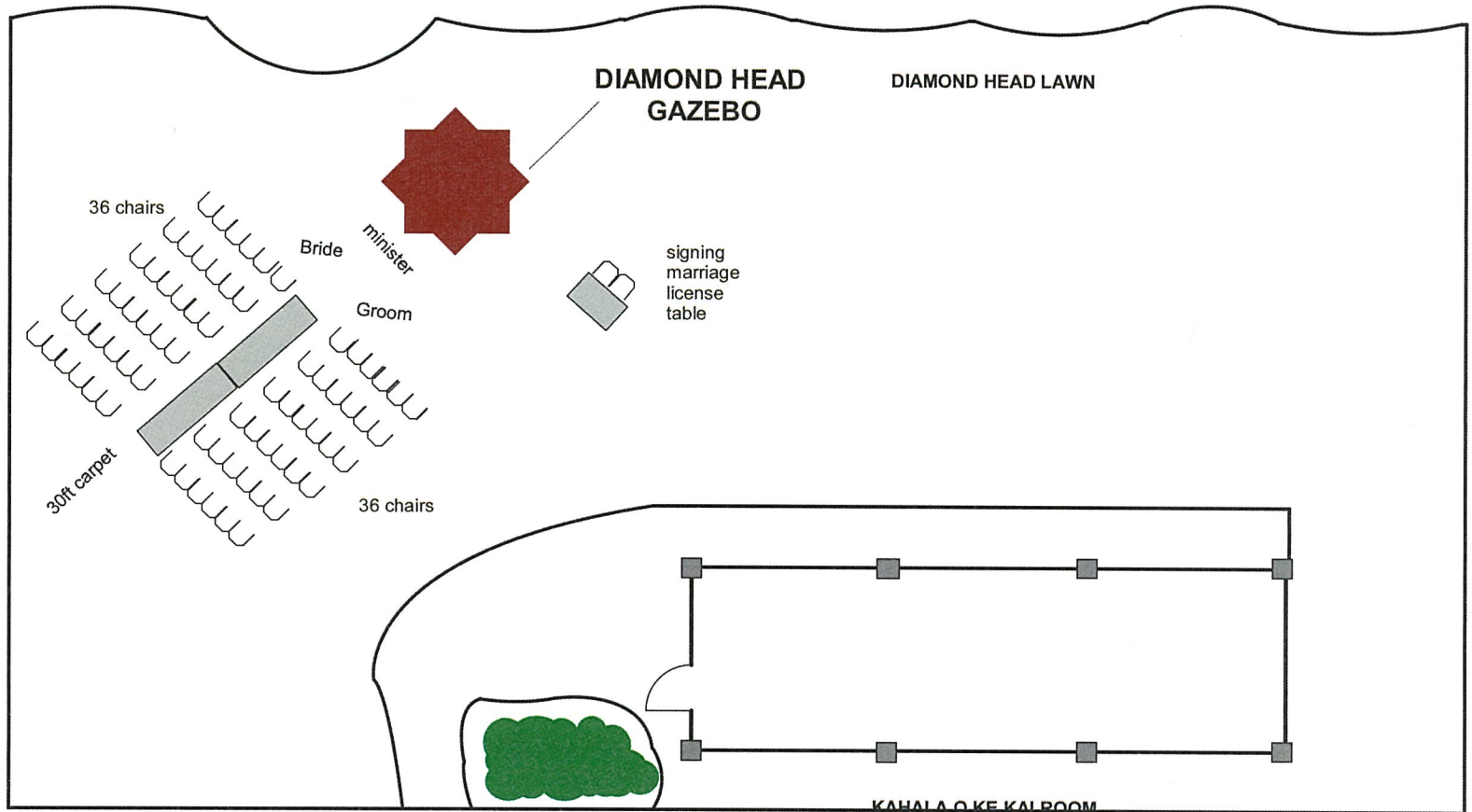
Outdoor Day - Wednesday, October 17, 2018



KOKOHEAD LAWN

Wedding Ceremony 12-29-18

BEACH



KAHALA O KE KAI

RECEIVED
LAND DIVISION
CARLSMITH BALL LLP
A LIMITED LIABILITY LAW PARTNERSHIP
2018 AUG 20 AM 9:43
2018 AUG 27 AM 10:53
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

DIRECT DIAL NO.
808.523.2557 (JAL)
808.523.2532 (JTY)

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

JLIM@CARLSMITH.COM
JTY@CARLSMITH.COM

OUR REFERENCE NO.:
067396-00006

August 17, 2018

VIA EMAIL (SUZANNE.CASE@HAWAII.GOV) AND HAND DELIVERY

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Re: Second Update to Application for Right of Entry Permit for Events on State Land in Waialae, Honolulu, Oahu, Tax Map Key No. (1) 3-5-023: 041

Dear Chairperson Case and Members of the Board:


We are writing on behalf of ResortTrust Hawaii, LLC, the owner and operator of The Kahala Hotel & Resort (the "**Hotel**") to amend our letter dated July 25, 2018, as supplemented and revised on August 13, 2018, requesting a Right-of-Entry permit ("**ROE**") permitting certain events to take place on the State-owned parcel identified as Tax Map Key No. (1) 3-5-023: 041 (the "**Application**").

It has just come to our attention that proposed event #3 (the December 29, 2018 wedding at the "W1 site") is no longer intended to take place on the State-owned parcel. The Hotel therefore withdraws that event from the Application for ROE.

Thank you for your time and consideration of this matter, please feel free to contact us should you have any further questions or require additional information on the foregoing.

Sincerely,

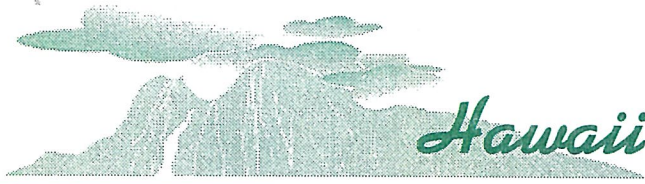
CARLSMITH BALL, LLP


Jennifer A. Lim
Jon T. Yamamura
Attorneys for Applicant

Enclosures

cc: The Kahala Hotel & Resort
4839-8763-4032.1.067396-00006

EXHIBIT 9



Hawaii's Thousand Friends

300 Kuulei Road, Unit A • PMB 281 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 • E-mail: htf3000@gmail.com

July 20, 2018

Suzanne Case, Chair
BLNR
P.O. Box 621
Honolulu, Hawai'i 96809

Dear Chair Case,

Hawai'i's Thousand Friends is concerned about the continuing encroachment of commercial activities by the Kahala Hotel onto the public beach fronting the resort.

Since opening in 1964 the Kahala Hotel and Resort exclusive location has been an oasis away from crowded Waikiki. This exclusivity along with DLNR approved revocable permit number S-7849 for *recreational and maintenance purposes only* offers out-of-sight out-of-mind opportunities for commercial resort related activities to encroach onto the public beach fronting the resort.

Commercial activities, not related to the revocable permit, that encroach onto the public beach include: 1) growing grass on the public beach, 2) holding weddings, 3) offering surf lessons, 4) setting up resort use only beach chairs and cabanas, 5) a restaurant and bar, and 6) selling alcohol on the public beach fronting the resort.

While commercial and exclusive use encroachment onto the public's beach has always been an issue such encroachment has been "tolerated" until now. Not satisfied with the silent encroachment Kahala Hotel and Resort i.e. Resorttrust Hawai'i LLC is seeking to renew revocable permit number S-7849 to continue their perpetual illegal commercial use of the public's beach.

Instead of considering renewing or enhancing Resorttrust Hawai'i LLC's request the Department and Board of Land and Natural Resources has a public trust responsibility to first eliminate all commercial activities on public land that violate revocable permit number S-7849 and encroach onto public land and state waters adjacent to resort owned land and restore the shoreline to it's pre-grass growing days natural contour.

In this era of climate change and rising seas the Department and Board's obligation under the Public Trust Doctrine and State Constitution (Article XI, Section 1) to "...conserve and protect Hawai'i's natural beauty and all natural resources, including land, water..." because "All public natural resources are held in trust by the State for the benefit of the people" is even more critical.

Sincerely,

Donna Wong
Executive Director

2018 JUL 23 AM 11:20
LAND AND NATURAL RESOURCES
STATE OF HAWAII
RECEIVED

EXHIBIT "9"

Cheung, Barry W

From: Jeannine Johnson [REDACTED]
Sent: Sunday, August 19, 2018 8:01 PM
To: Case, Suzanne D; DLNR.CO.PublicDLNR
Cc: Cheung, Barry W; [REDACTED] [REDACTED]
[REDACTED] Mark Hashem Rep.
Subject: Revocable Permit S-7849 issued to Resorttrust Hawaii LLC

Aloha Chair Case,

I represent Niu Valley on the Kuli'ou'ou / Kalani Iki Neighborhood Board No. 2. We've been dealing with the issue of beach access for over a decade:

On October 5, 2006, the Board ADOPTED by UNANIMOUS CONSENT that the Kuli'ou'ou-Kalani Iki Neighborhood Board No. 2 strongly opposed any development which would gate off the access to our beaches that has been traditionally used by our residents, fisherman and/or surfers. Further, it recommend the City place blue public right of way signs similar to those along Kahala Avenue at public rights of way along our shoreline from Portlock Road and continuing west along Kalaniana'ole Highway to Kahala.

On November 6, 2008, the Board ADOPTED, 12-0-1 to 1) Appropriate funds for the Office of Planning, Coastal Zone Management Program, to survey and map all existing public access ways to shoreline areas and nearby public parking areas; 2) Before permits are issued that may affect public access to the sea, the shoreline, or any coastal or inland public recreational area, the relevant agency shall ensure that a public right-of-way is available to access any and all public recreational areas, including beaches, shores, parks, and trails; and 3) Required state and county agencies to enforce the public's rights of access to and use of coastal and inland recreational areas as mandated in HRS Chapter 115 and increase penalties for the offense of obstructing access to public property.

In 1962, the State of Hawaii DOT Harbors Division and the Board of Land and Natural Resources ("BLNR") issued a permit authorizing the Kahala Hilton Hotel to dredge and fill the area fronting the Hotel, import sand to construct a beach, and to construct two small islets and two groins. Resorttrust Hawaii LLC now claims that the sandy beach and lagoon were created for the use and enjoyment of the public, along with a shower, refuse receptacle and water fountain. Instead, numerous violations are occurring including commercial events, weddings, surf lessons, boat rides, restaurant and bar activities and preset chairs on State land, to the tune of thousands of dollars in profits, all the while excluding the public from its own beach and property.

Residents along Maunalua Bay have been fighting for access to the beach for years (see 2006 Beach Wars [article](#)), therefore, it is improper for the BLNR to permit the continued taking of the public's property for commercial use on top of allowing the dredging, filling, sand importation and construction of groins and islets in the past. Do not renew revocable permit S-7849 and allow Resorttrust Hawaii LLC to continue to profit from its use of the State beachfront property or at the very least, require that the public be given half the profits of every single commercial activity (wedding, private function, surfing lesson, cabana and towel rental, as well as every meal and drink). That is the only fair thing to do if you allow the commercial activity to continue and consequently deprive the public of its own beach and property for profit.

Mahalo,

Jeannine

Jeannine Johnson, Subdistrict 7 Rep.

Kuli'ou'ou / Kalani Iki Neighborhood Board No. 2



Surfrider Foundation Oahu Chapter
P.O. Box 283092
Honolulu, HI 96828
oahu.surfrider.org

8/19/18

BLNR Chair Suzanne Case
PO Box 621
Honolulu, HI 96809

RE: Revocable Permit
S-7849
Kahala Hotel

Dear Chair Case,

I oppose granting the Kahala Hotel a new Revocable permit which allows commercial activity as this restricts the public's access, use and enjoyment.

Between the Kahala Hotel & Resort and the beach is a one acre parcel of public land that many people think is owned by the hotel. It is not. The Hotel has been entrusted, via a revocable permit, to use the land lawfully for maintenance and recreation. Instead, the Hotel has violated their permit in numerous ways as a result of their commercialization of the area. While the hotel says the "public is welcomed", their commercial activities squeeze the public out and deny the public's use of the land and surrounding waters.

Resorttrust Hawaii, LLC, the owner of the Kahala Hotel is a foreign owned company, is profiting at great expense to Hawaii's public.

For decades under the previous owners of the Hotel, the parcel of public land was open, accessible to the public, and free of commercial activity ... as it was intended to be. Commercial activity was kept to the hotel's own private property and off the public land. This worked well for the community for many years.

The hotel is welcome to maintain the public area so that it looks nice for their guests. But please do not allow any commercial activity on the public land or allow any commercial activity to cross this public land to the public beach.

After all...public land is for public use.

Sincerely, and on behalf of,

Surfrider Foundation - Oahu Chapter
PO Box 283092
Honolulu, HI 96828
oahu.surfrider.org

Cheung, Barry W

From: DLNR.CO.PublicDLNR
Sent: Monday, August 27, 2018 4:26 PM
To: Ferreira, Darlene S
Cc: Cheung, Barry W; Moore, Kevin E
Subject: FW: Kahala Hotel RP, attn: Suzanne Case, Barry Cheung

Forwarding....

From: Heather Lum [REDACTED]
Sent: Friday, August 24, 2018 8:23 AM
To: DLNR.CO.PublicDLNR <dlnr@hawaii.gov>
Subject: Kahala Hotel RP, attn: Suzanne Case, Barry Cheung

Aloha,

Per Sunshine Rules, Neighborhood Board #2 was unable to vote on this item when it came up at our August meeting because it was not on our printed agenda. It is on our September 6 agenda with a resolution. Based on the comments and level of concern at our August 2 meeting, I predict that we will pass a resolution opposing renewal of the Kahala Hotel's RP as it stands.

Historically, NB#2 has a stance of protecting public beach access, and the information we have received confirms that the Kahala Hotel is using numerous tactics that restrict and/or prevent that access. In addition, this Board has fought for decades against commercial activity occurring where it should not be, and the information we have received indicates that commercial activities are happening on public land.

Mahalo for your attention to this matter.

Heather Lum

--

Heather Lum

Chair, Neighborhood Board #2
[REDACTED]

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 11, 2016

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

Ref: RP 7849

Tim Lui-Kwan, Esq.
Carlsmith Ball LLP
ASB Tower Suite 2100
Honolulu, Hawaii 96813

Dear Mr. Lui-Kwan:

Subject: The Kahala Hotel & Resort – Revocable Permit No. 7849;
Waialae, Honolulu, Oahu, TMK (1) 3-5-023:041

Thank you for your letter dated June 30, 2016 regarding the collection of fees for weddings conducted at the subject location.

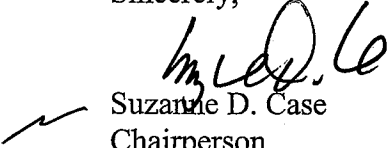
The subject parcel is encumbered by Revocable Permit No. 7849 for recreational and maintenance purposes, and no other commercial activities shall be conducted thereon without authorization from the Land Board.

We understand wedding ceremonies on the premises are an activity that is intended by both sides to be covered in a long term disposition. However, weddings are not currently authorized under the subject revocable permit. Therefore, we do not believe the remittance to the State of fees collected by your client for the weddings conducted on the subject premises is proper.

We request you to cease conducting any wedding ceremonies planned at the subject premises immediately, until proper authorization is obtained from the Land Board. In the meantime, please continue to work with our staff toward a long term disposition.

For any further questions, please contact Russell Tsuji at 587-0422 or Barry Cheung at 587-0430.

Sincerely,


Suzanne D. Case
Chairperson