

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

October 25, 2019

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

Ref: RP 7915

OAHU

Annual Renewal of Revocable Permit No. 7915; Resorttrust Hawaii, LLC,
Permittee; Waialae, Honolulu, Oahu, Tax Map Key (1) 3-5-023:041.

I. INTRODUCTION

This submittal concerns issuance or continuation of a revocable permit for a small area of urban land makai of The Kahala Hotel & Resort. The property has been subject to a revocable permit in one form or another since 1968. The "Premises" as defined under RP-7915 (the "RP") is approximately 1.280 acres (55,757 square feet). Resorttrust Hawaii, LLC ("RTH"), the owner of the hotel was granted rights to use approximately 3237¹ square feet, or less than 6% of the total. In return RTH pays rent and assumes responsibility to clean, maintain, and insure the Premises along with a maintenance obligation for the beach area and a small offshore island.

The Hotel has voluntarily suggested additional restrictions on its use of the Premises. RTH now proposes to use some 1492 square feet, approximately 2% of the total. Staff supports continuation of the RP.

II. FACTS

This submittal concerns property located on or near the ocean in the Kahala area of the island of Oahu, State of Hawai'i. The property and surrounding land were historically owned by

¹ The use table in the RP states 3263.5. The correct number is 3236.5.

the Estate of Bernice Pauahi Bishop/Kamehameha Schools (“KS”). KS used the property and surrounding lands for ranching. Part of the surrounding area had become the Waialea Country Club by the 1920’s.

The Kahala Hilton Hotel was developed and built in the early 1960s. As part of the development, the State, the Kahala Hilton Hotel Company, Inc., and KS agreed that the Hotel would create a new piece of fast land by filling submerged land makai of existing land. The new land would continue to be owned by the State and would be used by both the Hotel and the public. The Hotel occupies what is now TMK No. (1) 3-5-023:039, which is also designated as lot 228 of Land Court Application 828 (“Lot 39”). The filled and reclaimed land owned by the State is now TMK No. (1) 3-5-023:041 (“Lot 41”). The makai edge of Lot 41 is the shoreline. There is also a sandy beach makai of the shoreline.

Lot 41 was originally sand but has been covered with grass since at least 1986 and likely well before then.

The first revocable permit was issued to the Hotel in 1968. RP S-4220 authorized the Hotel to use 6250 square feet of the Premise for “recreational purposes.” Since that time the Hotel has always had a revocable permit and the permit was always for recreation and maintenance only. (In most versions “commercial use” was not specifically prohibited.). The Board continued the permits on a yearly basis per HRS § 171-55, except that new permits were issued when ownership changed. Permits through 2018 are summarized in the following table:

RP NO.	DATE FIRST APPROVED BY THE BOARD
S-4220	9/27/1968
S-6317	2/28/1986
S-6903	12/17/1993
S-7430	12/8/2006
S-7849	10/10/14

At its February 25, 2011 sunshine meeting, the Board designated Lot 41 as a property particularly well adopted “for income generation to support the management of land under the jurisdiction of [the Board and department].”

RTH purchased the hotel in 2014. RP S-7849 (2014) was the first permit issued to RTH. The Board continued RP S-7849 on a yearly basis through December 31, 2018.

From time to time over the years, members of the community made some complaints about the Hotel’s use of the property. At all times, the department made good faith efforts to inspect the Premises and enforce the permit terms. The Hotel was generally cooperative and RTH in particular has made strong efforts to work with the community and cooperate with the department.

From time to time there was discussion of changing the Hotel’s rights in the Premises. There was discussion of leasing the Premises to the Hotel for its exclusive use. More recently there was discussion of and steps taken toward allowing a significant intensification of uses to be authorized under a grant of easement. In the end, RTH chose not to pursue this out of respect for the community.

In 2018, staff asked the Board to issue a new revocable permit that would clarify what was allowed within the scope the RP. This request was presented to and considered by the Board at its September 14, 2018, and November 9, 2018 sunshine meetings. Both RTH and staff wanted the Board to clarify the use allowed by the permit. RTH submitted a list of items that it wanted to place on the Premises. There was extensive public input – both in favor of and in opposition to the request. The Board carefully considered all of the testimony and papers submitted. It granted the RP for specified purposes subject to a list of conditions and

clarifications including express requirements for public access and maintenance of the Premises and the beach makai of the Premises.

Despite the Board's careful consideration of RP 7915, Mr. David Frankel filed a lawsuit that challenged the issuance of the RP.

III. THE LAWSUIT

Mr. Frankel's lawsuit is filed in the First Circuit Court as Civil Number 18-1-1959-12.

The lawsuit challenges issuance of the permit on four bases:

- First, the Board cannot issue any revocable permits without rules to authorize doing so;
- Second, the Board was required to – but did not – consider factors set forth in HRS chapter 205A before issuing the permit;
- Third, an environmental assessment was required before issuance of the revocable permit; and
- Fourth, the Board was required to – but did not – consider its public trust duties before issuing the RP.

Judge Crabtree granted summary judgment in favor of the State as to all of these theories except HRS chapter 205A. Chapter 205A and the public trust are discussed further below.

IV. RP 7915 AND PROPOSED CHANGES

RP 7915 was issued to RTH pursuant to the approval by the Board at its meeting of November 9, 2018, agenda item D-18, commencing on January 1, 2019. The Board went to a lot of effort to be clear about exactly what is and is not allowed under the RP. This effort is especially embodied in Paragraph 1.3 of the RP which sets out a table of specific items that can be stored and preset on the Premises. These uses cover only approximately 3263.5 square feet (less than 6%) of the permit area. But RTH is very interested in working with the community. It

is therefore asking the Board to further limit use of the permit area. See **Exhibit A1**, a correction letter from RTH through its counsel dated October 14, 2019, and the initial request from RTH dated September 20, 2019 attached as **Exhibit A2**. Staff summarizes and comments on the proposed uses as follows:

USE	COMMENT	AREA IN SQ FT
KOKK storage area	This use will be discontinued	
Cabana Hale	The cabana hale is only partly on the Premises so the use remains the same but the square footage is corrected.	36
Cabana Tents	Cabana tents have been removed and RTH will no longer use them	
Beach Shower	The beach shower is open for use by the public	64
Towel Caddy	The use remains the same	12
Hammock	The use remains the same	58.5
Trash Cans	Trash cans will be removed	
Beach chair storage	This use will be discontinued. Beach chairs will be stored on RTH's property.	
Clam Shell loungers	This use will be discontinued	
Beach chairs and accompanying tables	RP S-7915 provides that beach chairs may be substituted for cabana tents and clam shells provided that the total number of "seating items" does not exceed 71. RTH intends to place a total of 70 beach chairs ² and accompanying tables.	1322.1
		1492.6

The other significant terms of the prior RP to remain include:

² RTH uses the term "chairs." Lounges might be more accurate. The first photo attached at Exhibit 3 to RTH's letter (Exhibit A) is a good picture of the "chairs" and accompanying tables.

- RP 7915 covers about 1.280 acres³, which is the grassy area at the subject location and the maintenance of the groins;
- Current monthly rent is \$1,320.50⁴;
- RTH is required to obtain authorization from the City and County of Honolulu, Department of Planning and Permitting for activities or purposes in RP 7915 for which a Special Management Area permit or other authorization is required;
- RTH shall maintain, at its own cost, the beach and island located seaward and outside the Premises;
- The public has full rights of access to and use of the 97% of the Premises not occupied by a use allowed by the RP;
- RTH will insure the Premises and name the State as an additional insured;
- No wedding, surf lessons, or kayaking/boating activities are allowed on the Premises;
- RP 7915 requires two (2) public corridors, mauka to makai, on the Koko Head side of the Premises, between the beach chairs allowed under the RP;
- Other items may be used by RTH guests on the Premises provided that “user is physically present or such items have been placed on the Premises at the request of the user.”

Any member of the public, including hotel guests, can use the Premises, have a picnic, or set up chairs or umbrellas. The only difference for a hotel guest is the 70 chairs preset for their use. Of note, “RTH has instructed all Hotel employees that food and beverage service should not be provided” on the Premises. Exhibit A2, page 3.

V. COMMUNITY CONCERNS AND STAFF RESPONSE

³ Area of RP 7915 (1.280 acres) was generated by a computer application, and did not undergo any survey process.

⁴ RP 7915 provided that the rent would be increased to \$6300 per month or 3% of gross monthly revenues when and if the cabana tents and clam shell loungers were approved by the City. That never occurred and RTH does not intend to do so in the future. So that provision is moot.

Staff at Land Division (LD) received a report by Mr. Frankel about the stacking of beach chairs and other hotel items on July 3 or 4, 2019. Mr. Frankel did not indicate the situation reported by him continued afterward. Photos provided by Mr. Frankel are attached as **Exhibit B**.

Around August 16, 2019, DLNR’s Land Division (“LD”) received an email from the public about the presetting of beach chairs on the Premises that allegedly happened before the complaint from Mr. Frankel described above. Additional photos received through this email and the redacted version of the same email are attached as **Exhibit C**.

Staff of LD⁵ conducted unannounced daily visits to the site between August 26 and September 13, 2019, and the photos taken are attached as **Exhibit D**. 12 of the 14 visits were conducted from 9:00 am to 12:00 p.m., with the remaining two taking place in the early afternoon.

LD summarizes the observations during the daily visits in the table below, with similar situations omitted.

8/26/19	<ul style="list-style-type: none"> • Outrigger canoe stored on Premises (permitted under the RP). • Beach chairs stored on the hotel property near the bungalow. • Small round tables were seen between beach chairs. Such tables were not expressly addressed in the RP.
8/27/19	<ul style="list-style-type: none"> • Teakwood lounge placed on hotel’s private property. • Some beach chairs were placed makai of the Premises, but they were occupied by guests or personal items were seen on the table between beach chairs indicating the chairs were in use.
8/28/19	<ul style="list-style-type: none"> • Beach chairs were stored under the tree near the golf course (permitted under RP) and outside the bungalows (on the hotel’s private property). • Standup paddling instruction given to hotel guests was seen on the Premises.
8/29/19	<ul style="list-style-type: none"> • Hotel is working with its consultant on obtaining permit(s) from the Army Corps of Engineers and/or the Department of Health on the drainage pipe; • Kids were seen on the Premises engaging in some educational activities about ocean life. [Note: Through the research on the internet, staff believes that the kids were engaging in the Dolphin Quest programs operated on the hotel property];

⁵ Staff: Cal Miyahara, Patti Miyashiro, and Darlene Bryant-Takamatsu

	<ul style="list-style-type: none"> • The two 20-foot wide public corridors were not restricted or prohibited. • Equipment used for a film production on the hotel property was also seen on the Premises. The production crew had obtained a film permit from the film office.
8/30/19	<ul style="list-style-type: none"> • The once-proposed outside seating area of the restaurant is clear of any hotel items.
9/3/19	<ul style="list-style-type: none"> • Teakwood loungers behind the cabana hale are on the hotel's private property. • A few round tables were seen on Premises. • Beach chairs on the Koko Head side could be on hotel's property or the golf course. • A lady [in red outfit] was giving surfing instruction on the beach makai of the Premises.
9/4/19	<ul style="list-style-type: none"> • Previously reported
9/5/19	<ul style="list-style-type: none"> • Similar dolphin educational program was seen on the Premises.
9/6/19	<ul style="list-style-type: none"> • Previously reported.
9/9/19	<ul style="list-style-type: none"> • Corporation event was set up on the Premises pursuant to the Board approval dated March 22, 2019, Item D-7. • Wedding photo shooting was seen on the beach. Film office permit obtained.
9/10/19	<ul style="list-style-type: none"> • Previously reported.
9/11/19	<ul style="list-style-type: none"> • Teakwood loungers behind the shower are on hotel's private property.
9/12/19	<ul style="list-style-type: none"> • Previously reported.
9/13/19	<ul style="list-style-type: none"> • Previously reported.

During the three (3) weeks of surveillance there were generally no sightings of any unauthorized items placed on the Premises, except for the few items noted above. From the site visits conducted by LD, it was noted that the public access to the Premises, the shoreline, and the beach was not restricted or prohibited.

During staffs' site visits, there was only one activity that appeared contrary to the permit conditions, while another activity occurred on unencumbered land. LD believes both sessions were conducted by the vendor operating from the hotel property.

A wedding photo shooting session was also seen once. LD confirmed that the State Film Office issued a permit.

The educational program seen on the Premises was not prohibited in RP 7915. People seen engaging in this program were children, likely staying at the hotel with their families; and

the activities only covered a small physical area with no intrusive equipment placed on the ground.

The small round tables mentioned above were not mentioned in the disposition of this revocable permit. RTH considers the tables as part of the 2-seating beach chair set up. LD does not object. The table is not intrusive and seems prudent for keeping personal items in sight while the guests are on the beach or in the water. The tables use a negligible portion of the Premises.

VI. CHAPTER 343 - ENVIRONMENTAL ASSESSMENT⁶

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, “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,” and 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”. (**Exhibit E**)

VII. HRS CHAPTER 205A

Judge Crabtree has not ruled either way as to whether and how policy considerations of HRS § 205A are applicable to the Board’s decision on the permit. HRS § 205A-2 in particular provides a detailed list of objectives and policies to be considered. A copy is attached as **Exhibit**

⁶ The ICA ruled in *Carmichael v. Bd. of Land & Nat. Res.*, 2019 WL 2511192 (Ct. App. 6/18/19) that issuance of permits under HRS § 171-55 is not subject to HRS chapter 343. Review by the Supreme Court has been requested so in an excess of caution the staff also reviewed the exemption status.

F. These policies and objectives in large part relate to coastal zone management. To the extent the chapter is relevant to this permit, staff believes the objectives and policies of chapter 205A support issuance of the permit for the following reasons. *See also* discussion in Exhibit A.

Recreational resources. RTH cleans and maintains the Premises along with the beach and island. RTH provides access to these areas. Without the RP, either the Premises would not be maintained or department funding to do so would have to be reallocated from other projects. The RP area as presently constituted is unique among shoreline areas.

Limited area (less than 6% of the total) is presently used for presetting of chairs reserved for hotel guests. This will be reduced to approximately 2%. Staff does not believe the RP significantly reduces access for or diminishes the value to the public.

Historic resources. The RP covers filled land and no historic resources are implicated in its use.

Scenic and open space resources. The Premises is maintained at the highest level of scenic and open space. Staff is not aware of any evidence or contention that the Premises would be better left to revert to natural or less maintained condition. RTH's obligation to clean and maintain the Premises and other areas helps preserve and maintain shoreline open space and scenic resources.

Coastal ecosystems. The Premises undoubtedly benefits from RTH's meticulous care. Staff is not aware of any evidence or contention that the Premises or off shore resources would be better left to revert to natural or less maintained condition.

Economic uses. The existing and proposed use of the Premises is highly appropriate in terms of concentrating development in appropriate areas and locating visitor industry facilities to

minimize disruption to other values. The Premises is in the urban district. It is used and maintained in a manner that minimizes adverse impact to coastal zone management values.

Coastal hazards. This area is not particularly susceptible to flooding, erosion, or tsunamis.

Managing development. The Hotel is a mature property developed in the 1960's. Existing use is relatively non intensive, less than the historical use, and will be further reduced under the revised terms. No development is associated with the proposed permit.

Public participation. The public has robustly and repeatedly engaged in the permitting process. The public uses the Premises and adjacent beach.

Beach protection. The beach and access to it are scrupulously maintained and protected by RTH. No new structures contemplated or allowed by the permit.

Marine resources. No marine resources are used or impacted by the permit.

VIII. PUBLIC TRUST

Article XI, section 1 of the Hawai'i Constitution provides:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

The Hawai'i Supreme Court has never "define[d] the full extent of article XI, section 1's reference to 'all public resources'." *In re Water use Permit Applications*, 94 Hawai'i 97, 9 P.3d 409 (2000). Only last year, the Court again noted that "[t]his court has never precisely demarcated the dimensions of the public trust doctrine as incorporated in Article XI, Section 1."

Matter of Conservation Dist. Use Application HA-3568 for the Thirty-Meter Telescope, 143 Hawai'i 379, 431 P.3d 752, 773–74 (2018) (“*TMT*”).

In *TMT*, the Court held that conservation district lands owned by the State are in the public trust.

We therefore now hold that conservation district lands owned by the State, such as the lands in the summit area of Mauna Kea, are public resources held in trust for the benefit of the people pursuant to Article XI, Section 1.

However, the Court specifically declined to rule that other types of public land – such as the urban land at issue here – are covered.

Other types of public lands (and whether or how public trust principles should apply to such lands) are not before us at this time.

TMT, 431 P.3d at 774 fn. 23. Based on this statement, Judge Crabtree dismissed Mr. Frankel's public trust claim.

However, even if the Board does not have a legal duty to consider public trust in this situation, it may wish to do. Staff believes that public trust considerations clearly support issuance of the permit. In this regard, the actual language of the constitution is critical. The State as trustee is directed to “promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.” Again, the Premises is urban land, directly adjacent to private land fully developed with a luxury resort hotel built in the 1960s. The Board concluded years ago – in 2011 – that the Premises was designated to generate income sorely needed to fulfill the State's trust duties as to all properties.

As best we can discern Mr. Frankel's argument regarding the public trust he seems to make four points.⁷

⁷ We assume Mr. Frankel will appear and make his position clear.

First, the Board failed to make clear what RTH can and cannot do in terms of commercial use of the Premises. Staff disagrees. In any event, this new permit being recommended makes clear exactly what use is allowed – effectively nothing other than presetting a limited number of chairs and tables for hotel guests.⁸ The metaphysical question of whether or not this is “commercial” is irrelevant. The point is that the use allowed is crystal clear.

Second, the DLNR failed to “take any enforcement action.” Staff disagrees as noted above and as can be further discussed at the board meeting. Staff regularly monitors the Premises by site visits. In any event, a few isolated violations (if any) do not mean that the RP should not be continued. At most, the Board may wish to direct staff to devote even more of its limited resources to enforcement in this particular area.

Third, the Board and department “actually allowed RTH to exclude members of the public from land dedicated to public beach use.” Staff points out that this filled land was originally sandy. However, the mauka portion has been grassed for decades. Staff disagrees that the Board has a duty – trust or otherwise – to ensure in perpetuity that the land remain untouched and wholly open to the public. And staff also points out that the public has unfettered access to 94% - now to be 98% - of the Premises. Also the alleged “dedication” to public beach use arises out of the same 1963 agreement by which the developer made the filled land. The State agreed to the hotel’s use as part of the agreement. Nothing in the 1963 agreement prohibits issuance of the RP. Staff does not agree that it is a breach of the public trust to allow RTH to use a small portion of the Premises for presetting, especially when the public interest is so well served by the money and services that the State receives in return.

⁸ The guests themselves can use the property just like any other person.

Fourth, the Board failed to consider alternatives. Specifically, the Board should just ask RTH to use its own property for the activities being done on the Premises. Staff believes that this “alternative” is simply another way of saying “do not issue the permit.” The Board most certainly did consider that alternative and will do so again this year.

In sum, staff recommends that the public trust be considered and that the permit be issued.

Recommendation: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this use of State land will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Declare, after considering the objectives and policies of Chapter 205A, HRS, that continuation of the permit fully complies with and reasonably advances those objectives and policies.
3. Declare, after considering the public trust, that continuation of the permit fully complies with public trust principles and reasonably advances the public interest.
4. Approve the continuation of Revocable Permit No. 7915 on a month-to-month basis for another one-year period from January 1, 2020 through December 31, 2020 subject to the following:
 - A. Monthly rent of \$1,360.
 - B. Replace the table in Revocable Permit regarding the specific items allowed on the Premises with the table shown on Exhibit A1.
 - C. Authorize the Chairperson to make other changes to RP No. 7915 to be in substantive conformity with the intent of the revisions suggested above.
 - D. The review and approval by the Department of Attorney General.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case
N Suzanne D. Case, Chairperson

List of Exhibits

- Exhibit A1 - Resorttrust Hawaii, LLC's correction letter dated October 14, 2019
- Exhibit A2 - Resorttrust Hawaii, LLC's initial request dated September 20, 2019
- Exhibit B - Photos provided by Mr. David Frankel
- Exhibit C - Redacted email and photos provided by the community
- Exhibit D - Photos taken during site inspections between August 26, 2019 to September 13, 2019
- Exhibit E - Environment Assessment Exemption Declaration
- Exhibit F - Objectives and Policies, Chapter 205A, Hawaii Revised Statutes

EXHIBIT A1

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)

JLM@CARLSMITH.COM
JTY@CARLSMITH.COM

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DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

OUR REFERENCE NO.:
067396-00006

October 14, 2019

VIA HAND DELIVERY

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

Re: SECOND CORRECTION & SUPPLEMENT-
Request for Modification and Renewal of Revocable Permit No. S-7915
For Approximately 1.280 Acres of State Land in Waialae, Honolulu, Oahu
Tax Map Key No. (1) 3-5-023: 041

Dear Chairperson Case and Members of the Board:

On behalf of Resorttrust Hawaii, LLC ("RTH"), the owner and operator of The Kahala Hotel & Resort (the "Hotel"), on September 20, 2019 we submitted a letter with Exhibits 1 - 14 requesting reauthorization of Revocable Permit No. S-7915 (the "RP"), but with modifications to the permitted uses and use areas approved by the Board of Land and Natural Resources ("BLNR") under the RP. On October 8, 2019 we submitted a correction and supplement to that letter upon determination that the total use area being requested by RTH was both less than what is permitted under the RP and what we described in our September letter. We have now identified some technical errors in Table 2 of our October 8 letter and provide the enclosed Updated Table 2 for the BLNR's consideration. We apologize for any trouble this may have caused the Board and the Department's staff.

The RP granted the Hotel a list of particular uses within approximately 3,236.5 square feet (sq. ft.) of the 1.280-acre RP Premises. In our September letter we indicated that RTH's actual use area was only approximately 2,504.7 sq. ft. We corrected that in our October 8 letter where we indicated that RTH's actual use area is only approximately 1,242.9 sq. ft. However, upon closer examination we have determined that the actual use area is approximately 1,492.6 sq. ft., or less than 3% of the RP Premises, as detailed in the Updated Table 2 provided herein.

EXHIBIT "A1"

HONOLULU

HILO

KONA

MAUI

LOS ANGELES

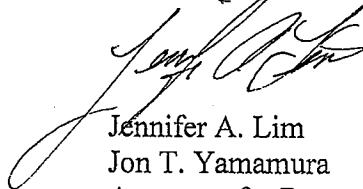
Updated Table 2 provides a listing of the items and use areas requested by RTH should the BLNR authorize the reissuance of the RP for the year 2020, and we ask that this Updated Table 2 replace Table 2 that was submitted on October 8, 2019.

UPDATED TABLE 2 (RTH Requested Items and Use Areas)					
Item	Dimensions (ft)	Area Per Item (sq. ft)	Count	Total Seats	Total Area (sq. ft) on State Property
Cabana Hale	8' x 9'	72 sq. ft.	1	N/A	36 sq. ft.
Beach chairs (pair) and small table	5.7' x 6.4'	36.5 sq. ft.	23 pair	46	839.5 sq. ft.
Beach Shower	8 x 8	64 sq. ft.	1	N/A	64 sq. ft.
Towel Caddy	6 x 12	12 sq. ft.	1	N/A	12 sq. ft.
Hammock	13 x 4.5	58.5 sq. ft.	1	1	58.5 sq. ft.
Beach Chair Setup - 4 chairs w/2 tables	12.4' x 6.4'	79.4 sq. ft.	3	12	238.2 sq. ft.
Beach Chair Setup - 6 chairs w/3 tables	19.1' x 6.4'	122.2 sq. ft.	2	12	244.4 sq. ft.
Total Seats				71 seats	
Total Use Area					1,492.6 sq.ft.

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 Resorttrust Hawaii, LLC

EXHIBIT A2

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

September 20, 2019

VIA HAND DELIVERY

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

Re: Request for Modification and Renewal of Revocable Permit No. S-7915
for Use Approximately 1.280 Acres of State Land in Waiialae, 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") and the permittee under Revocable Permit No. S-7915 (the "RP"), effective January 1, 2019, which grants RTH rights to use approximately 1.280 acres of State-owned land (referred to as the "RP Premises"),¹ together with the right and obligation to maintain the beach located seaward of the RP Premises, as shown on Exhibit A to the RP, a copy of which is enclosed here as Exhibit 1.

The Board of Land and Natural Resources ("BLNR") authorized the RP for recreational and maintenance purposes and permitted the Hotel a list of particular uses and use areas within approximately 3,236.5 square feet of the RP Premises. Over the past year the Hotel has closely evaluated its use of the RP Premises and has determined that its actual use area is much less (approximately 2,504.7 sq. ft.) than what BLNR previously authorized. RTH respectfully requests the BLNR authorize a renewal of RP 7915 for 2020, but that the renewed RP identify the Hotel's more limited use areas. RTH wishes to retain the rights under the RP to maintain and allow recreation within the entire RP Premises, but RTH has eliminated several of the particular use areas previously authorized by BLNR. Below is permitted use table from the RP, with additional columns showing what uses/areas the Hotel is no longer using or has modified.

¹ The TMK Parcel No. of the 40,460 sq. ft. State owned property is (1) 3-5-023: 041 (the "State Parcel"). The additional area of approximately 0.35 acres outside of the TMK boundaries includes the two constructed groins and adjacent areas. The State Parcel with the addition of the groins and adjacent areas totaling 1.280 acres is collectively referred to as the RP Premises.

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2019 SEP 20 PM 4: 19

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& NATURAL RESOURCES
STATE OF HAWAII

OUR REFERENCE NO.:
067396-00006

RECEIVED
LAND DIVISION
2019 SEP 23 AM 11: 11
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

TABLE 1

Item	Approved RP S-7915					RTH Request For 2020	
	Dim (in ft)	Area Per Item (sq. ft)	Count	Total Seats	Total Area (sq. ft)	RTH 2020 Request	Total Area (sq. ft)
KOKK Storage Area	14 x 40	560	1	N/A	560	Removed	N/A
Cabana Hale	8 x 9	72	1	N/A	72	Same, but only 1/2 on State property	Reduced by 36 sq. ft
Cabana Tents (1 tent = seating for 2)	10 x 10	100	10	20	1,000	Cabana Tents removed. Replaced with 20 light weight beach chairs and small tables	Reduced by 686 sq. ft. 20 beach chairs with tables = 314 sq. ft
Beach Shower	8 x 8	64	1	N/A	64	Same	Same, 64 sq. ft
Towel Caddy	6 x 12	12	1	N/A	12	Same	Same, 12 sq. ft
Hammock	13 x 4.5	58.5	1	1	58.5	Same	Same, 58.5 sq. ft
Trash Cans	2 x 4	8	4	N/A	32	Removed	N/A
Beach Chair Storage	18 x 26	468	1	N/A	468	Removed	N/A
Clam Shell Lounger (1 lounger = seating for 2)	5 x 6	30	13	26	390	Clam Shell Loungers removed, replaced with light weight beach chairs	Increased by 18.2 sq. ft. 26 beach chairs with tables = 408.2 sq. ft.
Beach Chair Setup - 4 chairs	12 x 7	84	3	12	252	Same	Reduced by 84 sq. ft.
Beach Chair Setup - 6 chairs	8 x 7	56	2	12	112	Same	Increased by 56 sq. ft.
Outrigger Canoe Storage	9 x 24	216	1	N/A	216	Removed	N/A
Total Seats	71 seats					71 seats	
Total Use Area	3,236.5 sq. ft						

RTH has completely cleared the KOKK Storage Area, a portion of which was on the State Parcel. See Exhibit 2, photos taken 9/19/2019, showing the area cleared of all items, and photo from August 2018 showing RTH's prior use of the KOKK Storage Area. In addition, although the RP does not provide RTH any special, exclusive, rights to use the sandy beach fronting the RP Premises, the RP does obligate RTH to maintain that beach at its own costs, and RTH is amenable to continuing to provide those services.

The RP allowed RTH to place 10 Cabana Tents and 13 Clam Shell Lounges on the RP Premises, and if those items were put onto the RP Premises and RTH charged a fee for the use of those items (as RTH intended), or if any other revenues were generated from goods and services sold on the RP Premises, BLNR would be entitled to a rental payment the greater of \$6,300/month or 3% of the gross monthly revenues derived from the sale of goods and services sold on or from the RP Premises. At this point, no revenues are generated from the sale of goods or services on the RP Premises. RTH has permanently removed the Cabana Tents and Clam Shell Loungers from the RP Premises. See Exhibit 3, photos taken 9/19/2019, showing the area cleared of all Cabana Tents and Clam Shell Loungers, and photos from August 2018 showing RTH's prior use of Cabana Tents and Clam Shell Loungers on the State Parcel.

Furthermore, RTH has instructed all Hotel employees that food and beverage service should be not be provided outside of the Hotel property boundaries (of course people, Hotel guests and otherwise, are free to bring their own food onto the RP Premises, but the Hotel is not providing any service outside of the Hotel property). Additionally, while in the past RTH charged a rental fee for Cabana Tents and Clam Shell Loungers, and rented those items to Hotel guests and members of the public, they have all been removed. Now, the only Hotel-seating items on the RP Premises are light weight portable beach chairs (and 1 hammock). No revenues are generated from and no fees are charged for the use of the portable beach chairs (or hammock) that RTH provides on the RP Premises. RTH has no intention of engaging in activities that generate revenues from the sale of goods or services sold in, upon, or from any part of the RP Premises.

The Towel Caddy with a trash receptacle and water cooler remains on the State Parcel, as does the public beach shower. See Exhibit 4, photo taken 9/19/2019, of the public shower and Towel Caddy.

The Beach Chair Storage Area at the Koko Head side of the State Parcel has been removed. See Exhibit 5, photos taken 9/19/2019, showing the State Parcel cleared of Beach Chair Storage and Outrigger Canoe Storage, and photos from RTH's August 2018 submittal, showing RTH's prior use of State Parcel for Beach Chair Storage (approx. 468 sq. ft.) and Outrigger Canoe Storage (approx. 216 sq. ft.). Additionally, the 4 trash cans have been removed from the State Parcel, but the Towel Caddy trash can remains.

I. **BACKGROUND OF DEVELOPMENT OF RP PREMISES**

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. In 1963, BLNR unanimously approved an agreement allowing the Kahala Hilton Hotel Company, Inc. ("KHHC") and Charles and David Pietsch (collectively referred to as the "owners" under the agreement), at their sole expense, to improve the beach fronting the Hotel property by dredging and filling the area to construct the beach, and constructing a small islet and two groins. The agreement addressed the following properties which were owned by KS: Lot 228, which was under sublease to KHHC (and is currently under lease to RTH); Lot 227, which was under lease to Charles and David Pietsch; and Lot 23, which was under lease to Waialae Country Club. The agreement also covered Lot 22, which was owned by Sheraton Hawaii Corporation.

The agreement recites that the "owners" desired to dredge a swimming area and construct a beach, and that permission was sought from the Department of Transportation Harbors Division for permission to dredge and fill the areas abutting and fronting their leasehold properties (i.e., Lots 228 and 23). The agreement further recites that the State, KS, Sheraton Hawaii Corporation, and the Waialae Country Club were desirous of having a public beach and swimming area fronting their properties, and that the "owners" agreed to construct such a beach and swimming area for and on behalf of the State. The agreement explains that title to all filled and reclaimed land and improvements seaward of the makai boundaries of the lots shall remain and vest in the State of Hawaii and shall be used as a public beach. However, KS and Sheraton reserved unto themselves the right of access to the beach and improvements, subject to all applicable laws, regulations, etc. A copy of the agreement and an excerpt of BLNR's minutes from January 25, 1963, approving the agreement, are enclosed as **Exhibit 6**.²

As a result of the work by KHHC, 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.

II. **BACKGROUND OF USE OF THE RP PREMISES**

There is a long, unbroken history of the Hotel being permitted to make use of the RP Premises and adjacent sandy beach conjunction with Hotel operations. 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 7**.

² 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.

Revocable permits over the RP Premises have been issued to the Hotel over the years, starting in 1968 when BLNR issued RP No. 4220, authorizing Kahala Hilton Hotel to “enter and occupy” 6,250 sq. ft. of the State Parcel for the Hotel's recreational purposes for \$80/month. RP No. 4220 was renewed annual until February 1986, when BLNR issued RP No. 6317, covering 32,860 sq. ft. of the State Parcel at a rent of \$855/month. In approving the expanded revocable permit, BLNR noted that at no cost to the State, the Hotel cleaned and maintained the beach and the State Parcel, provided refuse disposal receptacles, and maintained a public shower on the State Parcel. RP No. 6317 also permitted the Hotel to use the property for “recreational purposes and the maintenance of State land,” but it also expressly prohibited “commercial activity,” without defining what activities constituted “commercial activity.” That revocable permit was in place with annual renewals and rent increases until 1993 when Hotel ownership changed.

A new revocable permit (RP No. 6903) was approved in December 1993 for “[r]ecreational purposes and the maintenance of [the State Parcel]” and was issued without any prohibition on “commercial activity.” The monthly rental under RP No. 6903 was \$1,172/month. That revocable permit remained in place, with rent increases, until Hotel ownership changed in 2006. The next revocable permit that was issued was RP No. S-7430 issued in 2007 and covering an area of 40,460 sq. ft. for a monthly rental of \$1,244.³ This revocable permit authorized the Hotel's use of the property for recreational and maintenance purposes, and did not have any language prohibiting or restricting commercial activities.

RTH acquired the Hotel in 2014 and sought a revocable permit. The DLNR staff report recommended approval of the request, but also recommended BLNR impose new restrictions on the revocable permit, which BLNR declined to do. DLNR staff recommended that BLNR prohibit the Hotel from conducting weddings on the RP Premises, but BLNR declined to do so. DLNR staff recommended a prohibition on presetting of beach equipment and BLNR determined that the prohibition on presetting would apply only to the sandy beach fronting the RP Premises. BLNR voted unanimously to approve RTH's request, as amended. A copy of the amended and approved DLNR staff report of 10/14/2014 is enclosed as **Exhibit 8**. RP No. S-7849 was issued to RTH on June 8, 2016, authorizing the Hotel to “occupy and use” the 40,460 sq. ft. premises at a rental of \$1,244/month for “recreational and maintenance purposes.”⁴

Shortly after acquiring the Hotel, RTH began exploring an alternative to the revocable permit. RTH wanted to replace its revocable permit, which requires annual review and renewal, with a long-term non-exclusive easement. RTH also wanted to formalize its rights to hold weddings and other commercial events on the State Parcel, and even sought to add a third wedding site. RTH also wished to secure permission to pre-set chairs and Cabana Tents on the sandy beach and install tiki torches along the two groins. This plan was presented to the public through the publication of a Draft Environmental Assessment in 2017, and was greeted with

³ The size of the revocable permit premises expanded from 32,860 sq. ft. to 40,460 sq. ft. based upon DLNR's estimation of the total area constructed by the original Hotel developers.

⁴ From BLNR's 2014 approval to the issuance of RP No. S-7849, RTH was authorized to use the RP Premises and beach under a right-of-entry permit.

opposition from a considerable contingent of the Kahala community, including the Waiālae-Kahala Neighborhood Board, which was 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. RTH terminated its expansion and easement plan in August 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 to the Waiālae-Kahala Neighborhood Board, to keep the Board apprised of any significant new developments with the Hotel.

III. REVOCABLE PERMIT No. S-7915, EFFECTIVE JANUARY 1, 2019

Although the fact that the Hotel paid money to the State for rights to use the RP Premises in addition to covering the costs to clean and maintain the RP Premises indicates that the various revocable permits issued over the years granted the Hotel some rights over and above those granted to every other member of the public, the language in the revocable permits, permitting uses for "recreational and maintenance purposes", became problematic. Therefore, RTH sought to get clarification from BLNR on what uses were authorized. At the same time, RTH took action to reduce the Hotel's use of the RP Premises and beach, as documented in RTH's 8/6/2018 submittal to BLNR, incorporated herein by reference.

In response to RTH's 8/6/2019 request for clarification, and after two lengthy public meetings (nearly five hours of testimony and questioning by BLNR at the 9/14/2018 meeting, including RTH's video presentation on the uses and status of the RP Premises, and over two hours of listening, questioning, and deliberating at the 11/9/2018 meeting), for the first time ever, BLNR issued a revocable permit for the RP Premises that identifies with specificity and clear limitations on land areas, a narrow list of allowable uses. See Table 1; and see Exhibit 1.

One use requested by RTH in August 2018 that BLNR unequivocally denied was the right to use approximately 1,917 sq. ft. of the RP Premises immediately adjacent to the Hotel property for occasional overflow seating for the Seaside Grill restaurant. BLNR members rejected that request due to concerns that overflow restaurant seating in that area would interfere with the public's ability to traverse that portion of the RP Premises. That area was and continues to be completely clear and open. See Exhibit 9, photos taken 9/19/2019, showing the area adjacent to the Seaside Grill remains cleared of all chairs, tables, and overhead shade cloth.

In return for clarifying and limiting the uses and areas available to RTH, BLNR imposed several conditions in RP 7915. Some key conditions imposed include:

Public access shall be allowed on the RP Premises to the extent the area is not occupied for a use allowed under the RP. See RP at 9, # 19.

RTH must establish and maintain two (2) 20-foot wide, mauka to makai, pathways for public pedestrian access on the Koko Head side of the RP Premises. See RP at 9, # 20.

RTH may only place personal recreational equipment, towels, umbrellas, etc., on the RP Premises if the user is either present or has requested the items. See RP at 9, # 18.

RTH shall not allow any presetting of equipment except for the items permitted in limited areas under the terms of the RP. See RP at 10, # 23.

RTH shall not allow any weddings on the RP Premises. See RP at 10, # 21.

RTH shall not allow any surf lessons on the RP Premises. See RP at 10, # 21.

RTH shall not allow any kayaking/boating activities on the RP Premises. RP at 10, #21.

RTH must maintain the beach located makai of the RP Premises at its own costs. RP at 10, #22.

RTH must keep and maintain insurance naming the State as an additional insured. See RP at 4, # 14.

RTH must keep the RP Premises and improvements in a clean, sanitary, and orderly condition. See RP at 4, # 10.

In crafting these conditions and issuing the RP with such limited terms, BLNR clearly upheld any applicable public trust duties as well as any duties it may have under Hawaii Revised Statutes Chapter 205A. RTH is not seeking relief from any of these conditions. The only changes RTH wishes to make to the RP is a reduction in the scope of permitted uses. However, RTH's request for a further reduction in scope of the RP suggests that a refreshed analysis of these issues is warranted.

IV. PUBLIC TRUST AND HRS CHAPTER 205A

The RP Premises is classified in the State urban district. The sandy beach area makai of the shoreline and outside of the RP Premises is in the State conservation district. Public trust considerations are applied to conservation district lands and water resources, but not to urban district lands. Nevertheless, the RP, and as proposed for modification by RTH, is consistent with public trust principles. Public trust obligations require the State to both “‘protect’ natural resources and to promote their ‘use and development,’ consistent with conservation of the natural resources.” *Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai‘i 379, 400, 431 P.3d 752, 773 (2018). The RP mandates RTH's maintenance of the RP Premises and sandy

beach, and also requires that the properties are open to the public and used for recreational activities.

Moreover, the State has determined that the State Parcel should be an income-generating property for the State and designated the State Parcel specifically for Hotel/Resort use. Funds generated from the State Parcel are slated to DLNR's Special Land Development Fund, to help fund DLNR's efforts to manage and protect the State's cultural, historic and natural resources. See **Exhibit 10** (excerpts from approved DLNR Staff Report 2/25/2011, agenda item D-10). In no way does the RP preclude the use of the RP Premises as a public beach, but it does mandate that a clean beach and a clean RP Premises is available for all to use and enjoy.

The recreational uses permitted to RTH under the RP paired with the obligation to clean, maintain, and insure the properties, as well as pay rent to the State, strike an appropriate balance. In addition to the economic benefits to the State through the payment of rent and avoided costs, the Hotel's stewardship under the RP has enhanced public use and enjoyment of the beach and RP Premises and protected the resource not only through keeping the area pristine and open, but also by providing a fresh water shower for public use.

Before approving the RP, BLNR gave full consideration to ecological, cultural, historic, esthetic, recreational, scenic, and open space values, and coastal hazards, as well as to needs for economic development, and took into account the 10 objectives and numerous related policies under HRS § 205A-2.⁵ RTH respectfully asserts that its current request for a renewal of the RP with a further limited scope is consistent with all applicable objectives and policies.

Recreational Resources. The RP enhances public access to coastal recreational opportunities because under the terms of the RP RTH must clean and maintain both the RP Premises and the beach, enhancing the enjoyment of the area by all. The RP also mandates that the RP Premises be kept open for public access, and that within the limited areas where RTH places beach chairs at the Koko Head end of the RP Premises, the chairs must be set in a manner that maintains two 20-foot wide mauka/makai pedestrian paths. Pursuant to the special management area permit authorizing the Hotel construction, public access to the beach fronting 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. Additionally, RTH continues to have signs designating public beach access on the street, shoreline public access on the parking garage, and a 14" x 26" "welcome public access" sign on the RP Premises itself. See **Exhibit 11** photos of the various public access signs taken 9/19/2019. Furthermore, the original development of the RP Premises and the dredging of the beach to create a swimming lagoon made new shoreline recreational opportunities for the public, consistent with the recreational objectives and policies.

⁵ (1) Recreational Resources; (2) Historic Resources; (3) Scenic and Open Space Resources; (4) Coastal Ecosystems; (5) Economic Uses; (6) Coastal Hazards; (7) Managing Development; (8) Public Participation; (9) Beach Protection; and (10) Marine Resources.

Historic Resources. As fill land there are no significant archaeological resources at the RP Premises. However, the Hotel's stewardship of the RP Premises over the past 50 years has not infringed on any cultural resources or values. At the BLNR meeting of September 14, 2018, when BLNR was receiving public testimony regarding RTH's request for clarifications to the RP, Mr. Aaron Mahi, a designated cultural practitioner who serves on the State Land Use Commission, testified in support of RTH, explaining that he had dived and fished along the shoreline fronting the Hotel for many years. Mr. Mahi explained "There's never been a time that I felt my rights to public access or the use of, of either the joys of the ocean and the kinds of cultural activities that we would participate in in terms of letting net or throwing net or even night diving. There was never a time that I felt that the hotel was infringing our rights to be there on the beach in that area."

Scenic and Open Space Resources. As evidenced by the photos of the RP Premises, coastal scenic and open space resources as enhanced by RTH's maintenance activities under the RP. No structures are proposed within the RP Premises, in fact in 2018 RTH removed the long-standing wedding gazebo and tile platform fronting the gazebo from the RP Premises, and also removed the wedding trellis that had been located on the Koko Head side of the RP Premises for years. BLNR granted RTH permission to have up to 10 Cabana Tents on the RP Premises, subject to approval of the Department of Planning and Permitting. Cabana Tents are open air roofed frames approximately 7 feet tall. 10 Cabana Tents scattered within a 1.280-acre RP Premises could hardly have a negative impact on scenic and open space resources. However, RTH has decided to forgo using Cabana Tents on the RP Premises altogether and has instead placed low profile light weight beach chairs in those areas, eliminating any concerns about impacts to scenic and open space resources.

Coastal Ecosystems. The RP likely has a negligible effect on valuable coastal ecosystems, but RTH's stewardship and daily cleaning of the public beach (removing trash, animal waste, etc.) likely has some protective beneficial effect on coastal ecosystems.

Economic Uses. The BLNR has already determined that the RP Premises is well-suited for "income generation to support the management of land under the jurisdiction of the Land Board." Revenues generated from the rental of the RP Premises support the DLNR's Special Land Development Fund in furtherance of the DLNR's efforts to manage and protect the State's cultural, historic and natural resources. See Ex. 10. Additionally, the RP Premises is adjacent to the Hotel and has been used and maintained by Hotel owners since the Hotel opened in 1964. The Honolulu City Council, when voting in favor of the required zoning for the Hotel property in 1960, noted that the development of the Hotel was important for the State's economic growth.

The Hotel has been, and continues to be, important for economic growth. More than 50 years after its grand opening, the Hotel remains a special location outside of Waikiki that has served as one of Hawaii's premier destination luxury resorts. The Hotel 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. As RTH reported to BLNR last year, the Hotel employees some 500 people and it is thanks to their hard work and aloha that the Hotel remains renowned for impeccable service and gracious Hawaiian hospitality.

The Hotel is also a good corporate member of the community. Together with the Hawaii Legacy Reforestation Initiative, a non-profit organization, the Hotel created the Kahala Initiative for Sustainability, Culture and the Arts (KISCA). Through KISCA, the Hotel is committed to restoring part of the natural landscape of the island and planting 200,000 endemic Hawaiian Milo trees in Malaekahana on the North Shore of Oahu.

Beach Protection. The RP complements the desire to protect beaches for public use and recreation. RTH spends \$69,400 a year keeping the RP Premises and the sandy beach area clean and well maintained for the enjoyment of all. The RP is consistent with all policies related to beach protection. It does not involve construction of any new structures (erosion protection structures or otherwise), and ensures that unmaintained vegetation will not interfere with the public's access along the beach transit corridor.

V. CONCLUSION

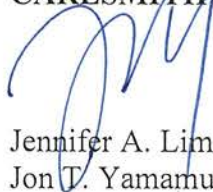
BLNR has the authority to issue revocable permits under HRS § 171-55 for the temporary occupancy of State lands "under conditions and rent which will serve the best interests of the State." Annually, since 1968, BLNR has reviewed the Hotel's use of the RP Premises to determine if the issuance/renewal of a revocable permit was in the best interests of the State. The RP Premises is exactly the kind of State property that BLNR determined is most appropriate for disposition under a revocable permit rather than a lease. See **Exhibit 12** (Report and Recommendation from DLNR Revocable Permit Task Force, Item D-17, 6/24/2016, identifying conditions that make property ill-suited for lease but well suited for revocable permits, such as properties that lack legal access or are otherwise not marketable). Furthermore, the Kahala community objected strongly to disposition of the RP Premises under a long term grant of easement. A revocable permit with annual renewals before the BLNR, and that obligates the permittee to pay rent to the State, clean and maintain the property—including the property outside of the RP Premises—insure the property, and keep the property, including the fresh water shower, open for public use, would seem to be in the best interest of the State. RTH's current uses of the RP Premises are extremely modest and far less than the uses that were in place over prior years, and even less than what BLNR approved in RP 7915. See **Exhibit 13**, overhead photo taken 8/17/2019; and see **Exhibit 14**, photos taken 9/19/2019 of the open sandy beach fronting the RP Premises. RTH respectfully requests renewal of RP 7915, and an adjustment to the permitted uses and areas to more accurately reflect the Hotel's actual use of the RP Premises.

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
September 20, 2019
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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,

CARLSMITHBALL, LLP

A handwritten signature in blue ink, appearing to be 'JAL' or similar, written over the printed name of Jennifer A. Lim.

Jennifer A. Lim
Jon T. Yamamura
Attorneys for Resorttrust Hawaii, LLC

Enclosures

cc: The Kahala Hotel & Resort
4844-2144-1702.2.067396-00006

EXHIBIT "1"

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

REVOCABLE PERMIT NO. S-7915

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 29th day of January, 2019, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and Resorttrust Hawaii, LLC, a Hawaii limited liability company, hereinafter called the "Permittee," whose mailing address is 5000 Kahala Avenue, Honolulu, Hawaii 96816. The parties agree that commencing on the 1st day of January, 2019, ("commencement date"), Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Waialae, Honolulu, Oahu, Hawaii, tax map key no. (1) 3-5-023:041, as indicated on the map attached as Exhibit A hereto, if any, and made a part hereof, containing an approximate area of 1.280 acres, which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1.1 Occupy and use the Premises for the following specified purposes only:

Recreational and maintenance purposes limited to storage area, cabana hale, cabana tent, beach shower, tower caddy, hammock, trash can, beach chair storage, clam shell lounge, beach chair set up, and outrigger canoes storage.

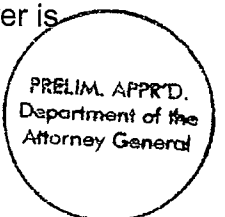
1.2 Obtain appropriate authorization in writing from the City and County of Honolulu, Department of Planning and Permitting ("City") prior to occupying and using the Premises for any activities or purposes described in the Permit for which a Special Management Area permit or other authorization is required. The Permittee shall provide copy of such written authorization from the City to the State.

1.3 Ensure the specified purposes listed in paragraph A.1.1 shall not exceed their respective count and approximate dimensions as noted in the

following table, and are located as further depicted on Exhibit B attached hereto and made a part hereof; provided, however, that beach chairs may be substituted for cabana tents and clam shell loungers, but not the other way around, and as long as the total number of seating items does not exceed 71.

Item	Reference (Exhibit B)	Dimensions (ft)		Area	Count	Total Seats Provided	Area (sq ft)
KOKK Storage Area	1	14	40	560	1	N/A	560
Cabana Hale	2	8	9	72	1	0	72
Cabana Tents (1 tent = seating for 2)	3-6, 10-15	10	10	100	10	20	1,000
Beach Shower	7	8	8	64	1	N/A	64
Tower Caddy	8	2	6	12	1	N/A	12
Hammock	16	13	4.5	58.5	1	1	58.5
Trash Cans	17, 38-40	2	4	8	4	N/A	32
Beach Chair Storage	18	18	26	468	1	N/A	468
Clam Shell Loungers (1 lounge = seating for 2)	19-31	5	6	30	13	26	390
Beach Chairs Setup 4 Chairs (1 chair = seating for 1)	32,34,36	12	7	84	3	12	252
Beach Chairs Setup 6 Chairs (1 chair = seating for 1)	33,35	8	7	56	2	12	112
Outrigger Canoes Storage	37	9	24	216	1	N/A	216
					39	71	3,263.5

- 2.1 Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, monthly rent in the sum of ONE THOUSAND THREE HUNDRED TWENTY AND 05/100 DOLLARS (\$1,320.05) payable in advance by the first of each and every month.
- 2.2 Upon obtaining the written authorization from the City described in paragraph 1.2 above, the monthly rent mentioned in paragraph A.2.1, shall be adjusted to SIX THOUSAND THREE HUNDRED AND 00/100 DOLLARS (\$6,300.00) or 3% of the gross monthly revenues, whichever is



the greater. "Gross monthly revenues" means all income and revenue derived from the sale of all goods and services sold in, upon or from any part of the Premises by the Permittee.

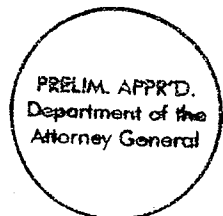
- 2.3 Submit to the State within one month after the expiration of each full permit month period, a complete certified statement by the Permittee or an officer of the Permittee showing in all reasonable detail the amount of gross monthly revenues during said periods. Upon request by the State, the Permittee shall provide supporting records and documentations regarding the Gross monthly revenues.

The interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month.

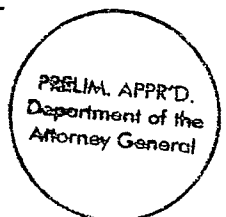
If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rental stated above in paragraphs A.2.1 or A.2.2 as appropriate, as security for the faithful performance of all of these terms and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. At the Permittee's own cost and expense, keep any government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and loss payee and shall be filed with the DLNR. In the event of loss, damage, or destruction of those improvements, the DLNR shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.



5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. Pay all real property taxes assessed against the Premises from the commencement date of this Permit.
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, release and indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety.
14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy of the policy or



other documentation required by the State shall be filed with the DLNR. The insurance shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of the Permittee.

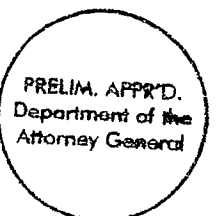
Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a policy(s) or other documentation required by the State showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the State on deposit during the entire Permit term, and furnish a like policy(s) or other documentation required by the State upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the State. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the permit period.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or other documentation required by the State thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance certificate(s) shall be mailed to:

State of Hawaii
Department of Land and Natural Resources
Land Division
Box 621
Honolulu, Hawaii 96809

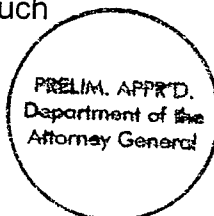


15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.
2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent stated above in paragraphs A.2.1 or A.2.2, computed and prorated on a daily basis, for each day the Permittee remains in possession.
4. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.

5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.
6. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such



materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

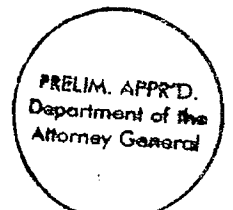
Permittee agrees to release, indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.
14. Permittee shall release, indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all

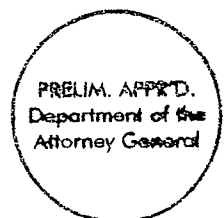
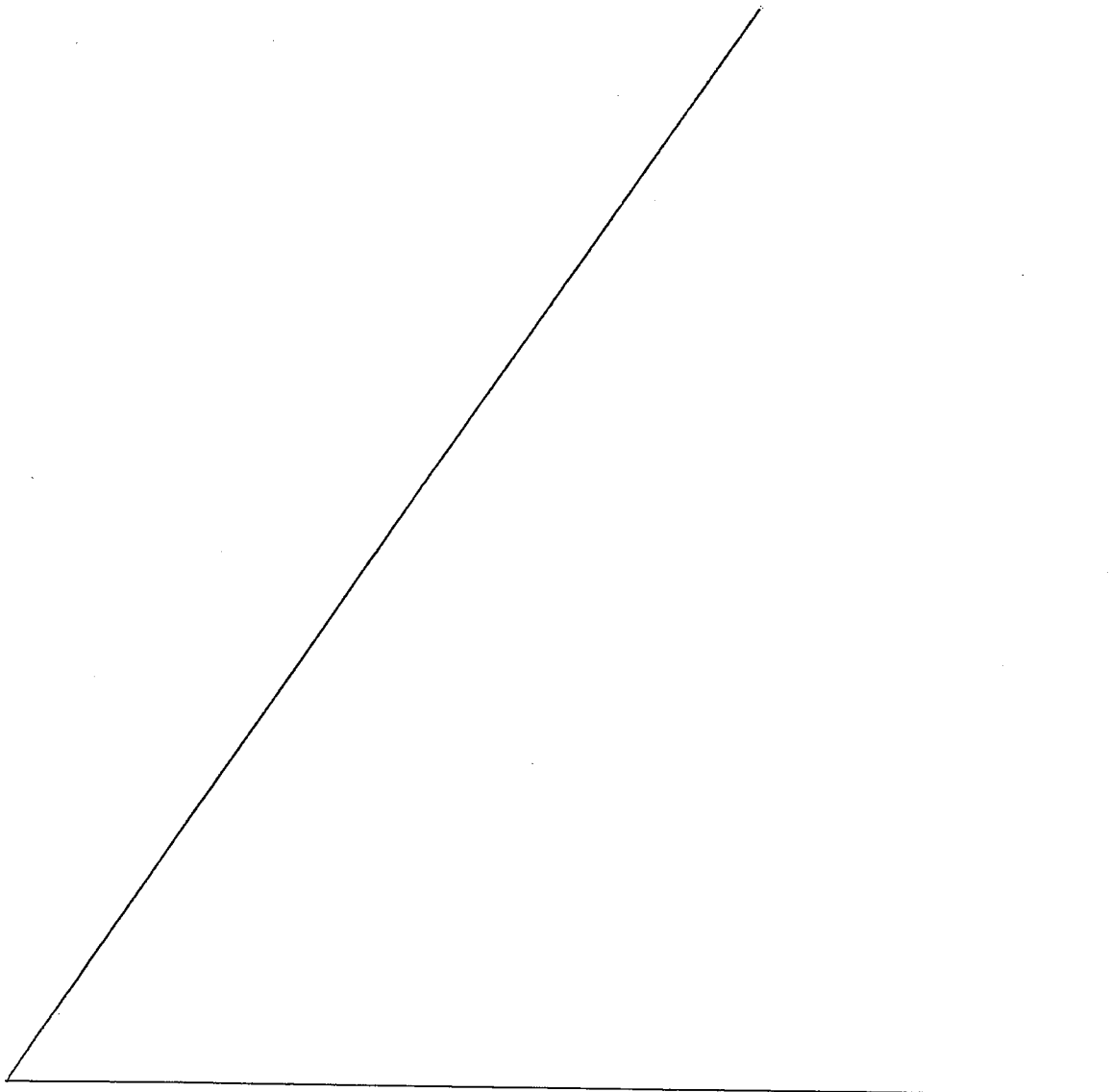
claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.

15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.
17. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.
18. In addition to the items listed in paragraph A.1.3, above, beach chairs, umbrellas, shade devices, mats, towels, and personal recreational equipment are permitted on the Premises as long as the user is physically present or such items have been placed on the Premises at the request of the user.
19. Public access shall be allowed on the Premises, to the extent the area is not occupied for a use allowed under the Permit.
20. The Permittee shall establish and maintain two (2) twenty-foot wide, mauka to makai, pathways for public pedestrian access on the Koko Head side of the Premises, provided, however, that the pathways shall not be located on the Koko Head boundary of the Premises. The pathways may be relocated as needed, provided there are two clearly delineated



pathways at all times. The Permittee is hereby authorized to instruct its guests and members of the public that the pathways must be kept clear to allow for public pedestrian access.

21. No weddings, surf lessons, or kayaking/boating activities are allowed on the Premises.
22. The Permittee has the authority to and shall maintain, at its own costs, the beach located seaward of the Premises, as indicated on the map attached hereto as Exhibit A.
23. Except as otherwise provided herein, the Permittee shall not engage in any presetting of any equipment on the Premises.



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved as amended by the Board of Land and Natural Resources at its meetings held on September 14, 2018 and November 9, 2018.

By [Signature]
SUZANNE D. CASE
Chairperson of the Board of Land and Natural Resources

APPROVED AS TO FORM:

STATE

[Signature]
JULIE H. CHINA
Deputy Attorney General

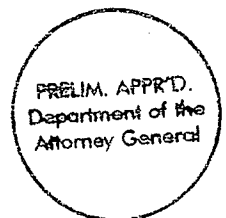
Dated: Jan. 23, 2019

Resorttrust Hawaii, LLC, a
Hawaii limited liability company
By: Resorttrust, Inc.
Its Member

By [Signature]
DAISUKE UEDA
Its VICE PRESIDENT

By _____
Its _____

PERMITTEE



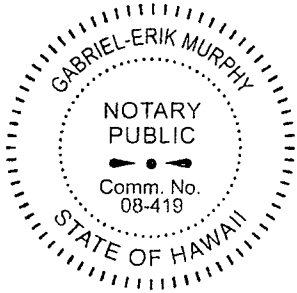
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

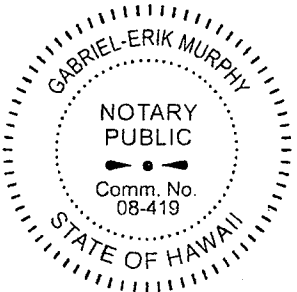
} SS.

**Acknowledgement Certificate for a Corporation
Or Partnership**

On this 25th day of January, 2019, A.D.,
before me personally appeared Daisuke Ueda,
who proved to me on the basis of satisfactory evidence to be the person
who appeared before me this day, being duly sworn (or affirmed), did
say that the person is the Vice President of
Resorttrust Hawaii, LLC, and that the instrument was
signed in behalf of the corporation (or partnership), by authority of its
board of directors, partners or trustees, and he acknowledged the
instrument to be the free act and deed of the corporation (or partner-
ship).



J. Murphy 1.25.2019
GABRIEL-ERIK MURPHY, Notary Public, State of Hawai'i Date
My commission expires: **September 21, 2020**



NOTARY CERTIFICATION	
Document Description:	<u>Revocable Permit</u>
	<u>No. S-7915.</u>
Date of Document:	<u>1.25.2019</u>
No. of Pages:	<u>14</u>
	<u>1.25.2019</u>
GABRIEL-ERIK MURPHY , Notary Public, State of Hawai'i Date	
First Circuit	

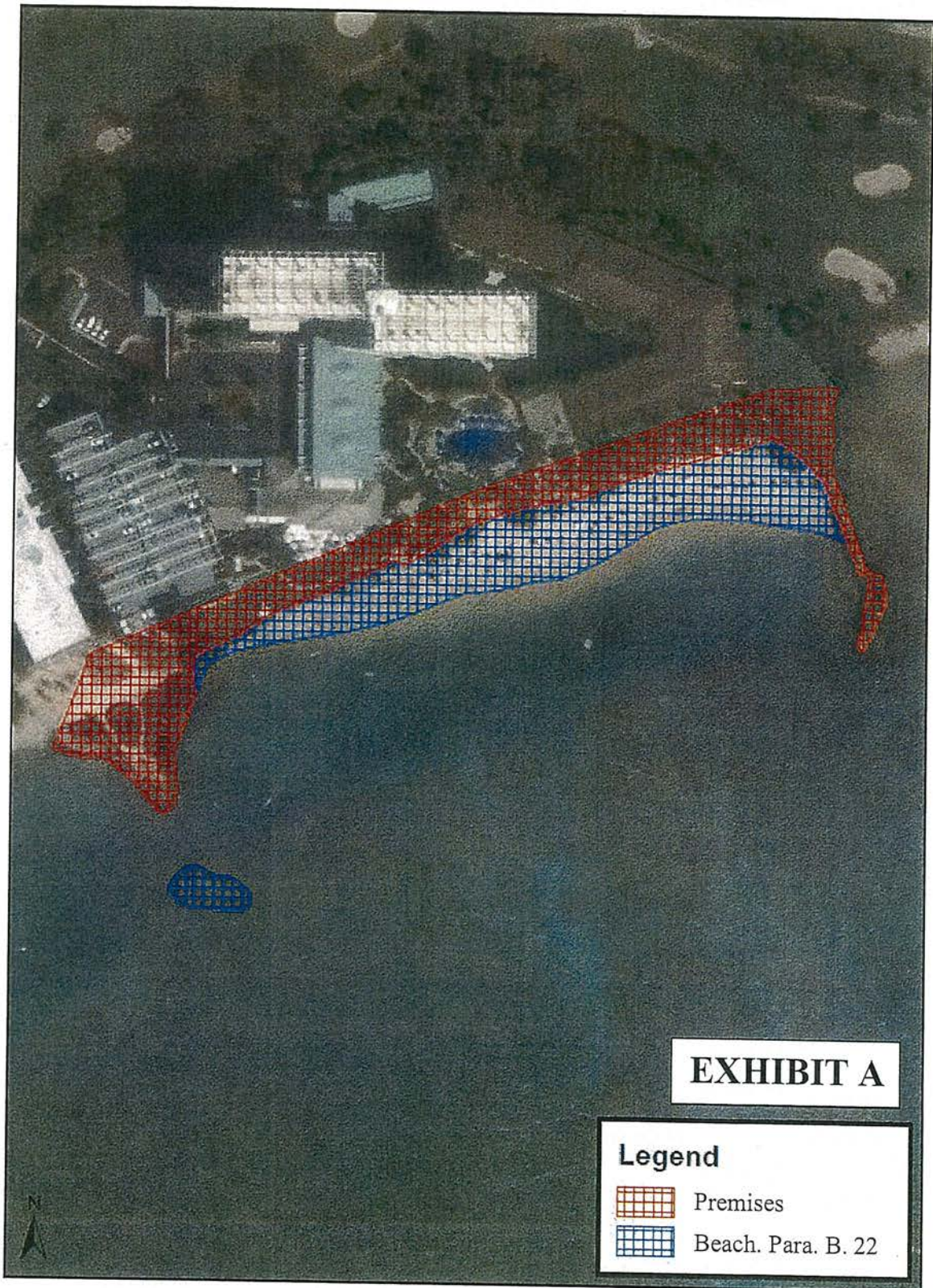




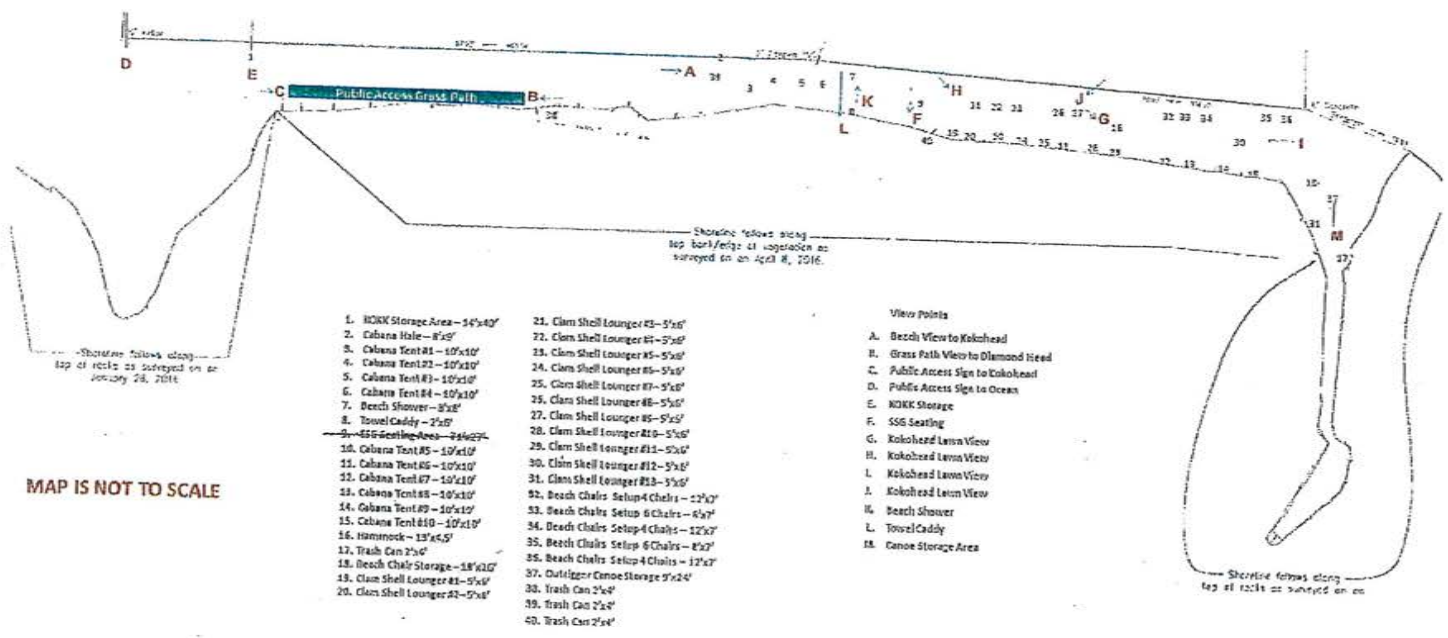
EXHIBIT A

Legend

-  Premises
-  Beach. Para. B. 22

0 0.025 0.05 Miles

PRELIM. APPR'D.
Department of the
Attorney General



- 1. NDKK Storage Area - 14'x40'
- 2. Cabana Table - 8'x8'
- 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'x8'
- 9. SSS Seating Area - 24'x24'
- 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'x10'
- 19. Cam Shell Lounger #1 - 5'x5'
- 20. Cam Shell Lounger #2 - 5'x5'
- 21. Cam Shell Lounger #3 - 5'x5'
- 22. Cam Shell Lounger #4 - 5'x5'
- 23. Cam Shell Lounger #5 - 5'x5'
- 24. Cam Shell Lounger #6 - 5'x5'
- 25. Cam Shell Lounger #7 - 5'x5'
- 26. Cam Shell Lounger #8 - 5'x5'
- 27. Cam Shell Lounger #9 - 5'x5'
- 28. Cam Shell Lounger #10 - 5'x5'
- 29. Cam Shell Lounger #11 - 5'x5'
- 30. Cam Shell Lounger #12 - 5'x5'
- 31. Cam Shell Lounger #13 - 5'x5'
- 32. Beach Chairs Setup 4 Chairs - 12'x2'
- 33. Beach Chairs Setup 6 Chairs - 6'x2'
- 34. Beach Chairs Setup 4 Chairs - 12'x2'
- 35. Beach Chairs Setup 6 Chairs - 6'x2'
- 36. Beach Chairs Setup 4 Chairs - 12'x2'
- 37. Outfitter Canoe Storage 5'x24'
- 38. Trash Can 2'x4'
- 39. Trash Can 2'x4'
- 40. Trash Can 2'x4'

- View Points
- A. Beach View to Kokohed
 - B. Grass Path View to Diamond Head
 - C. Public Access Sign to Kokohed
 - D. Public Access Sign to Ocean
 - E. NDKK Storage
 - F. SSS Seating
 - G. Kokohed Lagoon View
 - H. Kokohed Lagoon View
 - I. Kokohed Lagoon View
 - J. Kokohed Lagoon View
 - K. Beach Shower
 - L. Towel Caddy
 - M. Canoe Storage Area

MAP IS NOT TO SCALE

Exhibit I-A

EXHIBIT B

EXHIBIT " 2 "



EXHIBIT 2

PHOTO TAKEN 9/19/2019

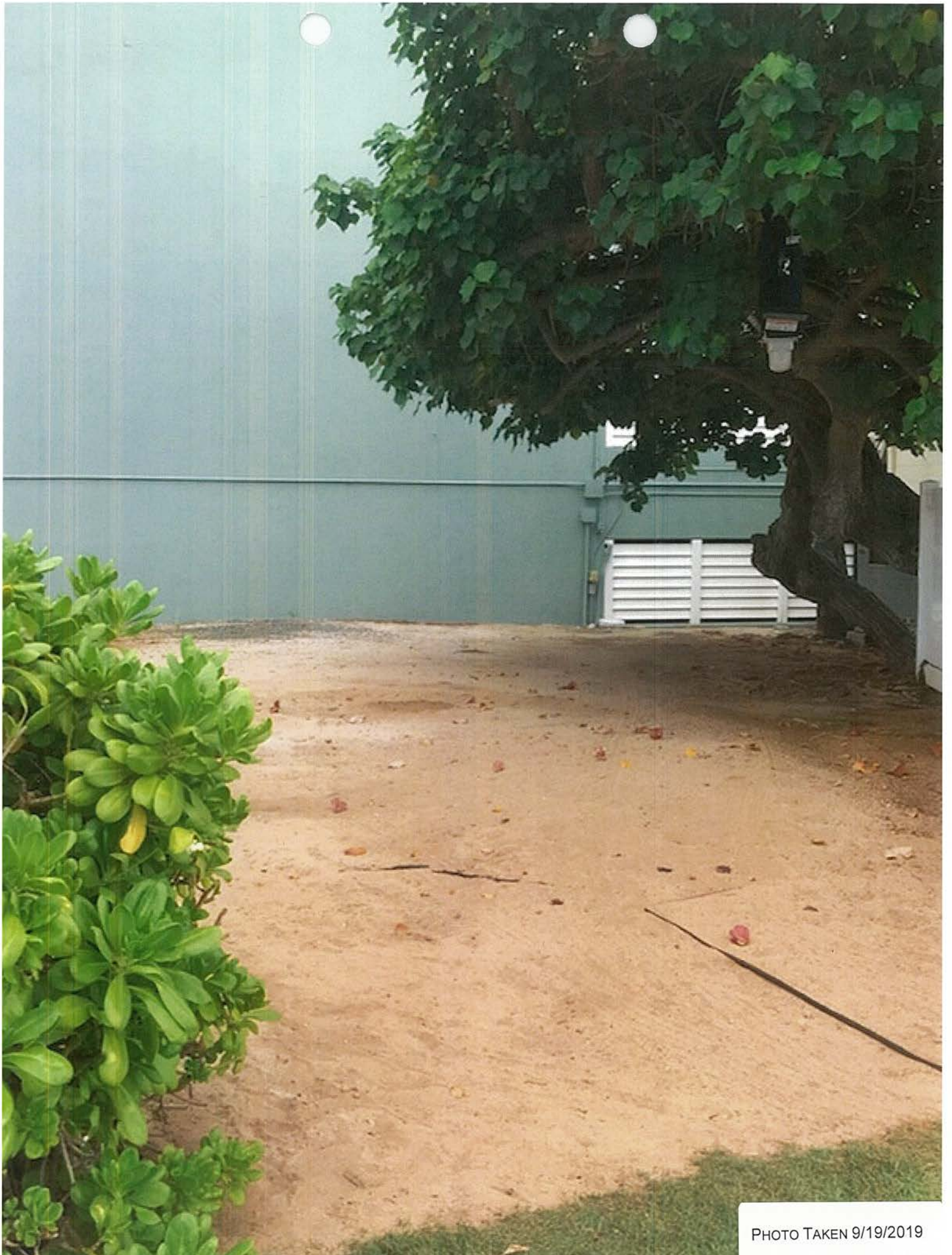


PHOTO TAKEN 9/19/2019



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.

EXHIBIT " 3 "



EXHIBIT 3

PHOTO TAKEN 9/19/2019

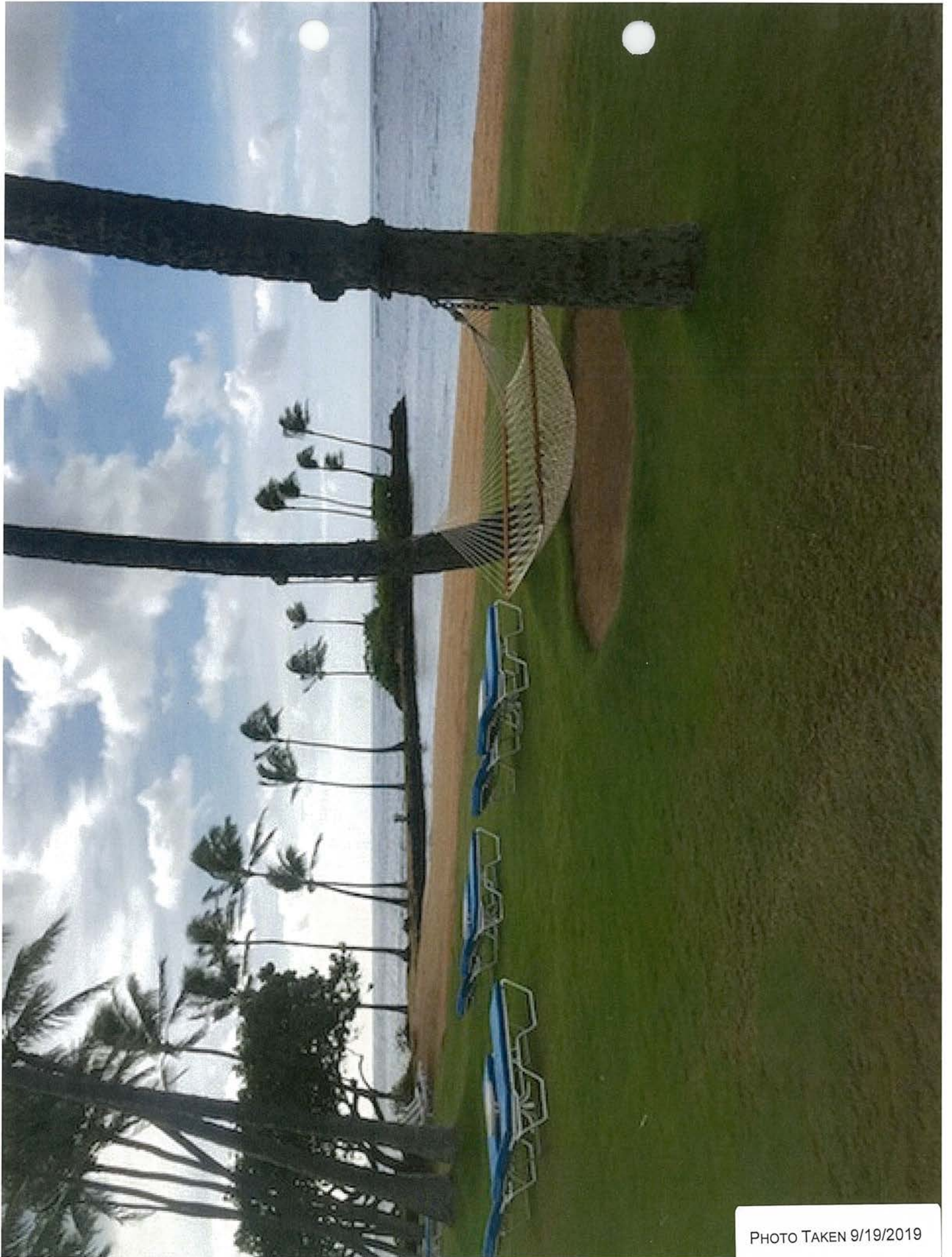


PHOTO TAKEN 9/19/2019

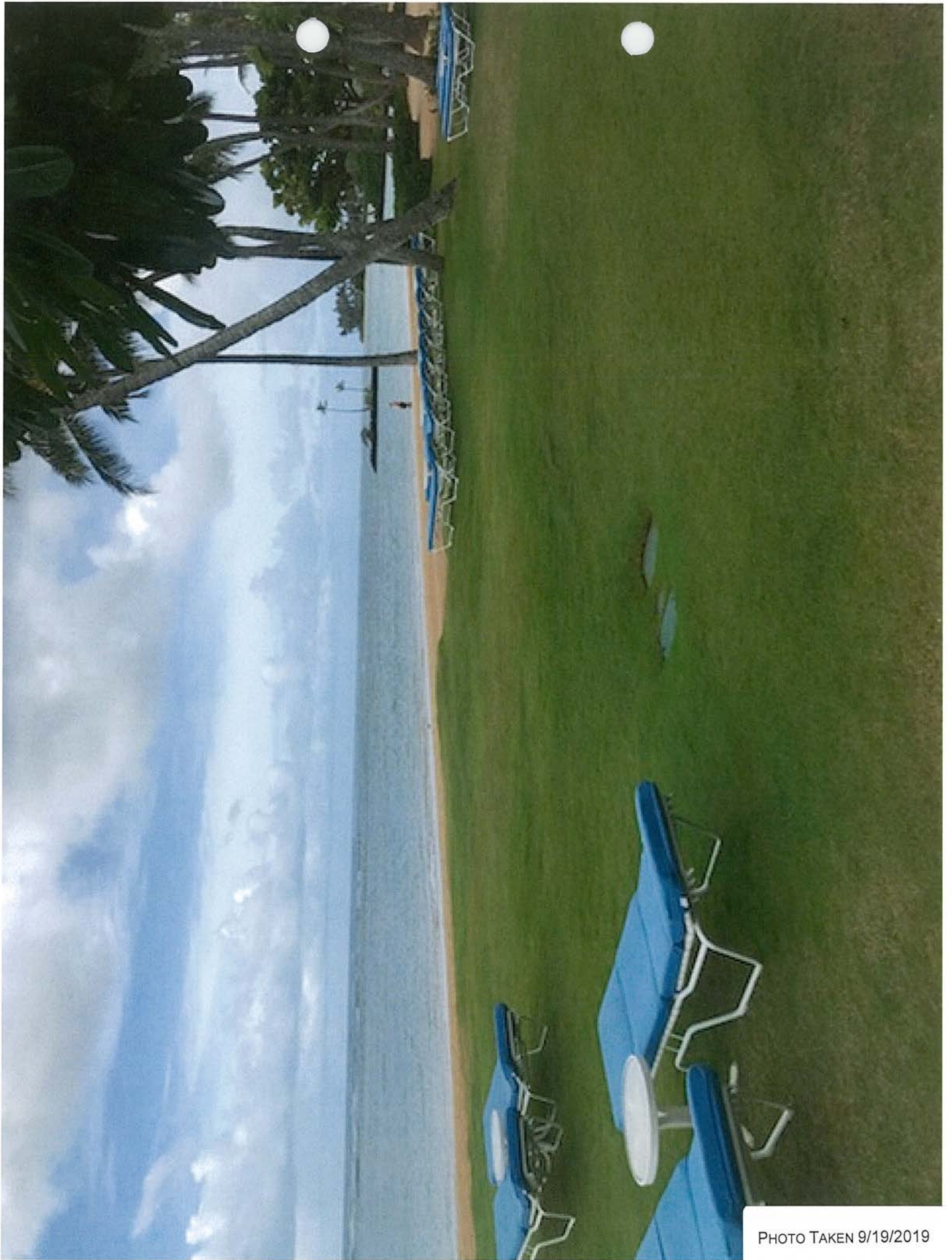


PHOTO TAKEN 9/19/2019



PHOTO TAKEN 9/19/2019



PHOTO TAKEN 9/19/2019



RTH AUGUST 2018
SUBMITTAL



RTH AUGUST 2018
SUBMITTAL





EXHIBIT " 4 "



EXHIBIT 4

PHOTO TAKEN 9/19/2019

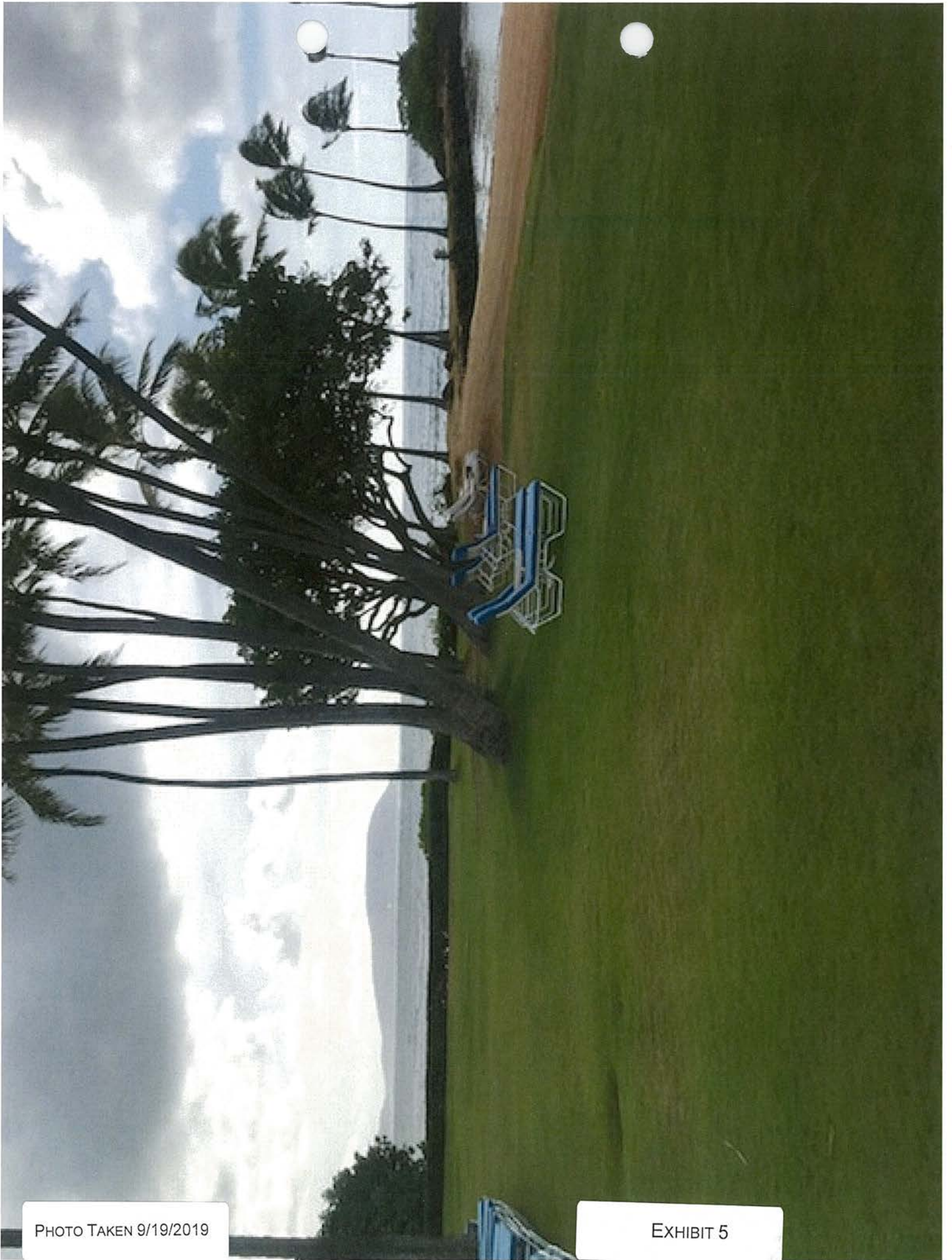


PHOTO TAKEN 9/19/2019

EXHIBIT 5

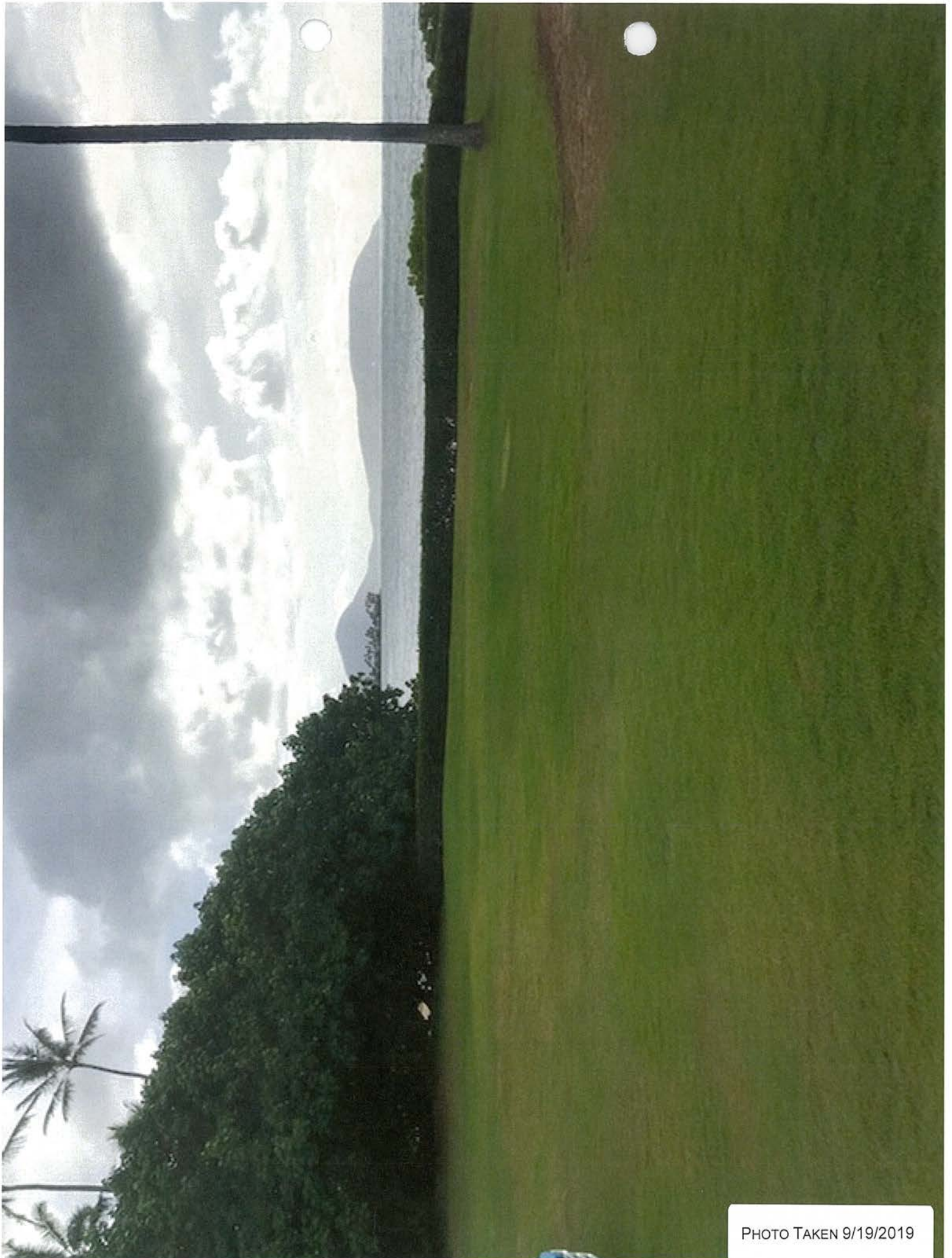


PHOTO TAKEN 9/19/2019

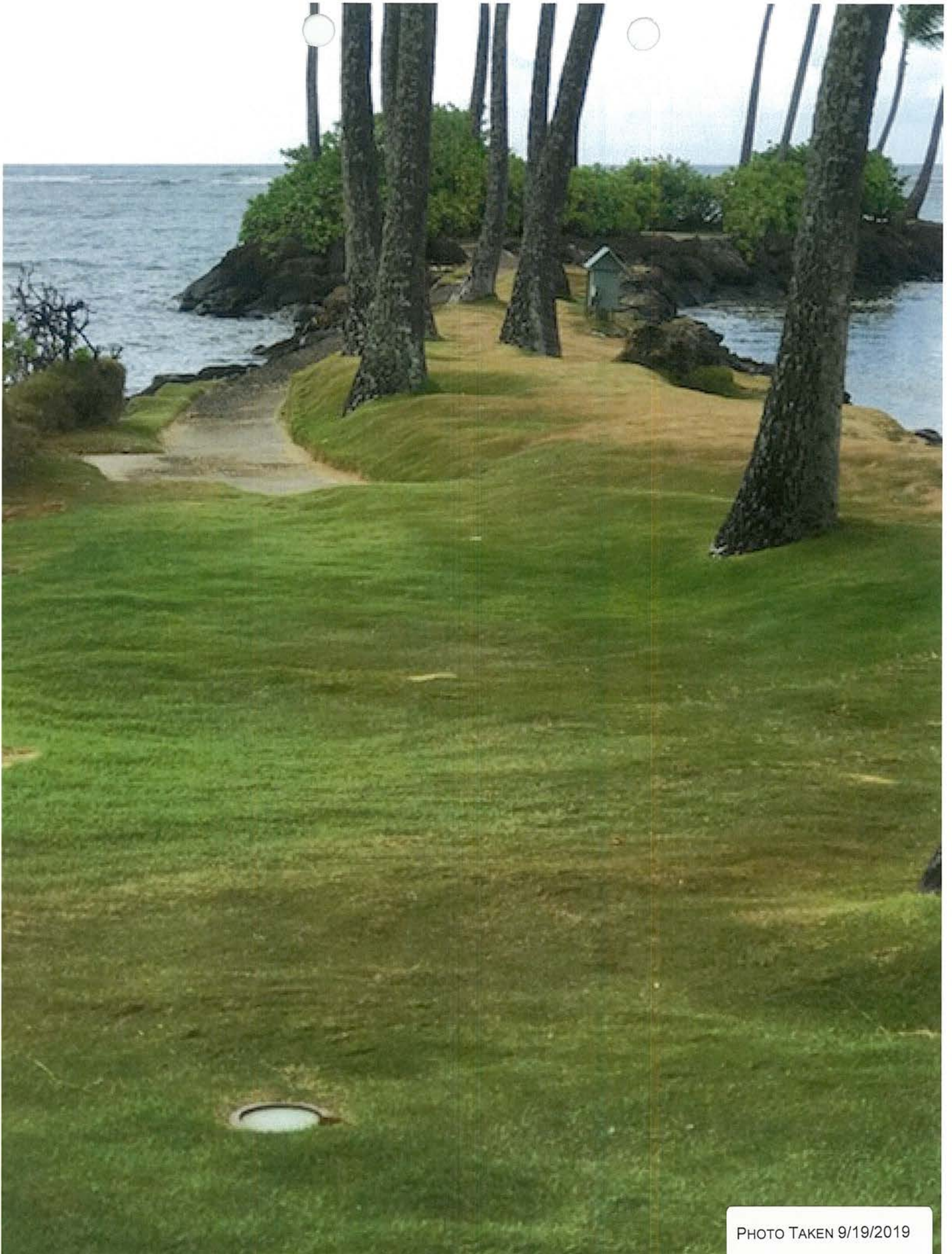
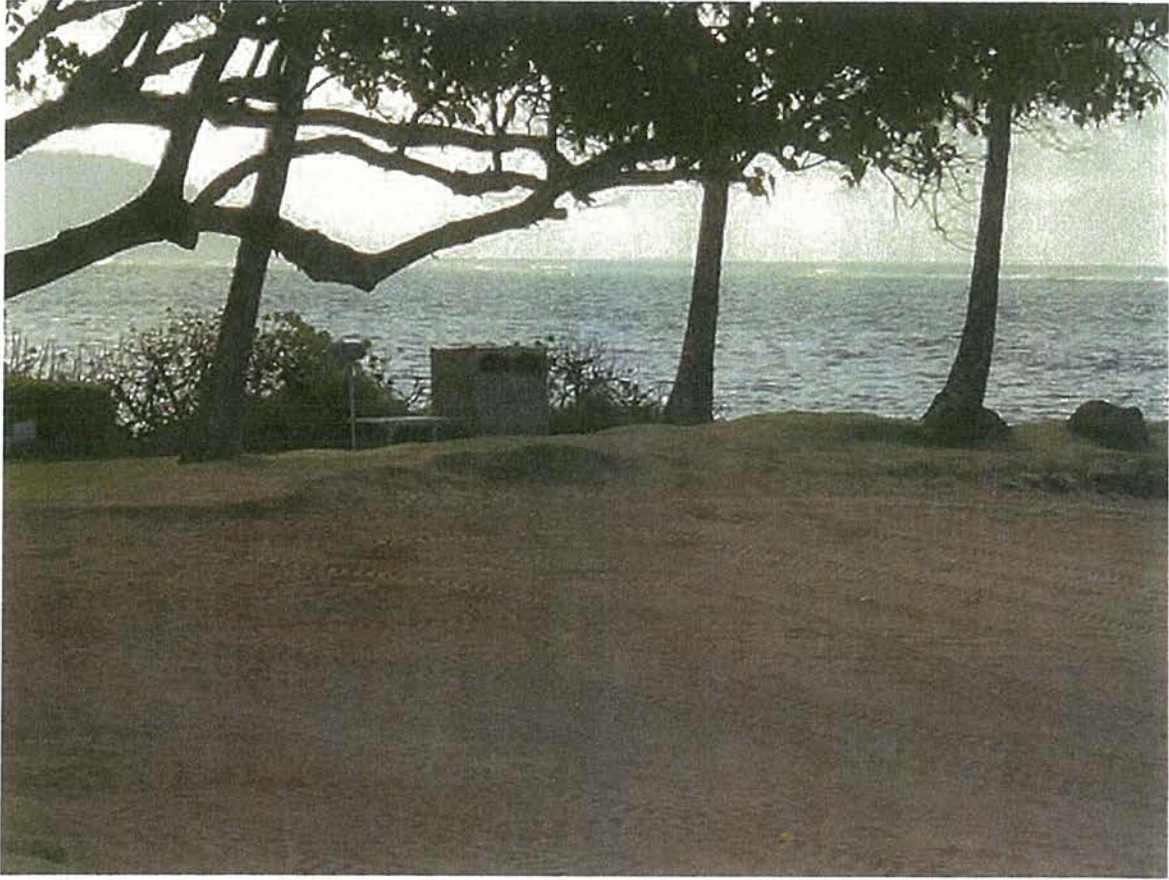


PHOTO TAKEN 9/19/2019



Beach Chair Storage Area



Trash Can (at Koko Head end of property)

EXHIBIT " 6 "

RECORDATION REQUESTED BY:

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

AFTER RECORDATION, RETURN TO:

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

RETURN BY: MAIL () PICKUP (x)

THE ORIGINAL OF THIS DOCUMENT
RECORDED AS FOLLOWS:

STATE OF HAWAII

BUREAU OF CONVEYANCES

Received for record this 27th
day of January, A.D., 1967
at 11:15 o'clock A.M. and
recorded in Liber. 5568
Pages 249

Space above this line for Registrars
use.

In accordance with the provisions of Section 343-21,
Revised Laws Hawaii, 1955, as amended, this page is
attached to that certain instrument dated
February 15, 1963 between:

STATE OF HAWAII

AND

KAHALA HILTON HOTEL COMPANY,
INC., ETALS

AGREEMENT

THIS AGREEMENT entered into this 15th day of February, 1963, by and between the State of Hawaii, hereinafter referred to as the "State," and the Kahala Hilton Hotel Company, Inc., a Hawaii corporation, whose principal place of business and post office address is 2005 Kalia Road, Honolulu, City and County of Honolulu, State of Hawaii, Charles J. Pietsch, Jr., whose principal place of business and post office address is 235 Queen Street, Honolulu aforesaid, David T. Pietsch, whose principal place of business and post office address is 235 Queen Street, Honolulu aforesaid, hereinafter referred to as the "owners" and the Waialae Country Club, whose principal place of business and post office address is 4997 Kahala Avenue, Honolulu aforesaid, the Sheraton Hawaii Corporation, whose principal place of business and post office address is 2259 Kalakaua Avenue, Honolulu aforesaid, the Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, whose principal place of business and post office address is 519 Halekauwila Street, Honolulu aforesaid.

WITNESSETH THAT:

WHEREAS, the Bernice P. Bishop Estate is the registered title holder of Lots 227 and 228, as shown on May 21 of Land Court Application No. 828 (Transfer Certificate of Title No. 83447) and Lot 23, as shown on May 2 of Land Court Application No. 665 (Transfer Certificate of Title No. 76540); and

WHEREAS, the Kahala Hilton Hotel Company, Inc. is the sub-lessee under the registered sublease (Land Court Document No. 289158 of said Lot 228 as shown on said Map of Land Court Application No. 838); and

*L. 273491
2/6 285441
ajr 304009*

WHEREAS, Charles J. Pietsch, Jr. and David T. Pietsch are the lessees under registered leases (Land Court Document Nos. 273490 and 273491 of the said Lots 227 and 228 as shown on the said Map 21 of Land Court Application No. 828); and

no in book

*now
given to
H. H. Co. Inc.
0 42 44*

WHEREAS, the Sheraton Hawaii Corporation is the registered title holder of said Lot 22 as shown on said Map 2 of Land Court Application No. 665 (Transfer Certificate of Title No. 75667); and

WHEREAS, the Waialae Country Club is the lessee under an unrecorded lease of the said Lot 23 as shown on Map 2 of Land Court Application No. 665 and also lessee under an unrecorded lease of the said Lot 22 as shown on Map 2 of Land Court Application No. 665; and

*undul
1295 ✓*

WHEREAS, the owners desire to dredge a swimming area and construct a beach and on their behalf a request to the Department of Transportation, Harbors Division, for permission to dredge and fill certain areas fronting and abutting their respective properties for the purpose aforesaid has been made; and

WHEREAS, the State and the said Trustees, the said Sheraton Hawaii Corporation and the Waialae Country Club are desirous of having a public beach and swimming area constructed in the place and manner shown on Exhibit "A" and the owners agree to construct such beach and swimming area for and on behalf of the State; and

WHEREAS, the Department of Transportation, Harbors Division, under Permit No. 1164, has approved of the application for the permit to create said beach at Waialae-Kahala area on August 13, 1962 and indicated its willingness to such dredging and filling under the terms of such permit and are willing to permit such dredging and filling under the terms and conditions as are herein set forth; and

WHEREAS, the City and County of Honolulu has granted its approval of the construction of said Waialae-Kahala beach improvement by letter dated September 18, 1962;

NOW, THEREFORE, and in consideration of the terms, covenants and conditions herein set forth on the part of the parties hereto to be observed and performed, the State hereby grants to the owners the right to dredge and fill that certain area hereinafter described in accordance with the plans and specifications hereinafter set forth.

The terms, covenants and conditions under which this right and permit is granted are as follows:

(1) The permit area to be dredged or filled is that area described and outlined on the plan entitled "Beach Improvement at Waialae-Kahala" prepared by Wilson & Associates, Architects and Engineers, and dated May 25, 1962, a copy of which plan is attached hereto as Exhibit "A" and made a part hereof.

(2) The owners hereby jointly and severally agree to dredge and fill those areas as shown on Exhibit "A" in accordance with the section, depths and notations shown thereon.

(3) Said Exhibit "A" has been submitted to and approved by the Department of Transportation, Harbors Division.

(4) The dredging and filling authorized herein shall commence not later than one month from and after the date and execution of the agreement and all work thereon shall be completed within twelve (12) months from said commencement date. In the event the filling operation is abandoned prior to completion, the owners hereby jointly and severally agree to restore the project areas back to the condition existing prior to the commencement of operations under this agreement.

(5) Coral and other material obtained by the dredging operations shall be disposed of in the following manner:

(a) The owners shall use so much thereof as is needed to fill in the "Fill Area" designated in Exhibit "A", "Typical Section A-A", page 2, identified as "Firm Salvaged material."

(b) All or any part of the remaining coral or other material may be taken by the owners for any purpose upon paying to the State royalty therefor in accordance and with the established schedule of rates as set by the Department of Transportation, Harbors Division.

(c) All coral or other material not used or taken as provided for in Sections (a) and (b) above shall be hauled and dumped at the owners' expense at a location to be determined by the Department of Transportation, Harbors Division.

(6) The owners shall comply with the provisions of all applicable statutes, ordinances, rules and regulations of any governmental body affected by the work permitted herein.

(7) The owners shall, jointly and severally, for a period of five (5) years after the effective date of this agreement save the State and the City and County of Honolulu harmless from and against any and all claims for personal injury, death or property damage, including but not limited to beach erosion and injury to vested fishing rights caused by the operations of the owners under this agreement.

From the commencement of the construction of this project as shown on Exhibit "A" and until three (3) months from and after the completion and acceptance thereof as provided in this agreement, the owners and/or contractor shall obtain and keep in force such liability insurance and such performance and/or completion bond as may be required by the Director of Transportation to protect the interest of the State. The requirement of liability insurance and bond for the period hereinabove provided shall in no way affect the five-year indemnification provided for in this provision of the agreement.

(8) It is mutually understood and agreed by all the parties hereto that this agreement shall in no way affect the title and ownership of the land subject to this agreement. Title to and ownership of all filled and reclaimed lands and improvements seaward of the makai boundaries of Land Court Applications Nos. 828 and 665 shall remain in and vest in the State of Hawaii and shall be used as a public beach. And it is further understood and agreed that the owners, the Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, the Sheraton Hawaii Corporation, and the Waialae Country Club hereby waive any and all claims to littoral rights and any accretion that may accrue.

Regis
Paul

(9) The project shall be considered completed for the purposes of this agreement when so determined by the State, by the Director of Transportation, and the determination of the State shall be announced by written notice to the owners and may be made on the basis of a full or substantial completion of the project.

(10) The owners shall keep the mouth of Kapakahi Stream clear of sand and loose coral for a period of twenty-five (25) years from the date of this agreement. Such sand and coral shall remain the property of the State and the disposition thereof to be determined by the Director of Transportation.

(11) In any conflict between the terms of this agreement and said Permit No. 1164, the terms and provisions of this agreement shall govern.

(12) The Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, the Sheraton Hawaii Corporation and the Waialae Country Club hereby consent to the construction of said beach and improvements by the owners as provided herein, and reserve unto themselves the right of access to such beach and improvements, subject to all applicable statutes, ordinances, rules and regulations of any governmental body.

IN WITNESS WHEREOF, the State of Hawaii has caused these presents to be executed by its duly authorized officials and the Kahala Hilton Hotel Company, Inc. has caused these presents to be executed and its corporate seal to be hereto affixed by its duly authorized officers and the Waialae Country Club has caused these presents to be executed by its duly authorized officers and the Trustees of the Bernice P. Bishop Estate have caused these presents to be executed by their duly authorized officers and Charles J. Pietsch, Jr. and David T. Pietsch have herunto set their hands, all effective as of the day and year first above written.

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION

Luisio Watsula

BOARD OF LAND AND NATURAL RESOURCES

By [Signature]

By [Signature]

APPROVED AS TO FORM:

[Signature]

Ass^{nt}. Attorney General
Dep. State of Hawaii

KAHALA HILTON HOTEL COMPANY, INC.

By [Signature]

By Vincent Esposito

CHARLES J. PIETSCH, JR.

[Signature]

DAVID T. PIETSCH

[Signature]

TRUSTEES UNDER THE WILL AND OF THE
ESTATE OF BERNICE P. BISHOP, DECEASED

[Signature]
[Signature]
[Signature]

APPROVED AS TO FORM
ROBERTSON, CASTLE & ANTHONY

By [Signature]

SHERATON HAWAII CORPORATION

By [Signature]

By [Signature]

WAIALAE COUNTRY CLUB

By Kenneth J. Brown

By Kush Kowal
treasurer

CITY AND COUNTY OF HONOLULU)

On this 26th day of February, 1963

before me personally appeared Charles J. Pietsch, Jr.
and O. Vincent Esposito, who, being by me duly sworn,

did say that they are the Exec. Vice Pres. and Asst. Secy. Treas. respectively of KAHALA HILTON HOTEL COMPANY, INC., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that the said Charles J. Pietsch, Jr.

and O. Vincent Esposito severally acknowledged said instrument to be the free act and deed of said corporation.

Birdie Cooper

Notary Public, First Judicial Circuit, State of Hawaii

My Commission expires: 2-9-67

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

On this 15th day of February, 1963, before me personally appeared CHARLES J. PIETSCH, JR. and DAVID T. PIETSCH, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Birdie Cooper

Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: 2-9-67

Charles Joseph Pietsch Jr
David Thomas Pietsch

On this 19th day of February, 1963, before

me personally appeared Edwin P. Murray,

Frank E. Midkiff and H. K. Keppeler,

three of the Trustees under the Will and of the Estate of Bernice P. Bishop Estate, deceased, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed.

[Signature]

Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: DEC 14 1965

action in instrument

STATE OF HAWAII }
CITY AND COUNTY OF HONOLULU } SS

On this 23 day of February, 1963

before me personally appeared Richard E. Holtzman

who, being by me duly sworn did say that he is the President

of SHERATON HAWAII CORPORATION, a Delaware corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and that the

said Richard E. Holtzman acknowledged said instrument to be the free act and deed of said corporation.

[Signature]
Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: Feb. 29, 1964

On this 19th day of February, 1963, before
we personally appeared Edwin P. Murray,
Frank E. Midkiff and H. K. Keppeler,

three of the Trustees under the Will and of the Estate of Bernice
P. Bishop Estate, deceased, to me known to be the persons described
in and who executed the foregoing instrument, and severally acknow-
ledged that they executed the same as their free act and deed.

[Signature]

Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: DEC 14 1965

*rection in
acknowledgment
s.B.*

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

On this 23 day of February, 1963,
before me personally appeared Richard E. Holtzman
and _____, who, being by me duly
sworn did say that ~~they are~~ ^{he is} the President

*Sheraton
sp. Seal
available
State of
Hawaii
D. B.
notary*

and Sheraton, respectively of SHERATON HAWAII
CORPORATION, a ~~Hawaii~~ corporation, and that the ~~seal~~ affixed to
the foregoing instrument is the corporate seal of said corporation,
and that said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors and that the
said Richard E. Holtzman and
~~severally~~ acknowledged said instrument to be the free act and deed
of said corporation.

[Signature]

Notary Public, First Judicial
Circuit, State of Hawaii

My commission expires: 2/29/64

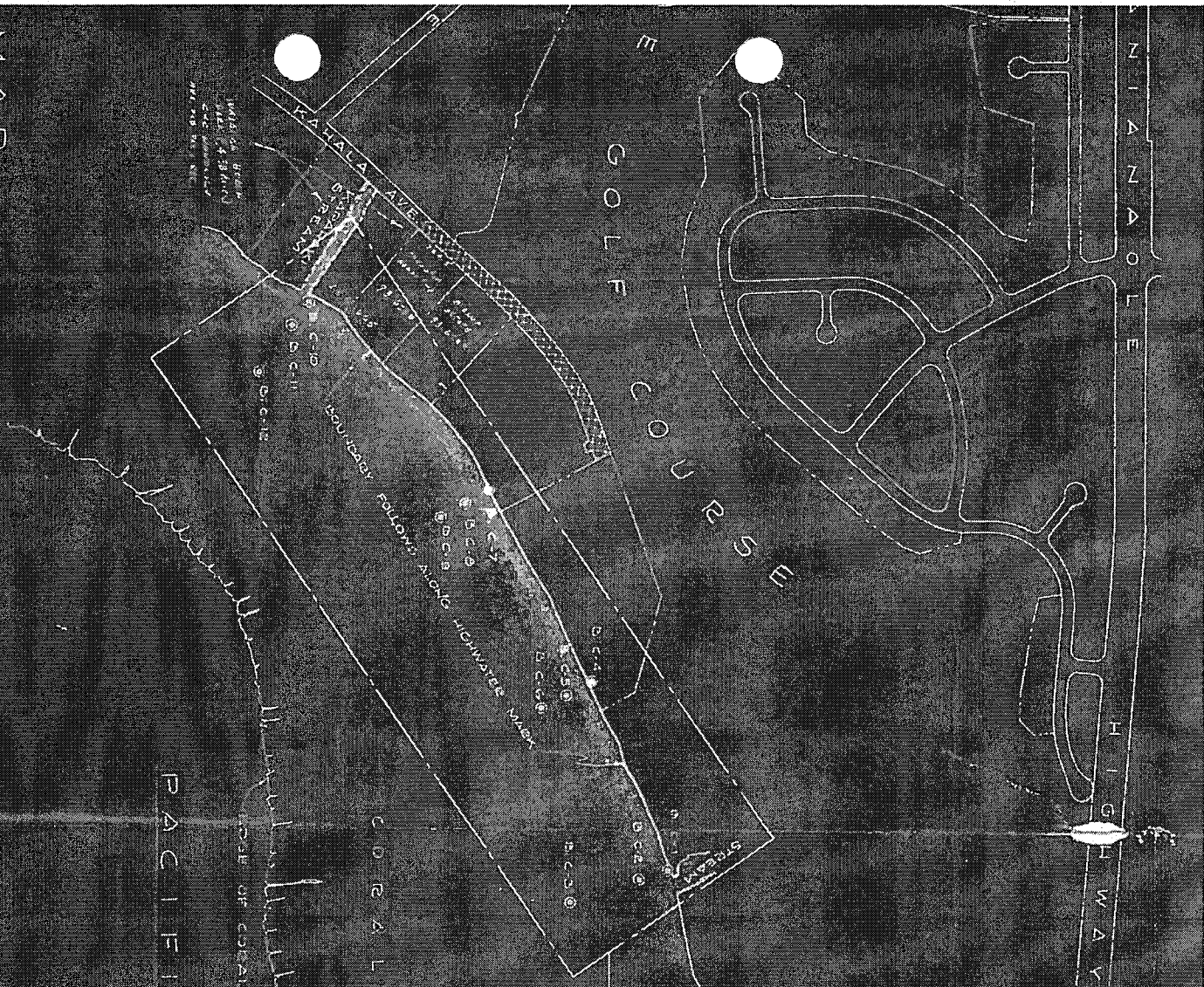
STATE OF HAWAII)
) ES.
CITY AND COUNTY OF HONOLULU)

On this 26th day of February, 1963, before
me personally appeared Kenneth F. Brown and
Hugh Howell, who, being by me duly sworn
did jointly and severally say that they are the
President and Treasurer,
respectively of the Waialae Country Club, and that the seal affixed
to the foregoing instrument is the corporate seal of said corporation;
and said instrument was signed and sealed on behalf of said corporation
by authority of and with the approval of the Board of Directors of
the WAIALAE COUNTRY CLUB and said Kenneth F. Brown and
Hugh Howell jointly and severally acknowledged
said instrument to be the free act and deed of said corporation.

Wilfred Nakamura
Notary Public, First Judicial
Circuit, State of Hawaii

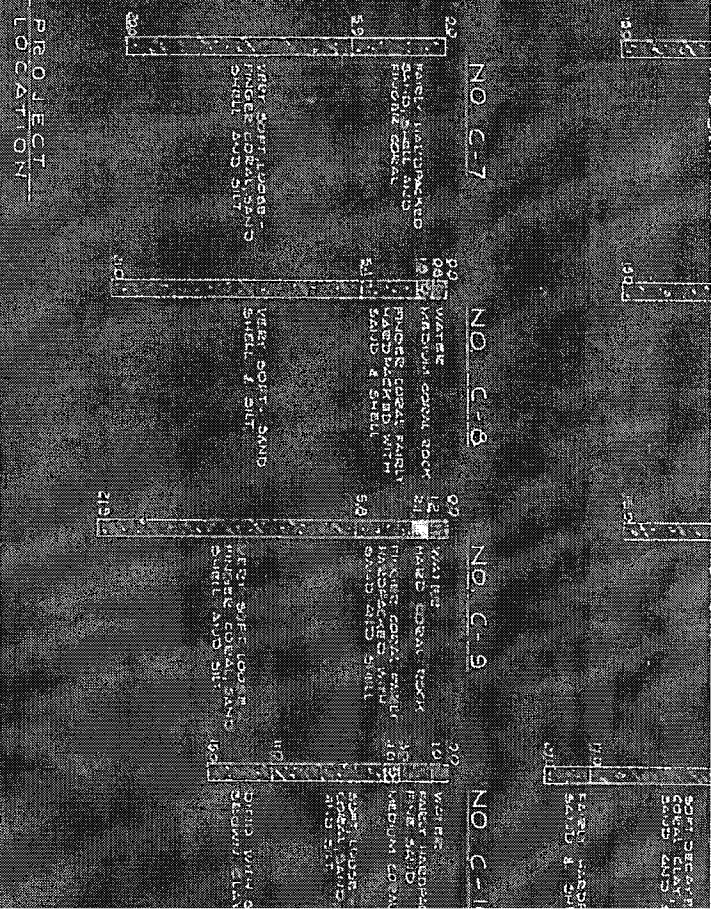
My Commission expires: 6/30/66

MAP

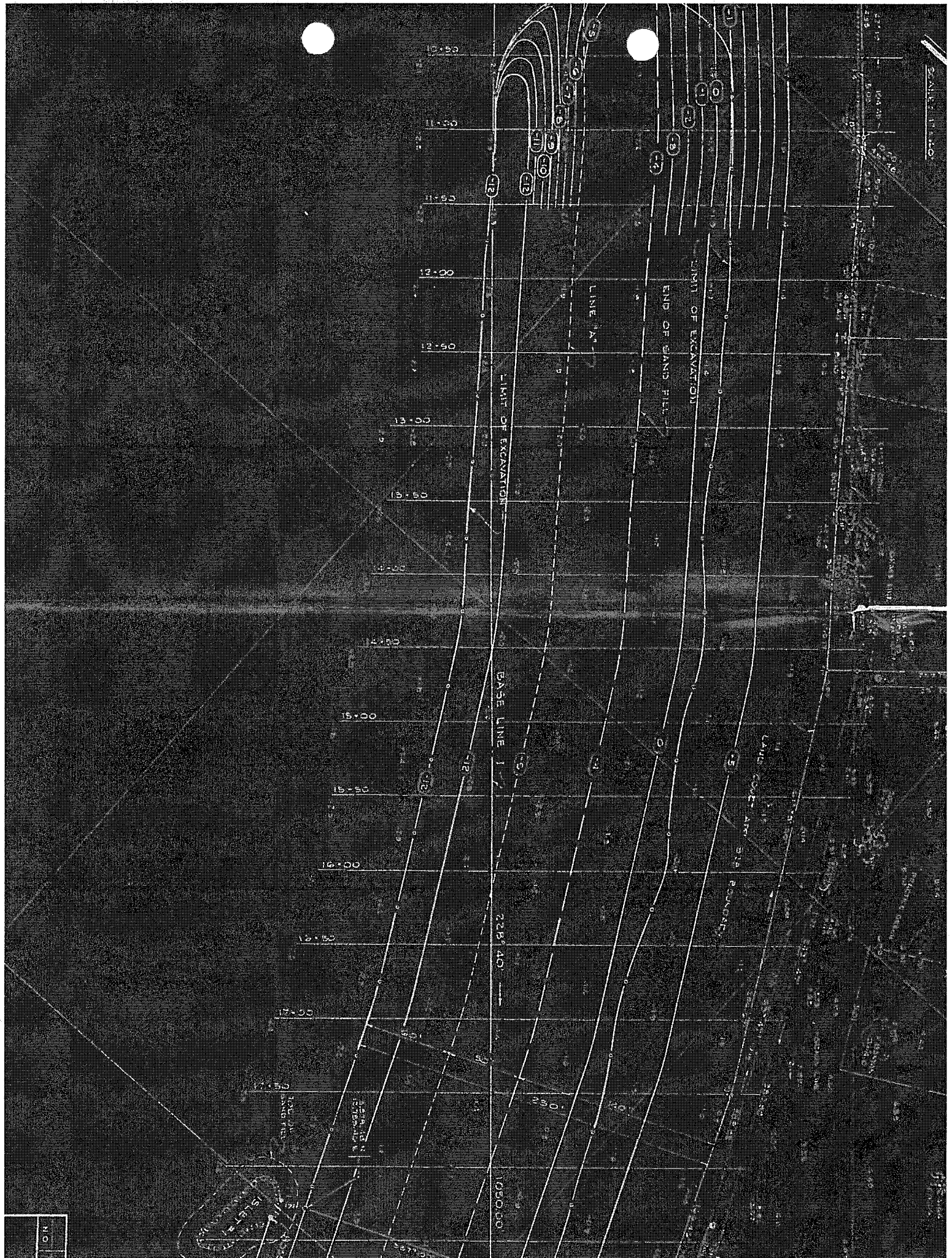


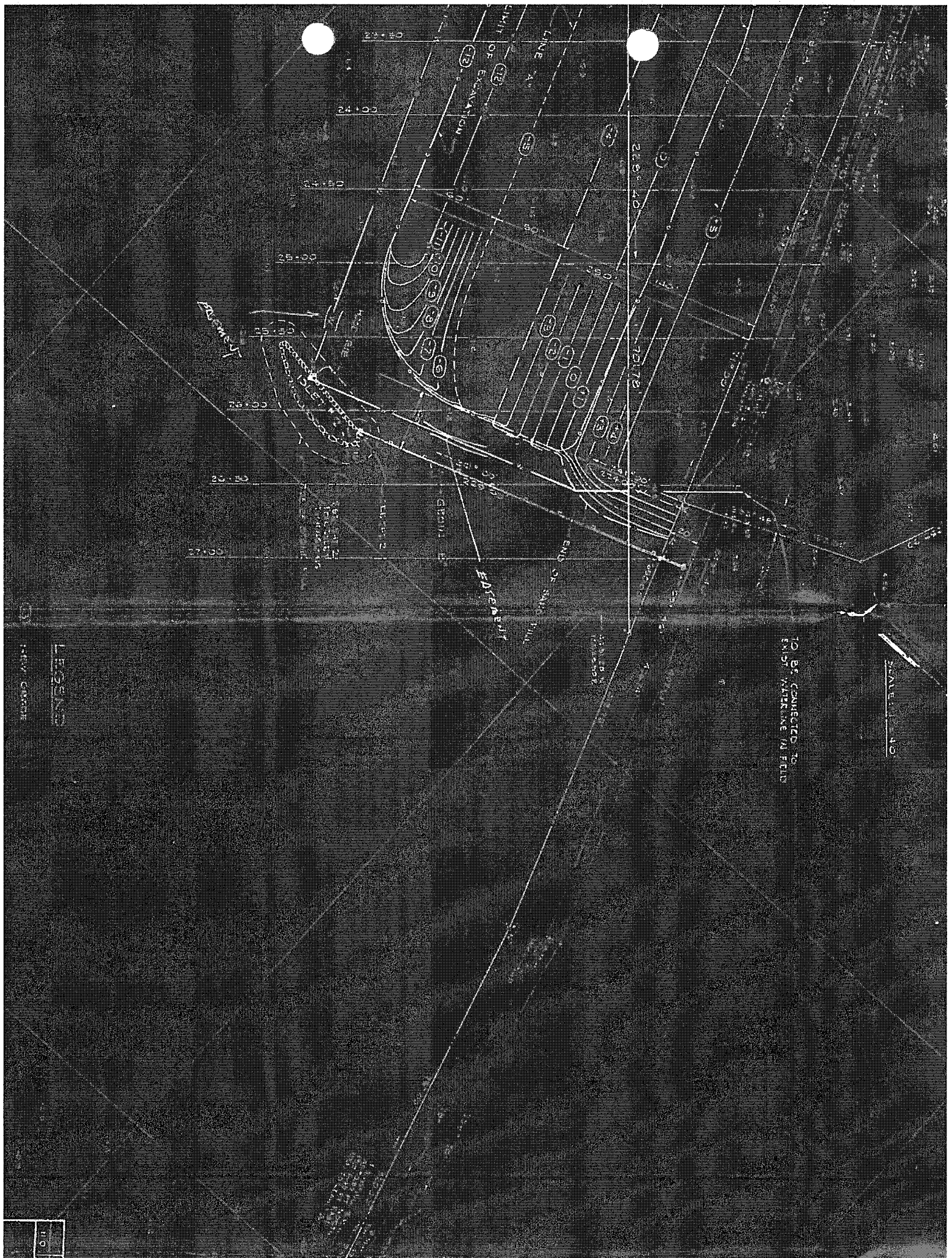
LEGEND

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2	SITE PLAN
3	PLAN
4	PLAN
5	PLAN
6	PLAN
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8	CROSS
9	CROSS
10	CROSS
11	CROSS
12	CROSS
13	CROSS
14	CROSS



BOLING STATION





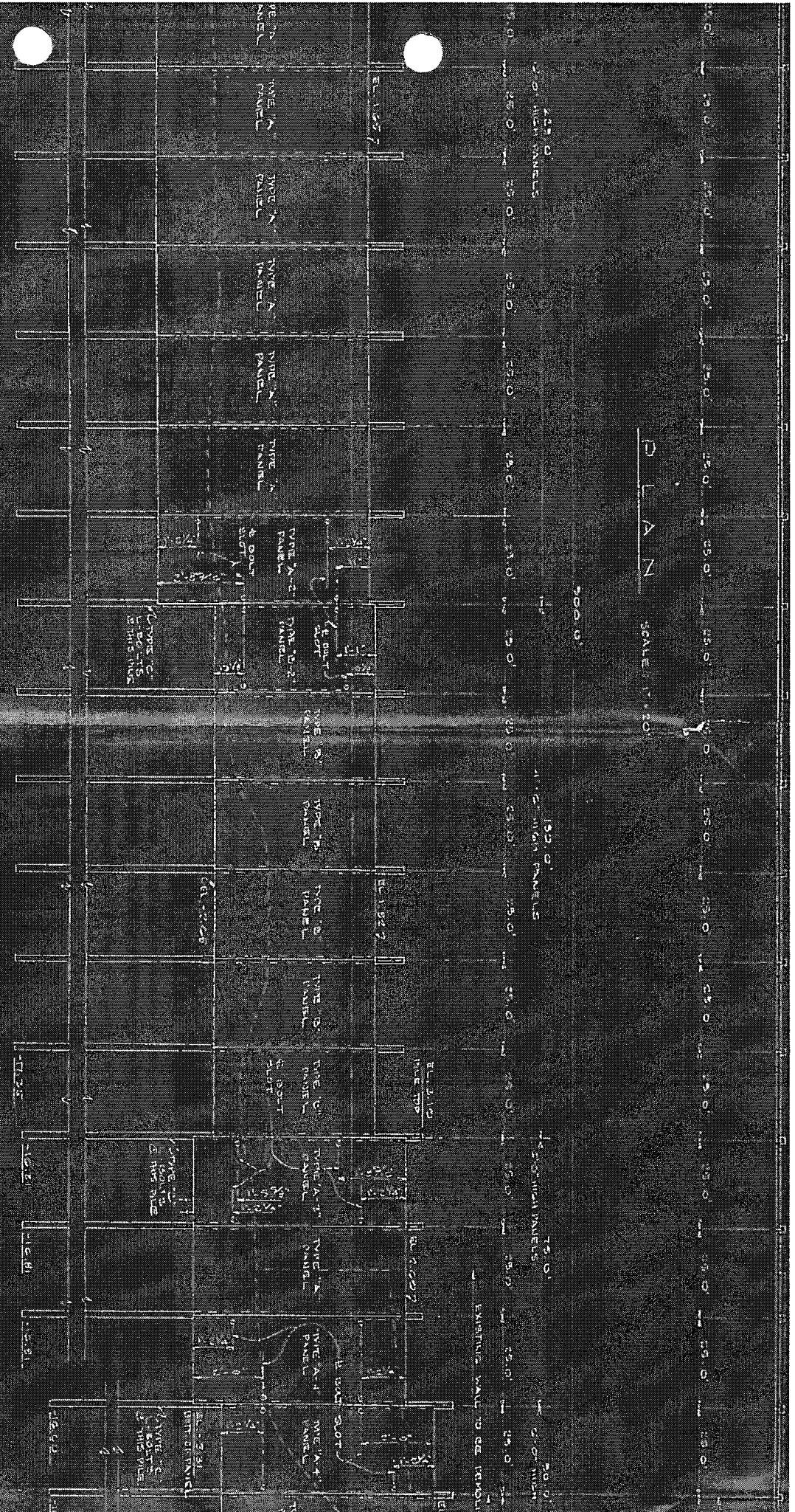
TO BE CONNECTED TO
EXIST. WATERLINE IN FIELD

SCALE: 1/4"

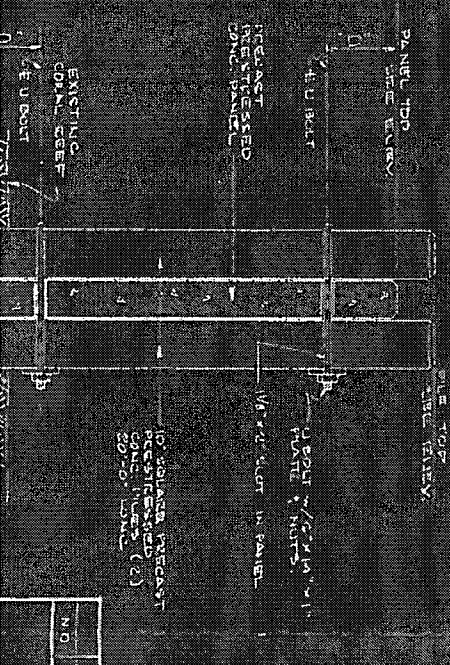
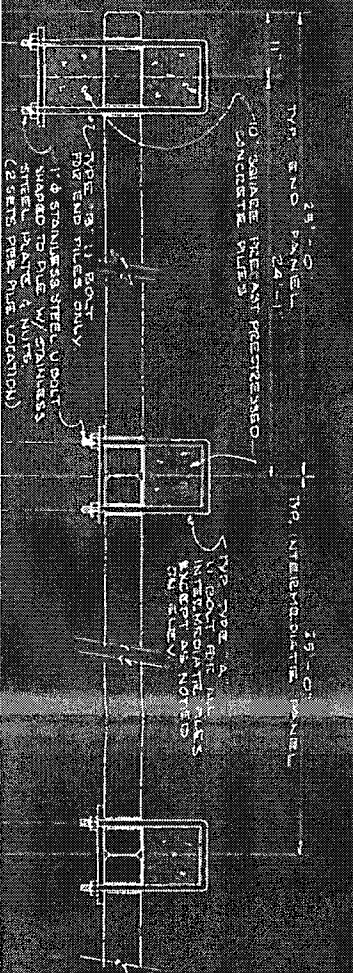
LEGEND
NEW CONCRETE

110	111
112	113

PLAN SCALE: 1" = 20'



ELEVATION SCALE: HORIZ. 1" = 20'



NO.

LAND COURT APP. 828 CONNOCKRY
 M. 4300.10 N
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PLAN SCALE: 1" = 20'

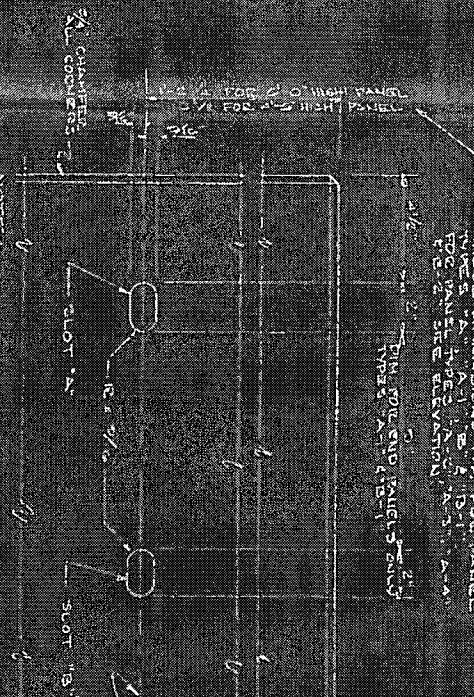
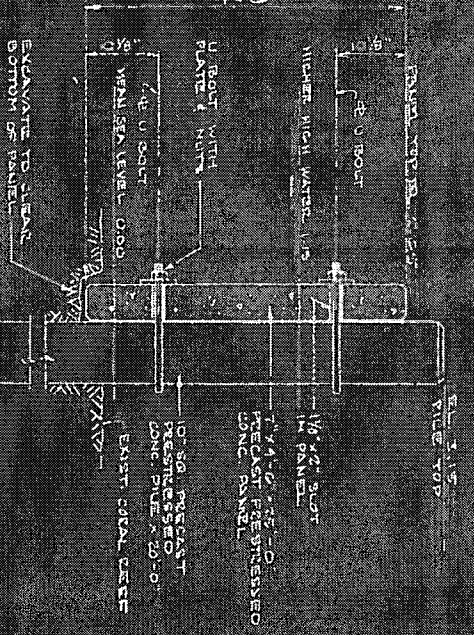
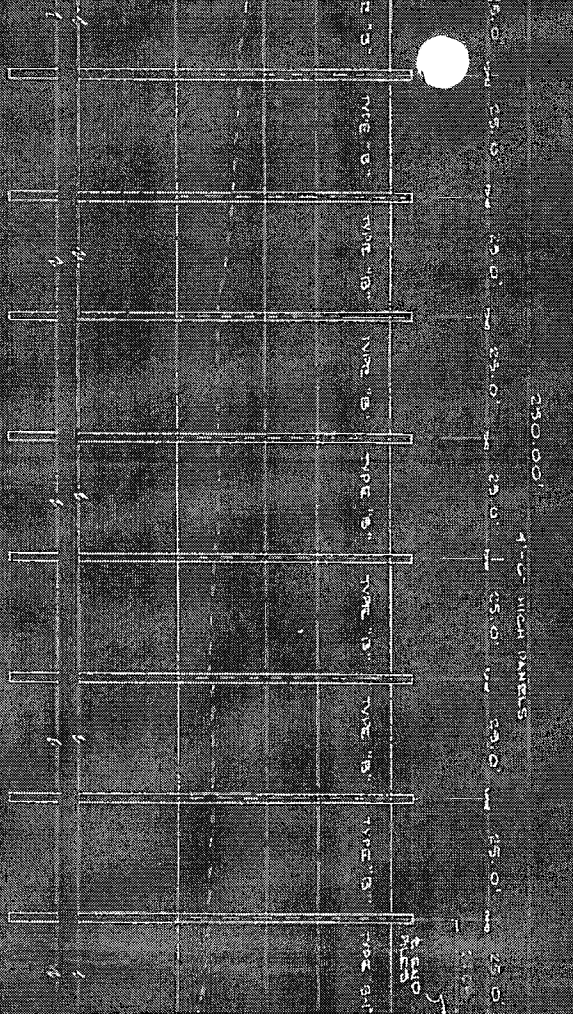
330.00'

3411.00'

SECTION B-B

ELEVATION SCALE: 1" = 20'

NOTE: 1" = 20'



MINIMUM SPACING MIN. 10" x 10"

SPIRAL SPACING AND PICK-UP TYPICAL PRECAST PRECAST CONCRETE

10" x 10"

10" x 10"

FILED-UP POINTS

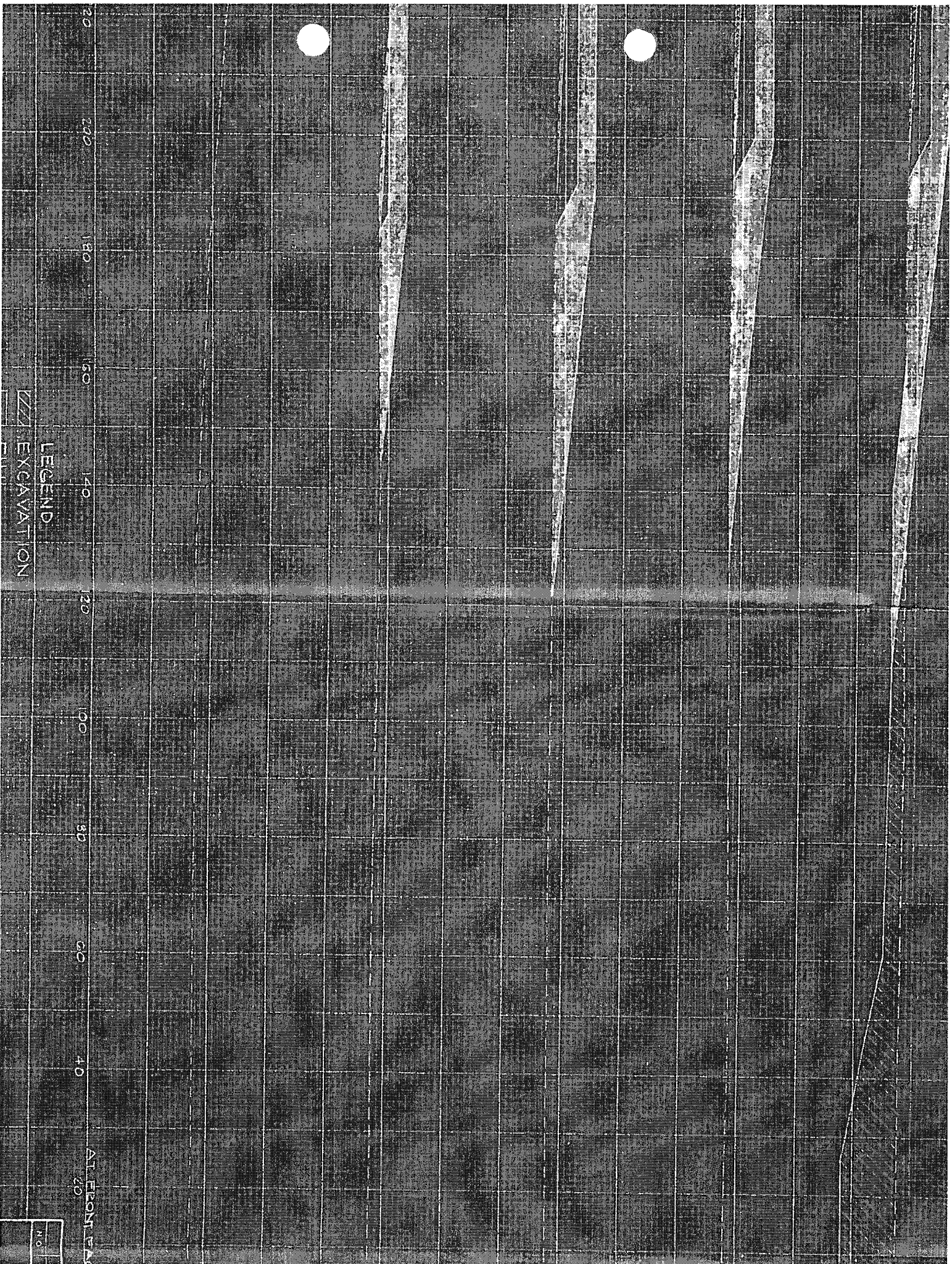
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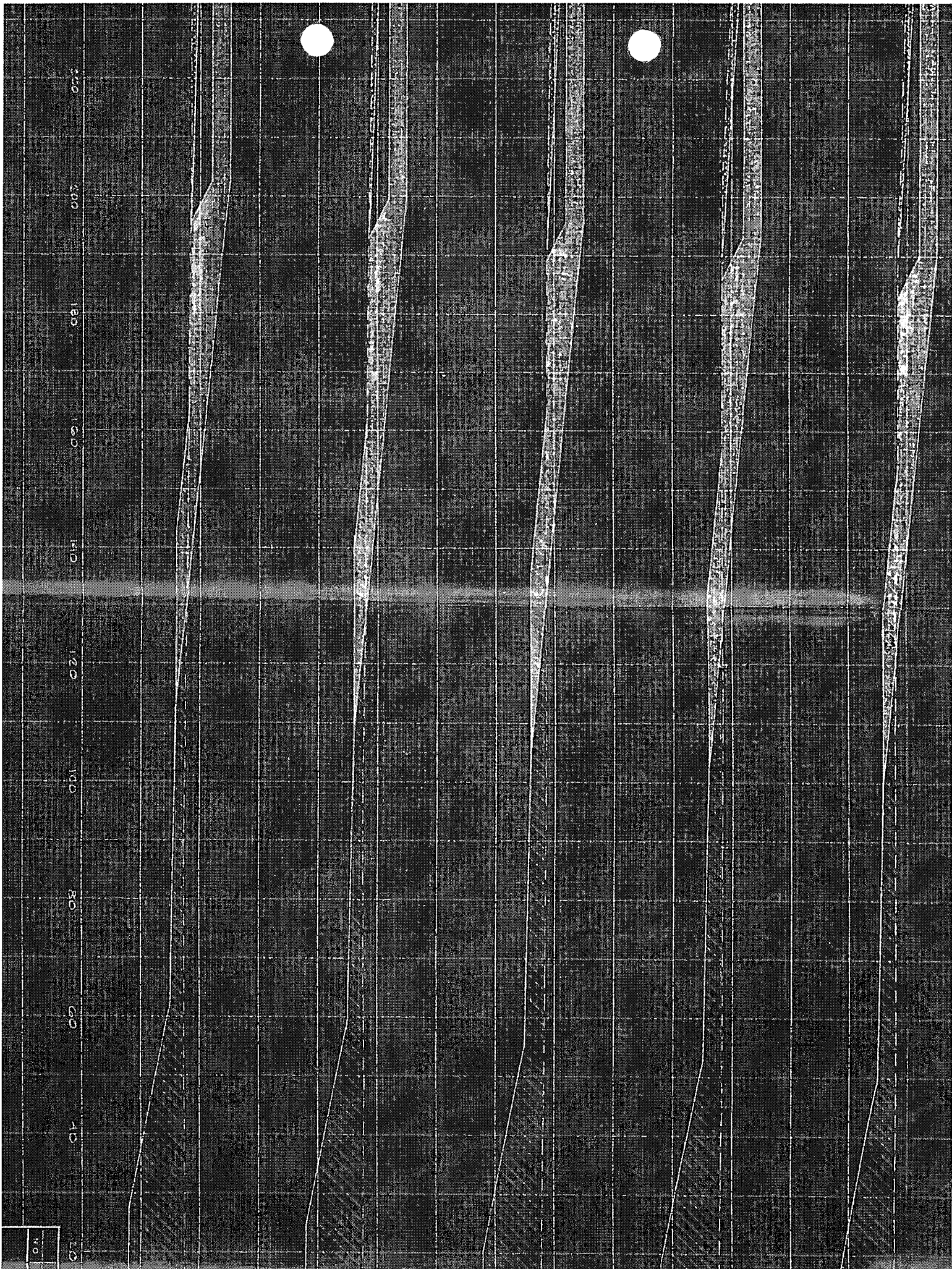
LEGEND

EXCAVATION

ATLANTA

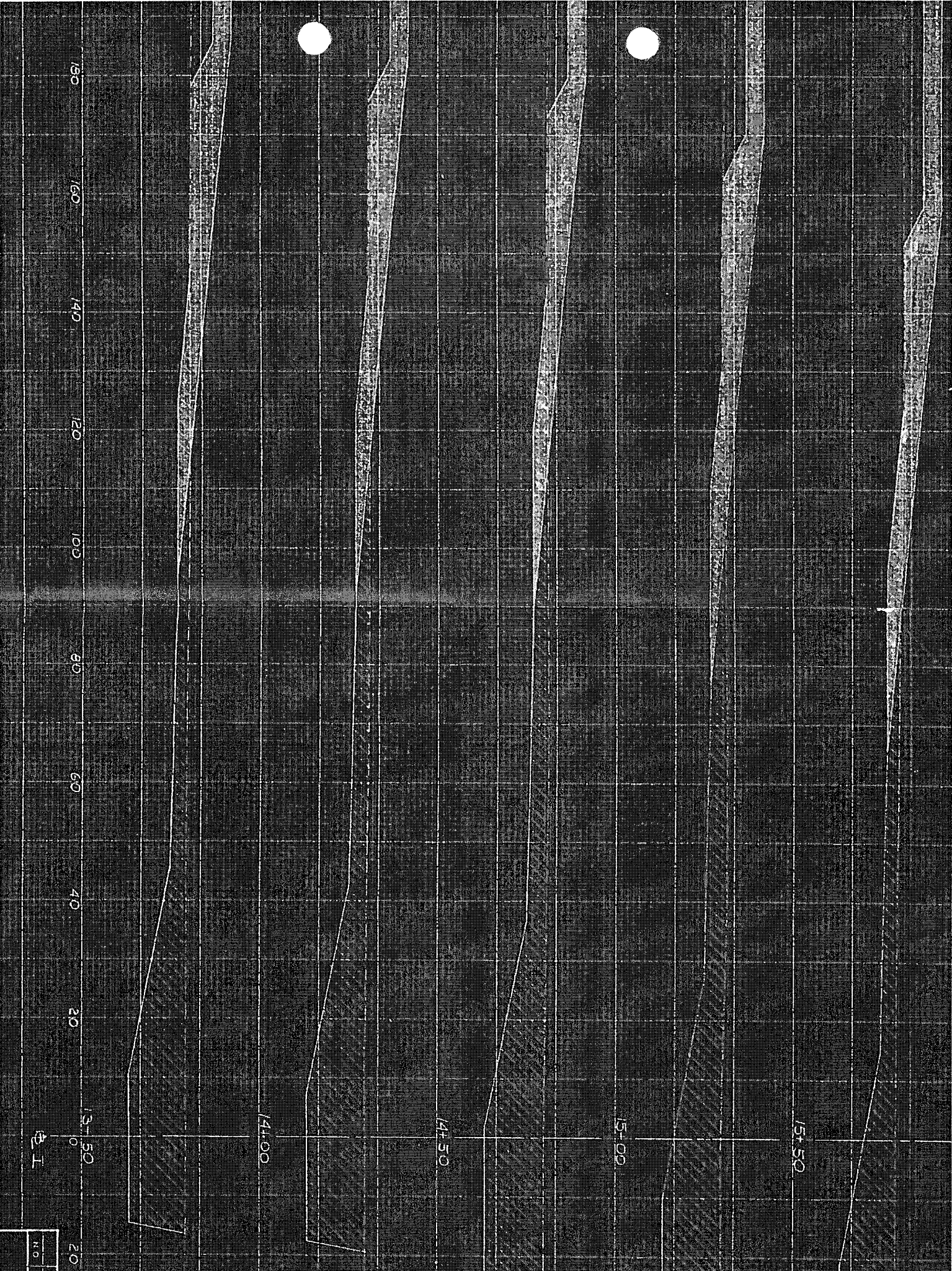
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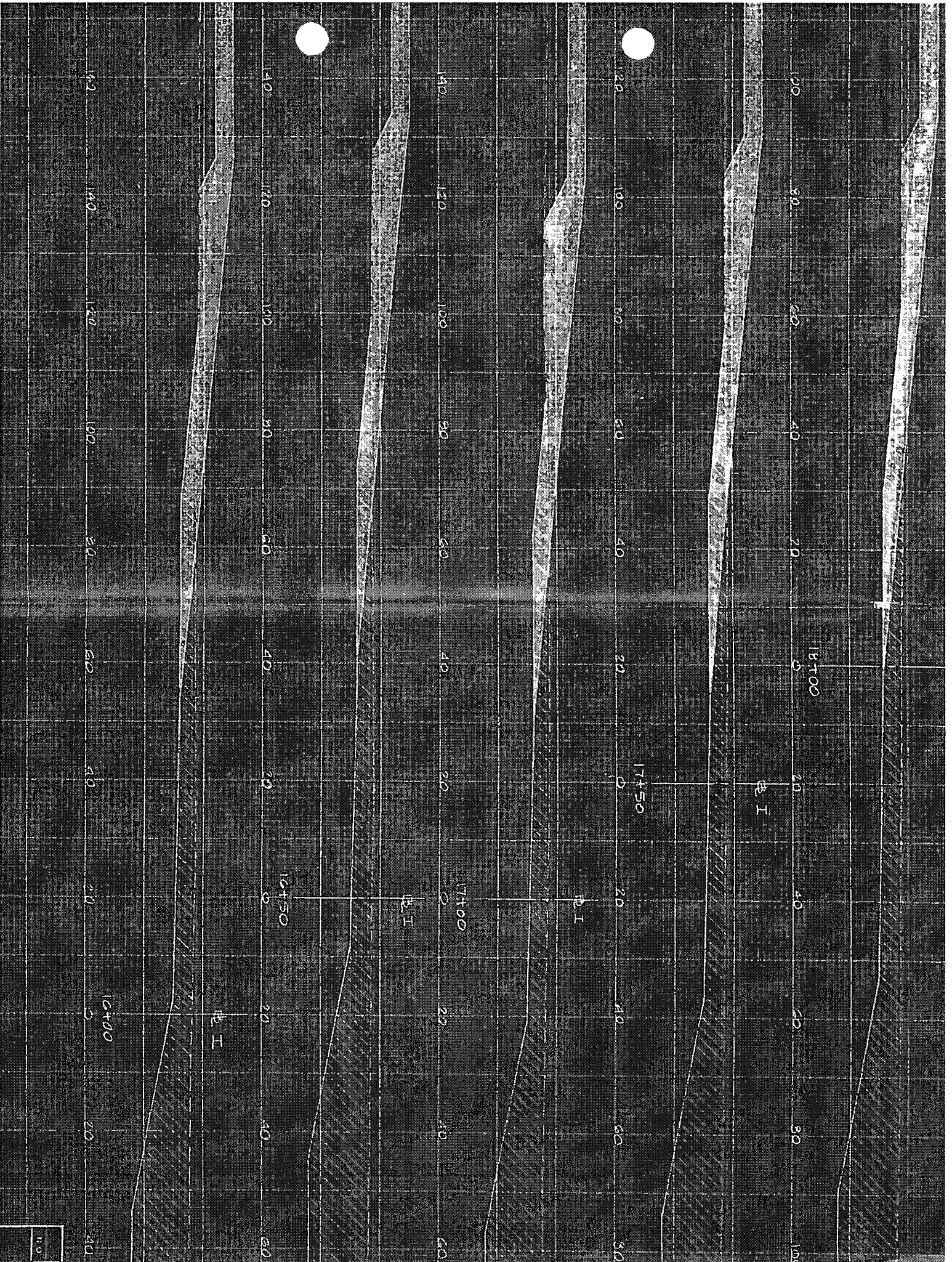
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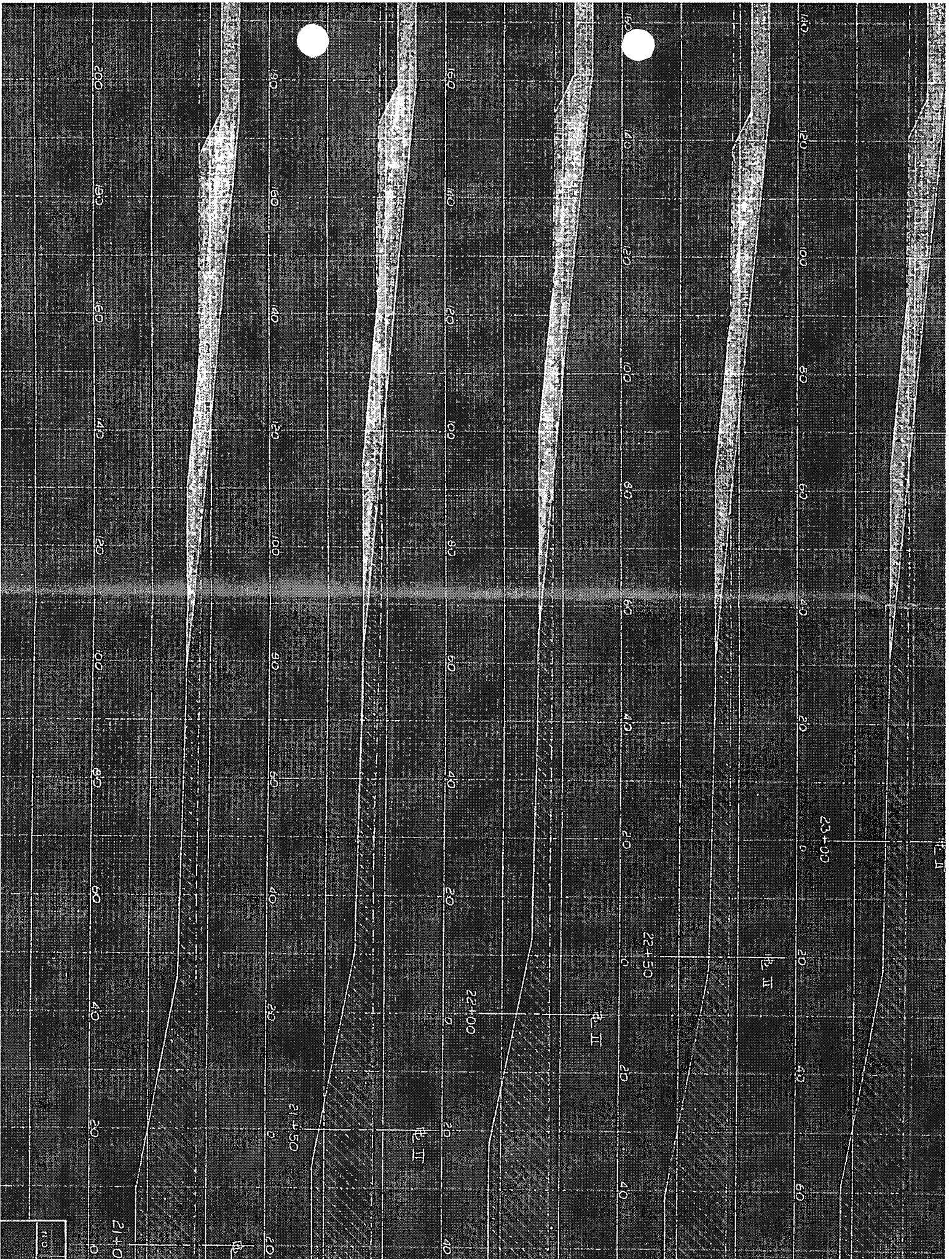
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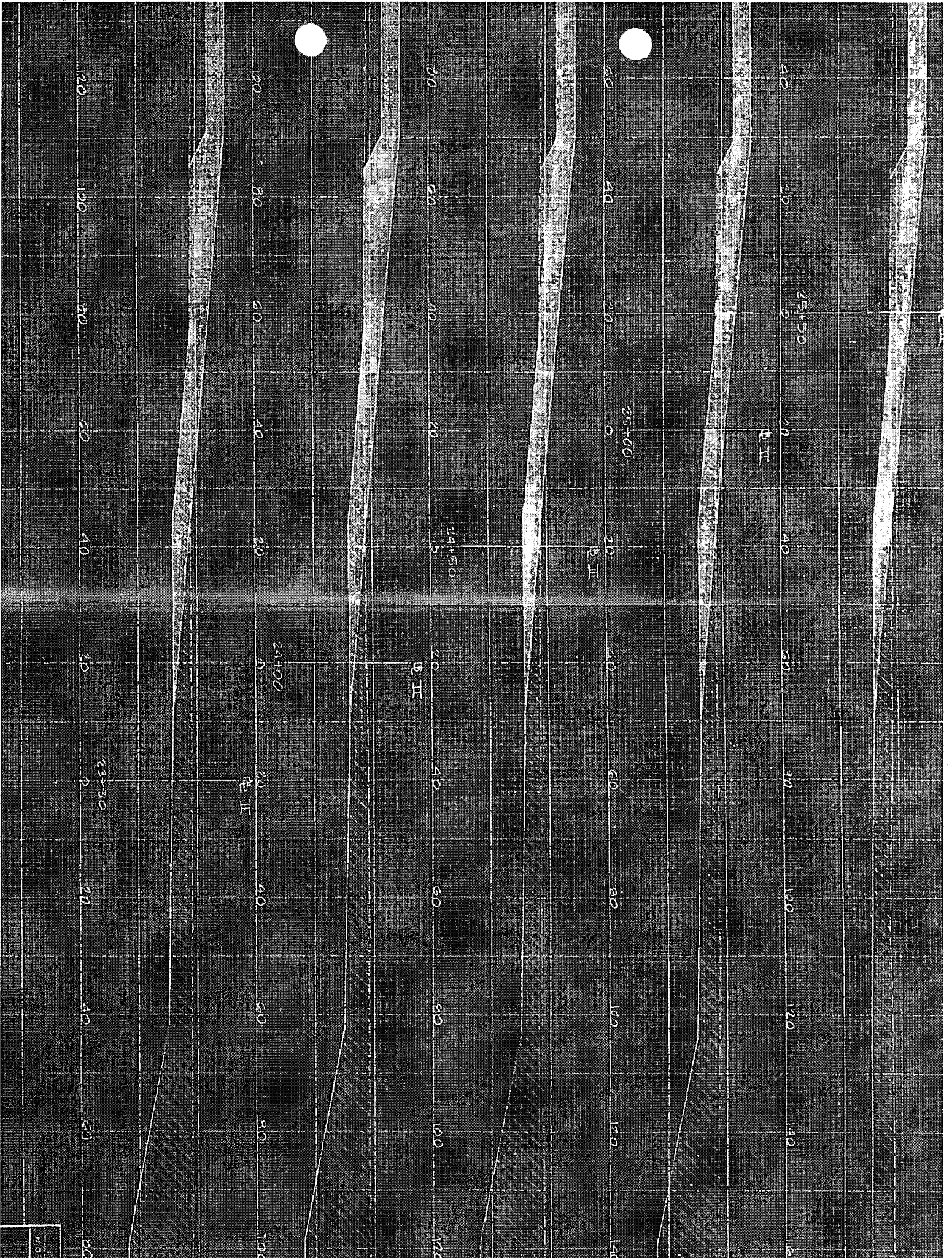


21

NO







25+50

II

25+00

II

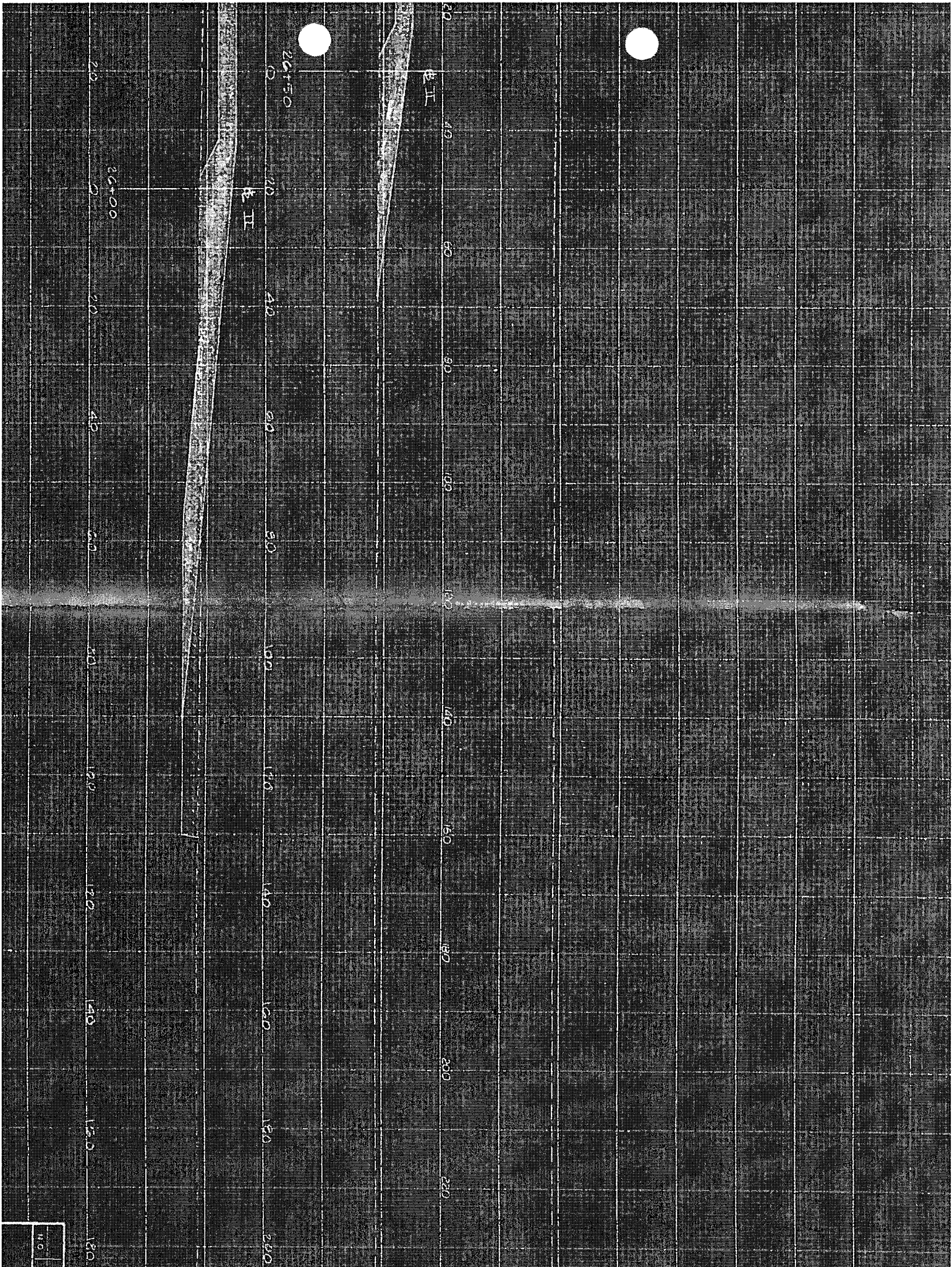
24+50

II

23+50

II

23+50



B I

B II

26+50

26+00

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0 20 40 60 80 100 120 140 160 180

0 20 40 60 80 100 120 140 160 180

H.O.

MINUTES OF THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES

DATE: January 25, 1963
TIME: 1:30 P. M.
PLACE: Department of Land and Natural Resources
Board Room

ROLL
CALL

Chairman Richard L. Summers called the meeting of the Board of Land and Natural Resources to order at 1:30 P. M.

MEMBERS: PRESENT

Mr. Richard L. Summers
Mr. Robert M. Fujimoto
Mr. Frank G. Serrao
Mr. G. Alan Freeland
Dr. Nobuichi Masunaga

ABSENT

Mr. William K. H. Mau

STAFF: PRESENT

Mr. E. H. Cook
Mr. James Detor
Mr. Eugene Apoliona
Mr. Haruo Shigezawa
Mr. William Benda
Mr. Richard Dunlap
Mr. Tom Tagawa
Mr. Eugene Burke
Mr. Robert Chuck
Mr. Ted Damron
Mr. K. Akita, Dep. A. G.
Mr. Francis Izumi, Dep. A. G.
Mrs. Joan K. Moriyama

OTHERS: Mr. Charles Brenham) Items J-1 to J-5,
inclusive

Mr. Wesley P. Wallace)
Mrs. Molly Zimring) Item F-11

MINUTES The minutes of January 11, 1963 were approved as circulated.

ITEM B-1 ADOPTION OF HUNTING AND FISHING RULES

Corrected copies of the Special Permit Rules relative to Archery Hunting Season within the Puuanahulu Game Management Area and Public Shooting Ground, Island of Hawaii, were circulated to the Board members. The staff reported that at the public hearing it was suggested that instead of only a portion that the entire area of Puuanahulu be opened up

ITEM J-3 REQUEST FOR APPROVAL OF ISSUANCE OF LEASE AT HONOLULU INTERNATIONAL AIRPORT, HONOLULU, OAHU, TO THE UNITED STATES OF AMERICA (FEDERAL AVIATION) (DEPARTMENT OF TRANSPORTATION)

ACTION Unanimously approved.

ITEM J-4 APPLICATIONS OF CENTRAL PACIFIC AIRLINES; MUELLER & COOKE, LTD., AND ISLAND AIRLINES, INC. FOR SPACE PERMITS (REVOCABLE PERMITS) AT HONOLULU INTERNATIONAL AIRPORT, HONOLULU, OAHU

ACTION Unanimously approved.

ITEM J-5 REQUEST FOR APPROVAL OF ISSUANCE OF LEASE AT HONOLULU INTERNATIONAL AIRPORT, HONOLULU, OAHU, TO SOUTH PACIFIC AIRLINES (DEPARTMENT OF TRANSPORTATION)

ACTION Unanimously approved.

ADDED
ITEM F-23 KAHALA-HILTON HOTEL MATTER (ORAL)

The Kahala-Hilton Hotel proposes to improve the beach frontage at Waialae, the construction to be entirely at their own expense, by (1) dredging and filling in the area; (2) the importation of sand to construct a beach; (3) the construction of two small islets; and (4) the construction of two groins. The area proposed for improvement abuts the City and County Park, and fronts the Waialae Golf Club-house site and will be used by the public for public beach. The agreement, similar to the Outrigger Canoe Club agreement with a few changes, has been prepared and reviewed by the Office of the Attorney General. There is a provision in the agreement for the clearing of the Kapakahi Stream mouth of coral and sand. The no-structure clause in the Outrigger Canoe Club agreement is deleted from this agreement. The Board concurred with Mr. Akita's suggestion that the agreement include a provision to have the hotel people grade down the groin so that the public could get easy access to the beach.

ACTION Subject to the final approval of the agreement by the Office of the Attorney General, the Board unanimously approved the Kahala-Hilton Hotel's request.

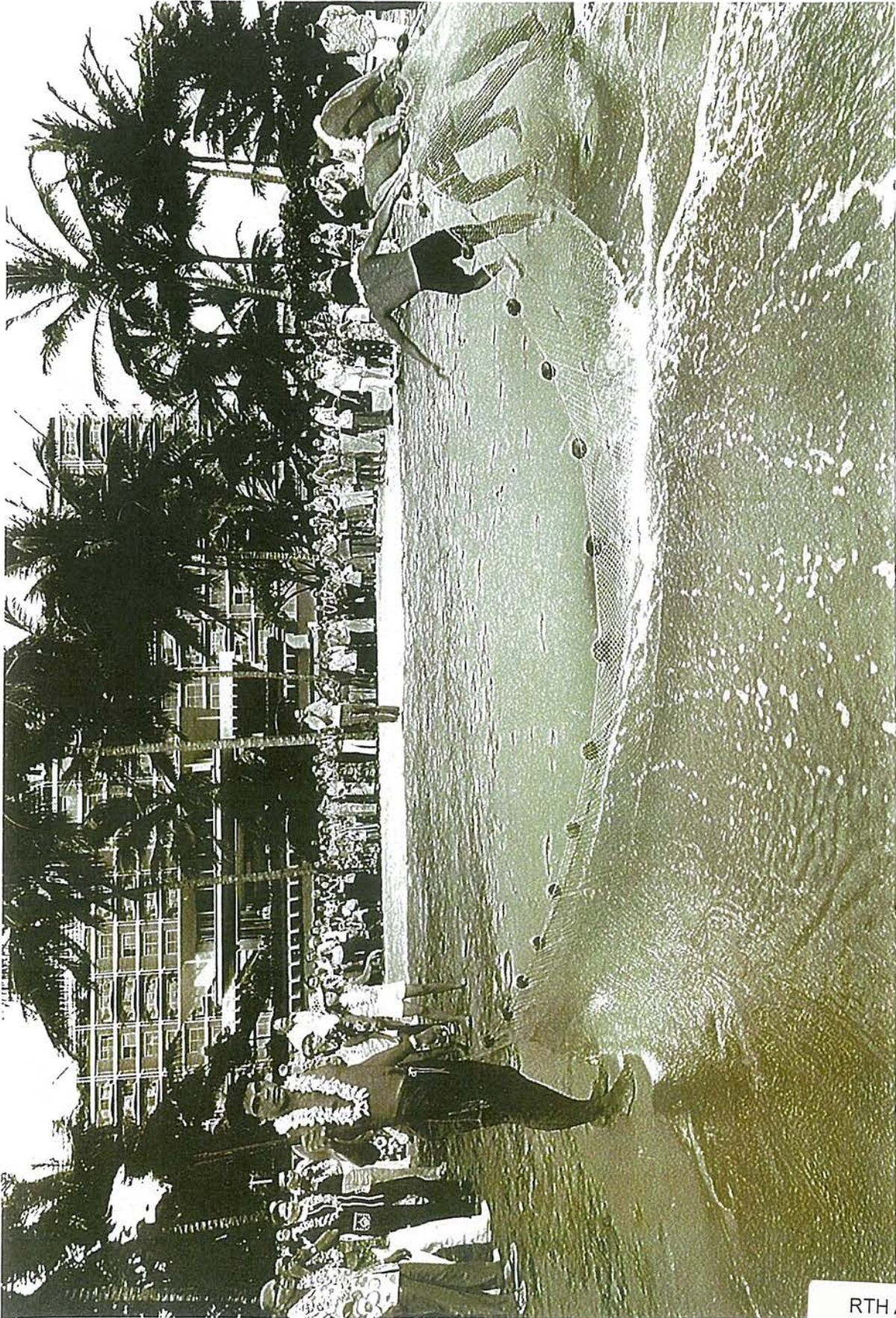
ITEM C-1 APPOINTMENT OF DISTRICT FIRE WARDEN, ISLAND OF HAWAII

ACTION The Board unanimously approved the appointment of District Fire Warden Frank Howard for the Island of Hawaii.

ITEM C-2 ADVERTISEMENT FOR BIDS ON INVITATION H-4-63 SITE PREPARATION, OLAA, HAWAII (OLAA FOREST RESERVE)

ACTION The Board authorized the advertisement for bids on the subject project.

EXHIBIT "1"



RTH AUGUST 2018
SUBMITTAL

EXHIBIT 7









EXHIBIT "8"

AMENDED

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

October 10, 2014

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

PSF No.: 110D-097

OAHU

Re-submittal - Issuance of Revocable Permit for Recreational and Maintenance Purposes to Resorttrust Hawaii, LLC; Issuance of Management Right-of-Entry, Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023:041.

APPLICANT:

Resorttrust Hawaii, LLC, a domestic limited liability company.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated Waialae, Honolulu, Oahu, identified by Tax Map Key: (1) 3-5-023:041, as shown on the attached map labeled **Exhibits A1 and A2**.

AREA:

40,460 square feet, more or less.

ZONING:

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

TRUST LAND STATUS:

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

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 10, 2014

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7430, Kahala Hotel Investors, LLC, Permittee, for recreational and maintenance purposes.

CHARACTER OF USE:

Recreational and maintenance purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$1,244 per month (current rent for RP 7430)

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation.". See **Exhibit B**.

DCCA VERIFICATION:

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

REMARKS:

Around 1963, the developer of the abutting hotel parcel obtained the approval from the State to excavate the rock coastline and develop a beach and two small islets. The Board approved the agreement at its meeting on January 25, 1963.

Since 1968, revocable permits were issued to the respective hotel owners over the subject location for recreational and maintenance purposes. Recently, the current permittee entered

into an acquisition agreement with the Applicant regarding the hotel property with the closing date scheduled on September 30, 2014. Therefore, the Applicant requests a new revocable permit be issued to continue the existing operation of the hotel activities over the subject location.

In anticipation of the time required for the preparation of the revocable permit document, the Applicant requests an immediate management right-of-entry which shall expire upon the issuance of the requested revocable permit.

Prior to the receipt of the subject request, the Department had been discussing with the current permittee and its counsel the permitted uses under the revocable permit. The issues covered in the discussions included presetting of beach equipment (e.g. chairs, umbrellas), placing of improvements, storage, and conducting surfing instruction and wedding ceremonies. Both parties were exploring the resolution of the issues through the disposition of a non-exclusive easement. The Applicant, through its counsel, is aware of the prior discussions and requests the continuance of the process of issuing an easement to resolve the issues.

In view of the imminent closing date of the acquisition, staff does not have any objection to the issuance of revocable permit and right-of-entry in the manner described above. However, staff recommends adding conditions specifically prohibiting the presetting of beach equipment, placing of improvements, storage, and conducting surfing instruction and wedding ceremonies on the subject location in the revocable permit and right-of-entry.

Staff did not solicit comments from other agencies on the request for revocable permit since the uses at the subject location remain the same as under previous permits.

Further, staff will bring the request for an easement to the Board for consideration at a later date after receipt of comments from other agencies.

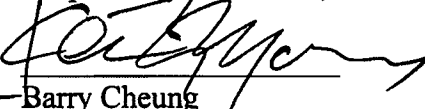
Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

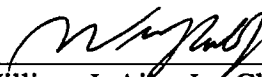

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to Resorttrust, 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 not place improvements, preset beach equipment, or conduct wedding ceremonies;
 - 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. Authorize the issuance of a right-of-entry permit to Resorttrust, 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 not preset and beach equipment, place or store any improvements, or conduct surfing instruction or wedding ceremonies at the subject location; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


for Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aifa, Jr., Chairperson


Land Board Meeting: October 10, 2014; D-5:
Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: October 10, 2014; D-5: Approved as amended.

Approved as amended. The Board amended the Recommendation sections 2b and 3a and 3b as follows:

2b to read:

- “b. Permittee shall not, without the prior written approval of the Department:**
- (i) Place improvements within the subject area; and,**
 - (ii) Preset beach equipment or conduct surfing lessons within the public beach fronting the subject area.”**

3a by replacing the phrase “most current revocable permit form” with the “most current right of entry form.”

3b to read:

- “b. Permittee shall not, without the prior written approval of the Department:**
- (i) Place improvements within the subject area; and,**
 - (ii) Preset beach equipment or conduct surf lessons within the public beach fronting the subject area.”**



TMK (1) 3-5-023:041

EXHIBIT A1

EXHIBIT A

BLNR - Issuance of RP to
Resortrust, LLC

October 10, 2014

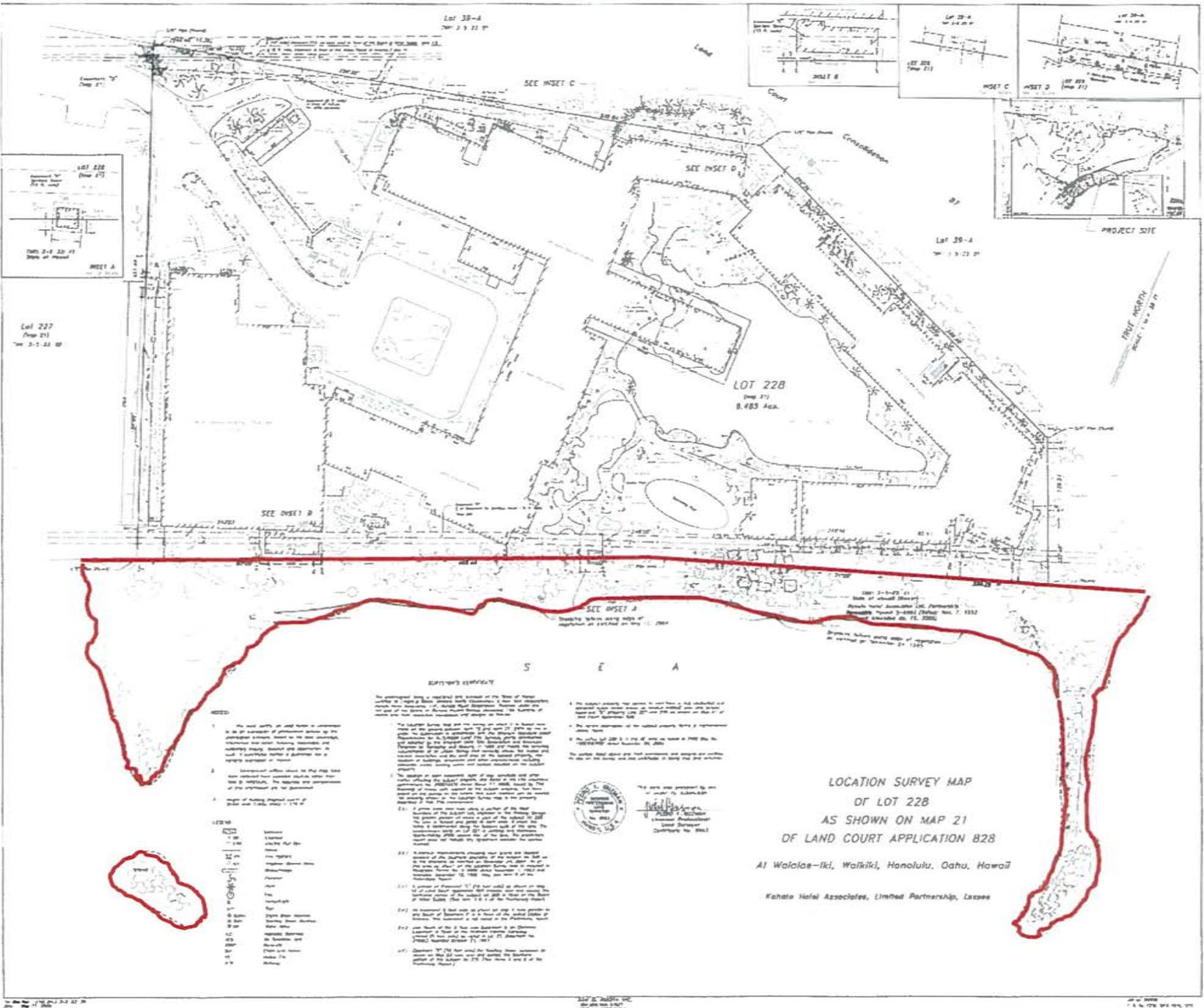


EXHIBIT A

EXHIBIT "A2"

11221

EXEMPTION NOTIFICATION

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

Project Title: Issuance of revocable permit and right-of-entry

Project / Reference No.: PSF 11OD-097

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

Project Description: Recreational and maintenance purposes


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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The request is a result of the change of ownership of the abutting hotel. The new owner does not plan to conduct any new activities at the subject area. As such staff believes that the proposed event would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Not applicable

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.



William J. Aila Jr., Chairperson
Date SEP 26 2014

EXHIBIT B

EXHIBIT "9"



EXHIBIT 9

PHOTO TAKEN 9/19/2019



PHOTO TAKEN 9/19/2019

EXHIBIT " 10 "

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

February 25, 2011

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

PSF No: Various
 STATEWIDE

Amend Prior Board Action of December 1, 2010, Item D-3, Designation of Certain Select Properties for Income Generation to Support the Management of Lands under the Jurisdiction of the Board and Department of Land and Natural Resources; relating to various TMKs on the Islands of Oahu, Maui, Hawaii and Kauai as articulated in Exhibit B attached hereto and incorporated herein

BACKGROUND:

At its meeting of December 1, 2010, under agenda item D-3, a copy of which is attached as Exhibit I, the Board of Land and Natural Resources ("Land Board") approved designating certain select properties, identified therein, to support the management of lands under the jurisdiction of the Land Board.

The identified properties were limited to commercial, industrial and hotel resort properties that, for the most part, were encumbered by long-term leases.

REMARKS:

This request before the Land Board is to designate additional properties for income generation to support the management of lands under the jurisdiction of the Land Board.

The additional properties were selected after further review of the over 1,300 leases, permits, licenses, etc., managed by Land Division and are identified in Exhibit II, attached. These properties are encumbered by month-to-month revocable permits and are limited to commercial, industrial and resort related uses.

Considering the implied short-term tenancies of a revocable permit, these properties were not included in the Land Board's prior action. Notwithstanding the above, however, continued use of these properties for commercial, industrial, and resort related uses are expected. Accordingly, designation of these properties is not only consistent with the criteria and intent of the Land Board's prior action, but will also provide additional assurances that the Department's Special

APPROVED BY THE BOARD OF
 LAND AND NATURAL RESOURCES
 AT ITS MEETING HELD ON

February 25, 2011

EXHIBIT 10

10019 D-10

Land Development Fund (SLDF) has adequate revenues to support the Department's many obligations including, but not limited to land management, emergency response, hazardous mitigation, debt service, and other Department budgetary shortfalls in program funding, all in accordance with Section 171-19, Hawaii Revised Statutes.

Subject to Land Board's approval of this request, revenues generated from these additional properties are projected to result in approximately \$697,000 of additional revenue for the SLDF to help fund the Department's efforts to manage and protect the State's cultural, historic and natural resources.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of December 1, 2010, under agenda item D-3, which by this reference is incorporated herein, by adding forty-two properties, identified on Exhibit II, to the properties previously designated for income production.
2. All other terms and conditions listed in its December 1, 2010 approval to remain the same.

Respectfully Submitted,



Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:

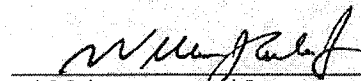

William J. Aila, Jr., Chairperson

EXHIBIT II

SUBJECT PROPERTIES

(Selected Additional Properties for Designation of "Income-Producing Assets")

Permit No.	TMK	Land Area (Ac.)	Current Annual Rent	Permitee	Comments
Oahu					
RP7470	1-2-21:36	1.424	\$ 34,680	JSR Equipment, Inc.	Baseyard/Storage
RP7097	1-2-21:40	1.102	155,592	Pestana Corp. dba Bob's	Baseyard/Storage
RP5557	1-2-21:42	2.594	31,008	Yamashiro, Inc., Ed	Baseyard/Storage
RP7188	1-2-21:44	0.307	5,400	Doonwood Engineering, Inc.	Baseyard/Storage
RP7412	1-5-20:17	0.229	12,060	Shoreline Restoration of Hawaii, Inc.	Baseyard/Storage
RP7212	1-1-03:03, 204-207 & 212	13.09	12,696	Hawaii All-Star Paintball Games	Commercial
RP7211	1-2-21:45	4.5	19,500	Hawaiian Paakai, Inc.	Commercial
RP7439	1-2-21:37	0.674	65,520	SCDC Alahao, LLC	Industrial (Parking)
RP7270	1-2-21:41	1.745	37,764	Robert's Central Laupahoehoe, Inc.	Industrial (Parking)
RP7514	1-2-21:46	0.047	2,292	United Laundry Services, Inc.	Industrial (Parking)
RP7430	3-5-23:41	0.929	14,928	Kahala Hotel Investors, LLC.	Hotel/Resort
RP7560	3-6-04:26	0.079	99,000	Mount Wilson FM Broadcasters, Inc.	Telecom Facility
RP5566	9-2-05:14	0	9,000	Hawaiian Electric Co. Inc.	Telecom Facility
	Subtotal Oahu (13)	26.720	\$499,440		
Maui					
RP5867	4-5-05:19	0.428	\$ 7,608	Keahi, Wilson	Baseyard/Storage
RP7066	4-5-01:09	0.028	15,384	The Weinberg Foundation, Inc.	Commercial
RP7484	4-5-01:53	0.043	16,080	Yamada Pacific, Inc.	Commercial
RP7196	3-9-04:01	0.425	936	AOAO of Mana-Kai Maui	Hotel/Resort (Parking)
RP7235	3-9-04:149	0.694	1,524	Western Apt Supply & Maint. Co.	Hotel/Resort (Parking)
RP7343	4-9-03:27	2.073	21,528	Castle & Cooke Lanai Prop, LLC	Commercial Pier/Dock
RP7194	1-3-03:37	0.005	9,000	Time Warner Entertainment Co	Telecom Facility
RP7209	2-2-07:14	0.166	9,000	Raycom National, Inc.	Telecom Facility
RP7208	2-2-07:15	0.204	9,000	Raycom National, Inc.	Telecom Facility
RP7205	2-2-04:89	1	9,000	Pacific Radio Group, Inc.	Telecom Facility
	Subtotal Maui (10)	5.066	\$99,060		
Hawaii					
RP7415	2-1-07:51	0.152	\$ 3,432	I. Kitagawa and Company, Ltd.	Commercial
RP7611	2-2-50:78	0.241	5,862	Chiquita, Jr., John	Commercial
RP7404	6-9-01:15	5	192	Richard Spiegel	Commercial
RP7447	6-9-01:15	4	480	Volcano Island Honey Co., LLC	Commercial
RP7438	7-5-06:22	0.31	8,100	IWF KKH, LLC	Concession
RP7083	1-7-13:98	1.328	660	HI Explosives & Pyrotechnics, Inc.	Commercial
RP3755	2-1-06:78	0.092	1,260	Hukilau Resorts - Hilo	Hotel/Resort (Parking)
RP7612	2-2-29:26	0.13	876	Café 100, Inc.	Commercial (Parking)
RP7580	7-5-06:34	0.041	756	Bougainvillea Plaza L.P.	Commercial (Parking)
RP7567	7-5-07:69	0.275	4,392	Kailua-Kona Village Dev Group	Commercial (Parking)
RP7262	2-1-12:04	45.00	196,020	Glover Ltd., Jas. W.	Quarry
RP7425	7-3-49:38	4	9,000	Skynet Hawaii, LLC	Telecom Facility
	Subtotal Hawaii (12)	60.572	\$231,030		
Kauai					
RP7407	4-1-03:44 por.	0.01	\$ 156	Coco Palms Ventures, LLC	Hotel/Resort (Access)
RP7176	4-5-15:37	0.287	384	Soares, Bernadine A.	Baseyard/Storage
RP7509	1-9-05:049	0.452	20,088	Bank of Hawaii, RE Mgr.	Commercial
RP7613	4-1-05:017	0.12	3,384	Coco Palms Ventures, LLC	Commercial
RP7507	4-5-09:043	0.172	7,596	Thatcher, Steve	Commercial
RP7256	1-9-10:34,35,38 & -11:07	0.825	5,700	Sunrise Capital, Inc.	Commercial (Parking)
RP7444	4-1-03:017	0.855	4,464	Coco Palms Ventures, LLC	Hotel/Resort (Parking)
	Subtotal Kauai (7)	2.721	\$41,772		
Total (42)		95.079	\$871,302		
80% of Revenues to SLDF			\$697,000	(rounded)	

EXHIBIT "11"



Shoreline
Public Access



PHOTO TAKEN 9/19/2019



PHOTO TAKEN 9/19/2019



PHOTO TAKEN 9/19/2019

EXHIBIT " 12 "

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Honolulu, Hawai'i 96813

June 24, 2016

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

Statewide

Report and Recommendations from the Department of Land and Natural Resources
Revocable Permits Task Force

INTRODUCTION

This report was prompted by an inquiry from the Board of Land and Natural Resources ("Board") and public interest regarding the Department of Land and Natural Resources application and management of revocable permits and leases. Chairperson Case convened this task force to revisit and evaluate the existing protocols and criteria for selecting a revocable permit or a lease for a disposition of use of State lands and to make recommendations for improvement. The goals are to best serve the needs of the people of Hawai'i, utilize public land to optimize its use in a sustainable manner, generate additional income for natural and cultural resource management, and to satisfy the fiduciary responsibility to the State of Hawai'i. The Department of Land and Natural Resources has a responsibility to implement the public trust in managing State lands and as such, it is Department of Land and Natural Resources' duty to award and steward these lands accordingly.

The vast variety of public lands under the jurisdiction of Department of Land and Natural Resources deserves a rationale and protocol for discerning the type of disposition that may be warranted. These recommendations are the result of the task force's goal to provide a more efficient, equitable, and inclusive system of public land management.

In today's world, it is critical to adapt and to learn, from the frequent updates and improvements from the way businesses are run to downloading the newest and most effective apps for computers and mobile phones. The purpose is always to improve upon a system or method. The task force applied this approach to the job at hand; i.e., to update the Department of Land and Natural Resources system and method of selecting types of dispositions to better manage the task of public land management and to deliver a more equitable process between permitors/permittees and lessors/lessees.

LEGAL REFERENCES

Sections 171-6, 13, 55, and 58, Hawai'i Revised Statutes as amended, govern the revocable permit process

BACKGROUND

Members of the public and local media shined a spotlight on the Department of Land and Natural Resources' revocable permits and leases, present, past and "on the table." The task force took this complex organizational challenge and began working on what needs to be done to accomplish positive change. This called for revisiting each island and its special issues while scrutinizing the system in place. In the majority of instances, we found evidence of fair pay, equitability, and satisfaction.

Having noted that, our attention turned to the aberrations in the system. Our priority was to be mindful of our obligations to the Public Trust and stewardship overseeing these public lands. The State statutes and administrative rules were our ready reference to confirm appropriate and authorized uses. We researched opportunities to suggest and/or consider repurposing our methods to achieve the highest and best use of these lands. We examined why and how agreements can sometimes appear to be "questionable." We determined that we need to raise the bar on our level of review regarding the length of the lease or permit time, fair market rents, parcel legal specifications, and broadening the scope and style of the bidding process.

In February 2016, Chairperson Case convened the task force to review the Department of Land and Natural Resources' revocable permit process and permit status, and to make any recommended changes to the Board to ensure the process serves the public trust and provides inclusiveness and consistency.

Chairperson Case appointed the following members to the task force:

- Chris Yuen, Board Member
- Paula Harris, Real Property Professional
- Scott Glenn, Office of Environmental Quality Control Director
- Jeff Pearson, Department of Land and Natural Resources Water Deputy
- Department of Land and Natural Resources Administrators:
 - Russell Tsuji, Land Division
 - Ed Underwood, Division of Boating and Ocean Recreation
 - Curt Cottrell, Division of State Parks
 - David Smith, Division of Forestry and Wildlife

The task force's areas of focus were to examine:

- Reasons for revocable permits vs longer-term dispositions
- Notice and opportunity for competition
- Duration of revocable permit terms
- Pricing, including establishment of value and any reasons for discounted value
- Review of current longer-term revocable permits
- Recommendations on possible administrative rules

The expected outcomes were to:

- Identify best practices and articulate principles to be applied;
- Update the Board review process and submittal form;
- Propose specific revocable permits for reconsideration by the Board, to long-term lease status, as appropriate; and
- Have new practices in place at the Department of Land and Natural Resources by June 30, 2016.

To fulfill its mandate, the task force met February through April 2016.

PRINCIPLES

The task force identified the following principles, which served as the basis for its findings, discussion, and recommendations.

1. The Department of Land and Natural Resources stewards the largest amount of state land. The Department of Land and Natural Resources has constitutional and statutory obligations to implement the public trust of stewarding resources, provide for reasonable and sustainable use of resources, and in return obtain a fair revenue for reinvestment into resource management. The method to obtain this goal is to add value and purpose to certain lands rather than leaving them vacant, thus allowing for both use and stewardship of the land. It is also a goal to provide value-added service and activity for the public by evaluating and creating opportunity on public land.
2. In many cases, it is preferable to have long-term and competitive leases than revocable permits; however, revocable permits have a useful function in helping the Department of Land and Natural Resources to administer its fiduciary responsibility by enabling the adaptation and transition to new uses over a short period of time.
3. Each revocable permit should have a specific justification. The revocable permit process is a public process that can be made more accessible to the *people* of Hawai'i, add purpose to public land in a sustainable manner, provide a fair compensation to the *State* of Hawai'i for the use of public land, and allow fair competition and certainty for the applicants seeking to use public trust resources.
4. The revocable permit process and decision making standards must be consistent and equitable across the respective Department of Land and Natural Resources Divisions.

DISCUSSION AND FINDINGS

The task force held discussions and made findings as follows:

1. The numbers of revocable permits by Division as of April 2016 are as follows:
 - a. Land Division; 340
 - b. Division of Boating and Ocean Resources; 30
 - c. Division of State Parks; 29
 - d. Division of Forestry and Wildlife; 1

2. As of 2015, Land Division's Revocable Permit list consisted of 340 permits, containing about 97,650 acres, and generating about \$2,032,000 in annual rents. In contrast, Land Division also manages about 1,012 long-term leases and 1,104 easements totaling about 2,116 long-term dispositions, with annual revenues of about \$13,357,000, as of April 2016.
3. The Department of Land and Natural Resources and Board are responsible for managing approximately 1.3 million acres of public lands comprised of sensitive natural, cultural and recreational resources. Much of these lands are set aside to government agencies for public purposes such as forest reserves, state parks, commercial and small boat harbors, airports, schools, etc. The remaining lands are mainly under the management of the Land Division who issued the dispositions (leases, permits, easements, etc.) above.
4. The Division of Boating and Ocean Resources and the Division of State Parks have recently engaged in reviews of their respective revocable permit lists to determine those that qualify to be issued under a lease process and those that require further examination due to anomalies and specific circumstances.
5. Current Division report templates to the Board have a section for revocable permit discussions. However, discussions vary in depth and completeness.
6. Water-related revocable permits are administered under Section 171-58, Hawai'i Revised Statutes, which is a separate statute and process from the land-related revocable permits regulated under Section 171-55. The statute states that water-related temporary uses may be issued so long as they will best serve the interest of the State and may be issued on a month-to-month basis subject to a maximum term of one year and other restrictions under the law. To obtain a long-term lease, the statute requires applicants to comply with the environmental review provisions of Chapter 343, Hawai'i Revised Statutes, consult with the Department of Hawaiian Home Lands on water amounts and issues, perform an appraisal, and then go to auction, prior to Board approval. This process can take more than one year to complete. Section 171-58 also provides for obtaining water leases for non-consumptive uses, such as hydropower, without public auction, by direct negotiation.
7. Currently, the Land Division administers 14 water revocable permits to 10 permittees. During the 28th Legislature of the State of Hawai'i, 2016 Regular Session, House Bill 2501 was introduced to address this process for permittees in holdover status. It allows those in holdover status time to complete the process to move from revocable permits to long-term leases, while retaining the water rights under the revocable permit for up to three years. At the time of this report, House Bill 2501 passed the State Legislature and is awaiting the Governor's review.
8. Appraising parcels and issuing leases are resource-intensive activities for Divisions. These activities require funds and staff time. They are sometimes delayed if funds are not available or staff have other issues that take precedent for their time. Costs for appraisals must be able to be recovered in a reasonable time through revocable permit fees for the appraisal to be justified.
9. A review of Division reasons for issuing revocable permits yielded common factors that could be summarized into a checklist. Factors included conditions about the lot that precluded leasing, such as the inability to subdivide, future

planned use of a parcel, and liability concerns, among others. An additional "other" reason could be added to the checklist to clarify why a lease is infeasible. Staff reports could check the applicable reasons and include supplemental information as needed to justify the revocable permit issuance.

10. Some parcels, by their nature, have limited to no competition for their use. Encouraging competition may not be practical due to administrative costs and limited market response, such as parcels where only an adjoining landowner owns legal access. In other cases, lands are provided to organizations that provide benefits to the State and it does not make sense to charge a fee.
11. Some activities on a specific parcel are new or experimental in nature and require a one-year temporal process to determine if the disposition yields a sufficient return.
12. Exhibit 1 summarizes task force review of certain revocable permits that have received scrutiny recently. The task force, with the help of the Land Division, took a fresh look at a selected group of revocable permits. This practice will continue with other revocable permits going forward.

RECOMMENDATIONS

The task force offers the following recommendations to the Board:

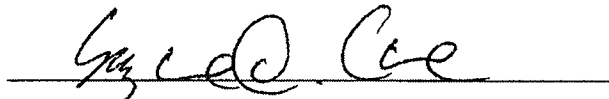
1. Land Division's revocable permits should be reviewed at four meetings a year, by county. Other divisions should present all of their own revocable permits at one Board meeting.
2. Given the strong public interest in the revocable permit/long-term lease process, continue to ask the Legislature to create and fund additional staff positions, including increased management-level staff, at the Land Division and other Divisions to implement the process so that the desired higher level of service can be better achieved.
3. Standardize the Divisions' submittal template to the Board to include a checklist for revocable permits and supporting details for their review (See Exhibit 2).
4. Develop policy guidance for all Divisions on the revocable permit process and standards consistent with this report.
5. Develop a timeline for follow up for revocable permit reviews in accordance with the policy.
6. List revocable permits online with key information and a contact point for questions or interest. The current revocable permit list can be found at <http://dlnr.hawaii.gov/ld/revocable-permits-land-division/>.
7. Require each Division to track market interest in parcels currently used under revocable permits and determine a threshold for when enough interest is present that the parcel is put out for competitive bidding, either as a revocable permit or a lease.
8. Develop an internal calendaring system for each Division to track a parcel's movement toward a long-term disposition, as appropriate.
9. Review and update, as appropriate, revocable permit rental amounts and provide justification for rental amount.

- 10. Develop procedures for competition over revocable permits when there is reason to think market interest exists and it is not feasible to put it out to public auction.
- 11. Work with holders of water revocable permits to initiate the process to convert to water leases.

Based on the details noted in this report, we recognize that in addition to implementing these recommendations, additional staffing is of utmost importance to make a successful shift from the way Department of Land and Natural Resources conducts this process to a revised model that honors accountability.

Respectfully Submitted,
The Revocable Permit Task Force

APPROVED FOR SUBMITTAL:



Suzanne D. Case

EXHIBIT 1: REVOCABLE PERMIT "FRESH LOOK" FOR RECENTLY HIGHLIGHTED PERMITEES

Below is a fresh look at a sample of recently discussed revocable permits. Task force members did a review and report the following. **Staff will bring recommendations to the Board as appropriate.**

- **Antone Carrillo/previous permit to Annitta Perreira/\$600 per month**
Generally, Land Division does not issue long-term leases for residential properties to allow flexibility for changing tenants. In addition, the Department of Land and Natural Resources is not organized to function effectively as a residential manager. This area is not in high demand and a reasonable rent is charged.
- **Diamond Head Papaya Co. Ltd./agricultural lands 125 acres/\$709 per month**
Lands have been under revocable permit since 1983 to Diamond Head Papaya. It has been under Revocable Permit 7656 since 2011. Other revocable permits were started in 1989 (80 acres at \$400/month) and 2003 (125 acres at \$700/month). There was a review done on monthly rent with comparable lands nearby. A question was raised about Mr. Renton Nip's involvement with obtaining the revocable permits but no reference to him was found in any of the permit documents dating back to 1983. Staff should review for long-term lease potential.
- **Donna Nunes-Hoopii/request to cancel**
Staff is not aware of non-compliance issues of the permit terms at this time. This is a residential revocable permit and not intended for lease (see above regarding residential properties).
- **Francis Madrid/rental rates/\$386 per month**
Rent is based on unimproved land. Tenant has resided there for more than 50 years. In 1992, Hurricane 'Iniki devastated the home. The permittee cleaned the property and rebuilt the home. The last appraisal was in 1999 at \$514 per month with a 25% discount for tenancy to \$386 per month. This is a residential revocable permit and not intended for lease (see above regarding residential properties).
- **Hazel Higgins/rental rates/\$262 per month**
Rent was at \$435/month, appraised in 1999, and lowered to \$262/month. Lands are not subdivided. There may be interest in a land purchase as a remnant parcel. Staff should confirm the current fair market value.
- **Jacob Kaleo Hines/rental rates/\$500 per month**
Surrounding lands are permitted for agricultural use. The Board approved the revocable permit with conditions to demolish the main dwelling and consolidate the two smaller dwellings. This is a residential revocable permit and not intended for lease (see above regarding residential properties).
- **Junedale Hashimoto/rental rates/\$454 per month**
This is a unique situation that the Board approved on June 13, 2012 after extensive review based on staff recommendation for a revocable permit.

EXHIBIT 1: REVOCABLE PERMIT "FRESH LOOK" FOR RECENTLY HIGHLIGHTED PERMITEES

- **Peter Kunstadter/pier dock/\$19 per month**

A non-commercial pier for which the owner refused a long-term easement. Mr. Kunstadter's pier qualified under Act 261, Session Laws of Hawai'i 2000 for a 55-year non-exclusive easement. He failed to act timely before the sunset date and remained under a revocable permit. Staff wrote to Mr. Kunstadter recently to determine whether to proceed with a long-term easement or terminate the revocable permit.

- **Wanda Nakoa of Waianae/deceased/permit renewed**

Staff was not informed of the permittee's death and has no mechanism for receiving this information automatically. Meanwhile, the permit remained in full compliance. At times, permits may be covered by a family member and the Board may re-issue the permit to a family member who applies for it. This is a residential revocable permit and not intended for lease (see above regarding residential properties).

EXHIBIT 2: REVISED BOARD SUBMITTAL TEMPLATE

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
_____ Division
Honolulu, Hawaii 96813
(Date of Board Meeting)

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

PSF No.: _____
(Island)

Issuance of Revocable Permit to (Name), (Town), (District), (Island), Tax Map Key: _____.

APPLICANT:

(Name of Applicant), marital status, Tenants in _____, OR a _____ corporation/partnership, (as applicable).

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of _____ situated at (Town), (District), (Island), identified by Tax Map Key: _____, as shown on the attached map labeled Exhibit A.

AREA:

___ acres, more or less.

ZONING:

State Land Use District: _____

County of _____ CZO: _____

TRUST LAND STATUS:

Section 5() lands of the Hawaii Admission Act

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

EXHIBIT 2: Revised Board Submittal Template

CURRENT USE STATUS:

Vacant and unencumbered.

Or

Encumbered by General Lease No. S-____, (Lessee Name), Lessee, for (character of use) purposes. Lease to expire on (Date).

CHARACTER OF USE:

_____ purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$_____ per month, based on staff appraisal dated (Date), attached as Exhibit B.

OR

[Optional] To be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

Explain why the rent charged is fair under the circumstances.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred 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. __, Item No. __. See exemption declaration attached as Exhibit ____.

OR

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on (date) with a finding of no significant impact (FONSI).

OR

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice on (date).

OR

EXHIBIT 2: Revised Board Submittal Template

If subject lands are in Conservation District, check with Applicant and OCCL if CDUP required.

DCCA VERIFICATION:

Place of business registration confirmed: YES _ NO

Registered business name confirmed: YES _ NO

Applicant in good standing confirmed: YES _ NO

(If not applicable, state as such and explain why. E.g.: 1) Applicant is not operating a business and, as such, is not required to register with DCCA, 2) Applicant is sole proprietorship and, as such, is not required to register with DCCA, etc.)

JUSTIFICATION FOR REVOCABLE PERMIT (IF APPLICABLE):

Explain why month-to-month tenancy is more appropriate than long-term disposition in this case. [E.g., does the parcel have legal access? Is it a legally subdivided lot? Is it a substandard lot size? Is it pending transfer to another division or agency? Are there issues with squatters or dumping? Is it a remnant? Has anyone from the public expressed interest in acquiring a long-term disposition of the parcel?]

- A. Site issues make property unsuitable for public auction lease (RP typically goes to adjacent owner):
 - 1. No legal access
 - 2. Substandard lot size or irregular shape
 - 3. Only interest is for a portion of a lot; subdivision difficult (example, landscaping)
 - 4. Pasture property difficult to use except in conjunction with adjacent property (adjacent owner may have water system, fencing, ability to move cattle)
 - 5. Property cannot be leased without major infrastructure improvements (Hoonee Place)
- B. Truly short-term use (examples, construction staging area)
- C. Interim arrangements pending lease disposition
 - 1. Could be leased at public auction, staff needs time to prepare (staff will give timetable)
 - 2. Awaiting long-term decisions to be decided in planning process (example, Banyan Dr.)
- D. Testing market and operational issues, plan to go to lease later (example, parking at State Parks)

EXHIBIT 2: Revised Board Submittal Template

E. Government uses

1. Pending E.O. or other long-term disposition (provide timetable)
2. Only short-term transfer needed

F. Non-profits

1. Pending direct lease (provide timetable)
2. Trial period while nonprofit gets funding, proves capacity to use site, etc.

G. Staff unaware of interest in long-term disposition

H. Other unusual circumstances (provide explanation)

Discussion:

REMARKS:

Discuss the history of the parcel.

Discuss whether proposed use is allowable in the county zoning, including, where necessary, comments from county planning or land utilization departments on such compliance.

Make a statement that 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.

Discuss the applicant's qualifications to be using land. For ag/pasture permits, comment on whether applicant would qualify as a bona fide farmer pursuant to §171-14.5, HRS. Discuss special circumstances which would exempt Applicant from this.

Discuss whether there were other applicants requesting the same parcel, and if so, indicate dates requests made.

Discuss any agency or community comments, including a statement on what agencies were solicited for comments and a statement that no comments were received, where applicable.

EXHIBIT 2: Revised Board Submittal Template

Discuss any other pertinent issues or concerns, including but not limited to, those for which a special condition was made in the Recommendation section.

Whenever recommending an action that qualifies for an exemption from the preparation of an environmental assessment, you need to include a short statement why the action should be exempt. The proposed use has continued since xxxx and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

ONLY IF APPLICABLE (if EA/EIS done, delete):

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 (Name) covering the subject area for _____ 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. Review and approval by the Department of the Attorney General;
and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

(Any other special conditions not included in the current document form.)

Respectfully Submitted,

EXHIBIT 2: Revised Board Submittal Template

(Name of Agent)

(Title)

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

EXHIBIT "13"



The Kahala Hotel & Resort
Lot 228 of Land Court Application 828
(Map 21)
At Waialae, Honolulu, Oahu, Hawaii
Tax Map Key: (1) 3-5-23: 39

EXHIBIT 13

Note:
Aerials are referred to Government Survey Map/plan Sheet (GSM) 21.
Date of Photography taken August 17, 2018.

EXHIBIT " 14 "

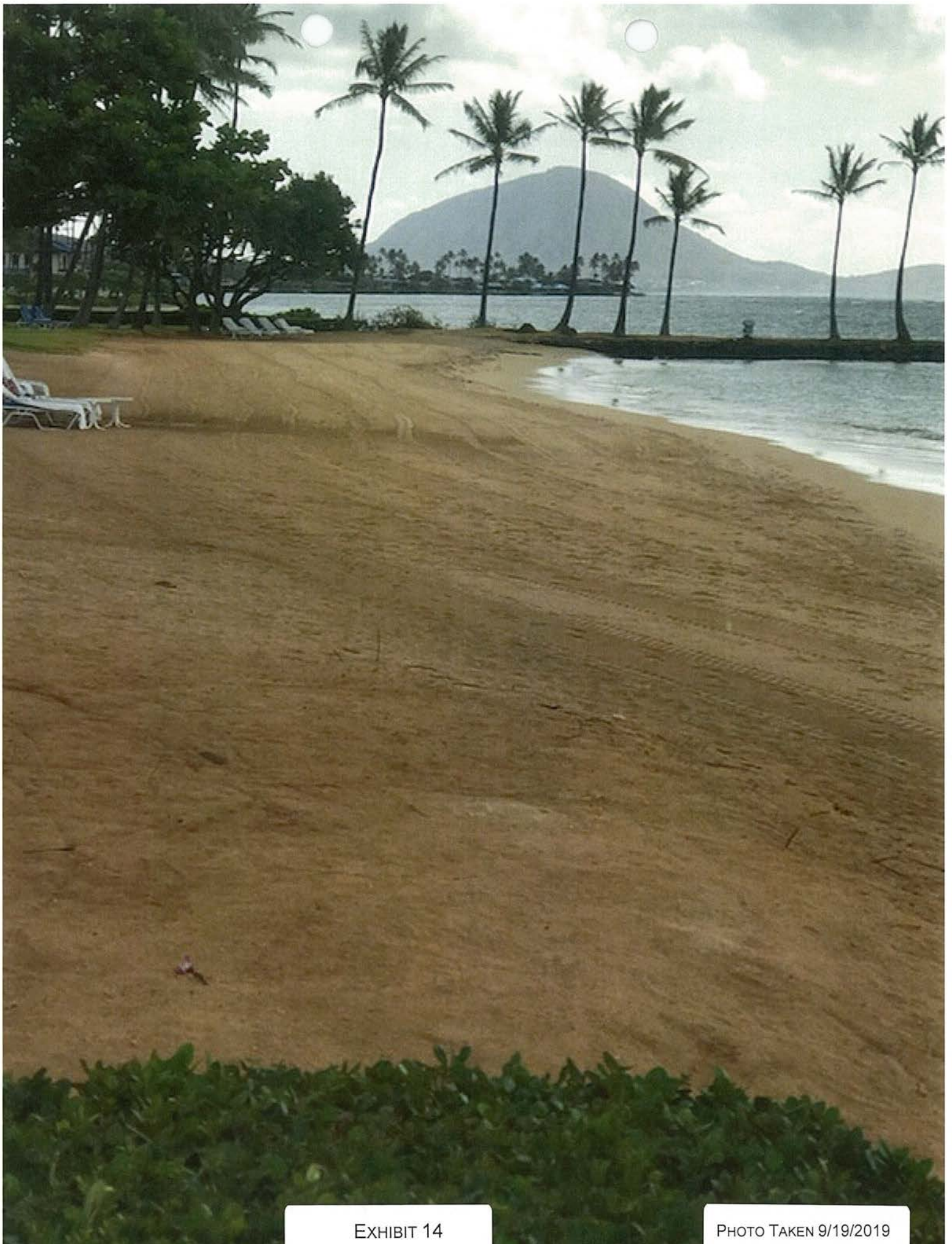


EXHIBIT 14

PHOTO TAKEN 9/19/2019

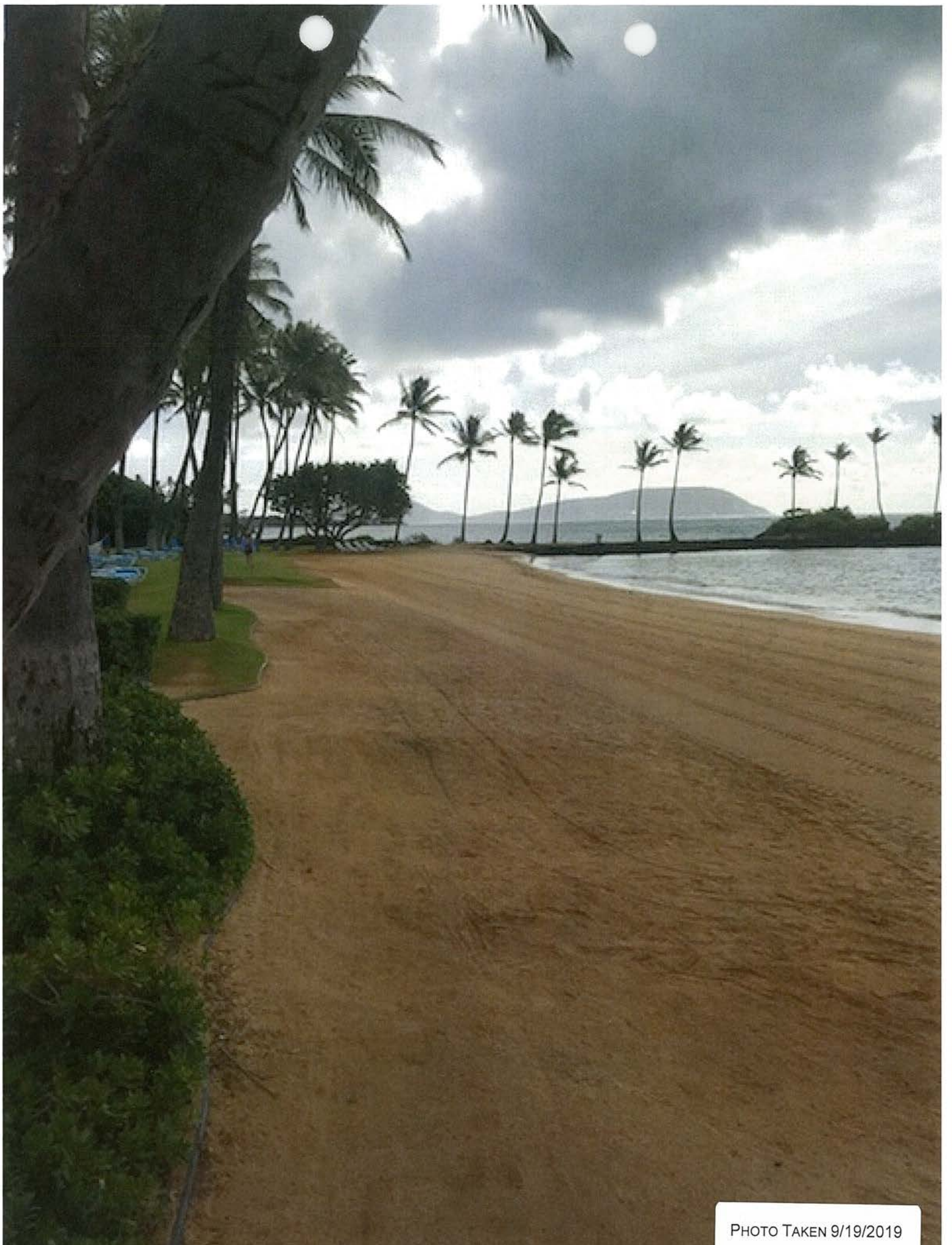


PHOTO TAKEN 9/19/2019

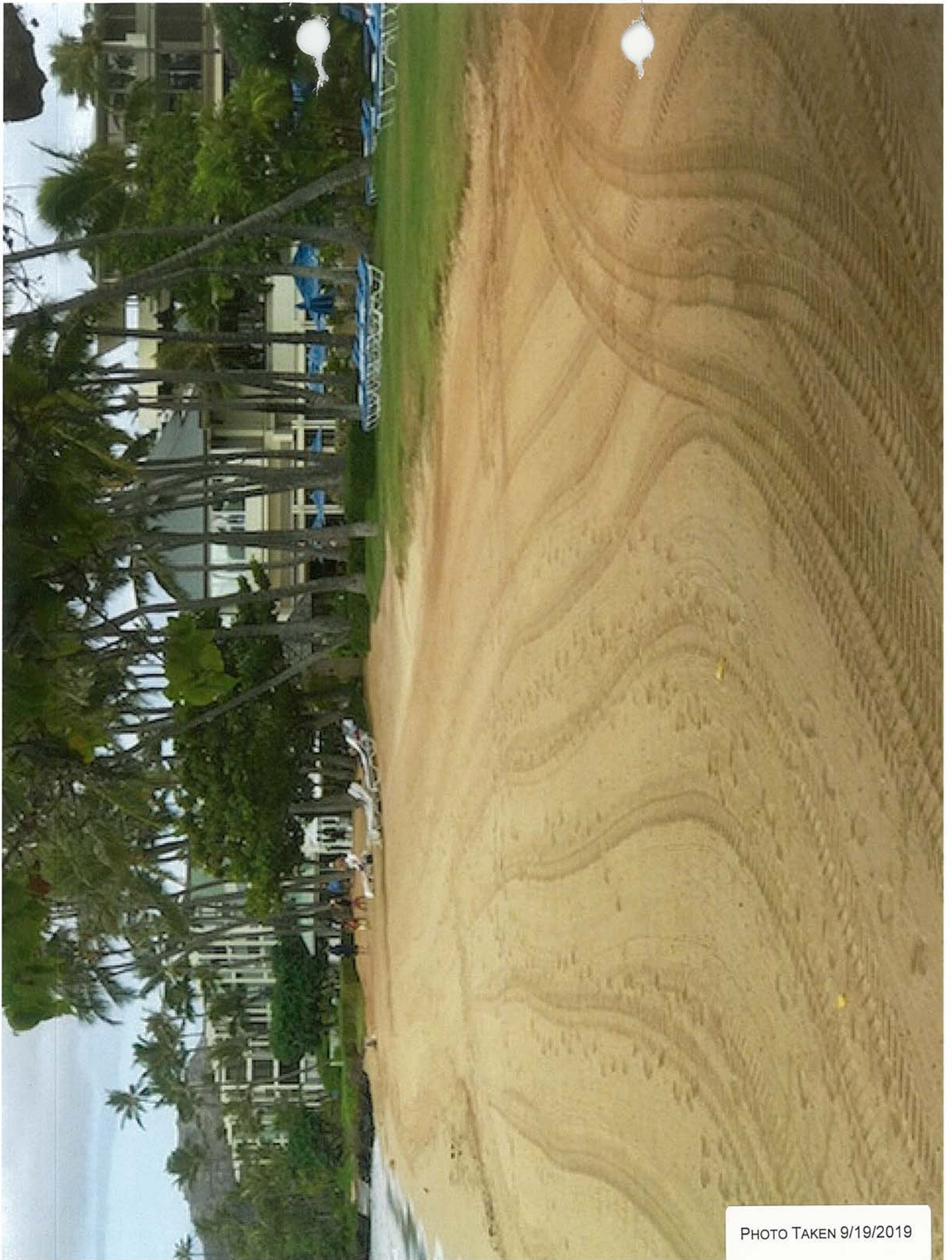


PHOTO TAKEN 9/19/2019

EXHIBIT B



Beach Chair - July 3, 2019-Source: David Frankel

EXHIBIT B



Beach Chair – July 3, 2019-Source: David Frankel

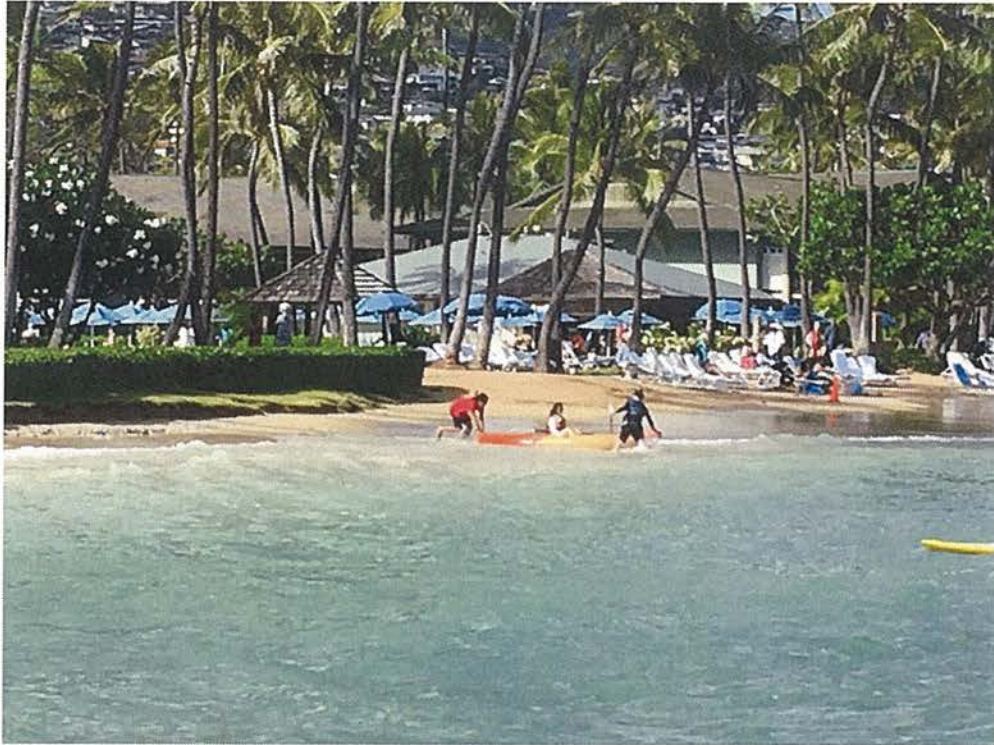


Beach Chair -July 3, 2019-Source: David Frankel

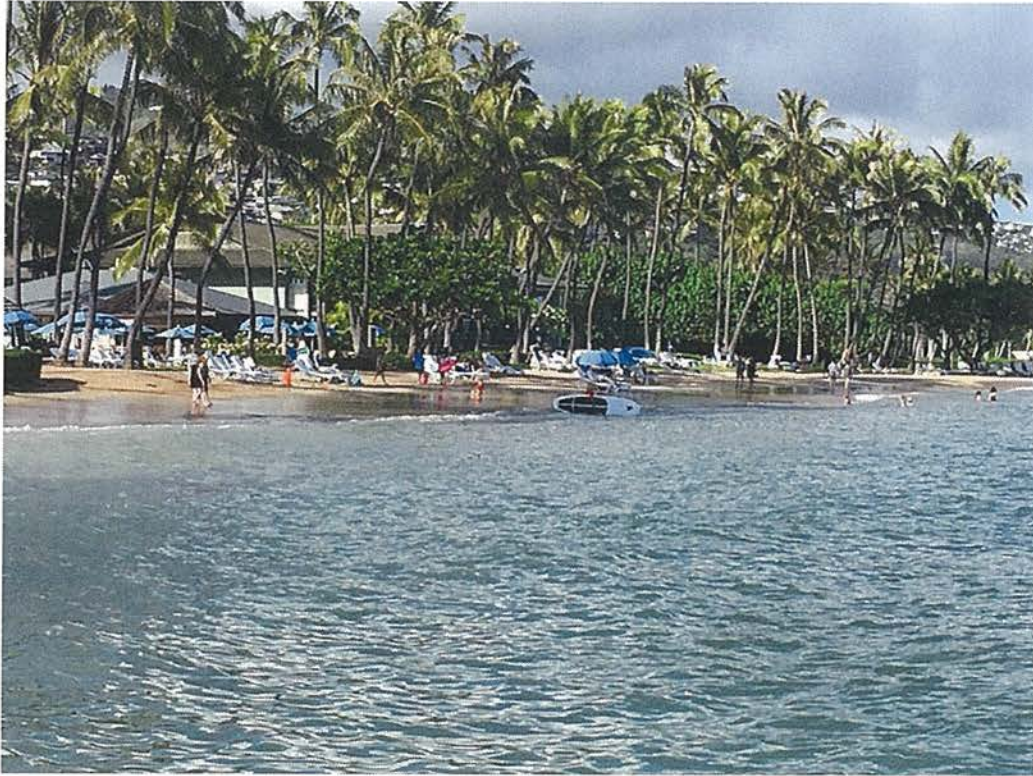


Beach Chair – July 3, 2019-Source: David Frankel

1. Hans Hedeman surf school employee in red shirt working from the RP parcel and the sandy part of the beach, rather than from hotel property as supposed to.

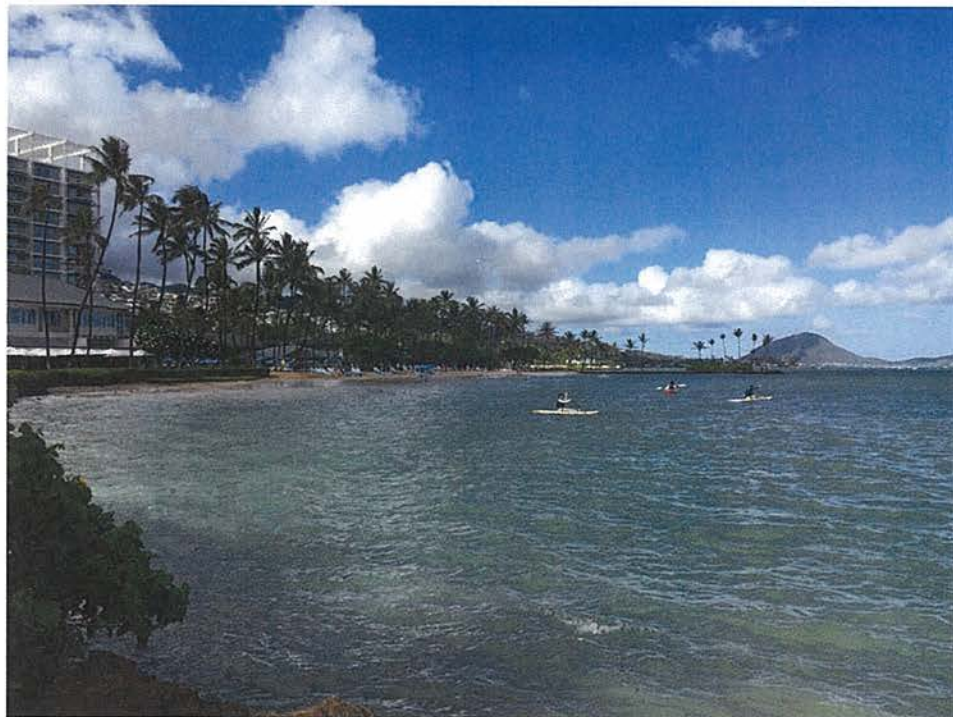


Boating in Prohibited Area-Source: David Frankel



Boating in Prohibited Area-Source: David Frankel

2. Tourists in surf school kayak and SUPs in the swimming-only area. The orange cone on the beach is what the guy in the red shirt puts out and tells them not to go past it, East. Problem is, that cone is about 75 yards East of the actual line which vessels are not supposed to cross. The legal line that they are not supposed to be East of is off the left side of both of these photos out of view.



Boating in Prohibited Area-Source: David Frankel

EXHIBIT C

Tue 9/3/2019 9:24 AM
[Redacted]
Re: Beach Chairs reserved and preset on Kahala RP parcel, violations of RP

To Cheung, Barry W
You forwarded this message on 9/3/2019 3:34 PM.

Action Items + Get more add-iti
1 2 3 4 5 6 7 8 9 10

Thank you for your reply Barry, and for including David Frankel's report and photos with your submittal. I request that when you present them in your submittal, you accurately acknowledge that they are violations, vs. taking a neutral stance or some other permissive approach that will only encourage the hotel to continue to violate their RP. I also ask that you recommend that RTH be cited and restricted with some kind of active and appropriate consequence for their disregard for the terms of their RP.

In addition to David Frankel's report and photos, please include the following photos below showing violations on five other days during the term of their current RP. Please see the date and note with each photo(s). Please note, that these were violations that were present every day of the whole RP period until early July when David Frankel sent the photos to Bill Wynoff. Shortly after that is when the hotel started to comply a bit more. RTH committed numerous and daily violations of their RP for 6 months.

The photo below from 7/4/19 shows beach chairs and tables preset on parcel. Please note the property line marked by the sign (you can see the edge of the sign) lined up with the right side post of the cabana hale. Everything to the left, makai of that sign (which is the majority of the lounge chairs and tables in this photo) is on the RP parcel. This photo was taken in the morning and clearly shows many chairs and tables preset.

Thank you,
[Redacted]



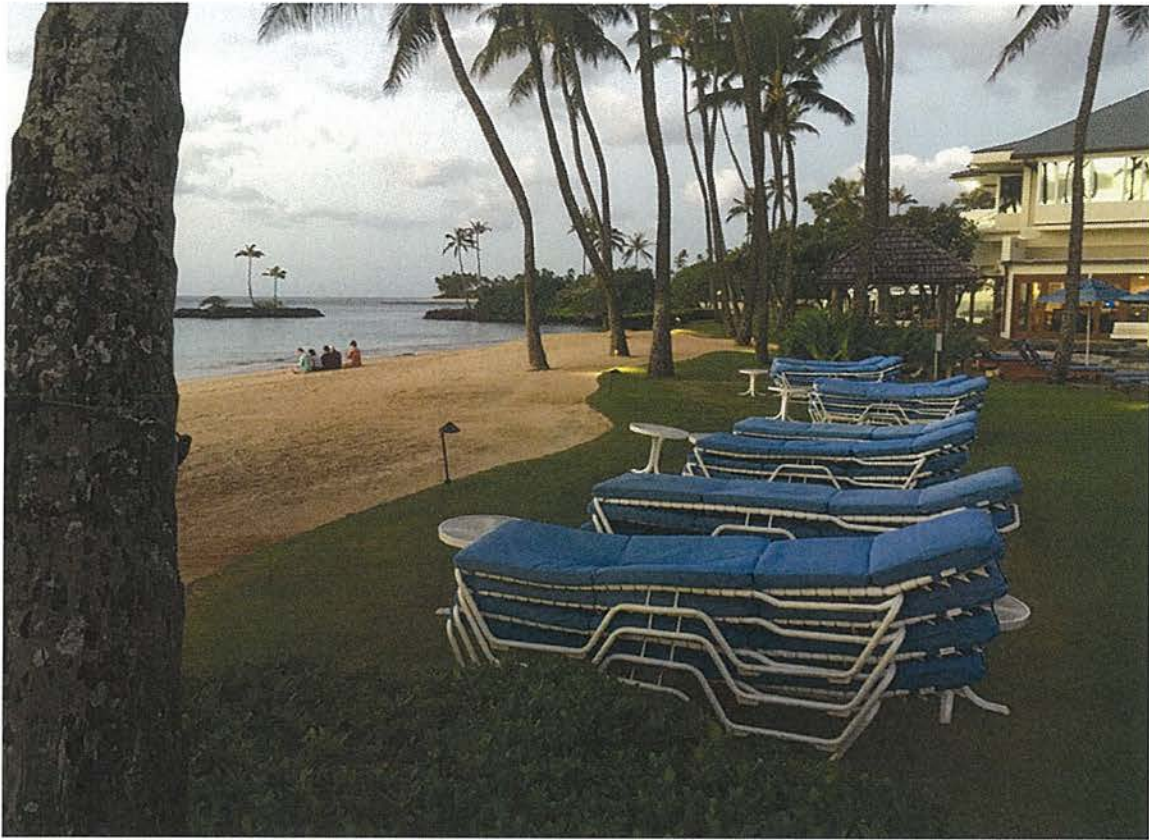
The two photos below from 7/3/19 show chairs preset and reserved, on the parcel. The signs on the tables say "reserved"



The two photos below from the morning of 5/24/19 show many chairs preset and stored on the parcel as well as the sandy portion of the beach.



The two photos below from the morning of 1/28/19 show many tables and chairs preset and stored on the parcel.



The cement marker at the far right of this photo where the grass meets the hedge, is the property line. Everything makai of that is on the RP, in violation of their RP.

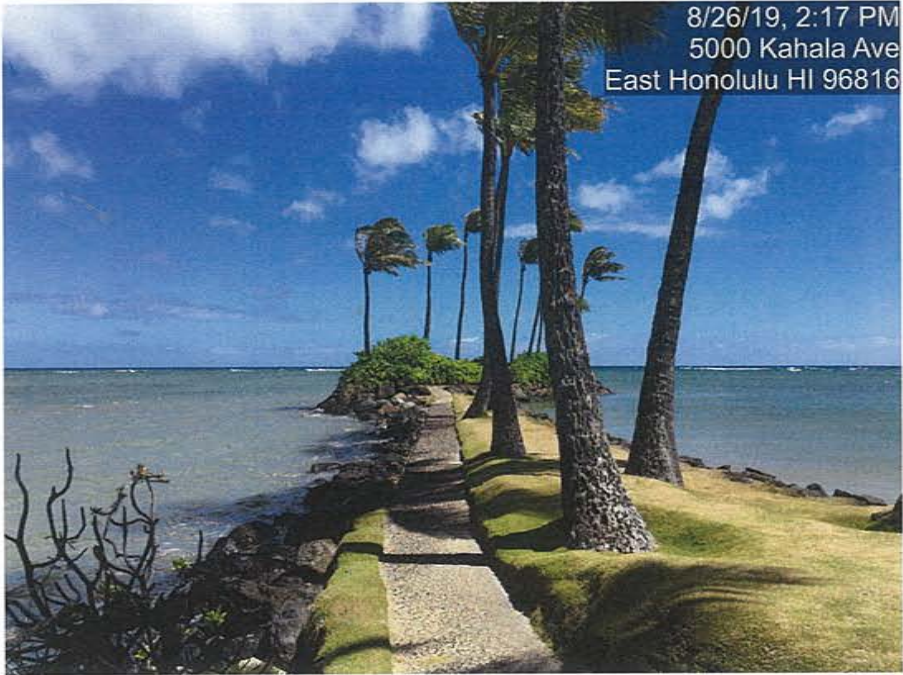


The photos below from the morning of 1/10/19 show many chairs and tables preset and stored on the parcel.

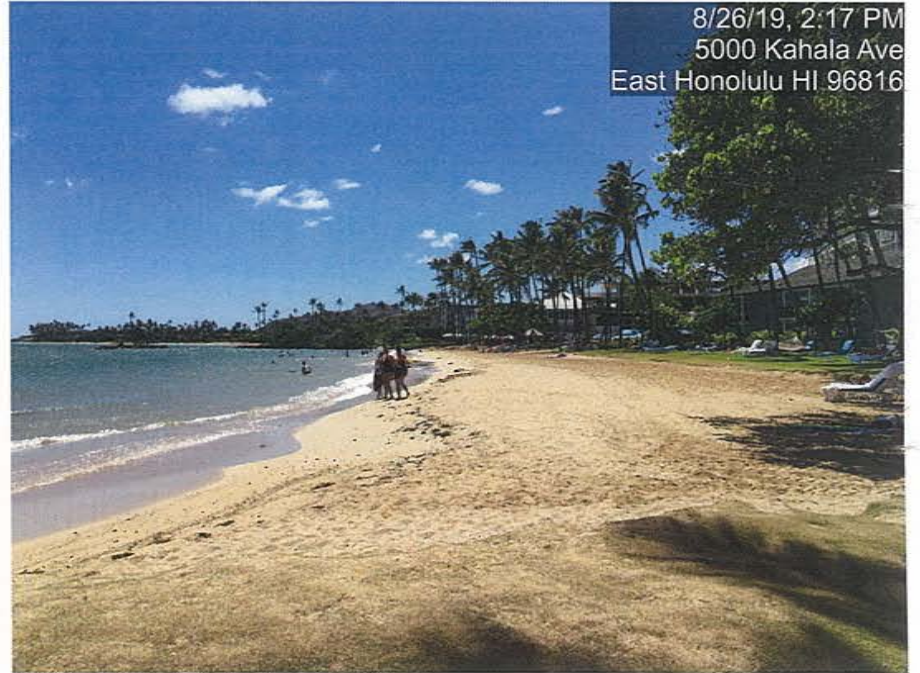




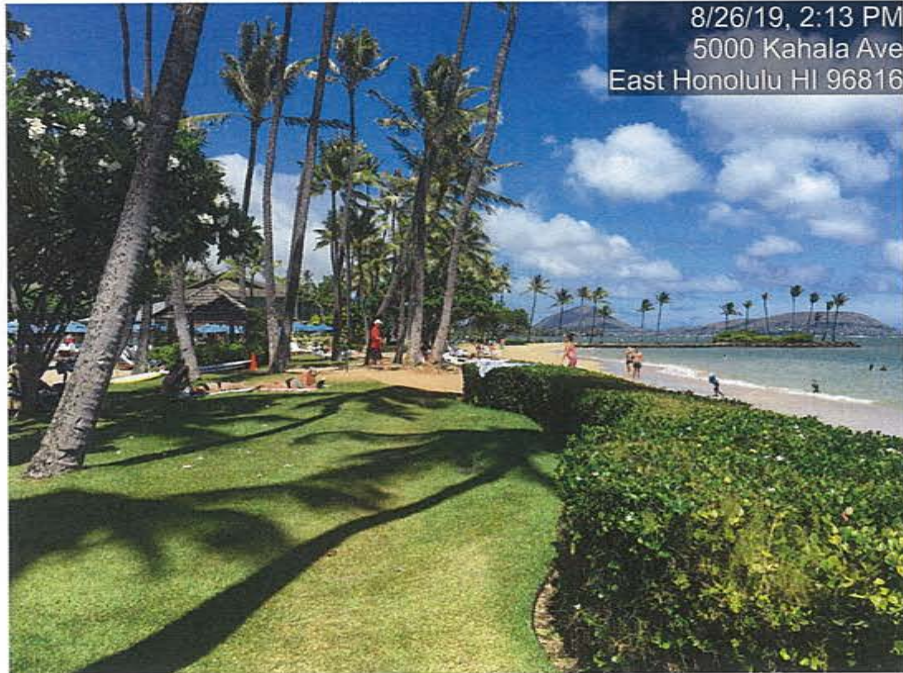
EXHIBIT D



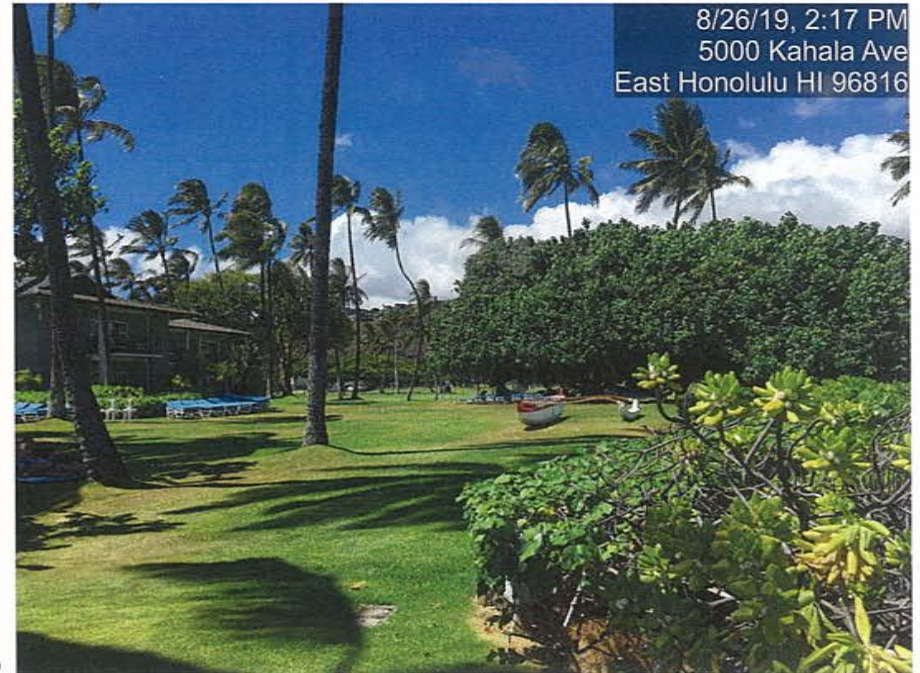
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5000 Kahala Ave
East Honolulu HI 96816



8/26/19, 2:17 PM
5000 Kahala Ave
East Honolulu HI 96816

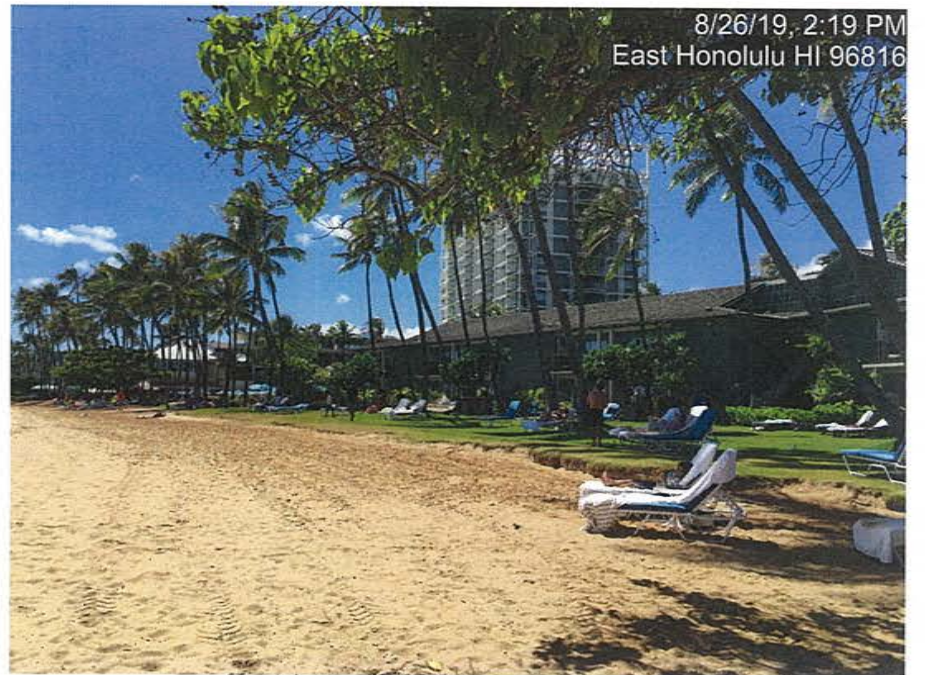
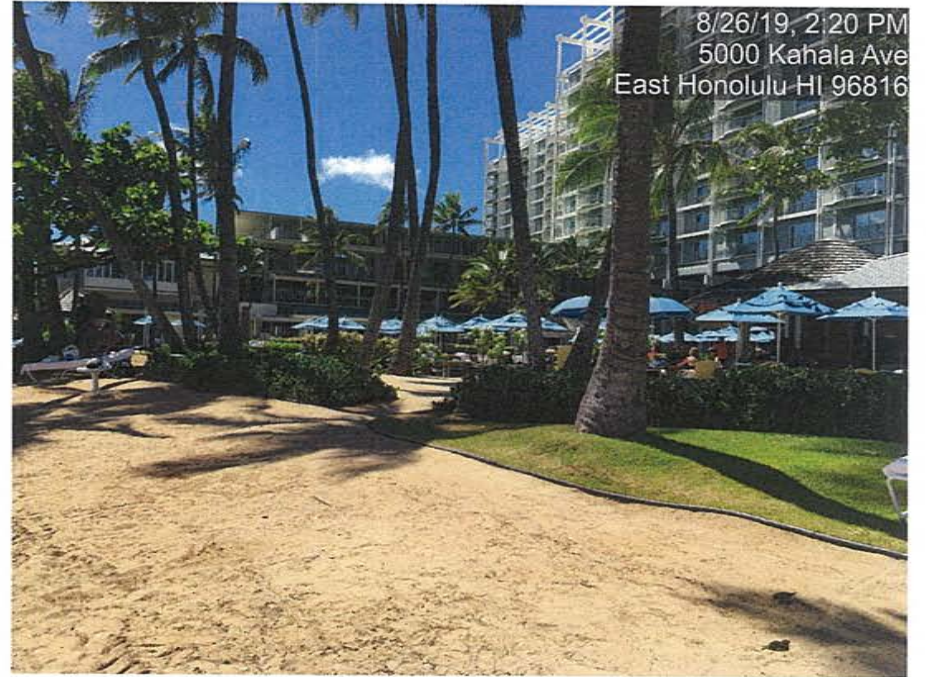


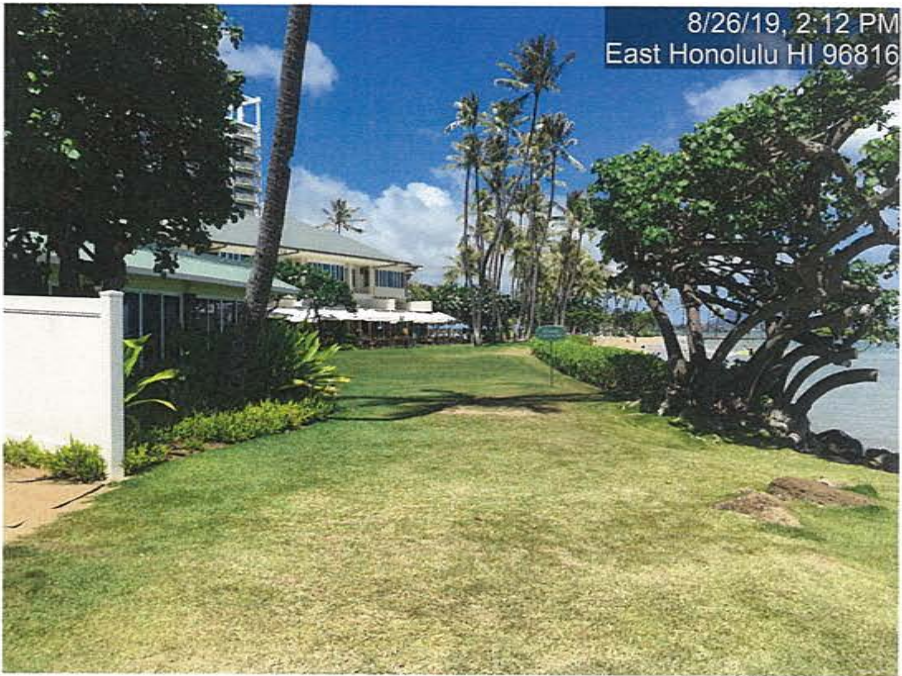
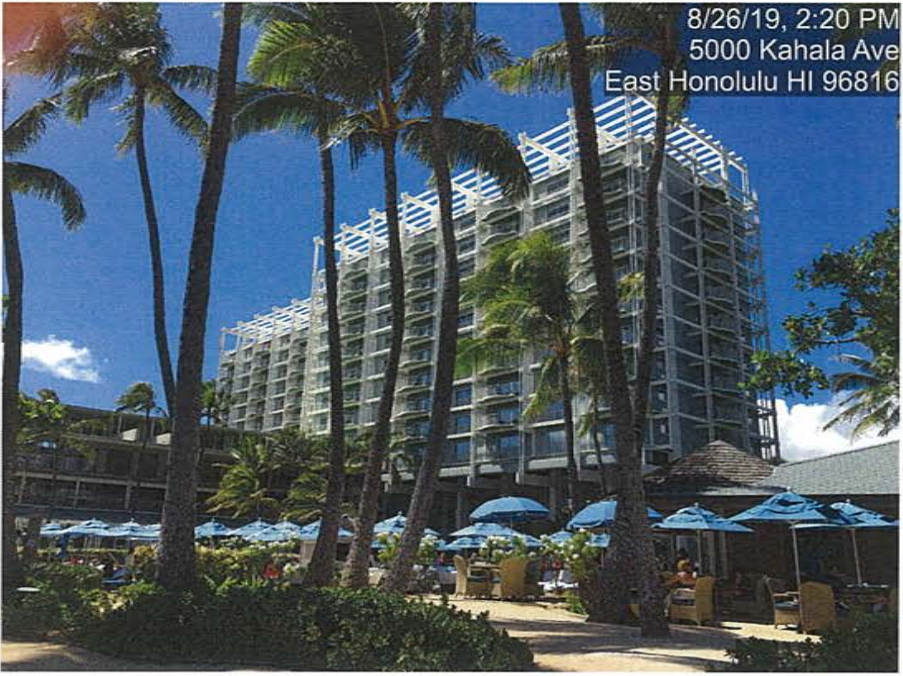
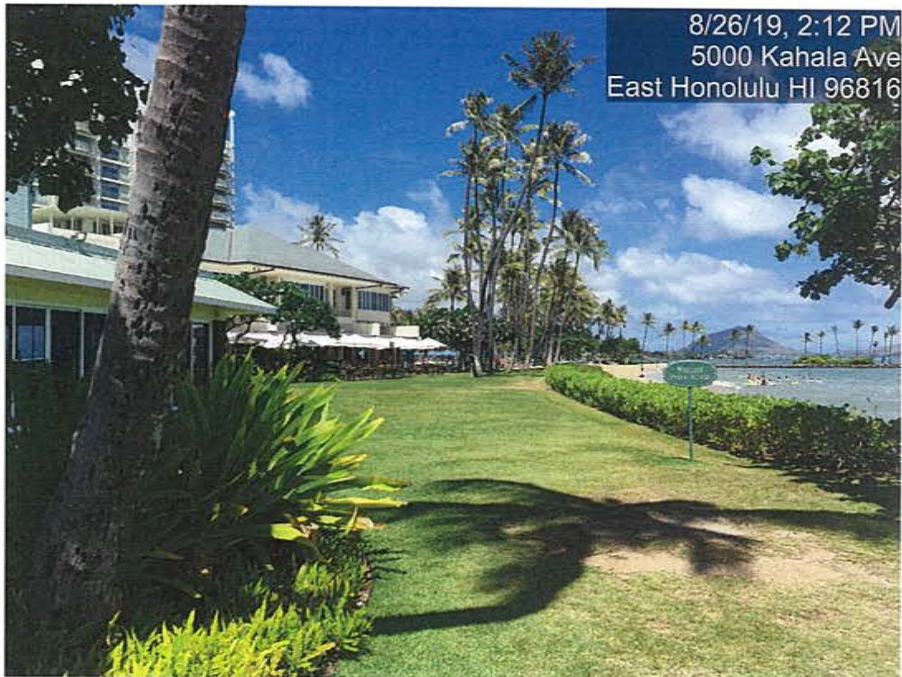
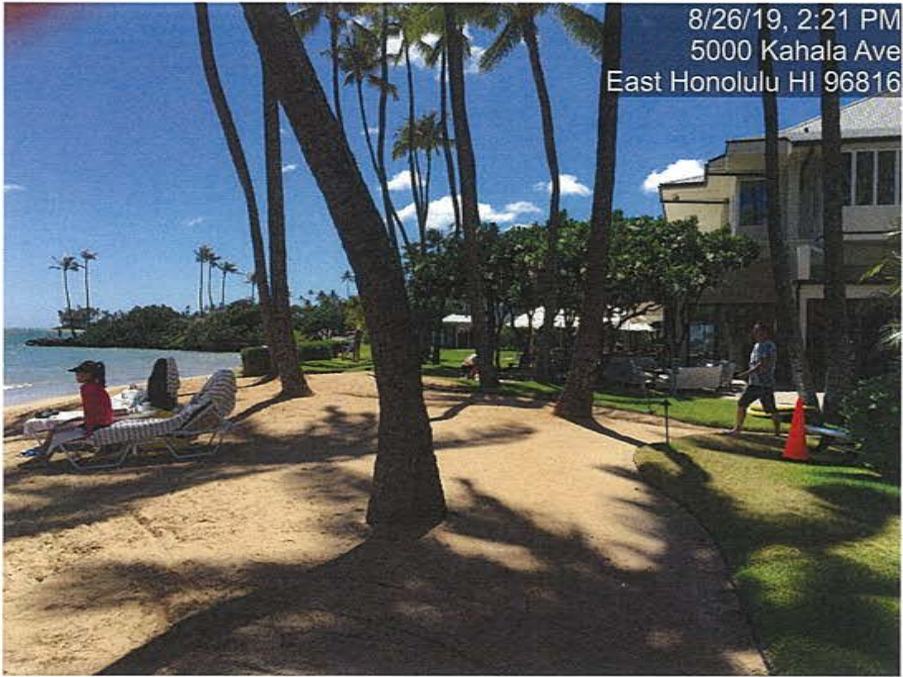
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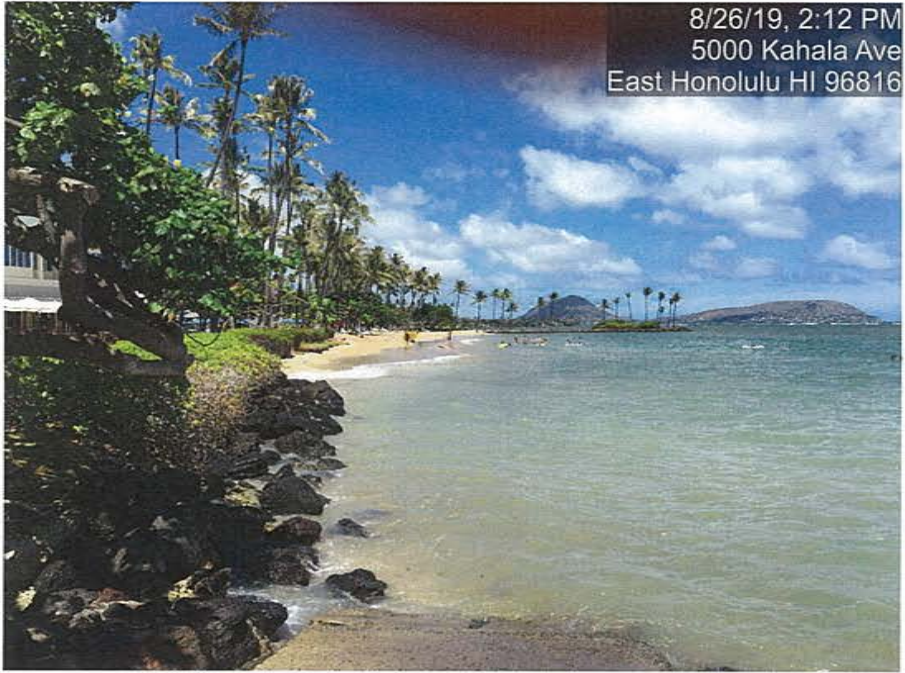


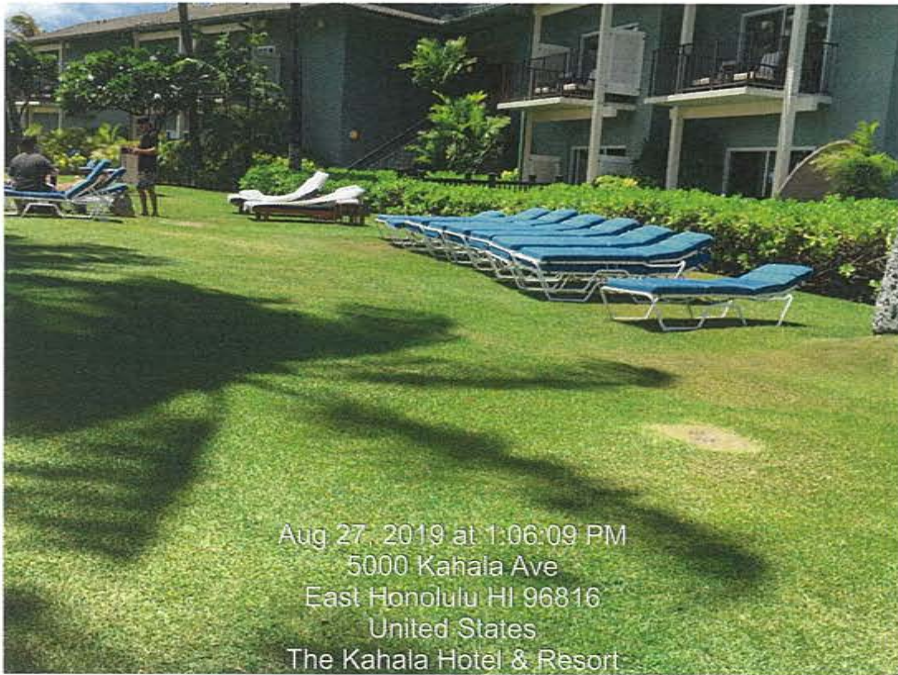
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EXHIBIT "D" 8-26-19

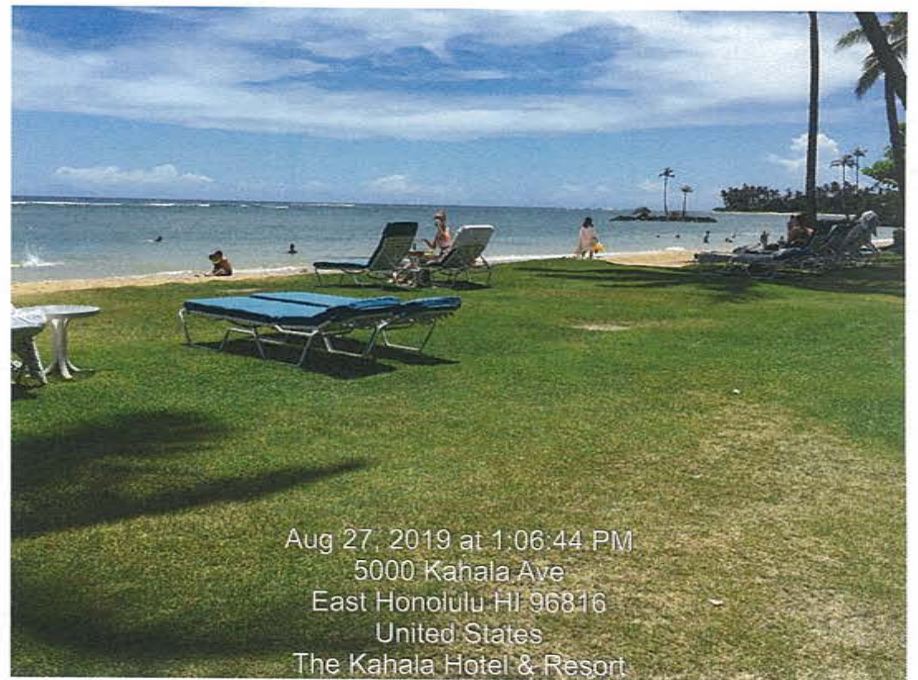




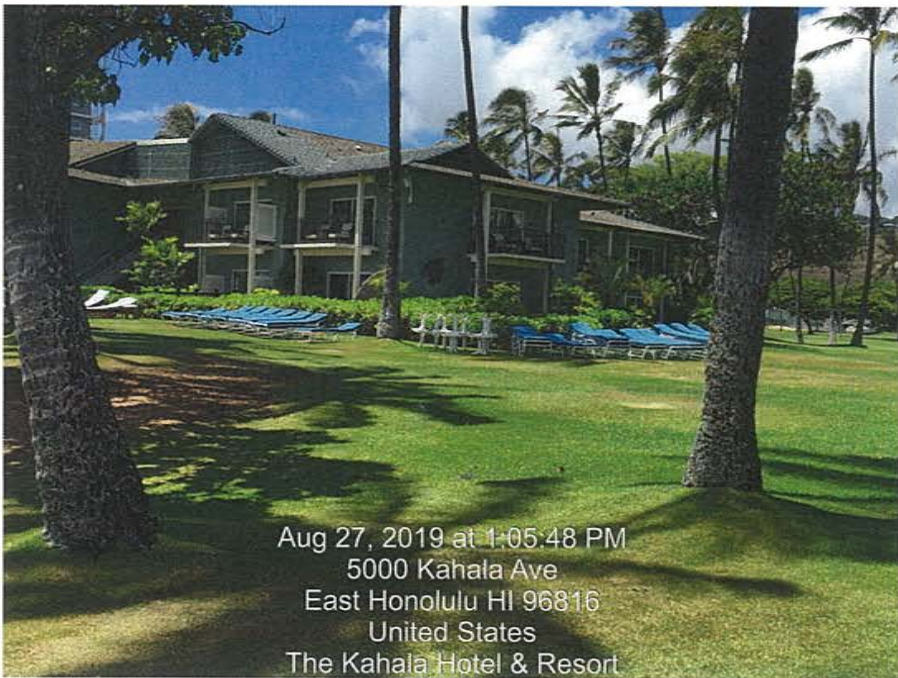




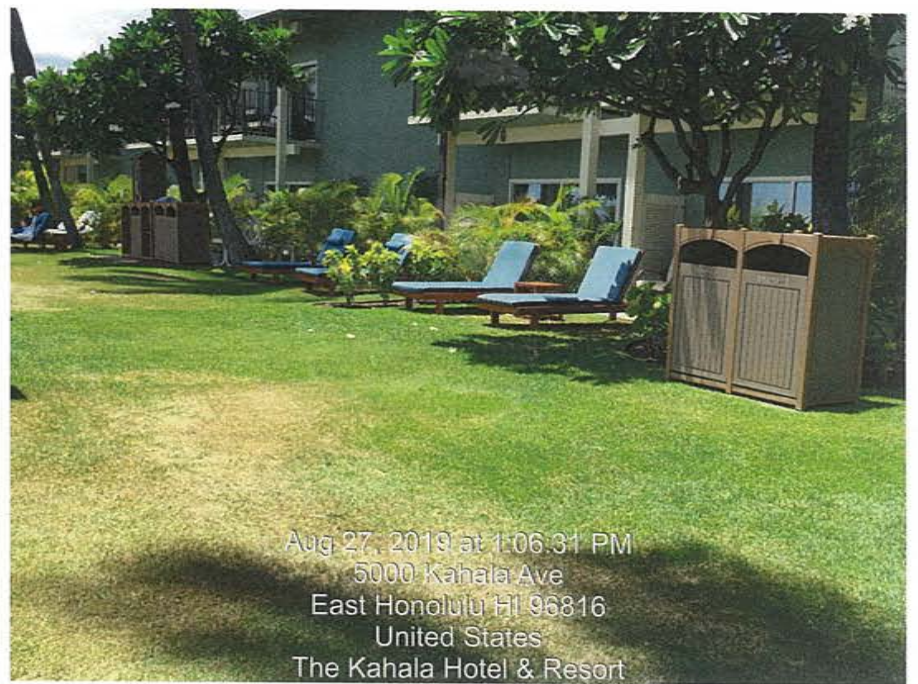
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United States
The Kahala Hotel & Resort



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United States
The Kahala Hotel & Resort

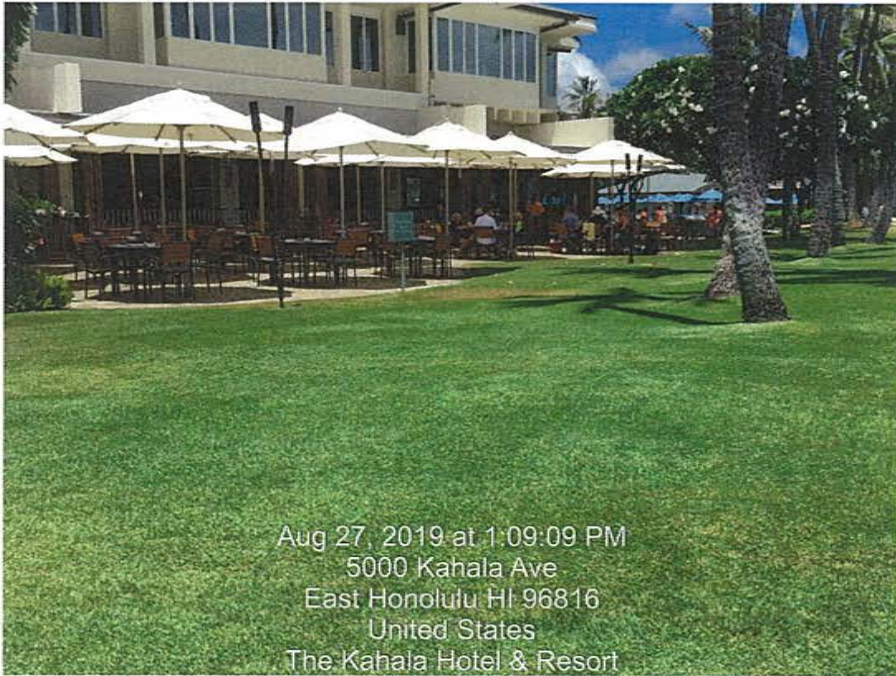


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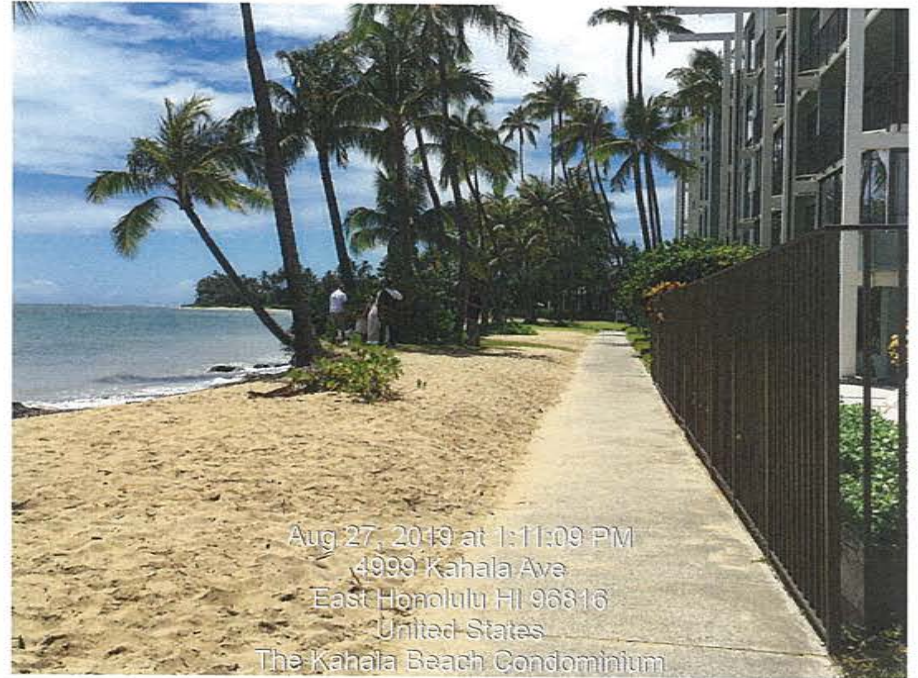


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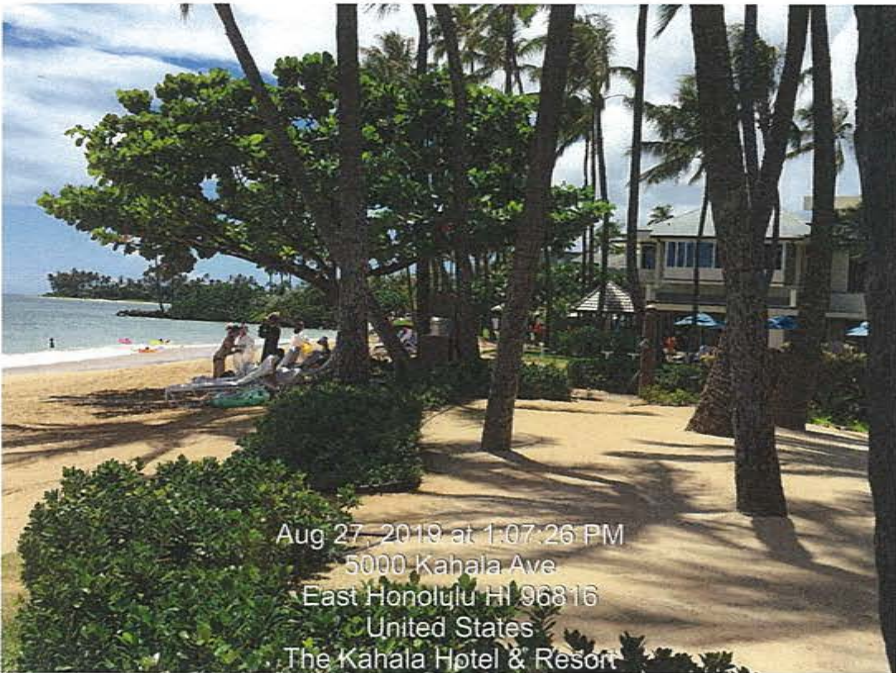
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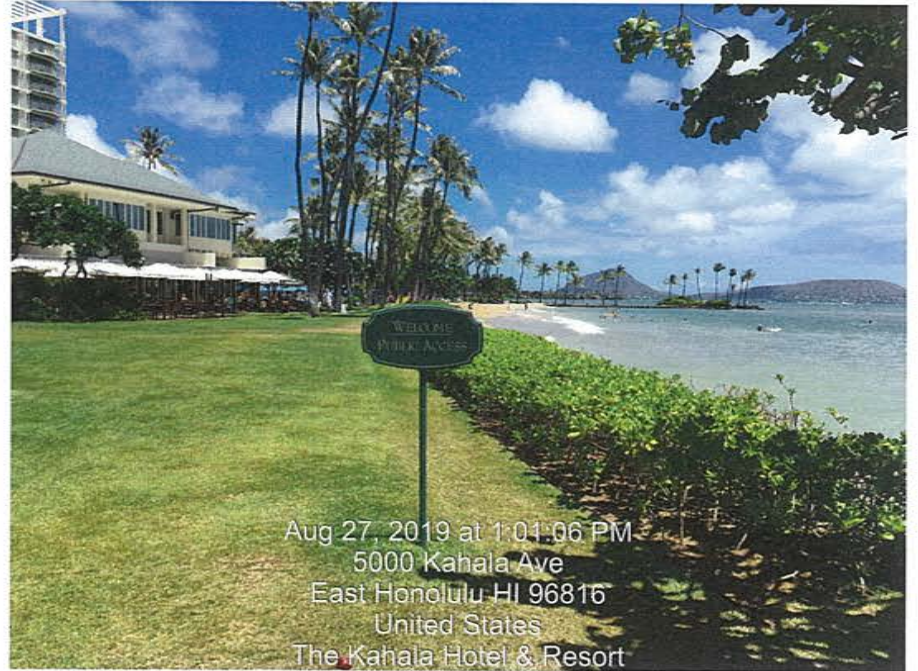
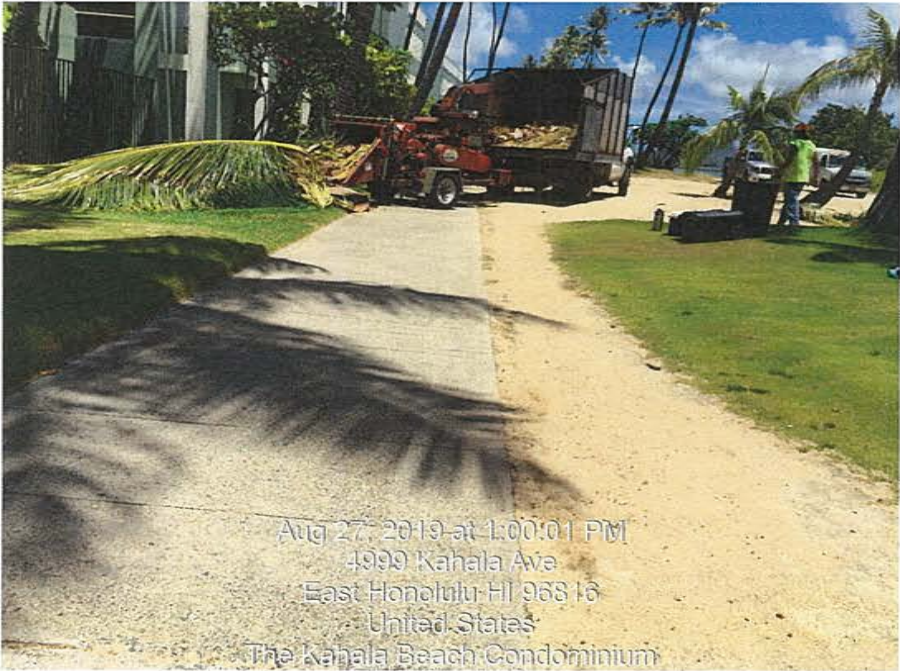
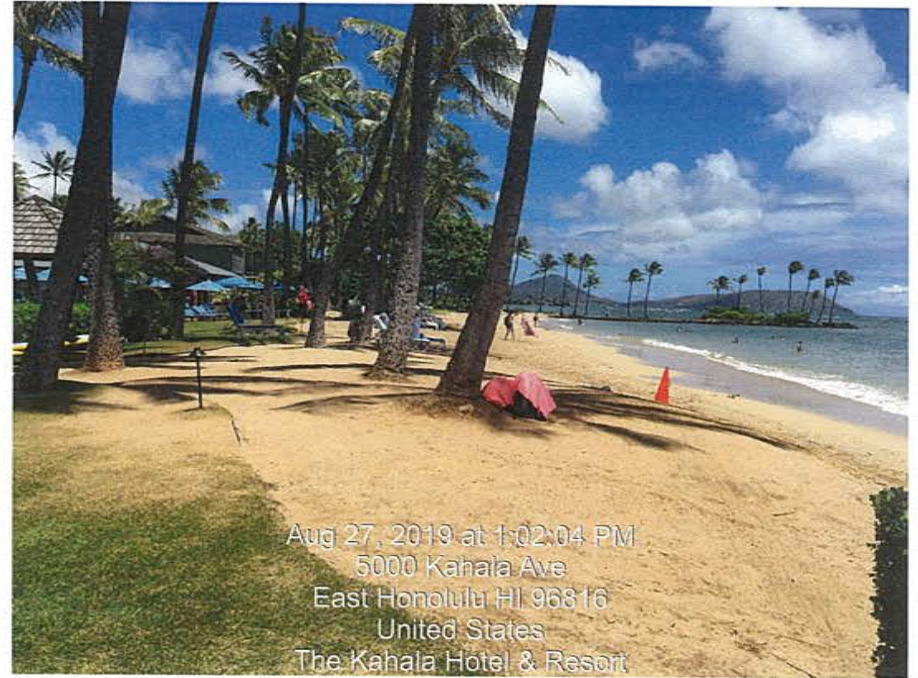
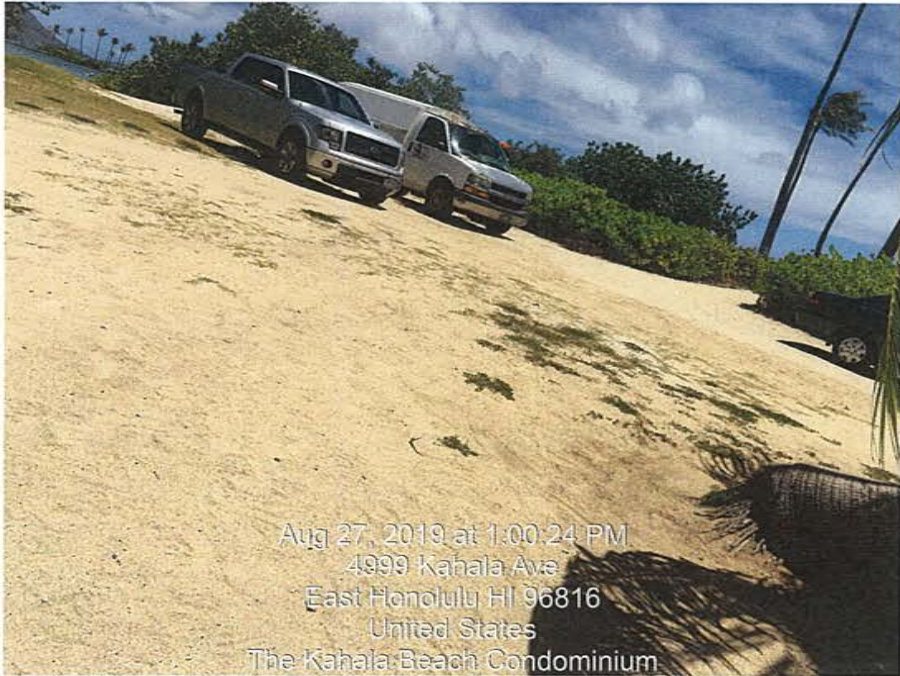
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The Kahala Beach Condominium

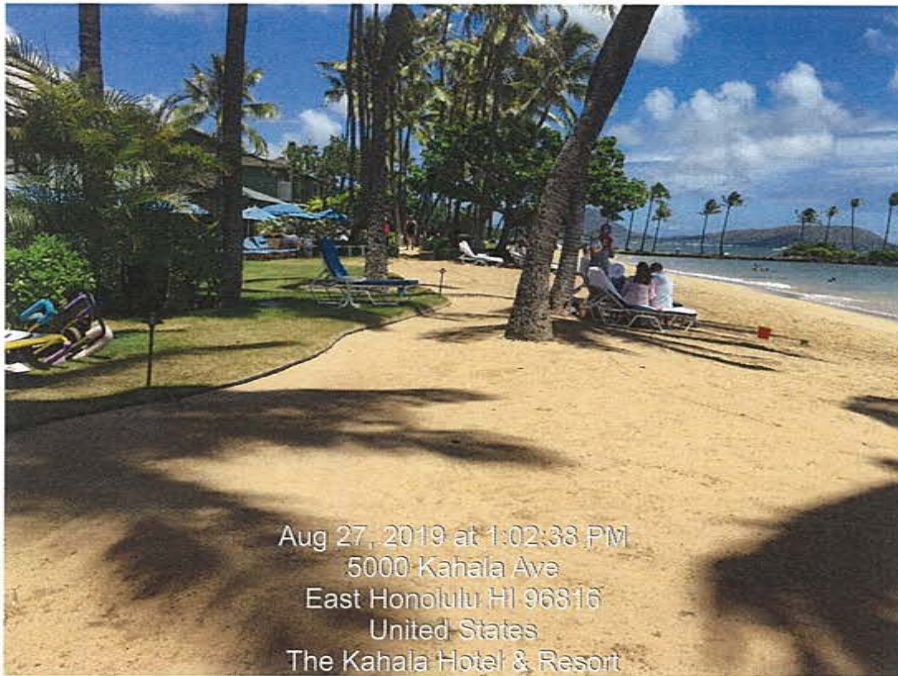


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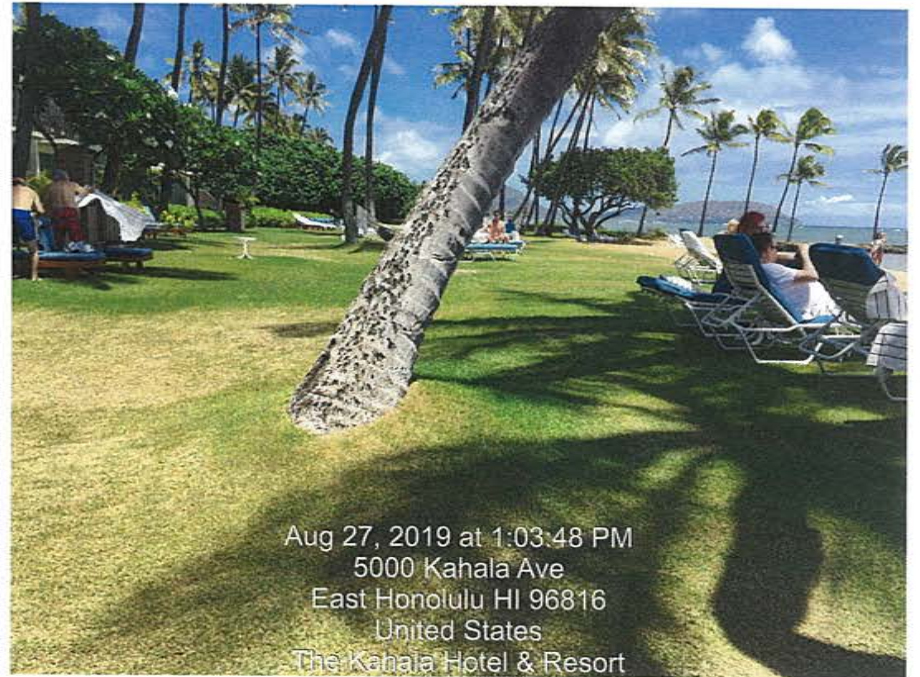


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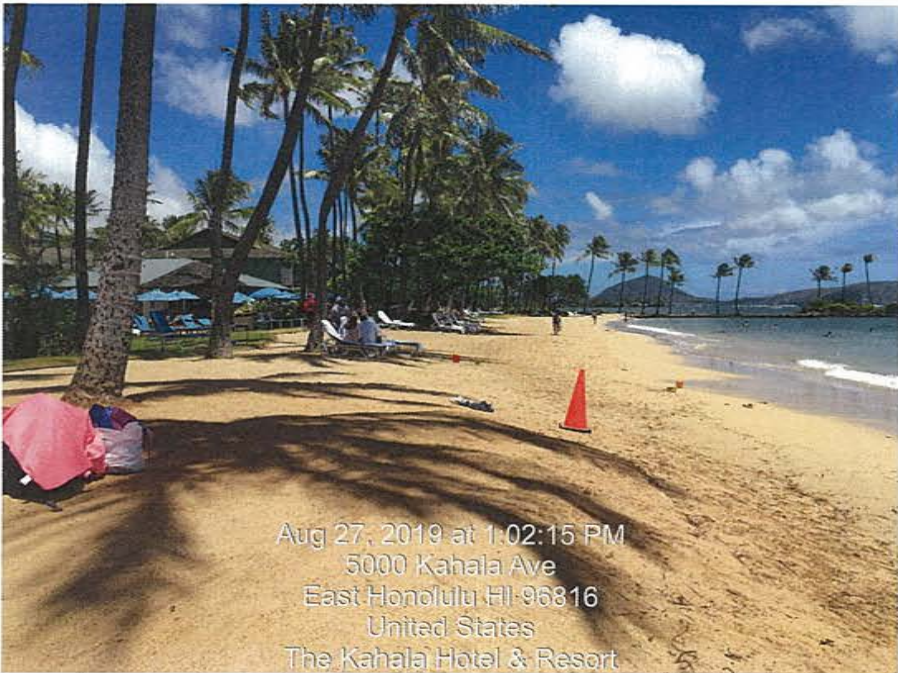




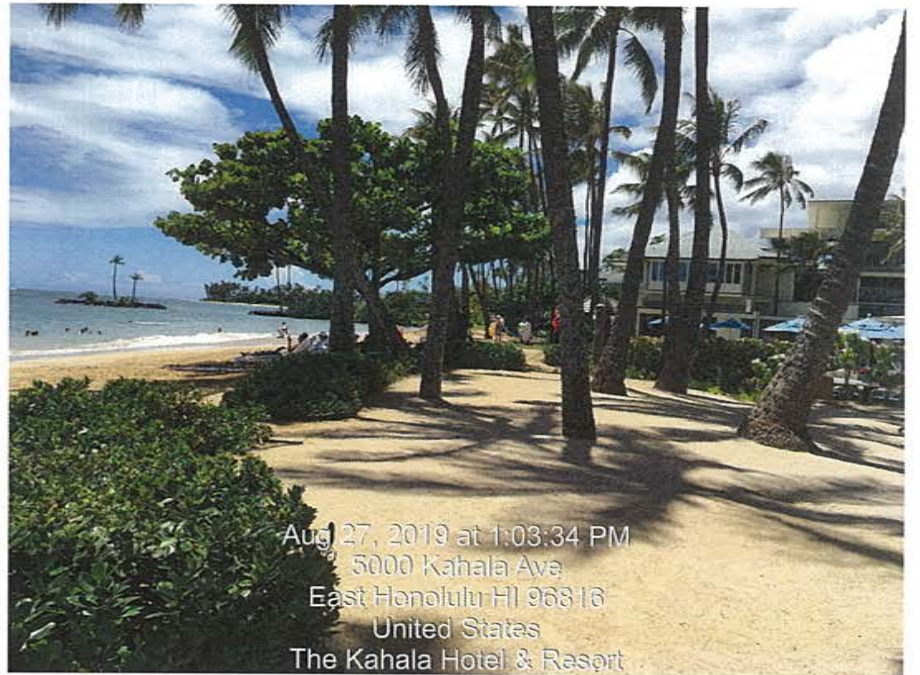
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The Kahala Hotel & Resort



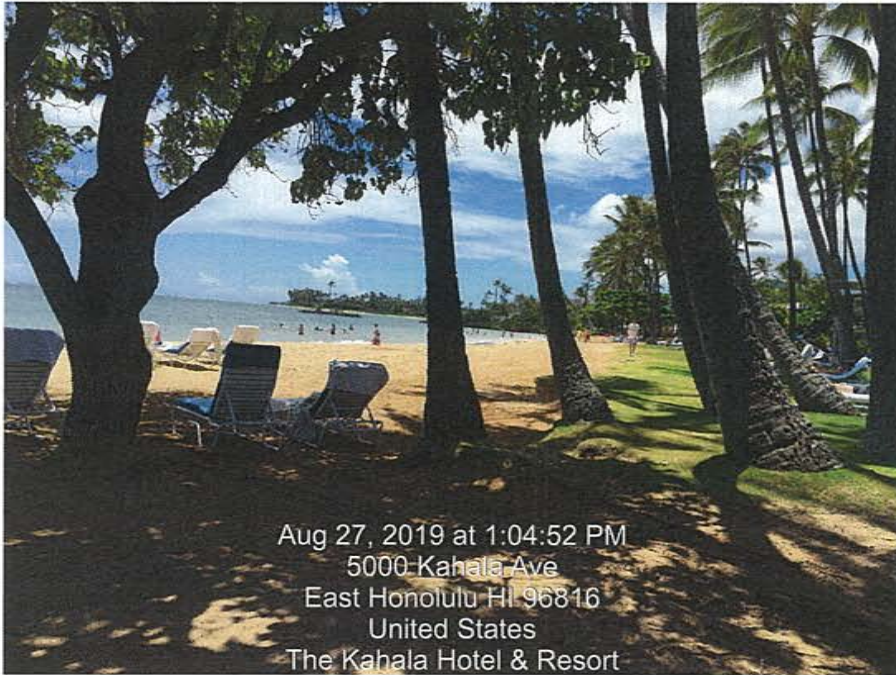
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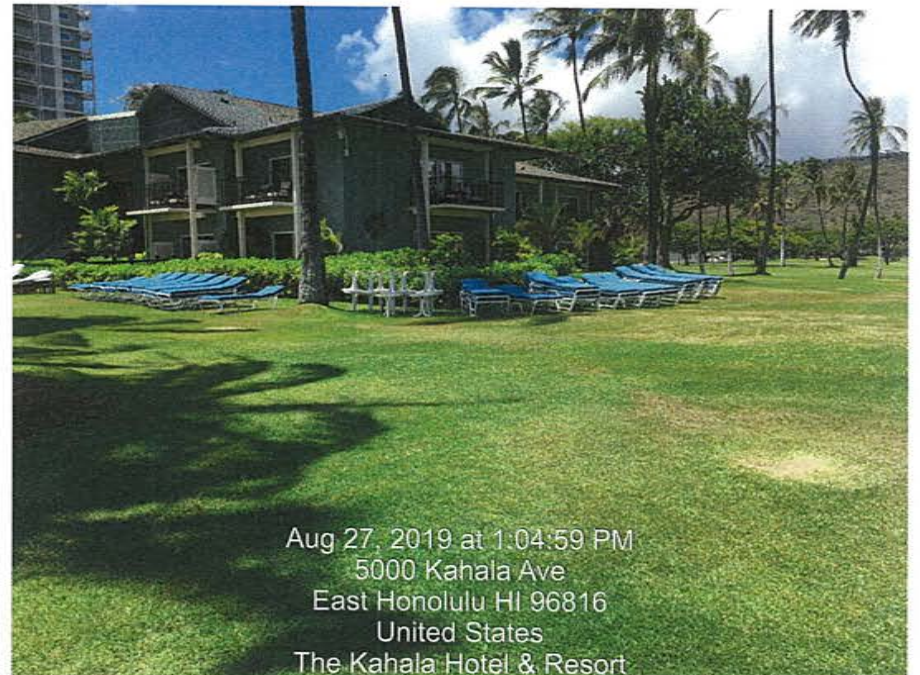
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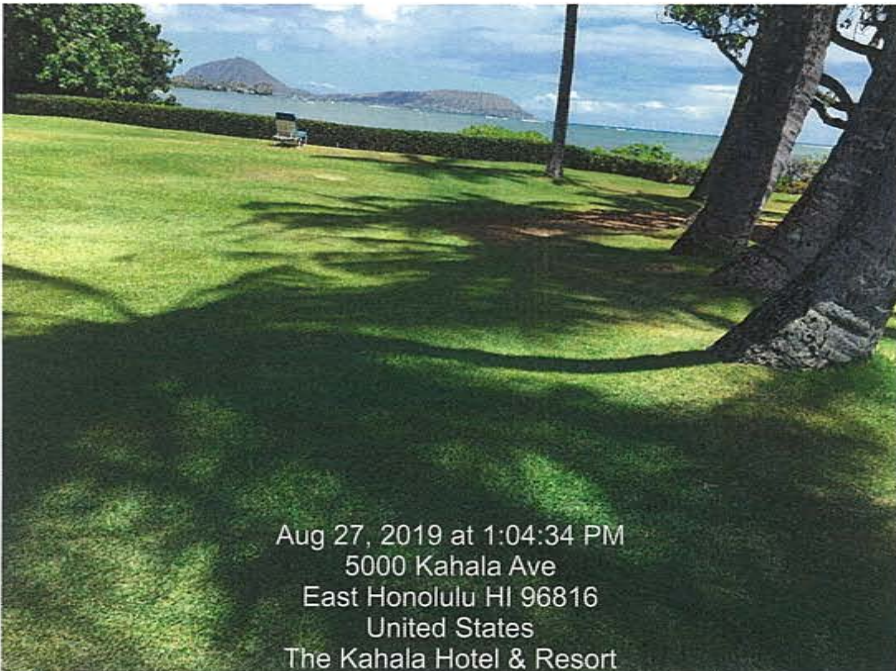
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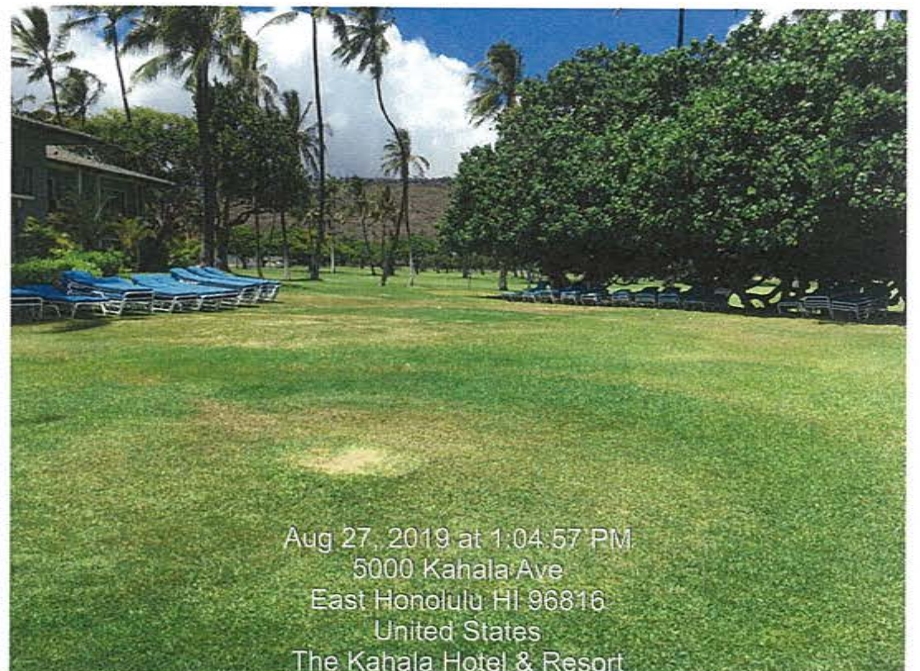
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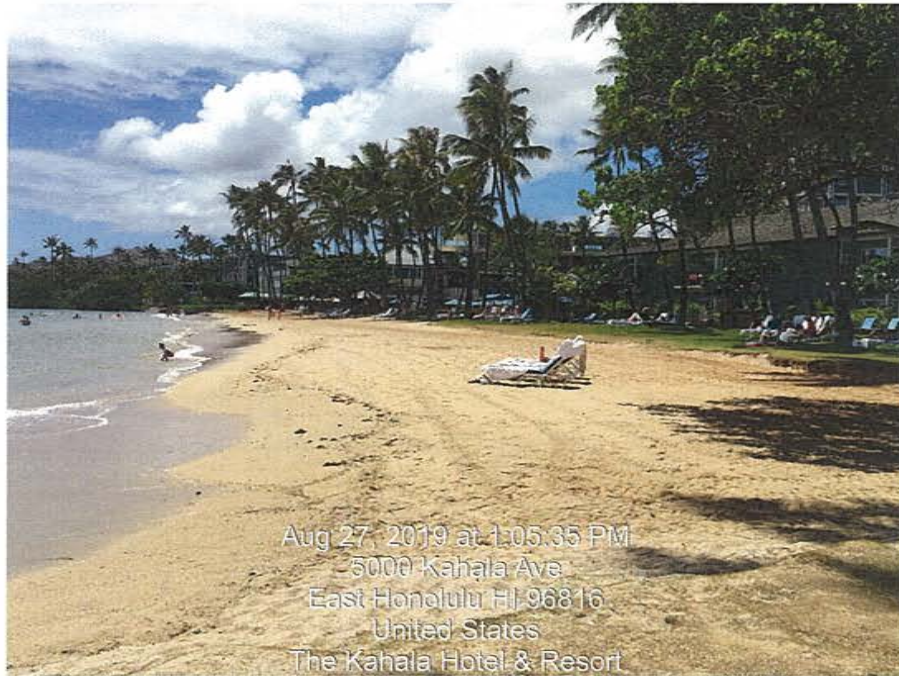
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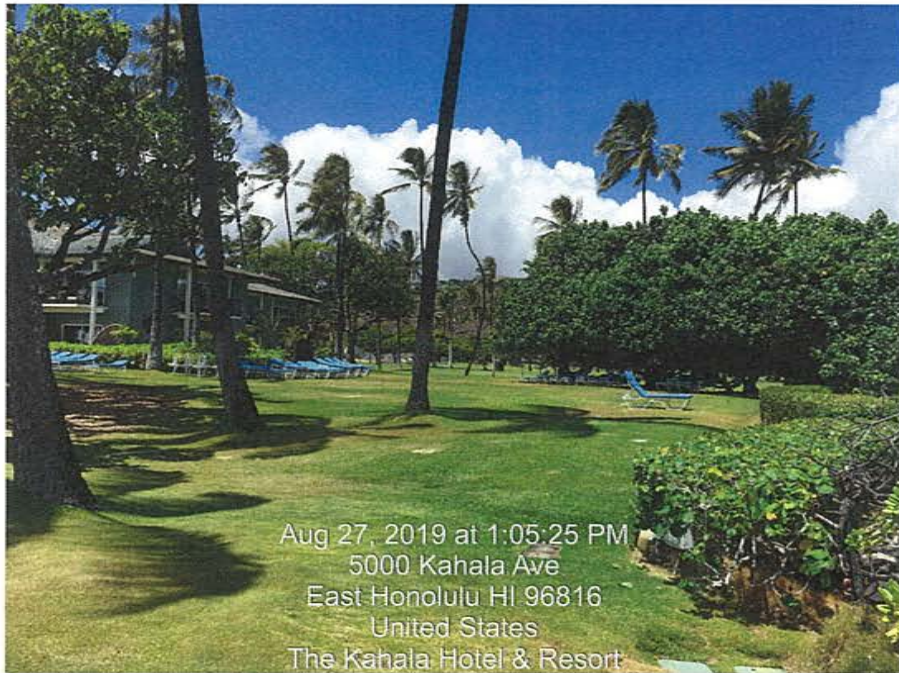
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The Kahala Hotel & Resort



Aug 27, 2019 at 1:04:57 PM
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East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Aug 27, 2019 at 1:05:35 PM
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East Honolulu HI 96816
United States
The Kahala Hotel & Resort



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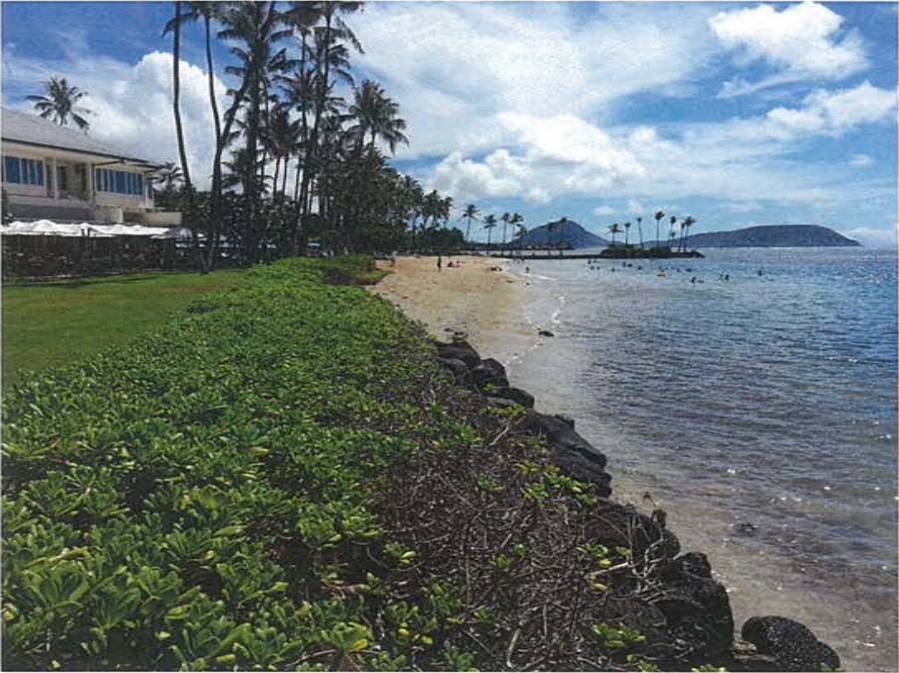
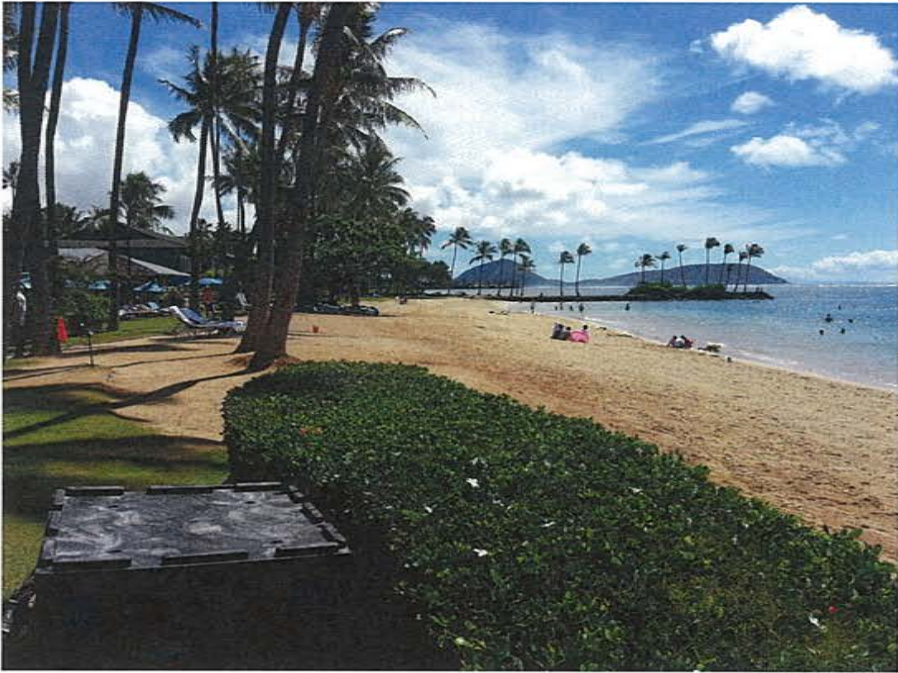
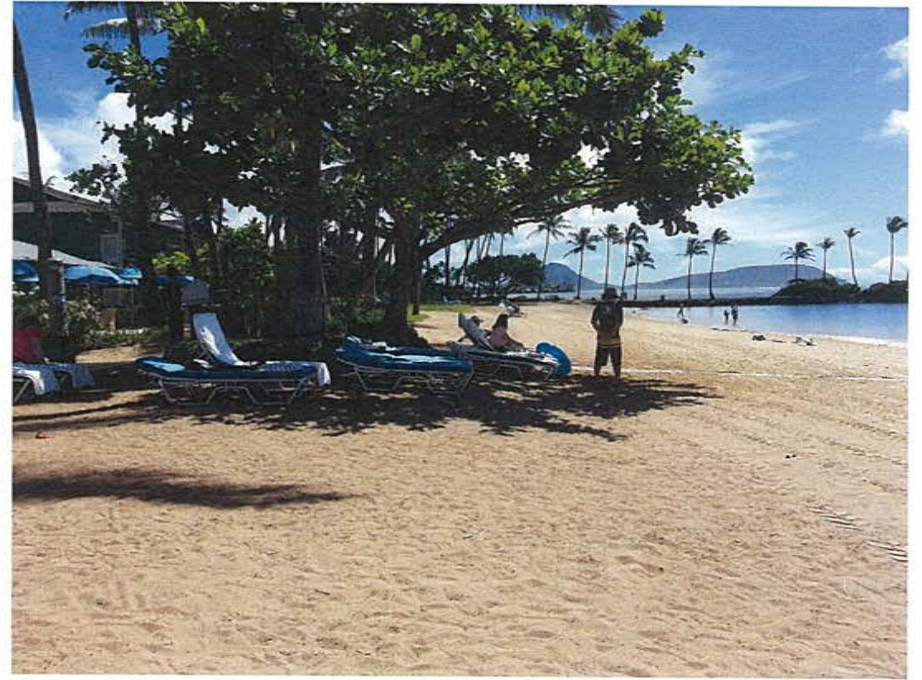
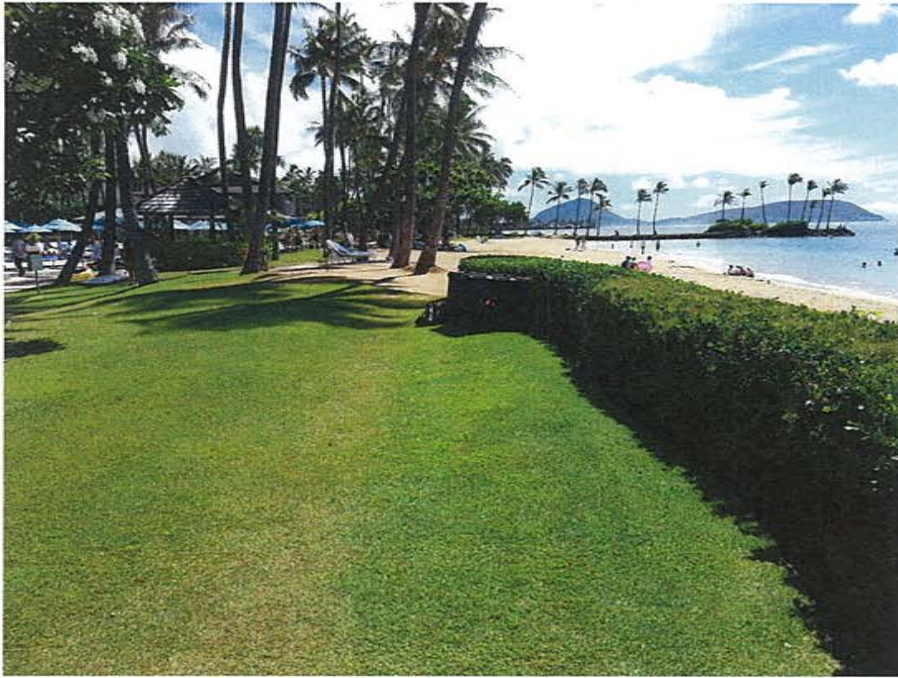
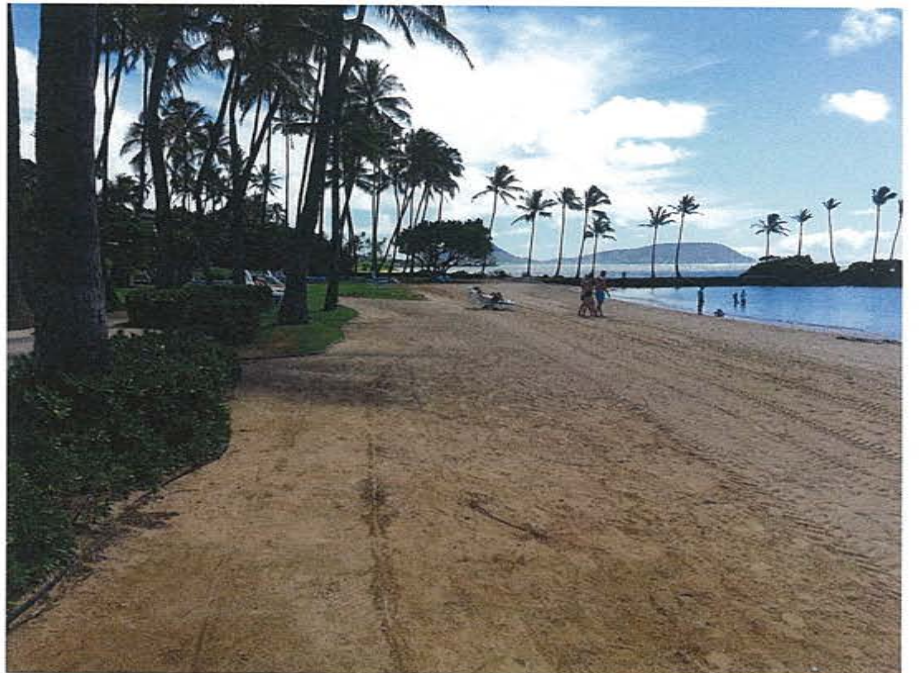
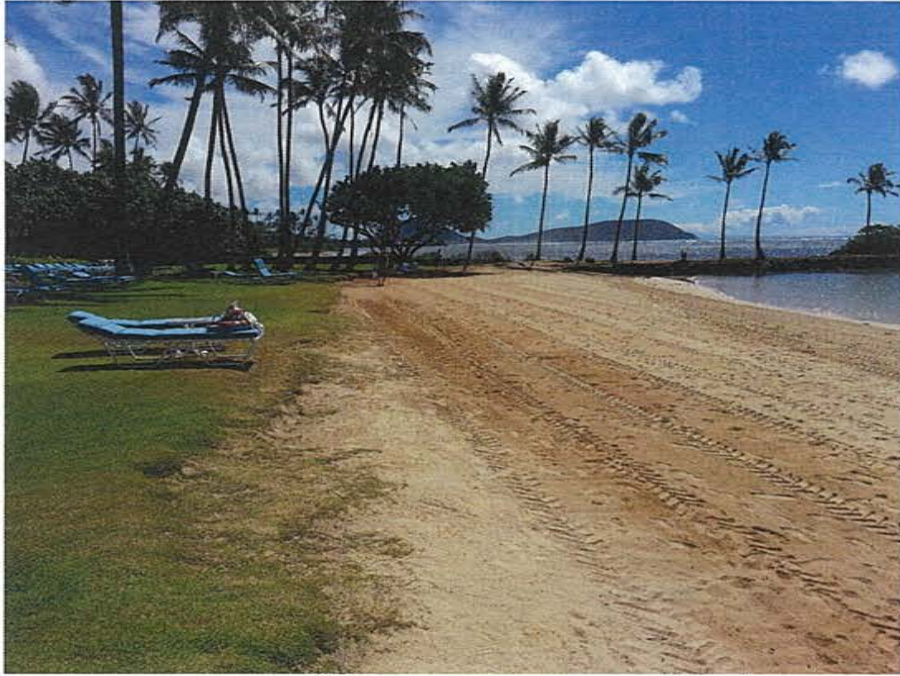


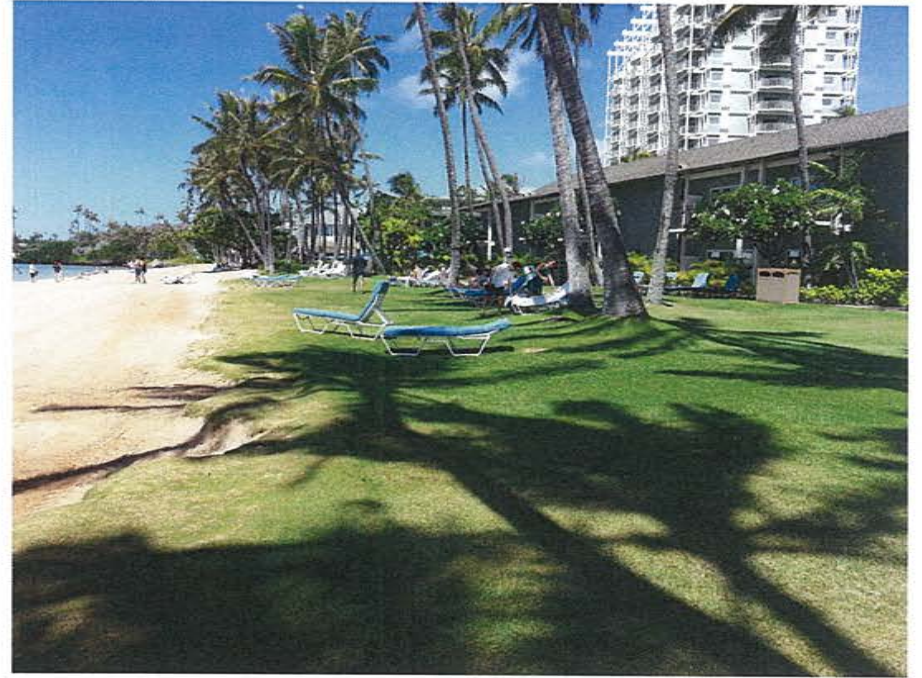
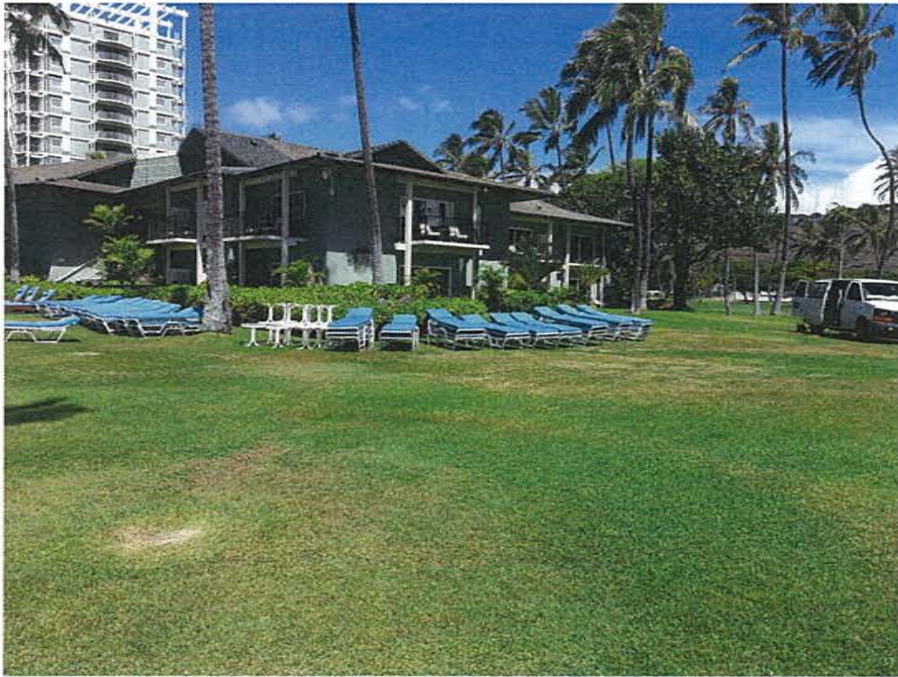
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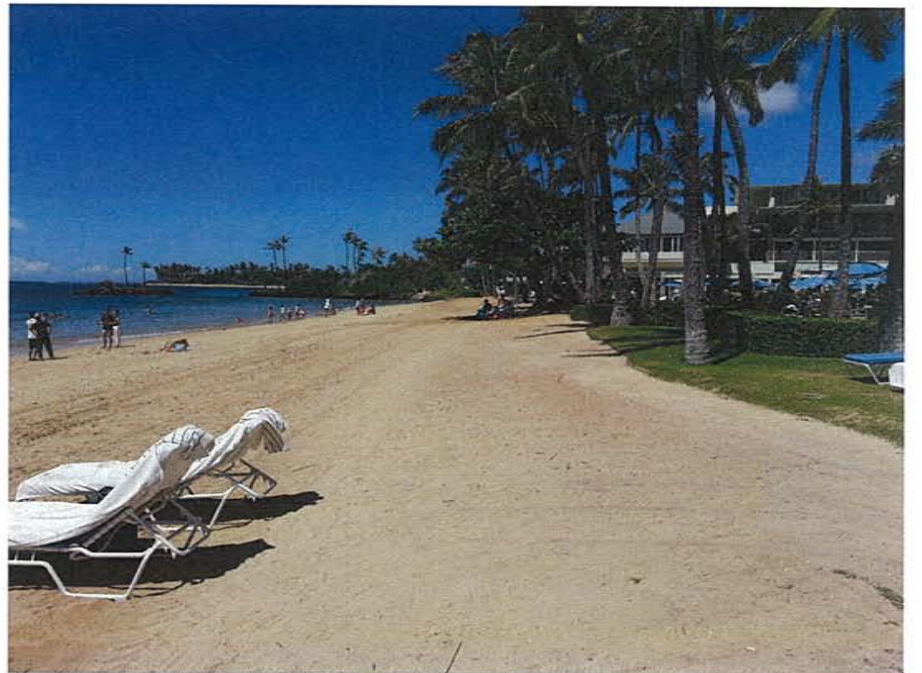
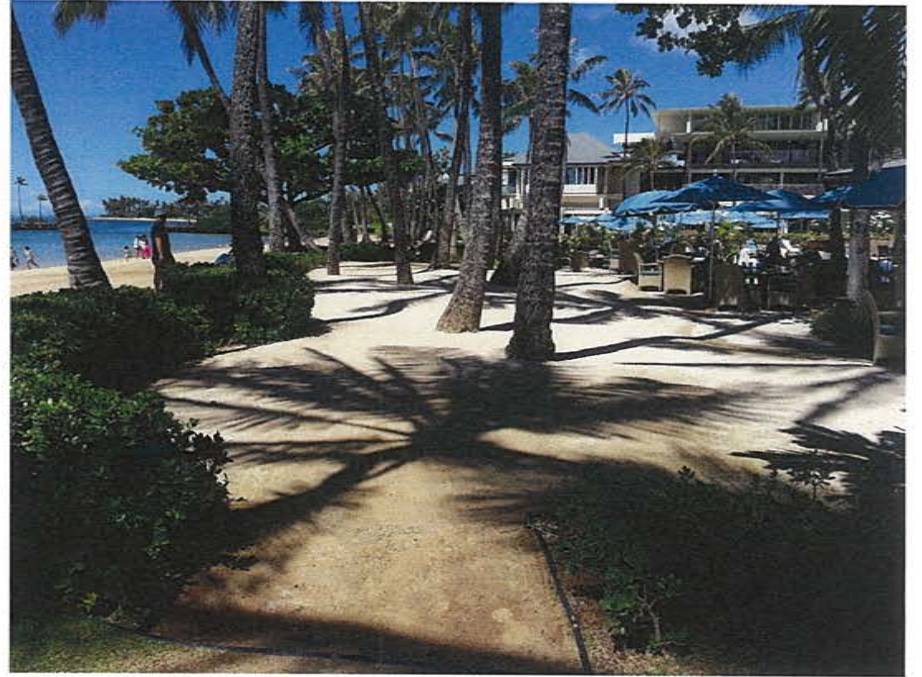
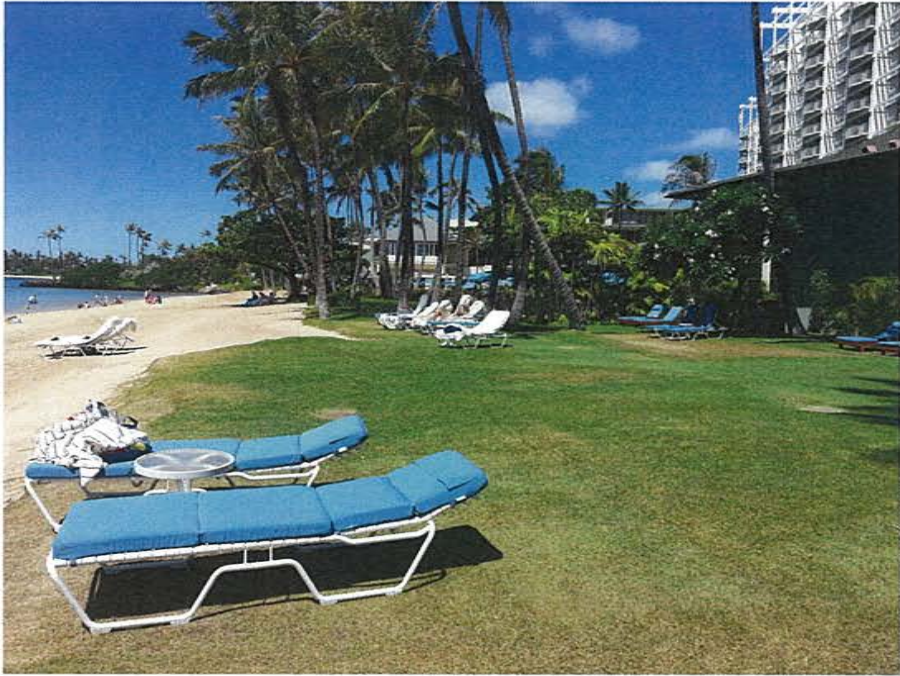








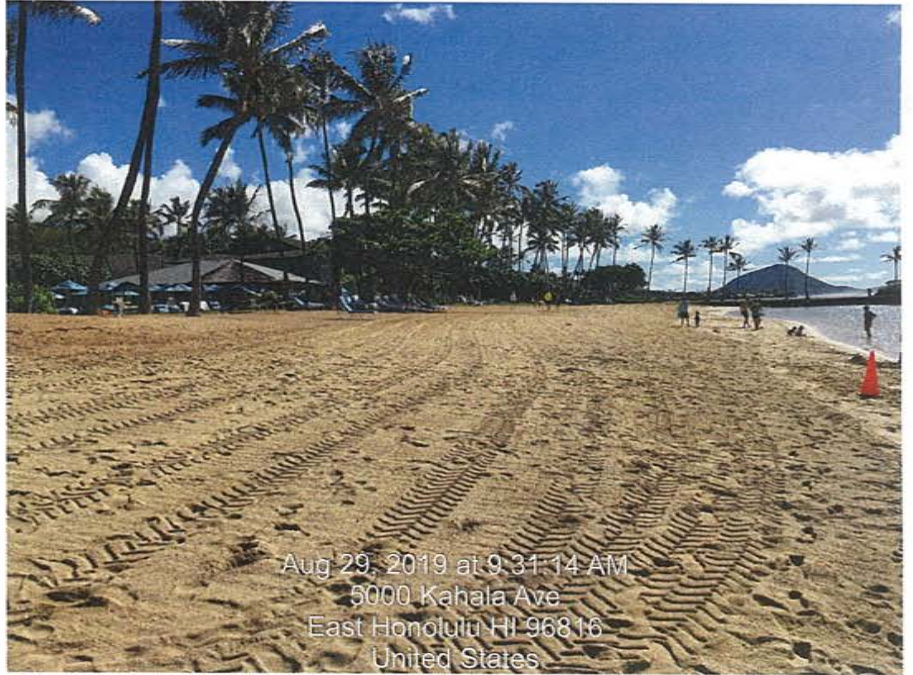




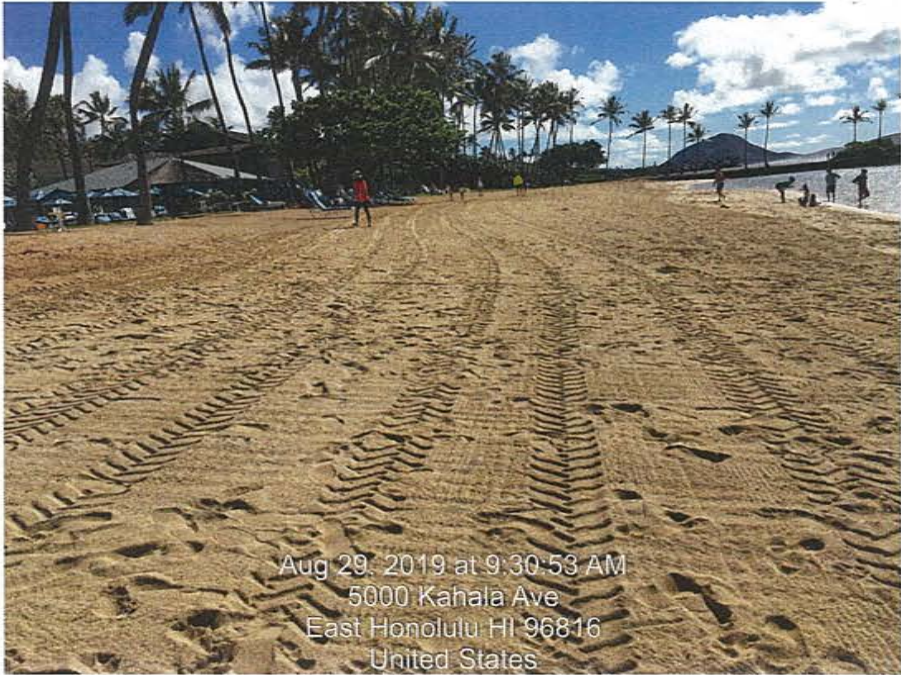




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United States



Aug 29, 2019 at 9:31:14 AM
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East Honolulu HI 96816
United States

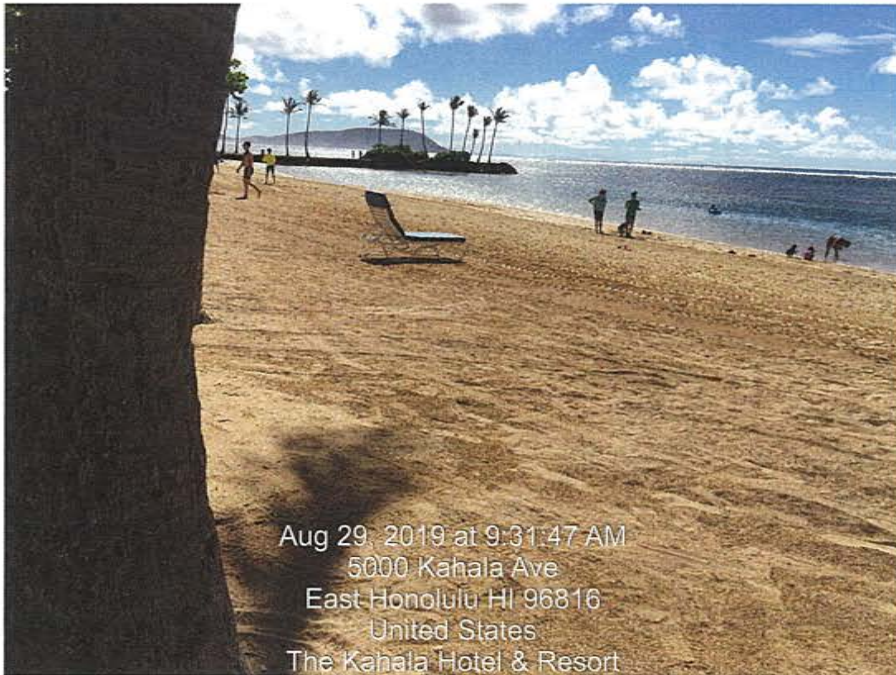


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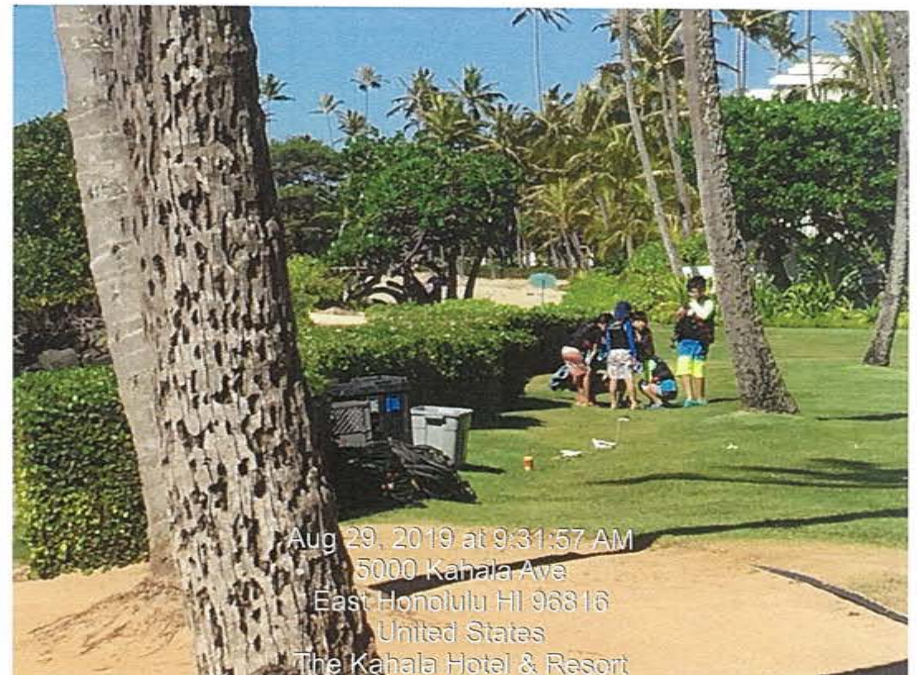
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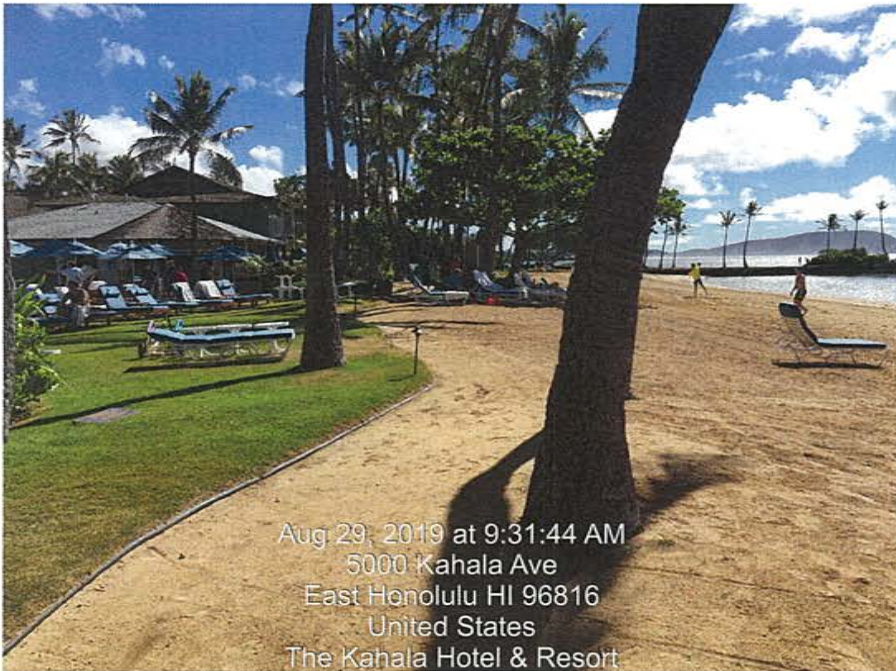
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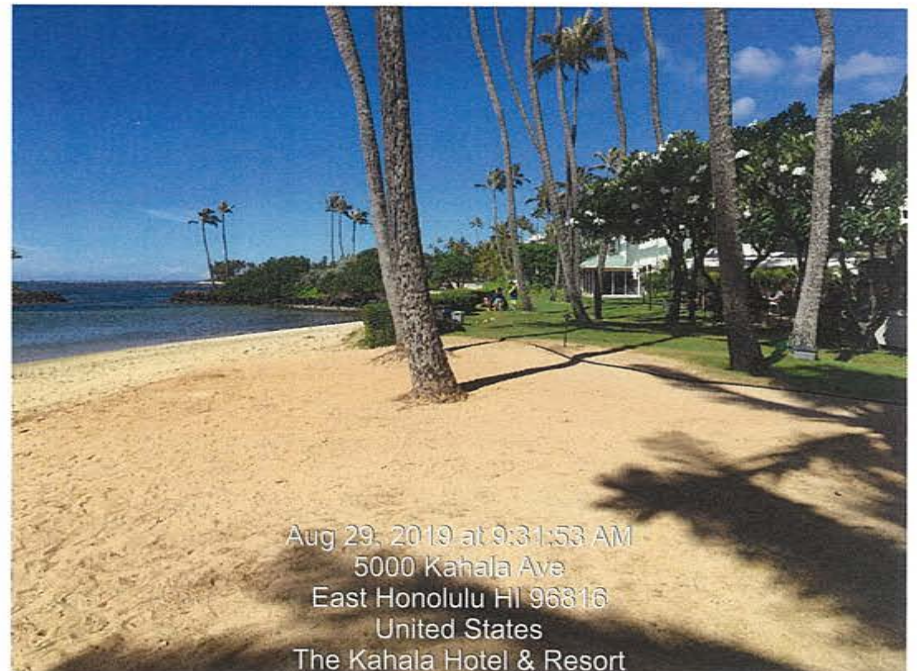
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United States
The Kahala Hotel & Resort



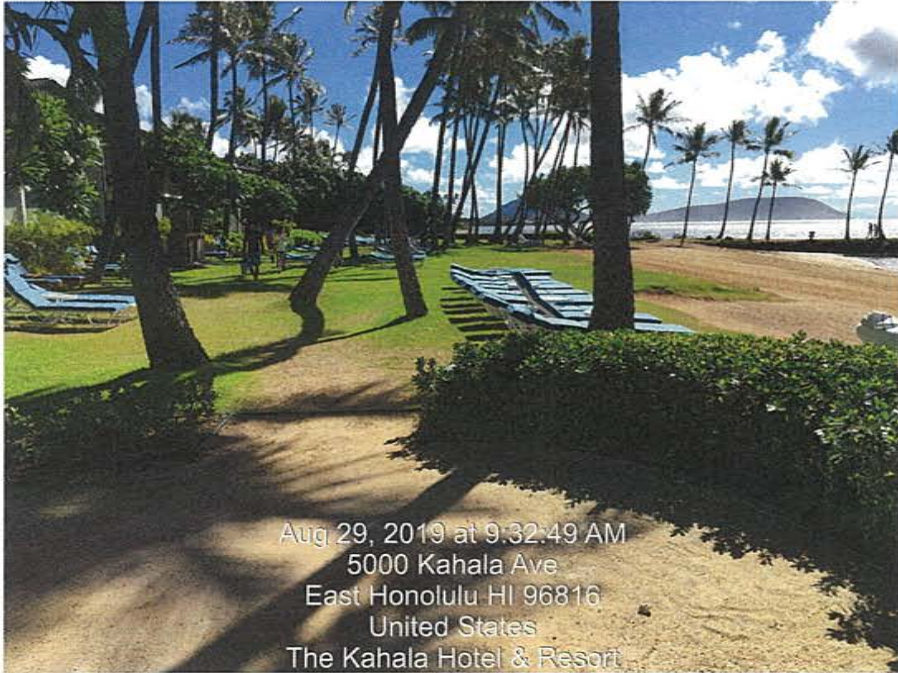
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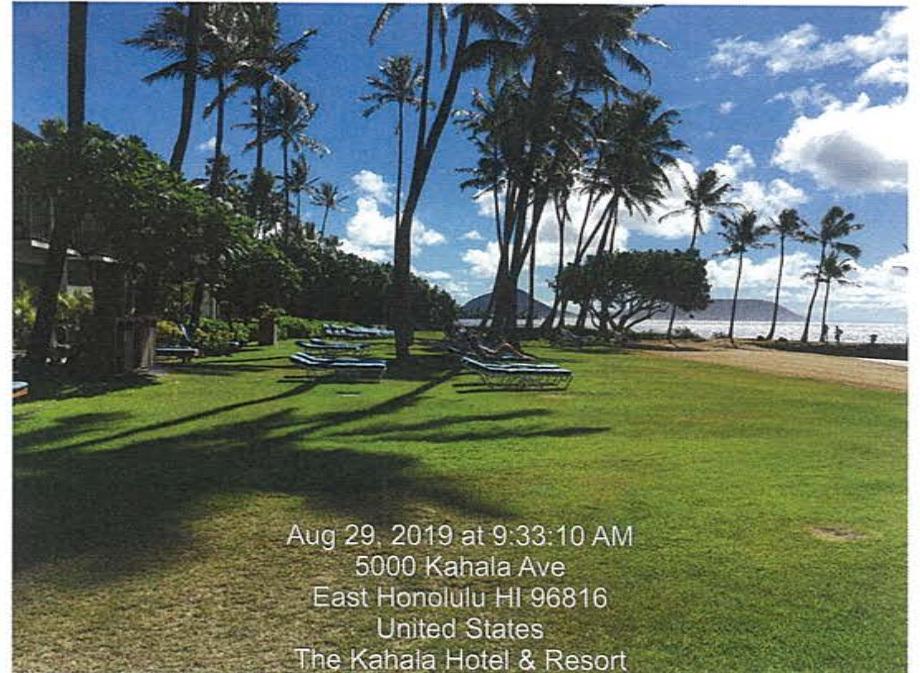
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The Kahala Hotel & Resort



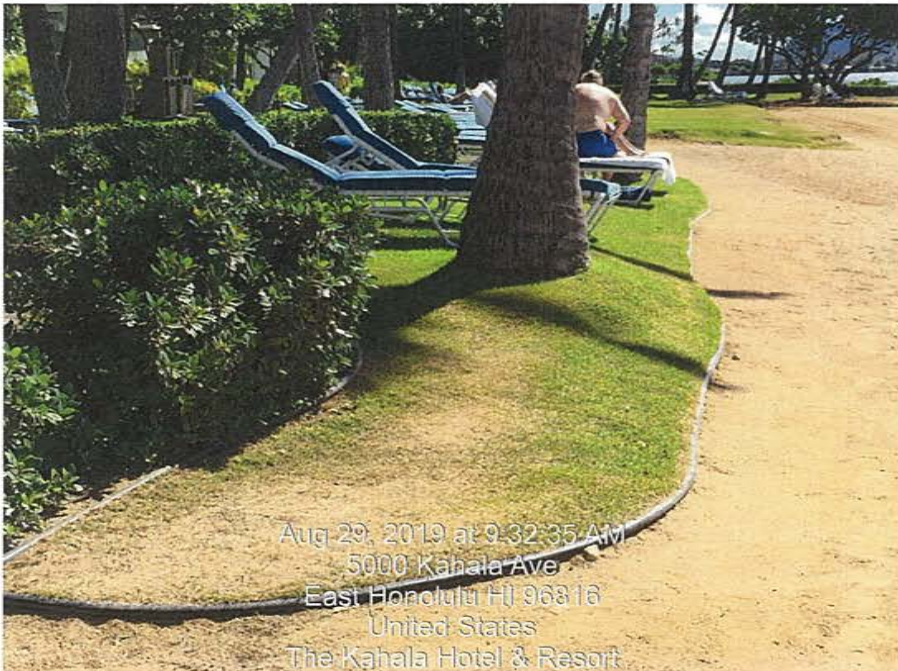
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



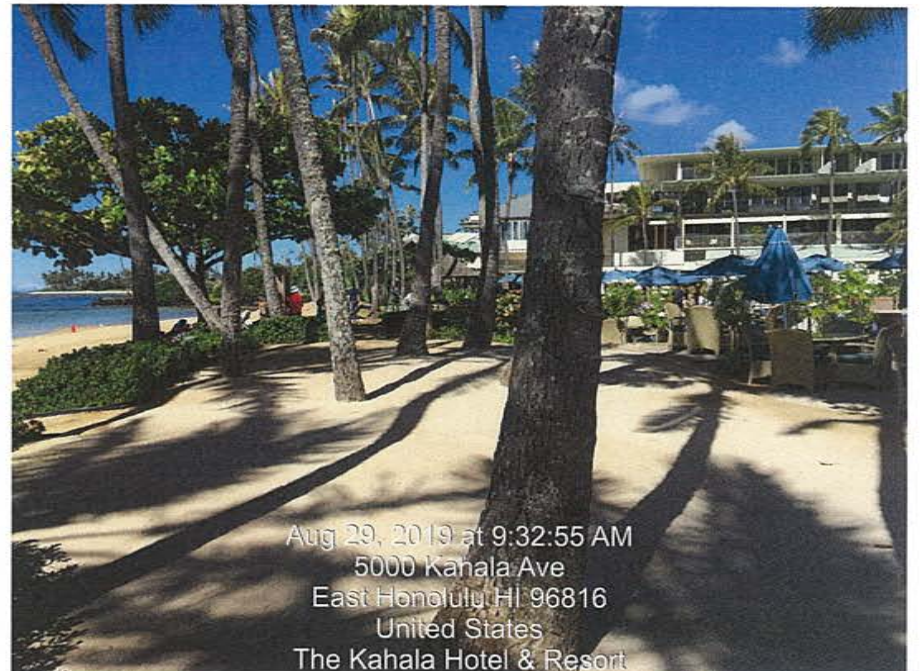
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



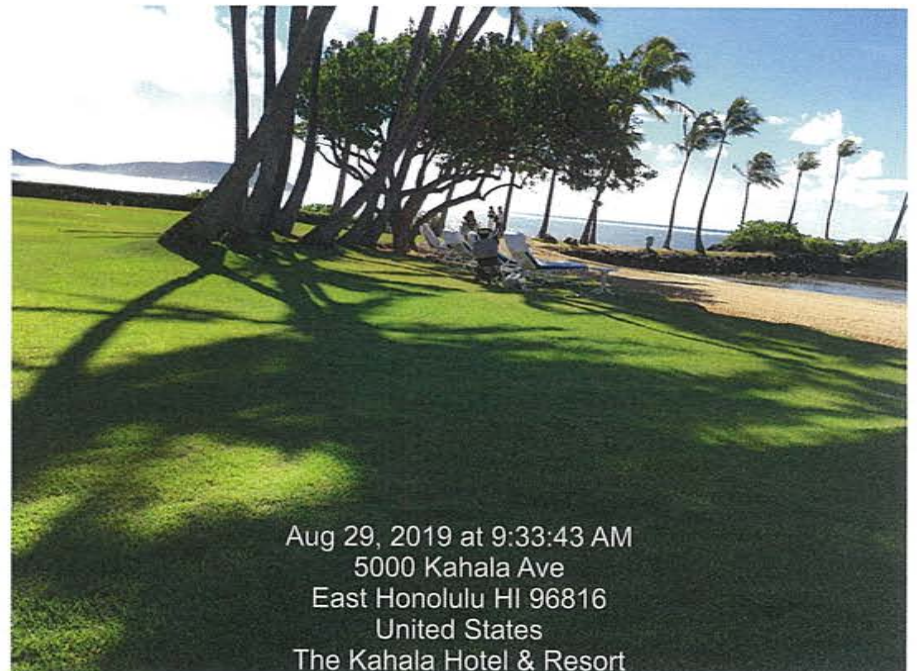
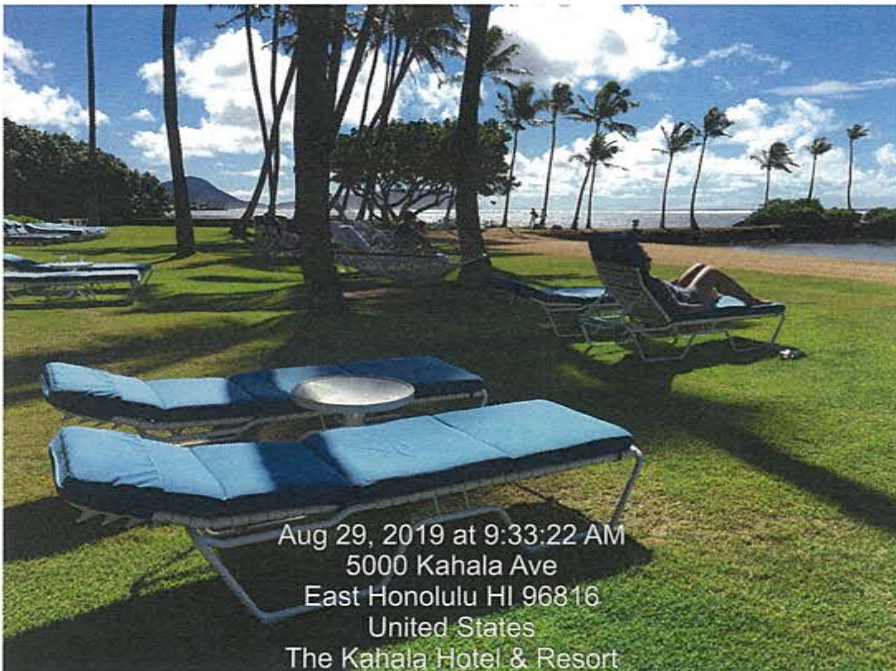
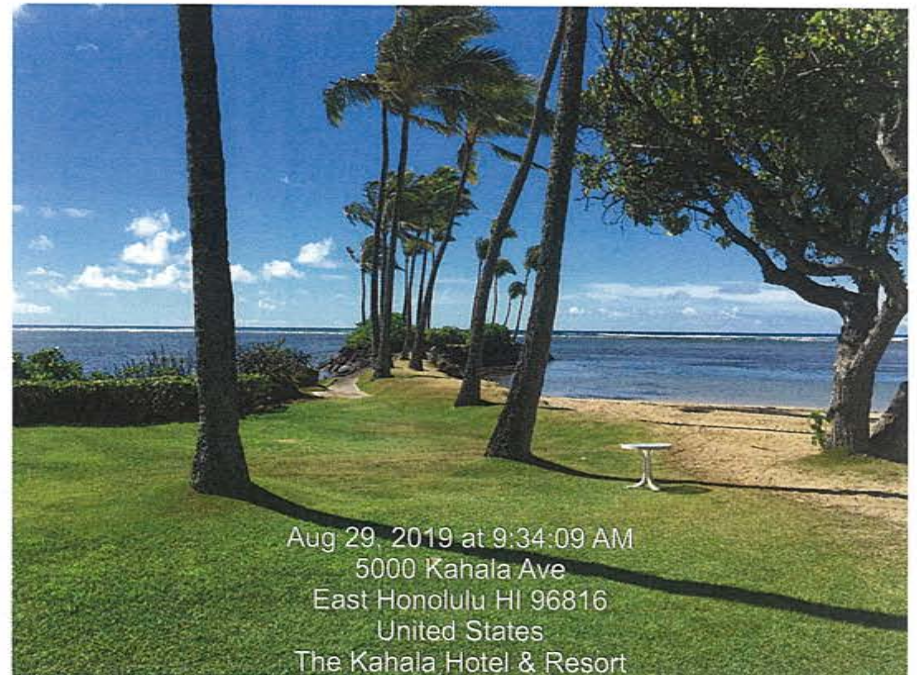
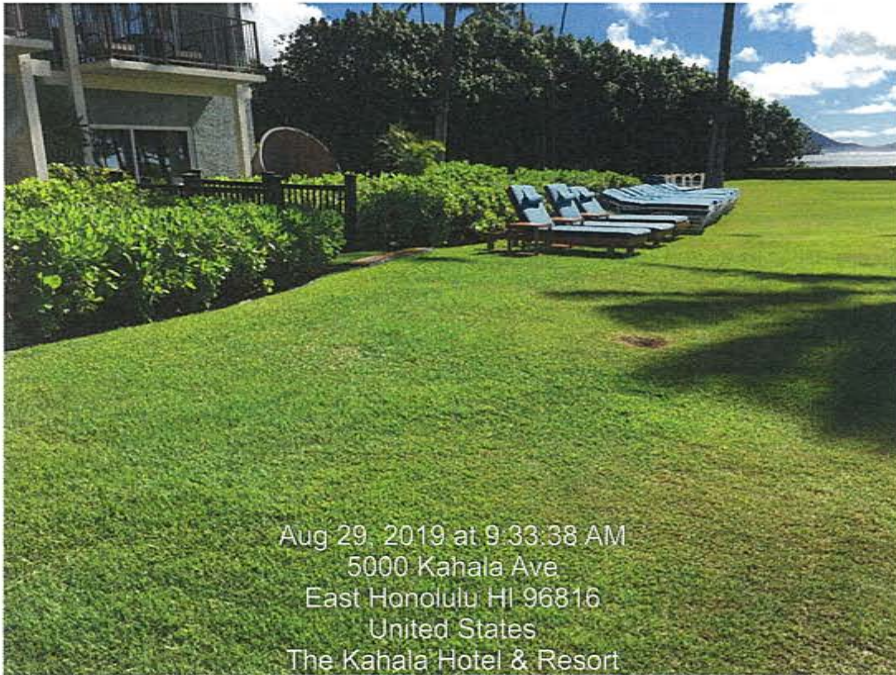
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

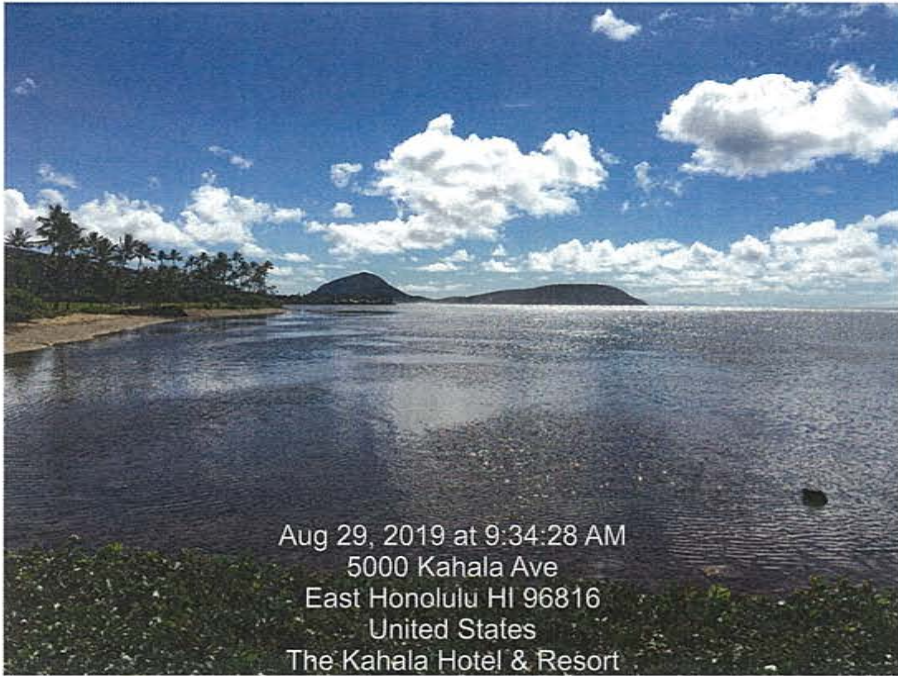


Aug 29, 2019 at 9:32:35 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

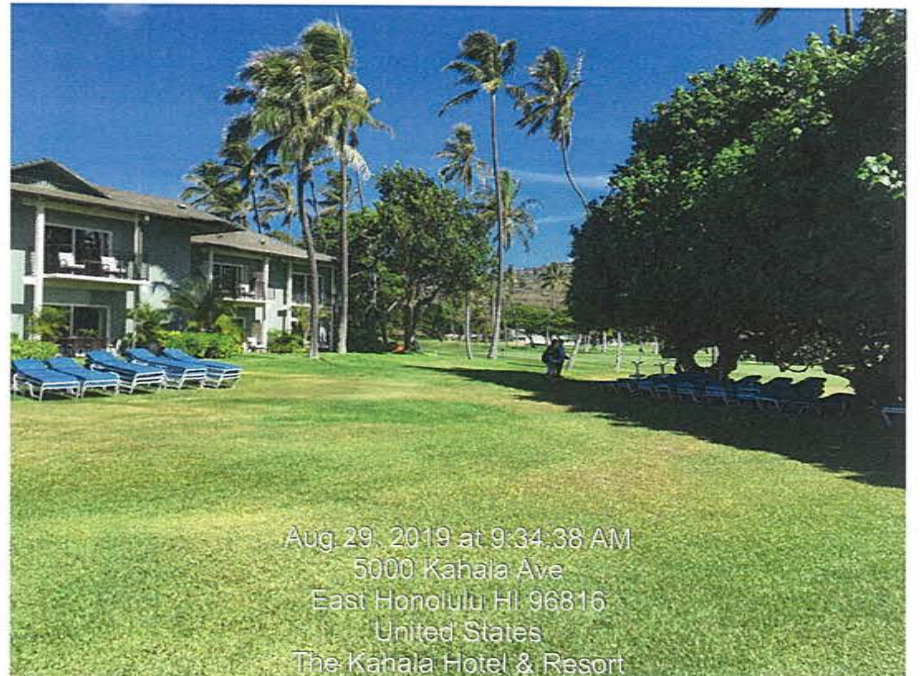


Aug 29, 2019 at 9:32:55 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

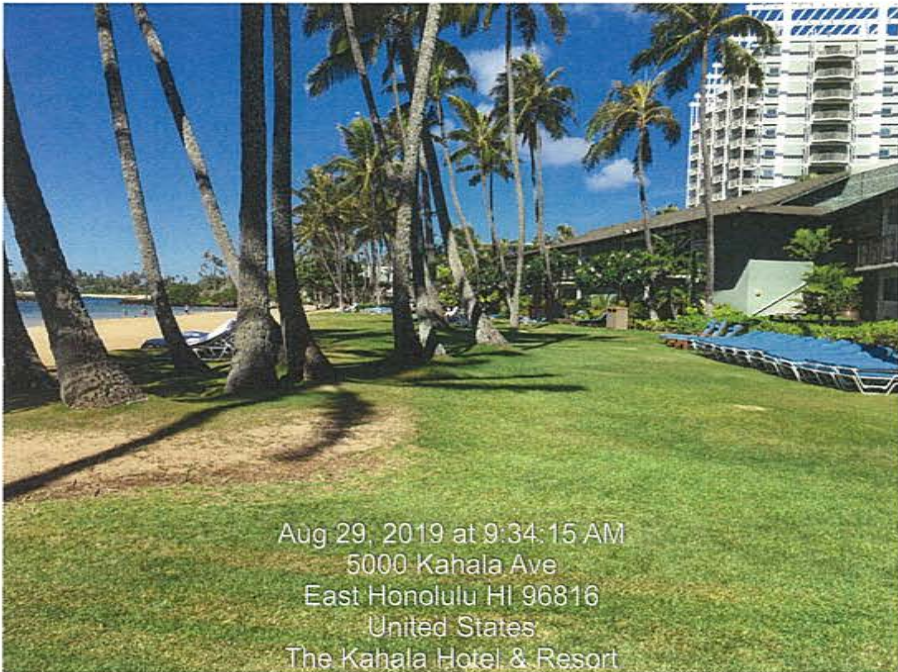




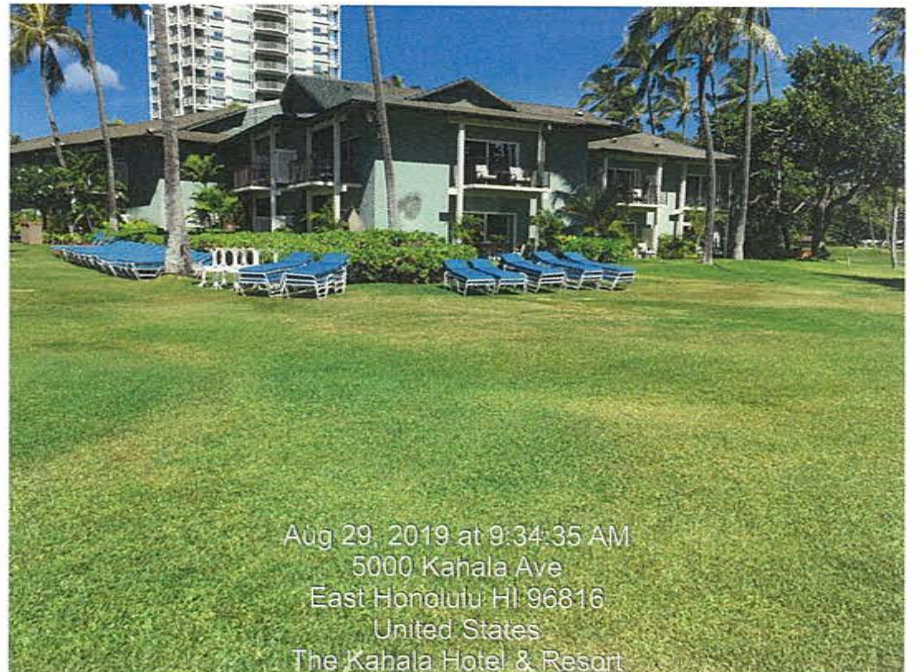
Aug 29, 2019 at 9:34:28 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



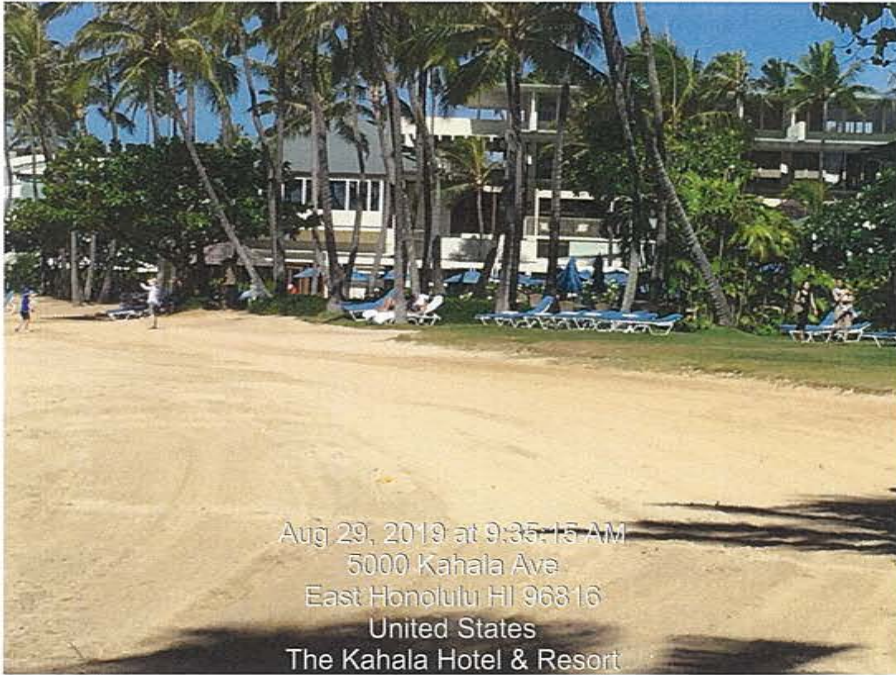
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



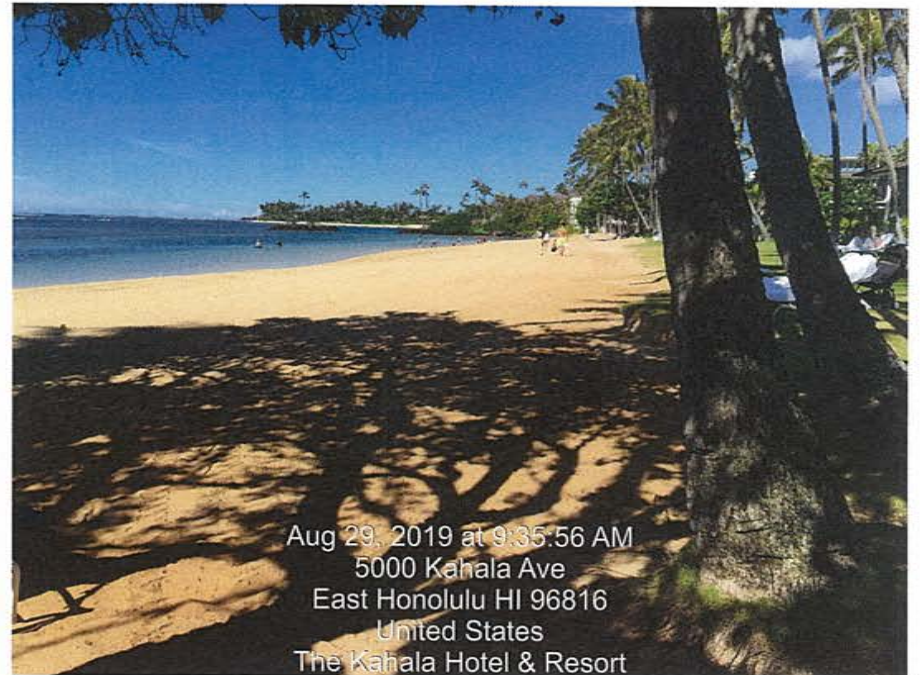
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



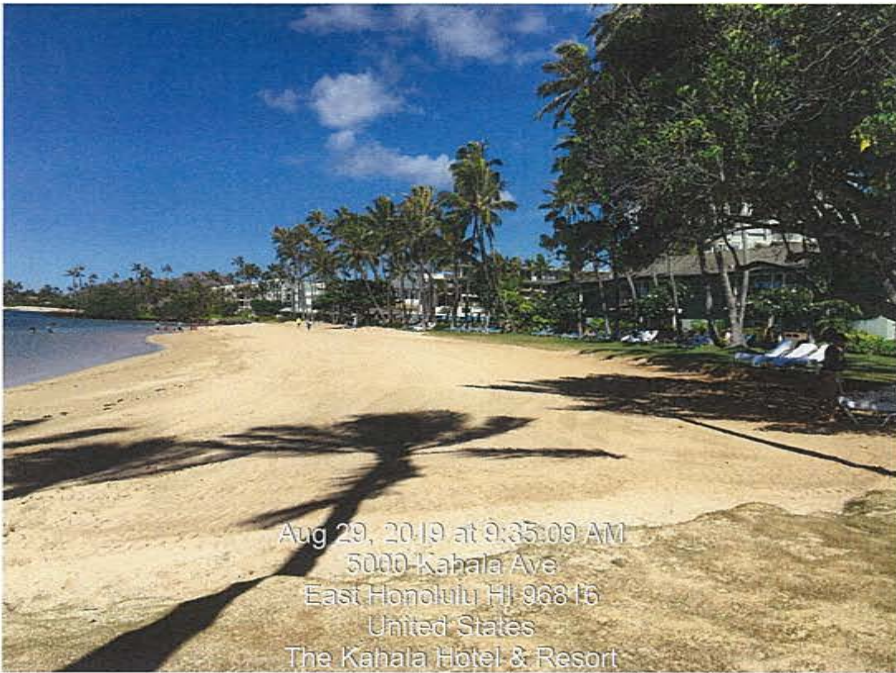
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



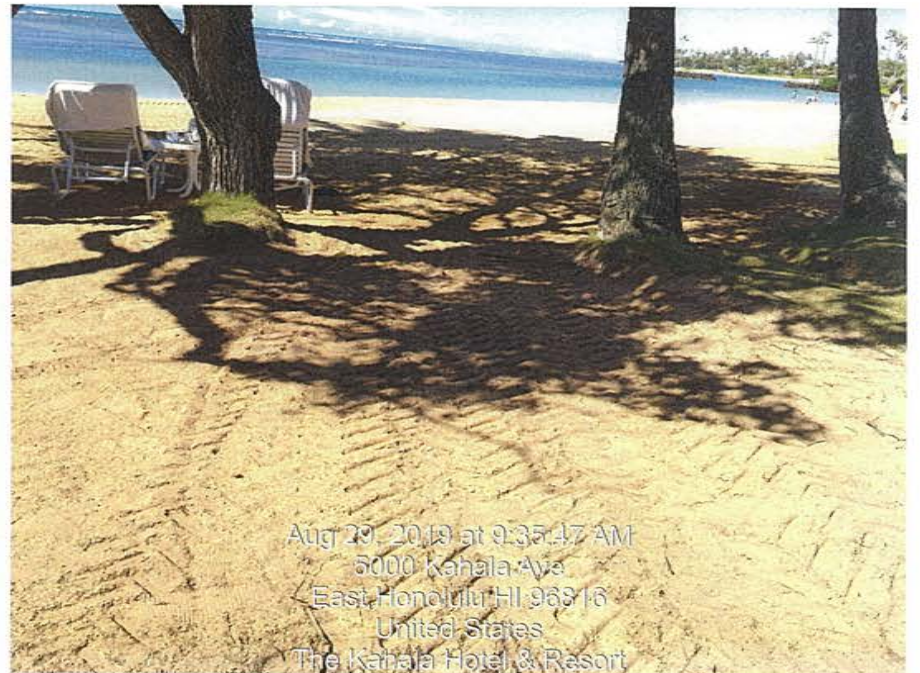
Aug 29, 2019 at 9:35:15 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



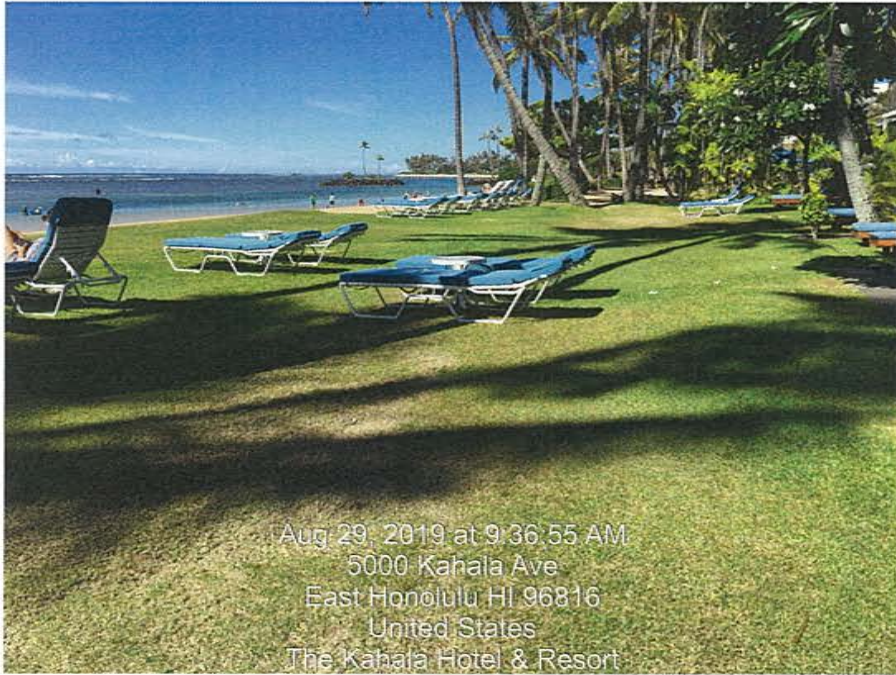
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



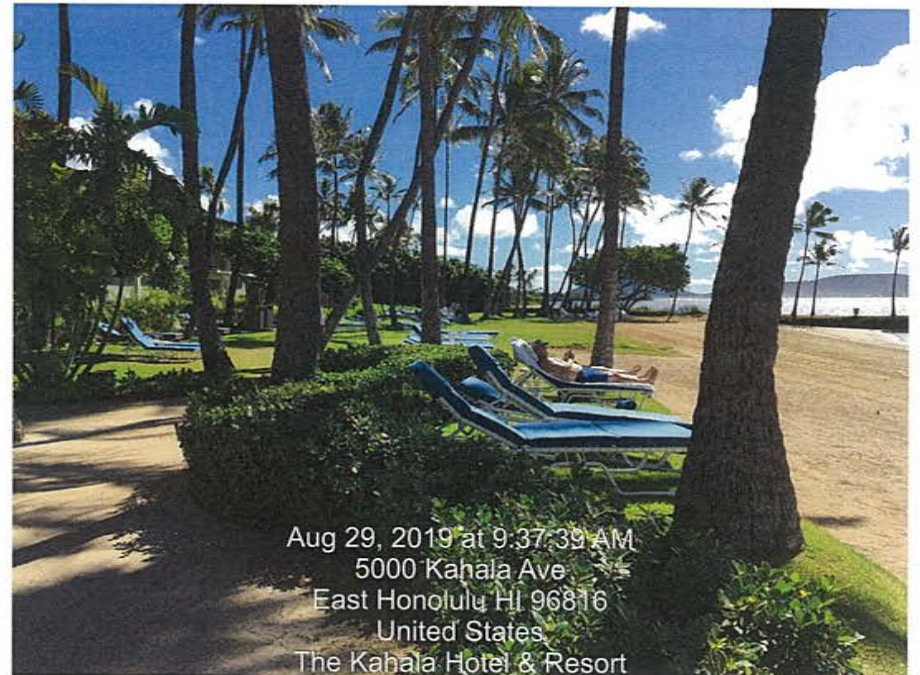
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



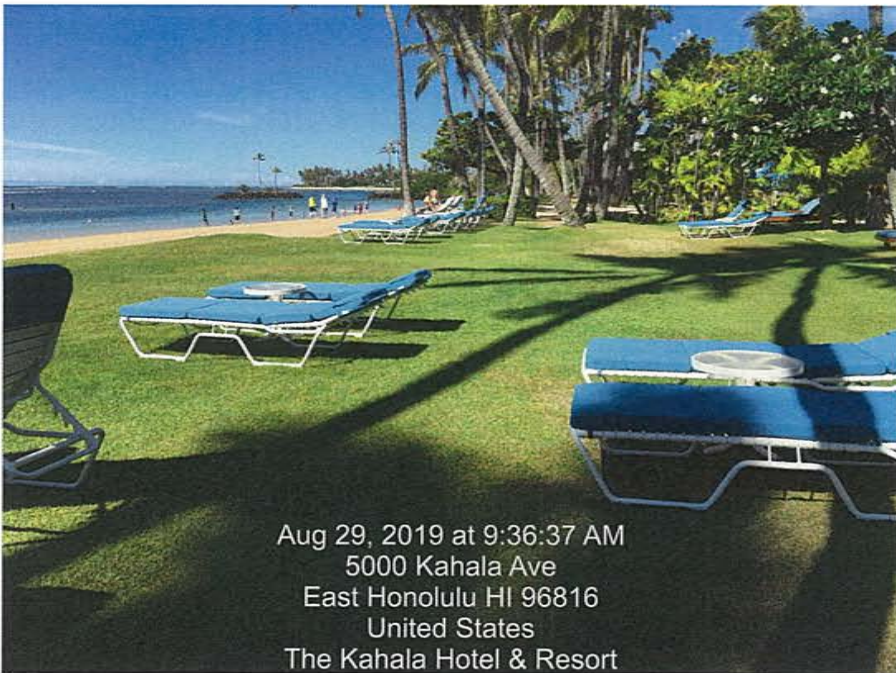
Aug 29, 2019 at 9:35:47 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Aug 29, 2019 at 9:36:55 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Aug 29, 2019 at 9:37:39 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



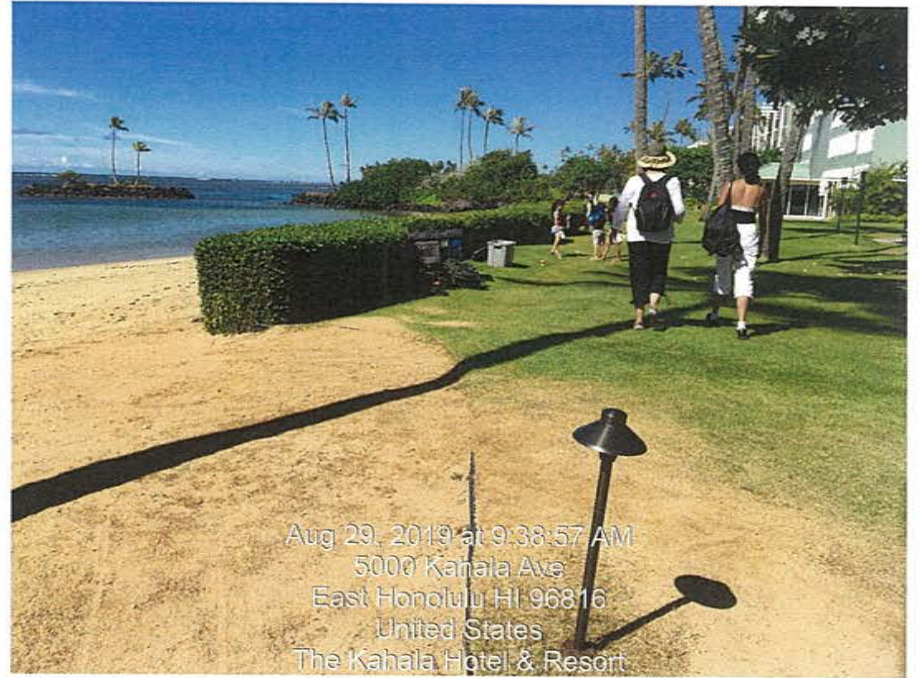
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



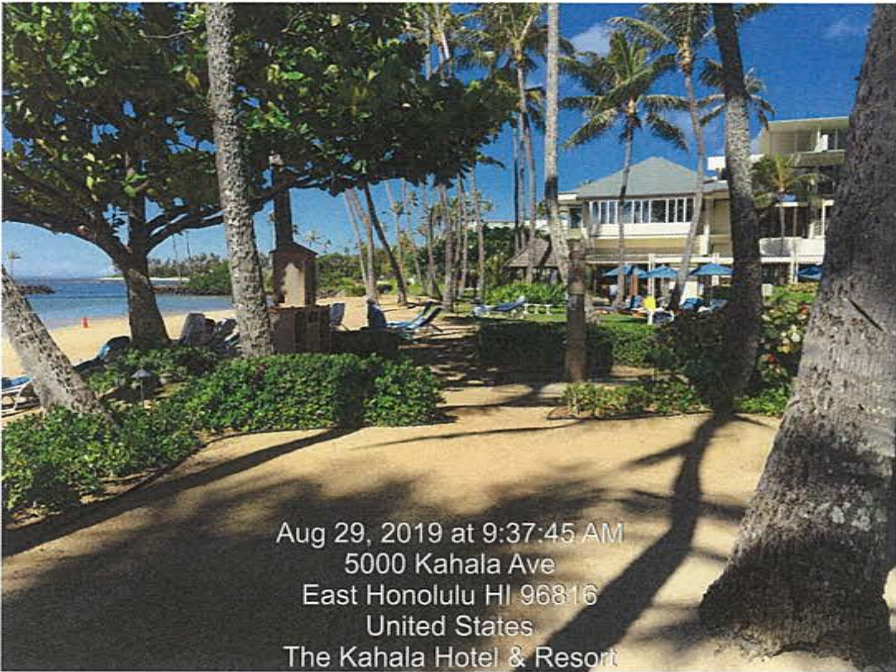
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



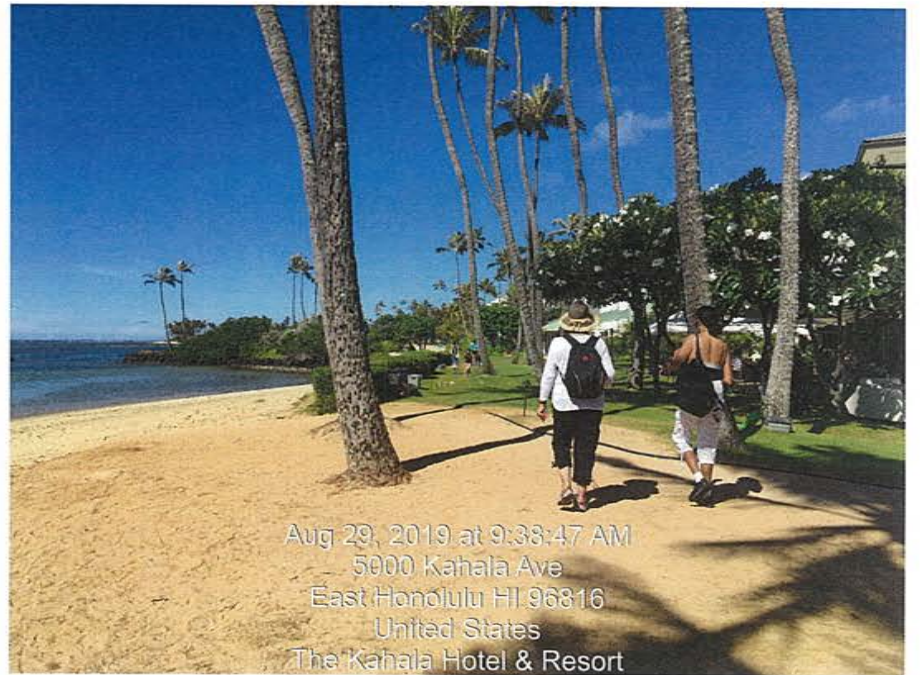
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



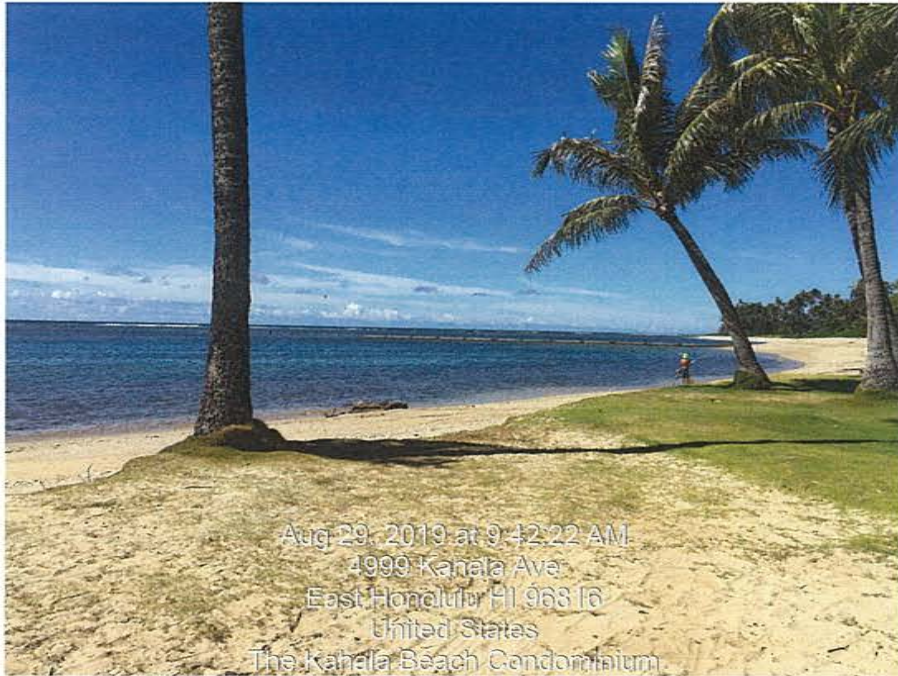
Aug 29, 2019 at 9:38:57 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



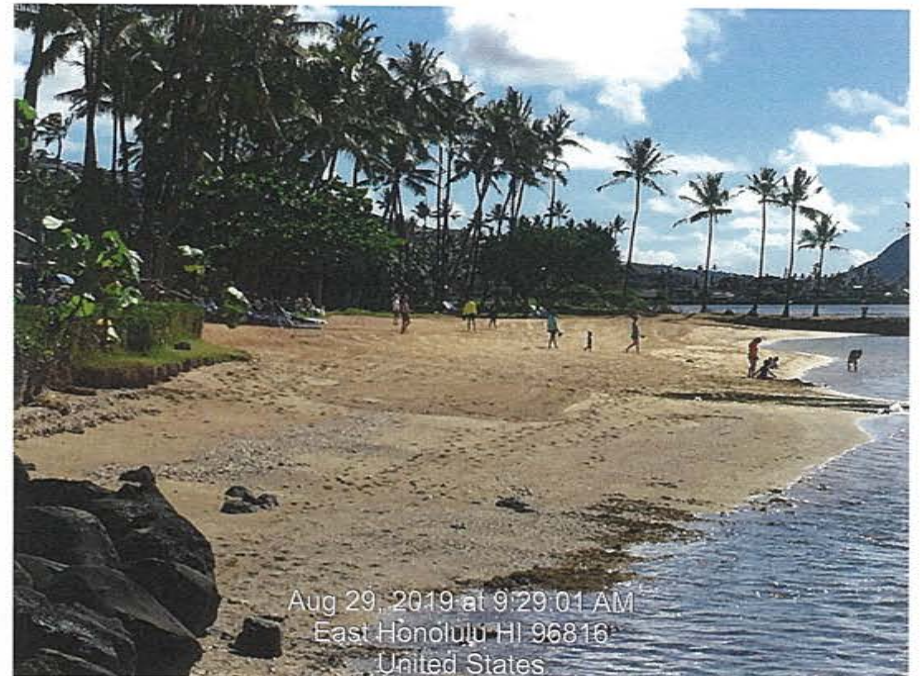
Aug 29, 2019 at 9:37:45 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



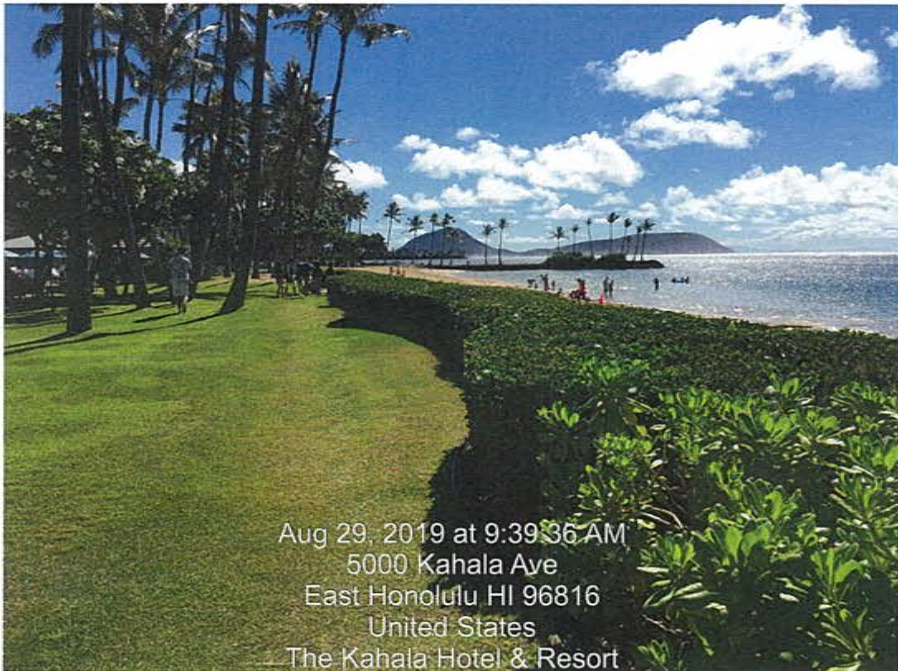
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



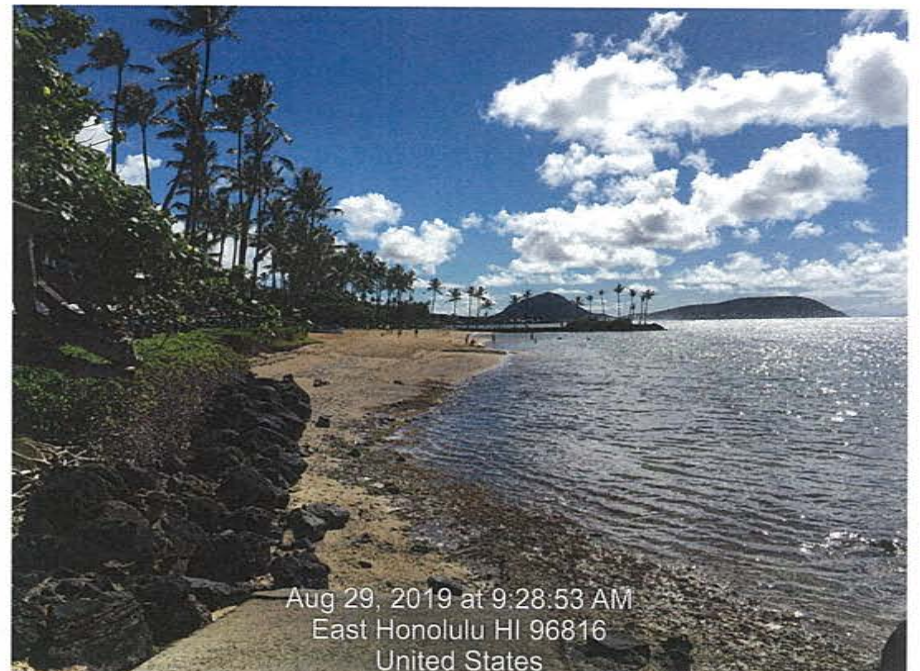
Aug 29, 2019 at 9:42:22 AM
4999 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Beach Condominium



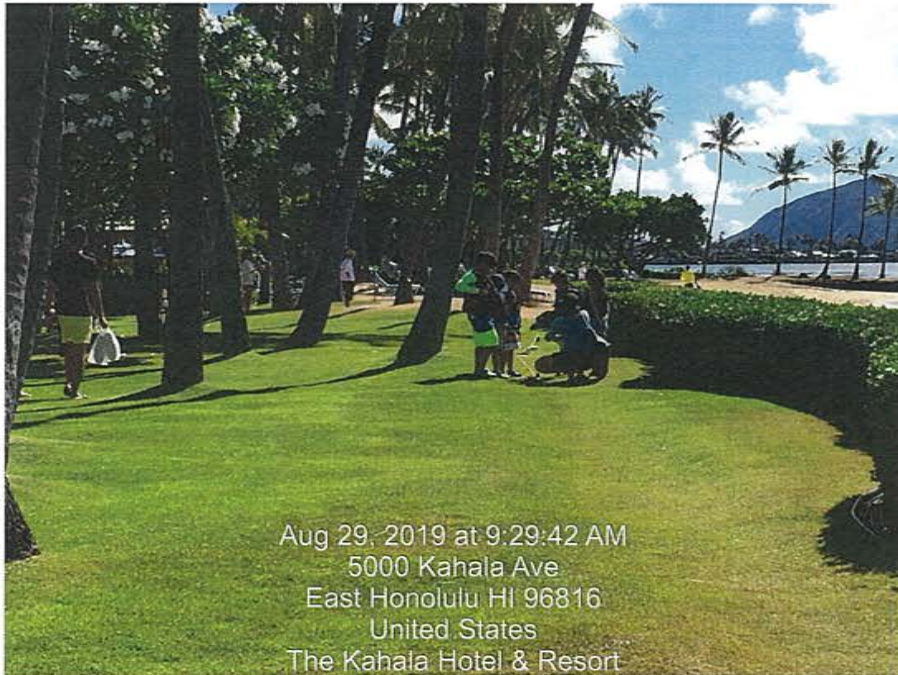
Aug 29, 2019 at 9:29:01 AM
East Honolulu HI 96816
United States



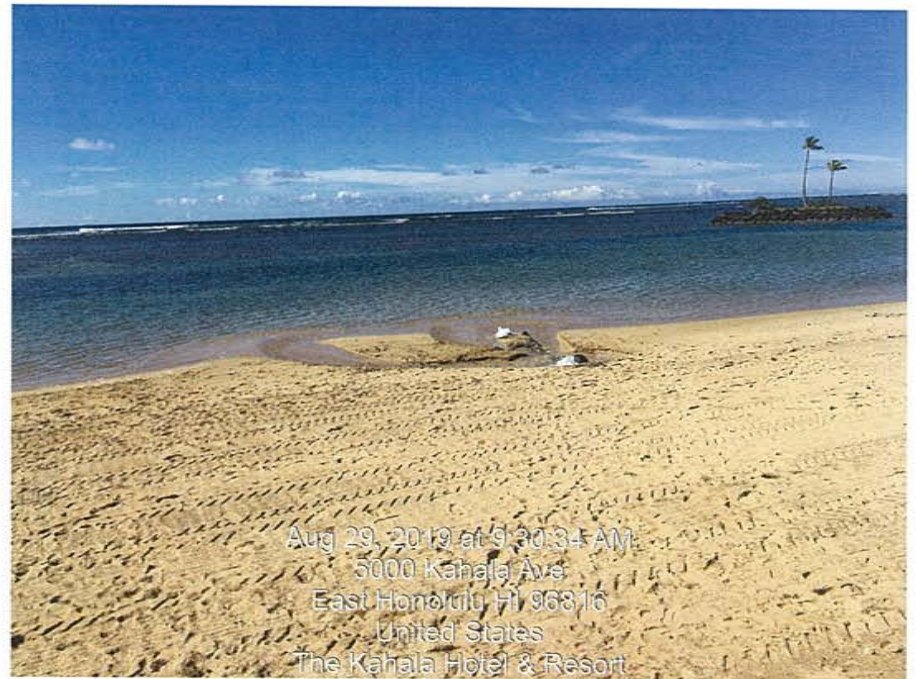
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



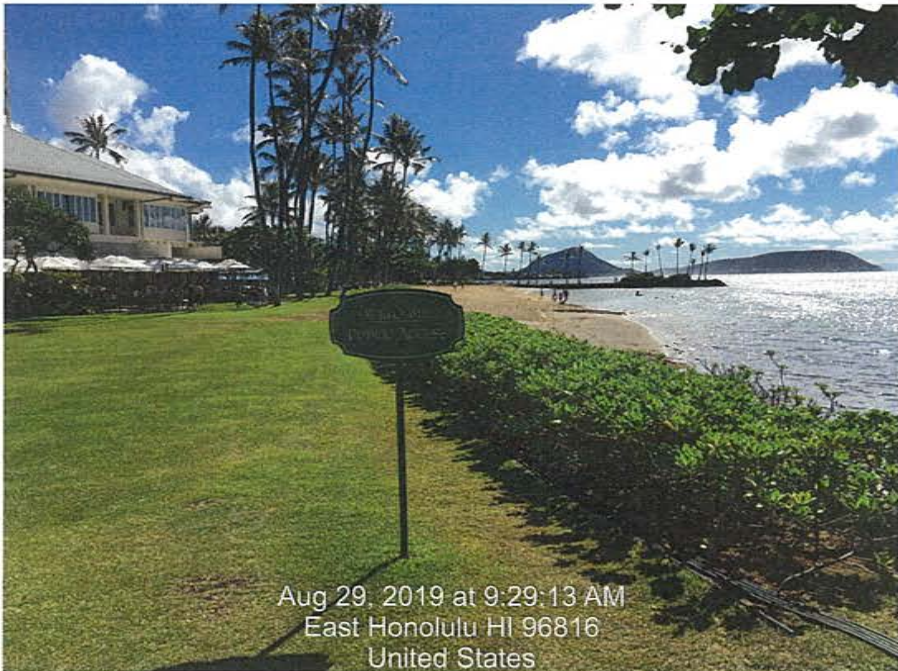
Aug 29, 2019 at 9:28:53 AM
East Honolulu HI 96816
United States



Aug 29, 2019 at 9:29:42 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Aug 29, 2019 at 9:30:34 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



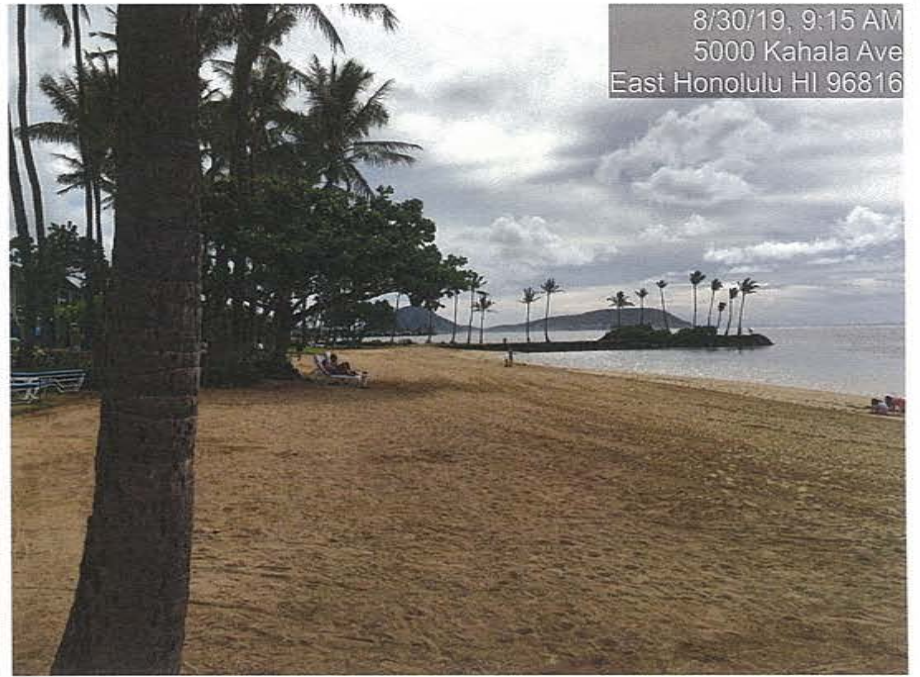
Aug 29, 2019 at 9:29:13 AM
East Honolulu HI 96816
United States



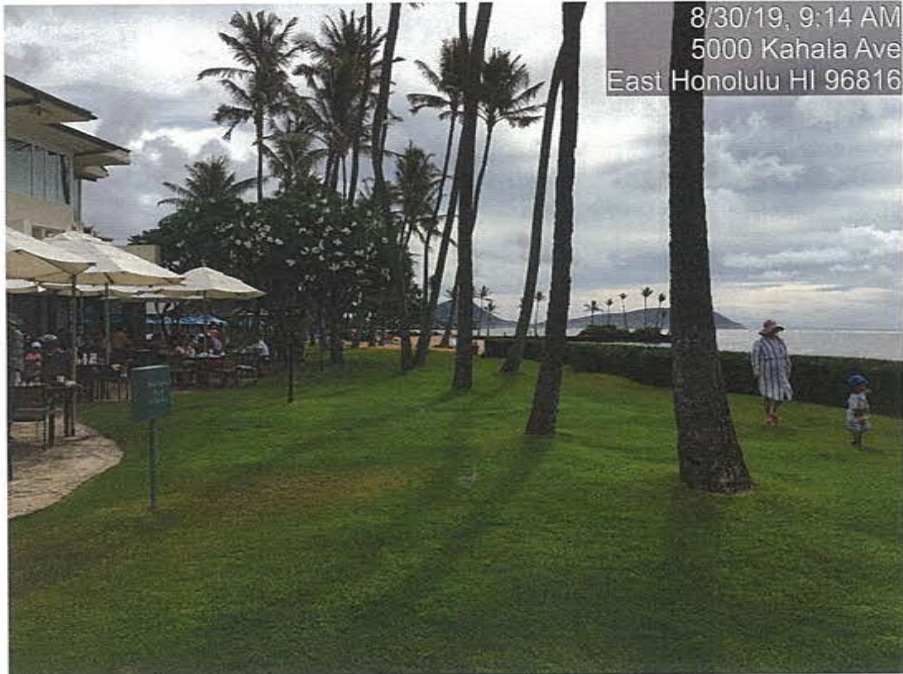
Aug 29, 2019 at 9:30:13 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



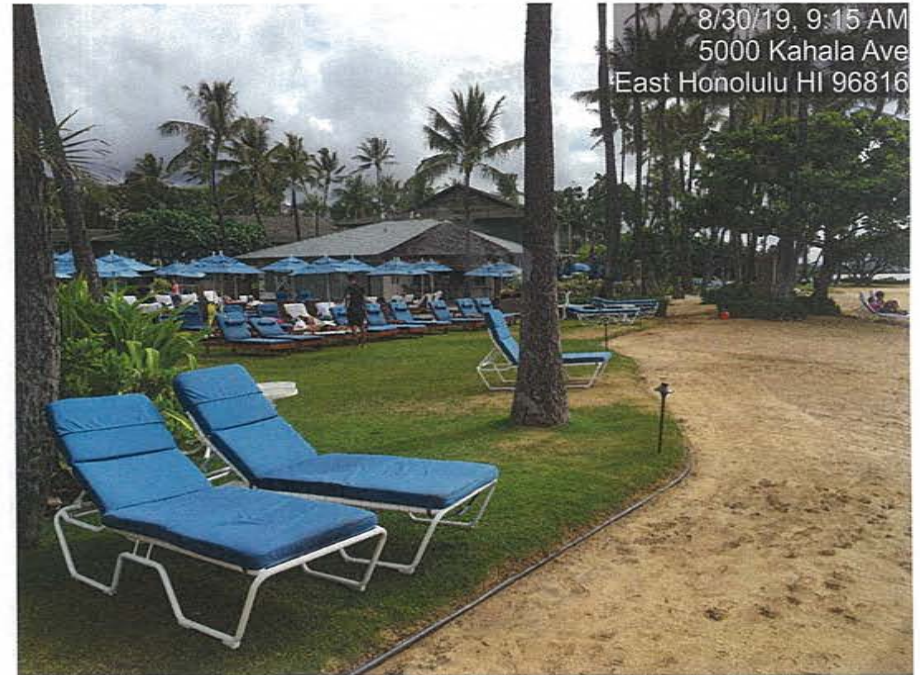
8/30/19, 9:15 AM
5000 Kahala Ave
East Honolulu HI 96816



8/30/19, 9:15 AM
5000 Kahala Ave
East Honolulu HI 96816

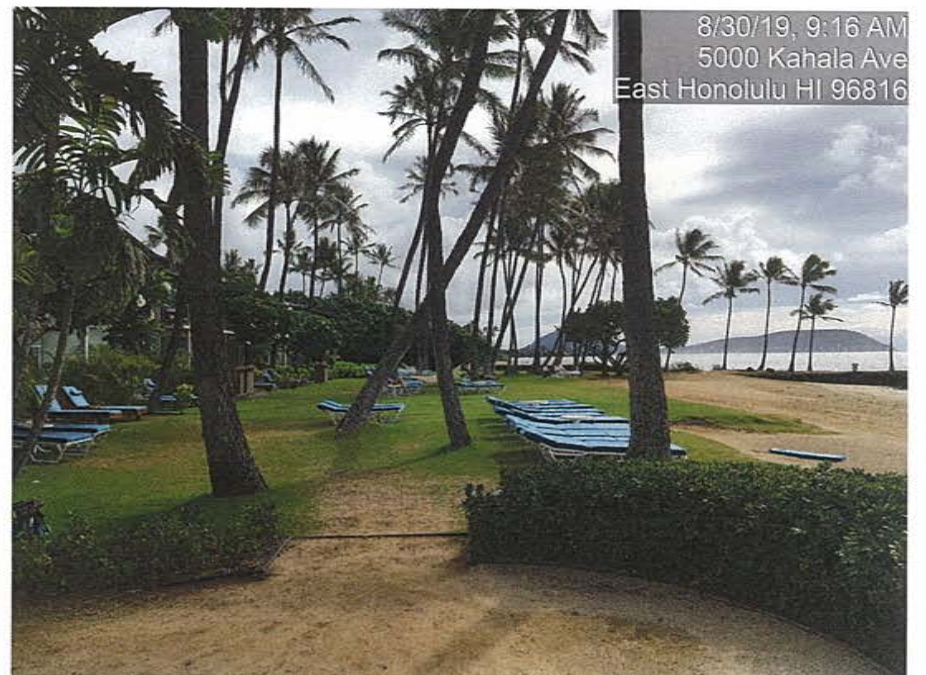
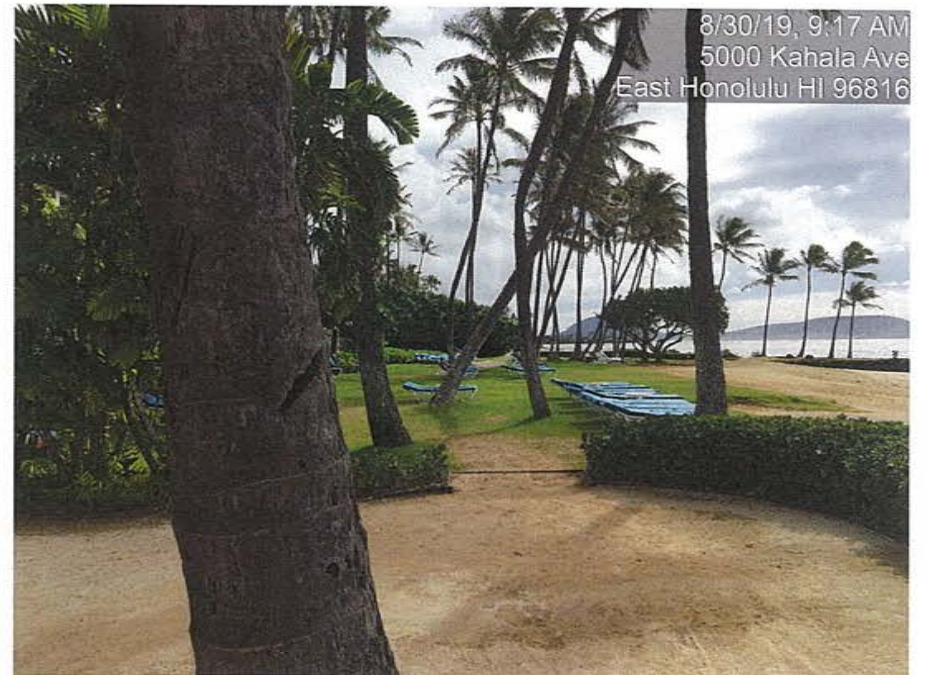
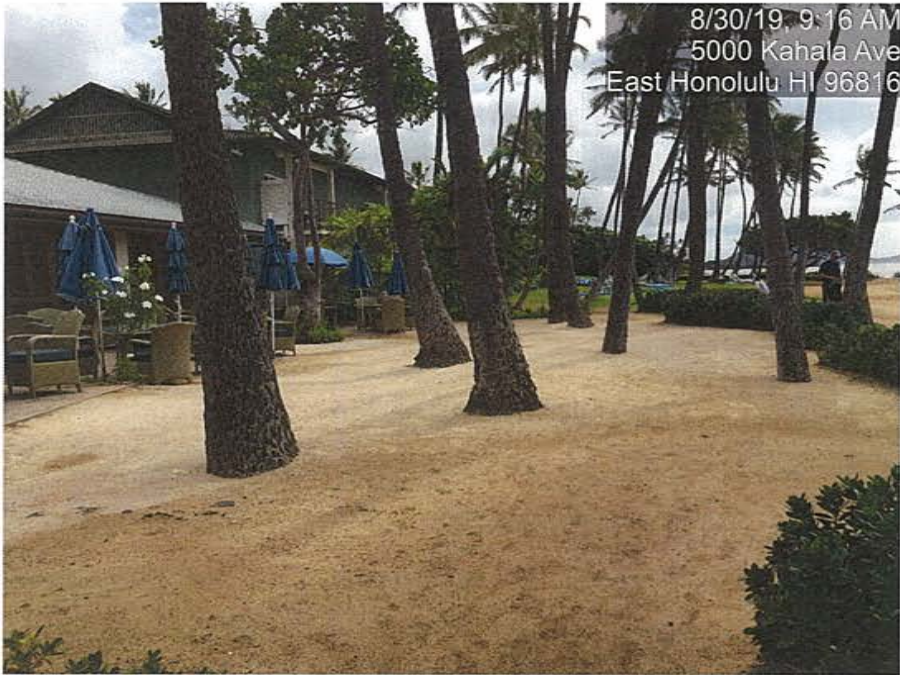


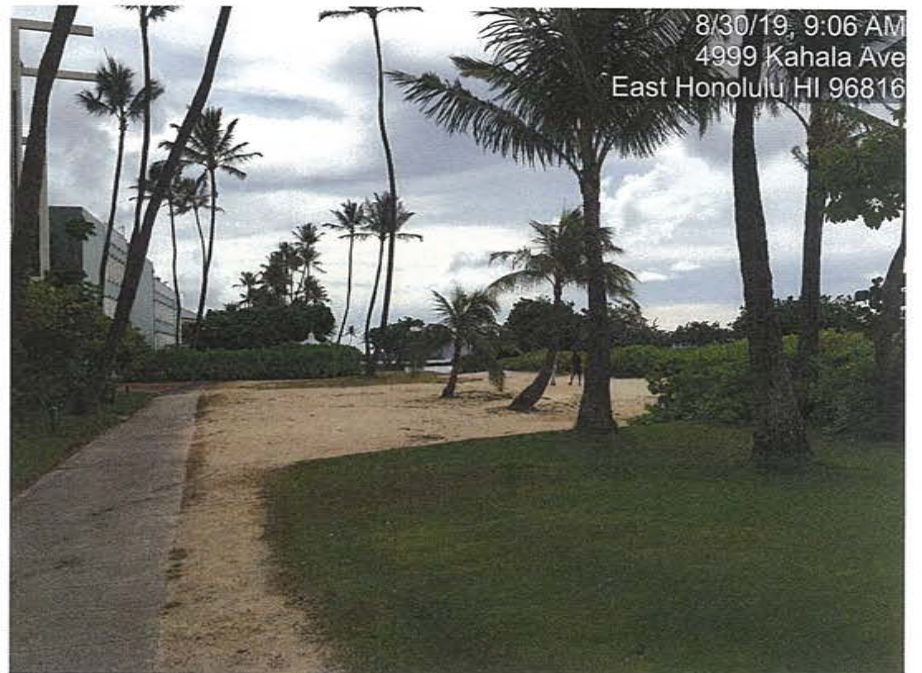
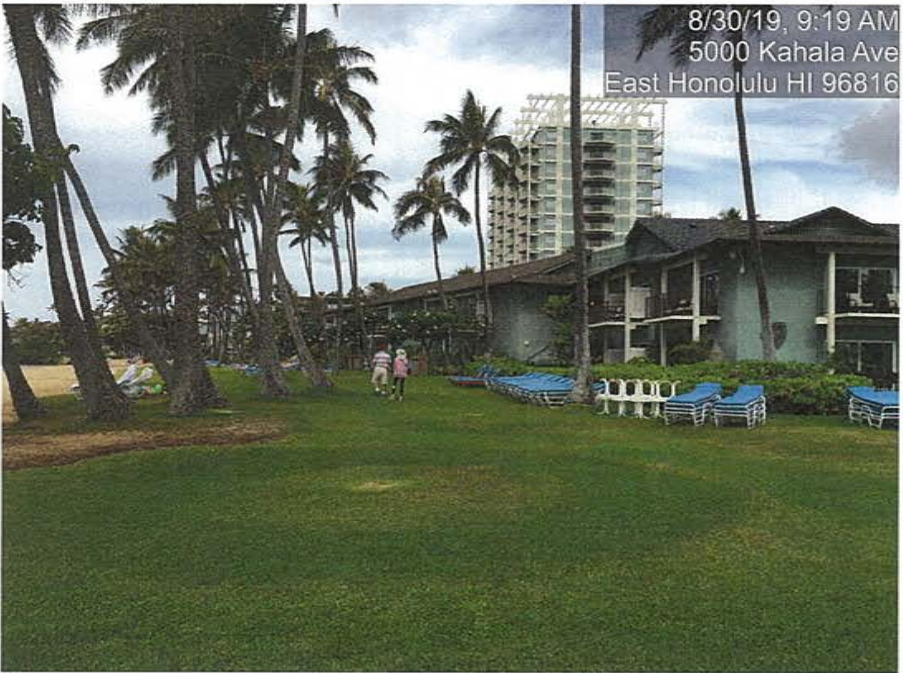
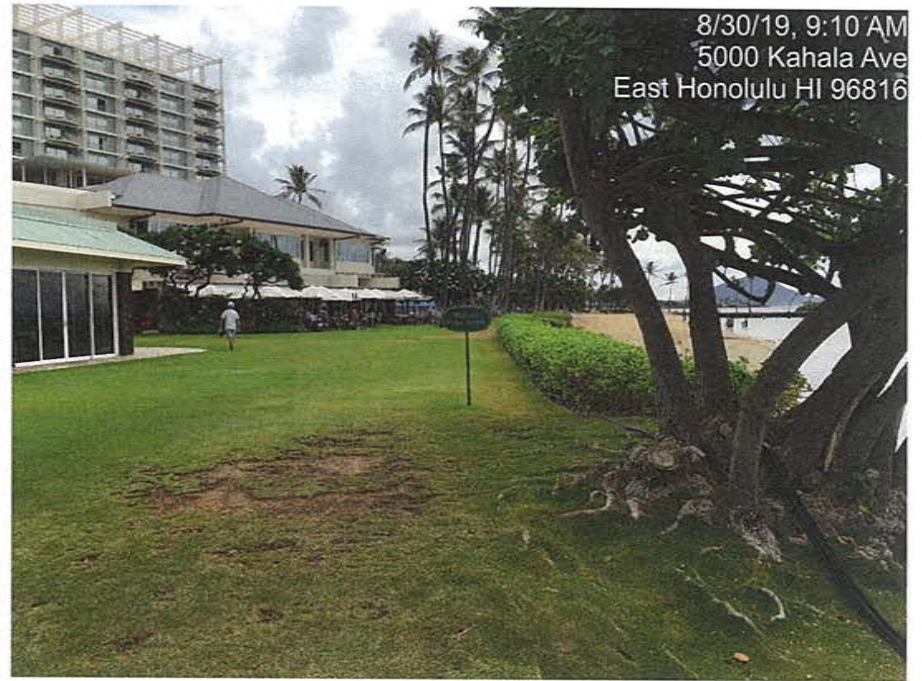
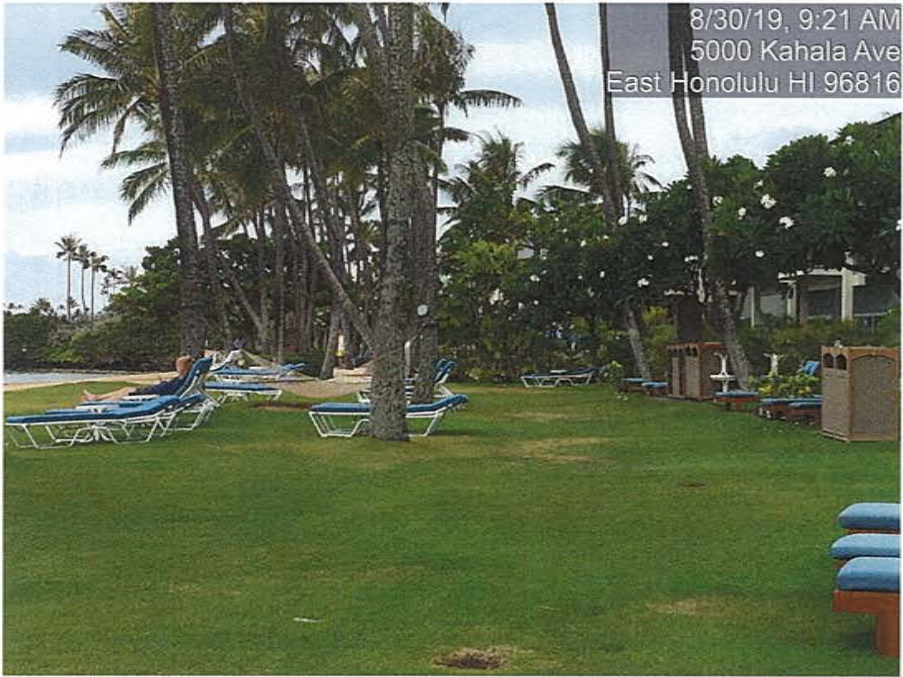
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5000 Kahala Ave
East Honolulu HI 96816

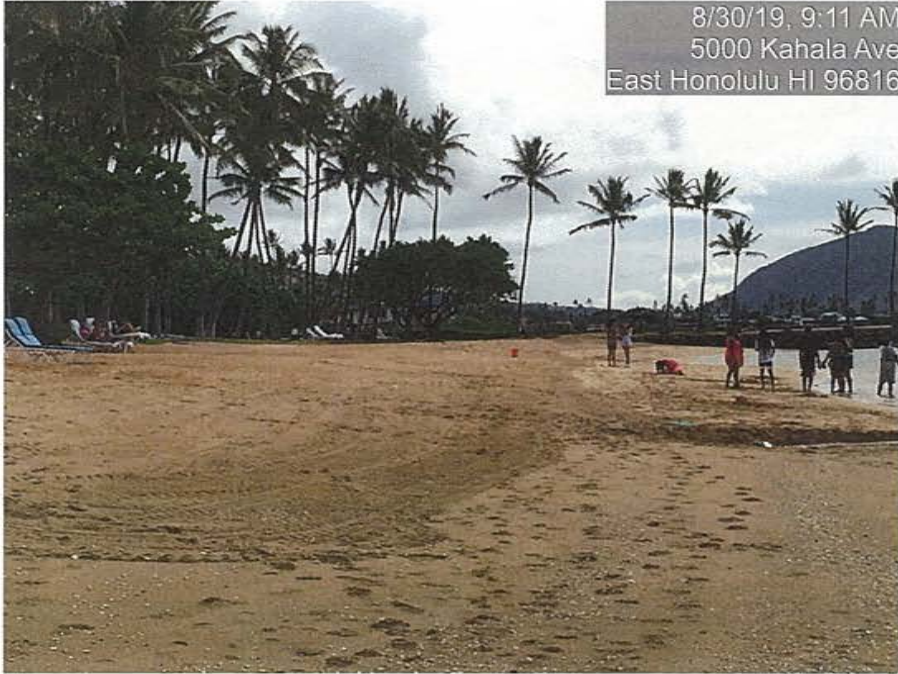


8/30/19, 9:15 AM
5000 Kahala Ave
East Honolulu HI 96816

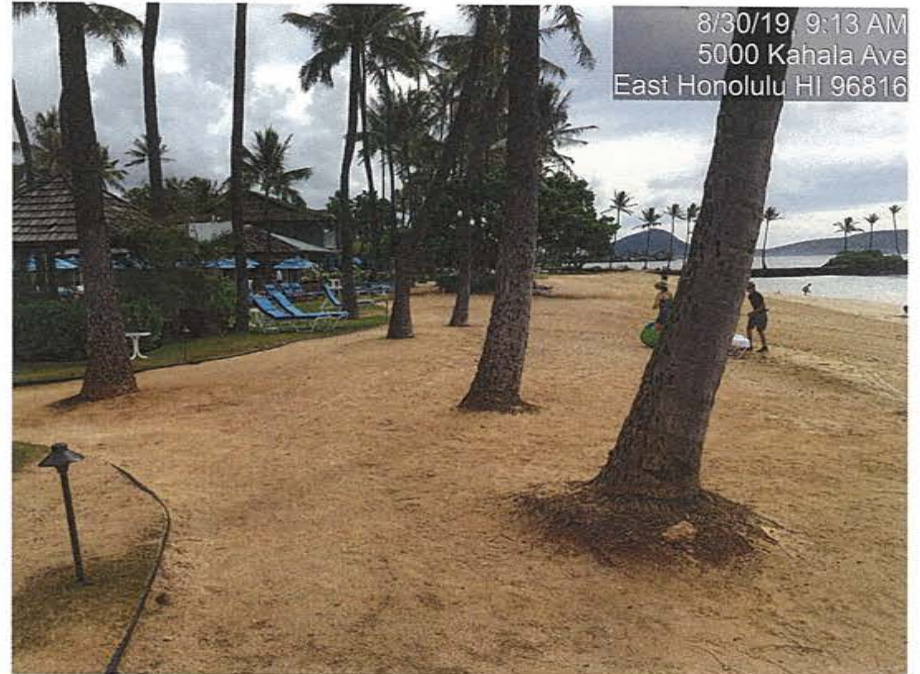
EXHIBIT "D" 8-30-19



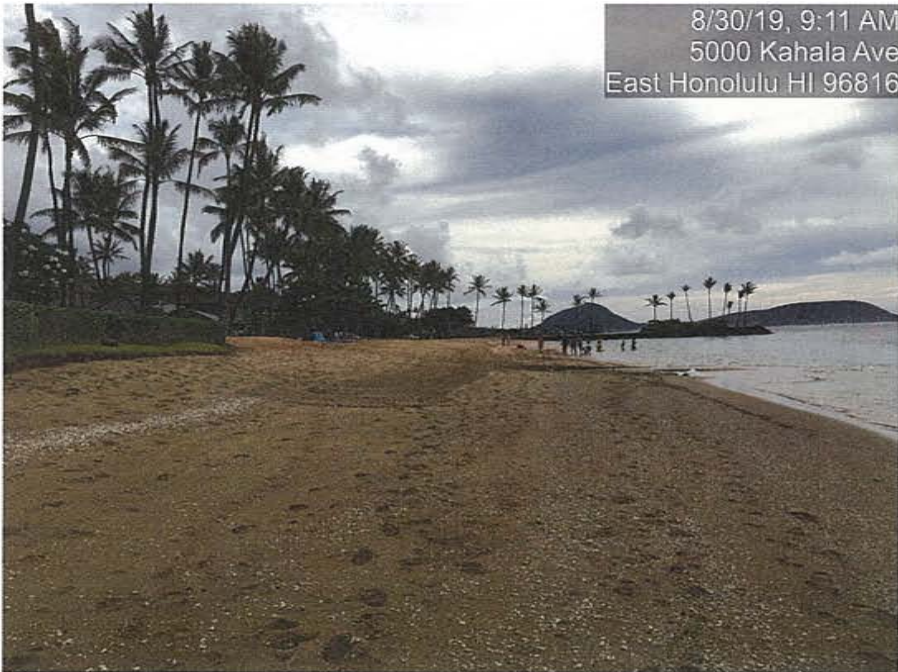




8/30/19, 9:11 AM
5000 Kahala Ave
East Honolulu HI 96816



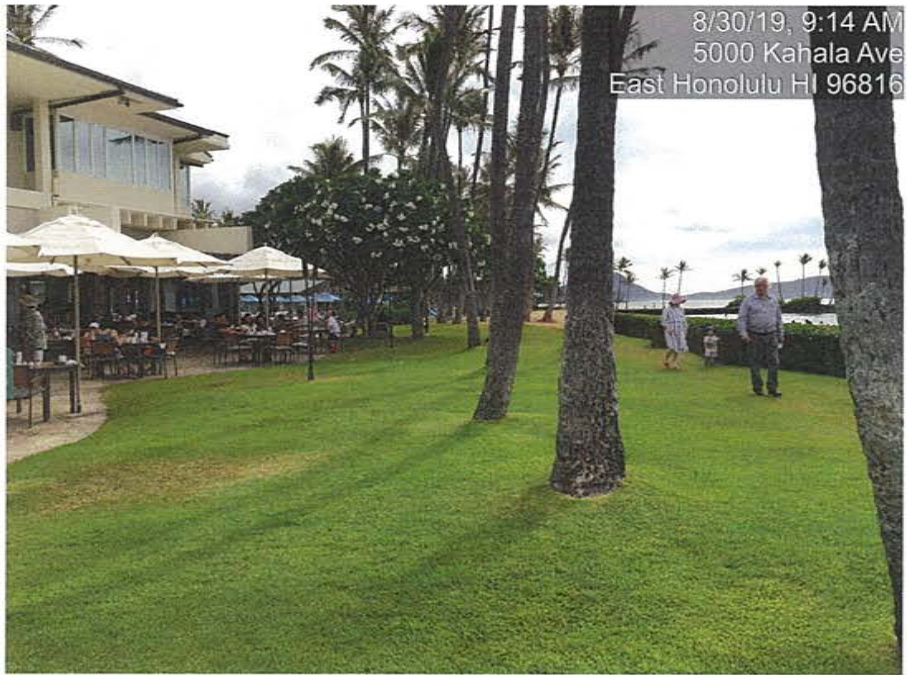
8/30/19, 9:13 AM
5000 Kahala Ave
East Honolulu HI 96816



8/30/19, 9:11 AM
5000 Kahala Ave
East Honolulu HI 96816



8/30/19, 9:11 AM
5000 Kahala Ave
East Honolulu HI 96816



8/30/19, 9:14 AM
5000 Kahala Ave
East Honolulu HI 96816

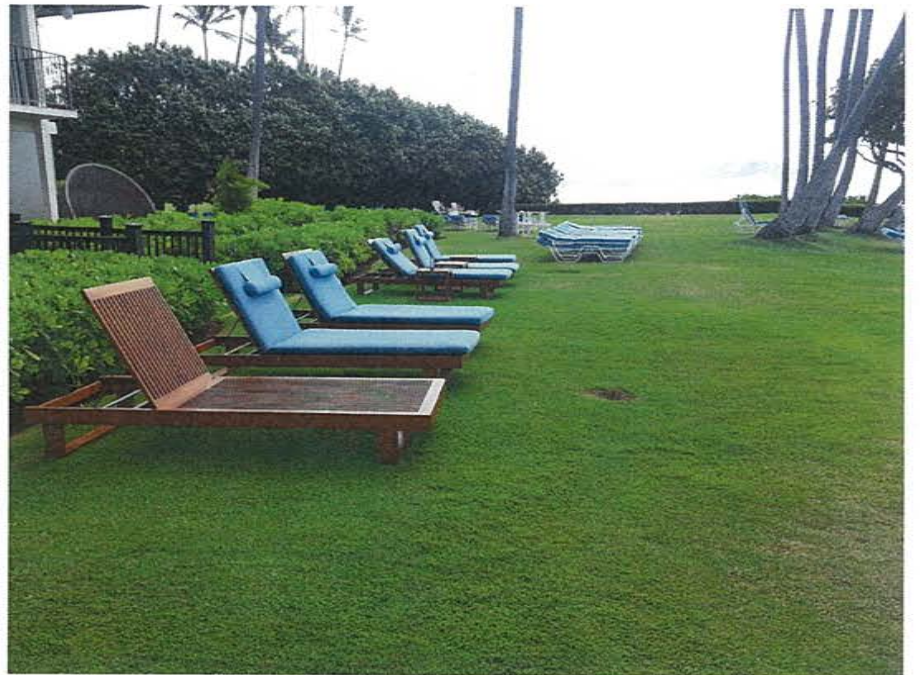


EXHIBIT "D" 9-03-19

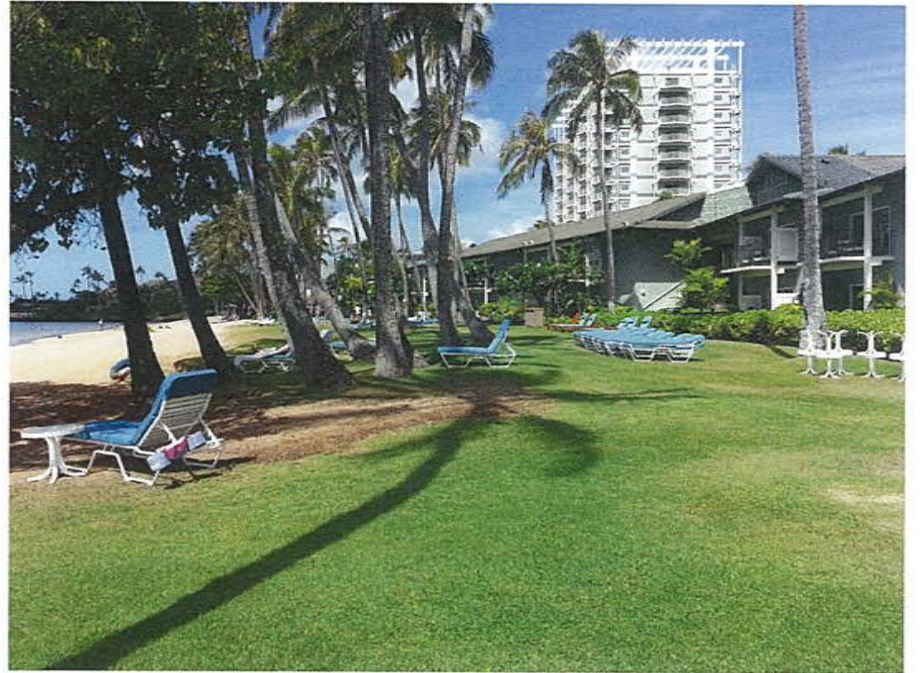
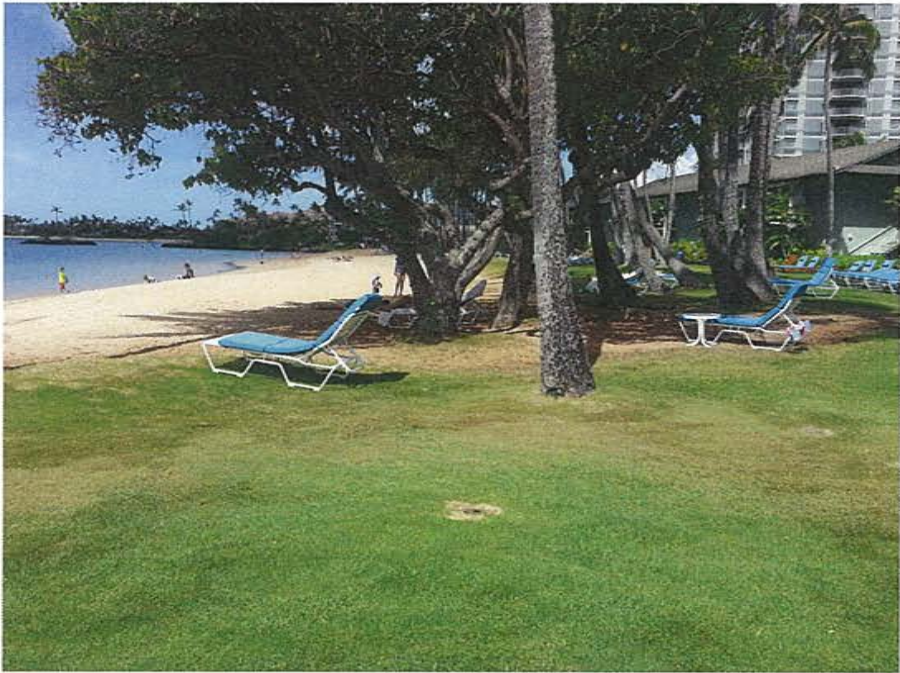
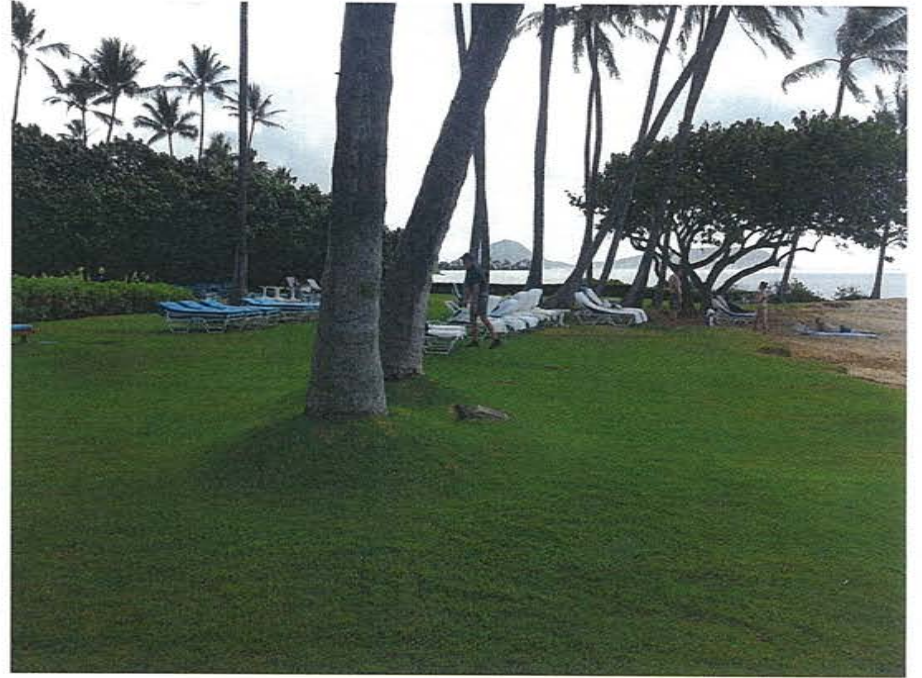




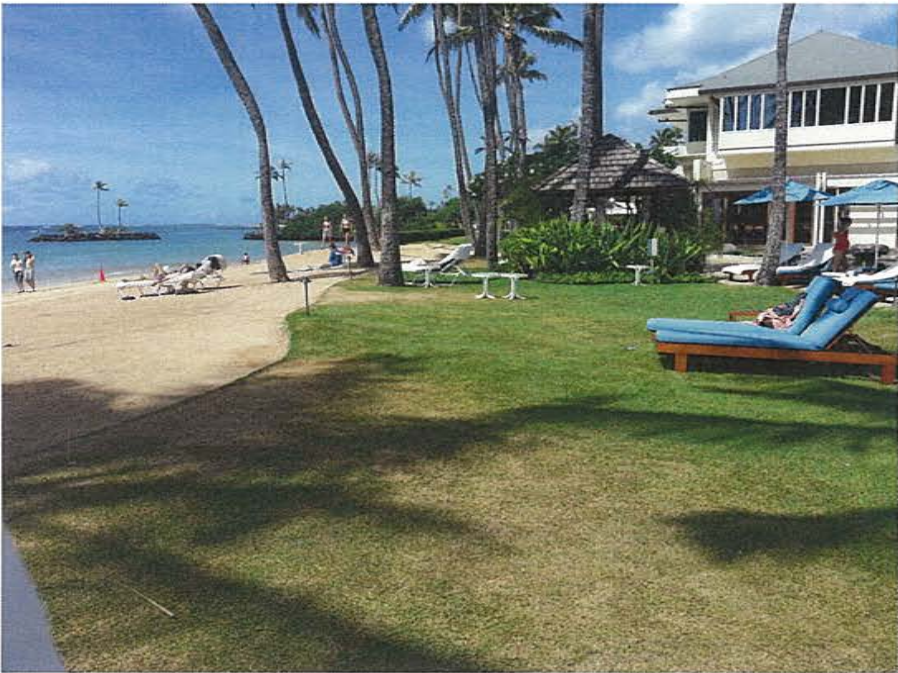






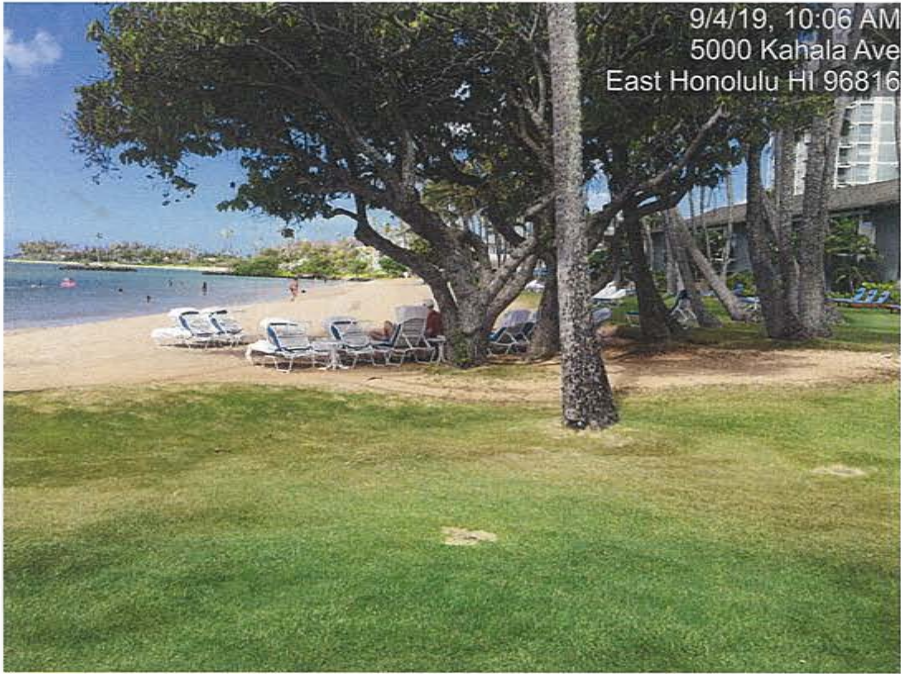




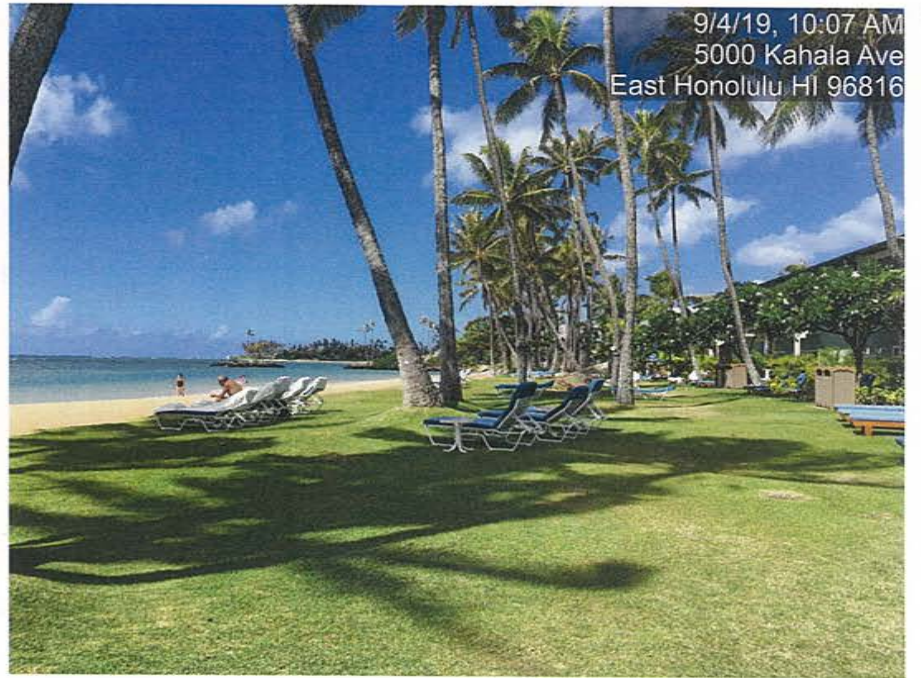




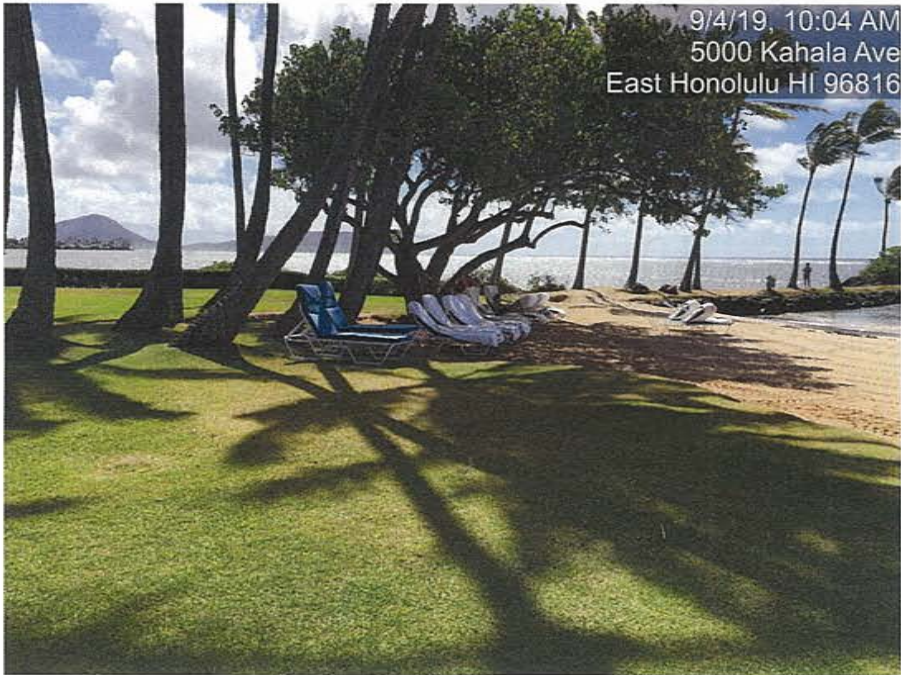




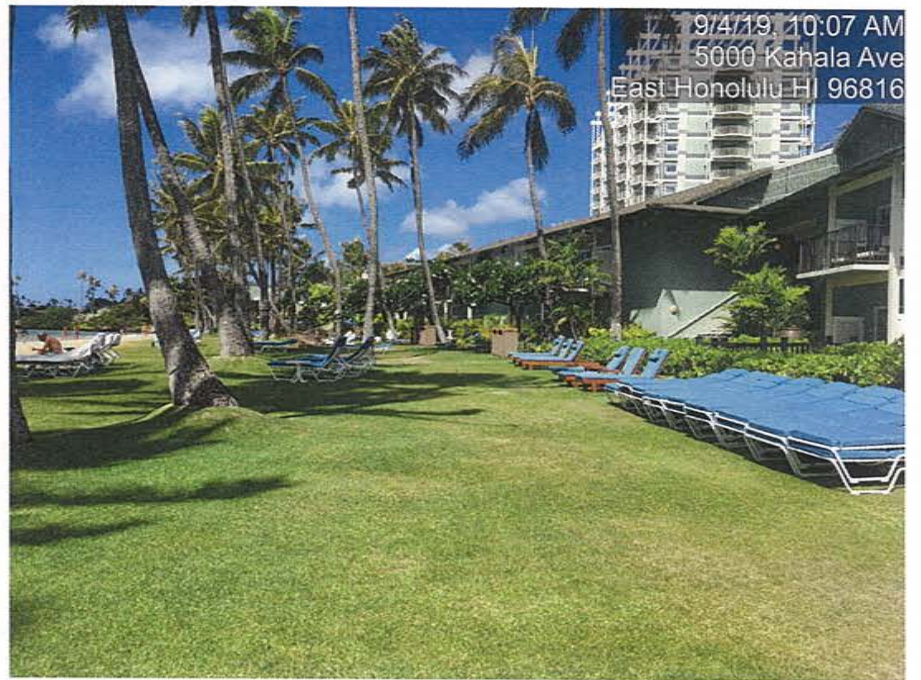
9/4/19, 10:06 AM
5000 Kahala Ave
East Honolulu HI 96816



9/4/19, 10:07 AM
5000 Kahala Ave
East Honolulu HI 96816

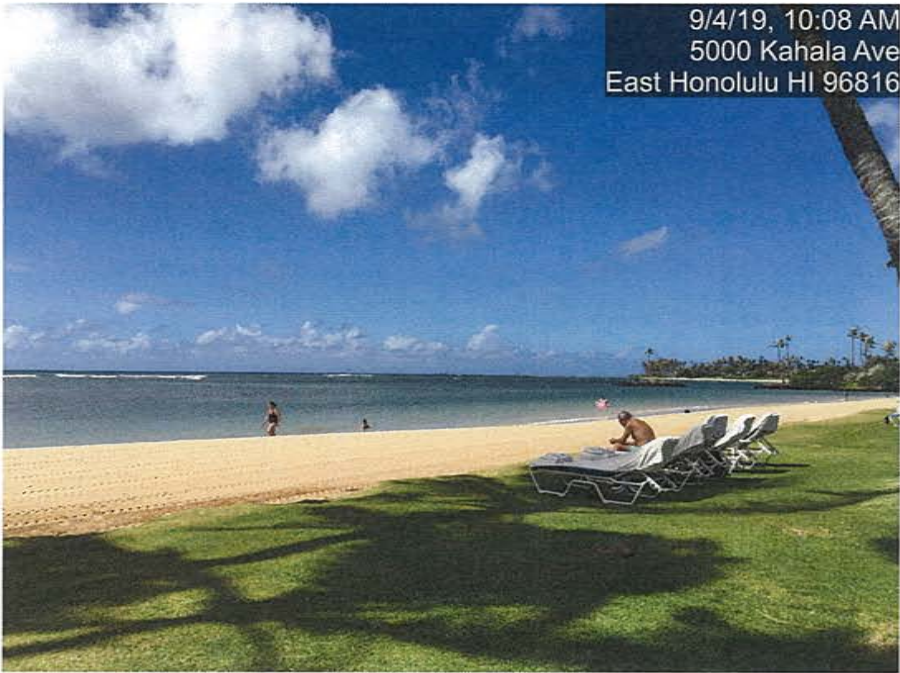


9/4/19, 10:04 AM
5000 Kahala Ave
East Honolulu HI 96816

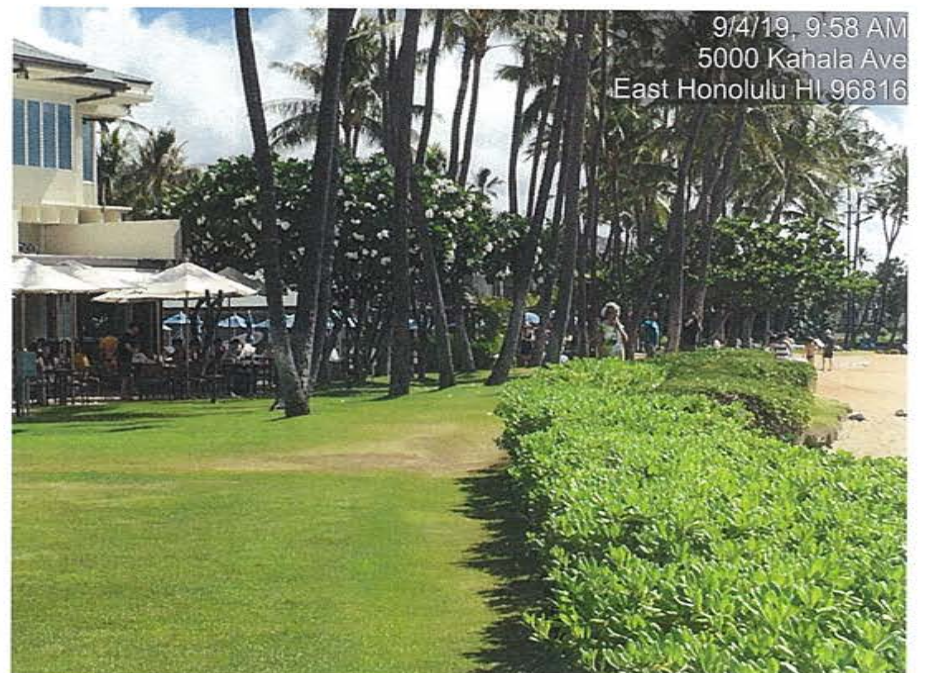
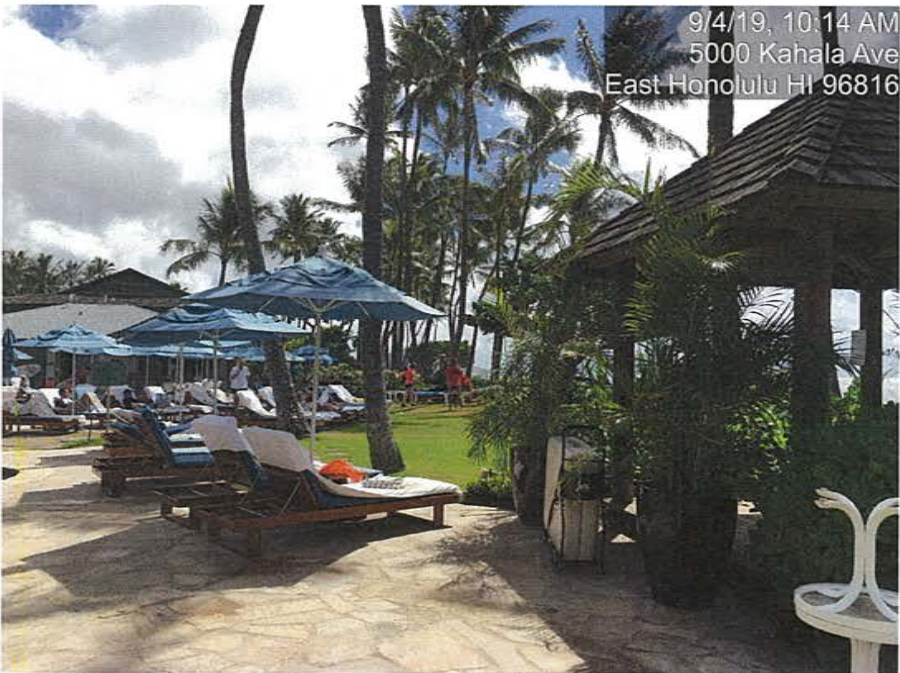
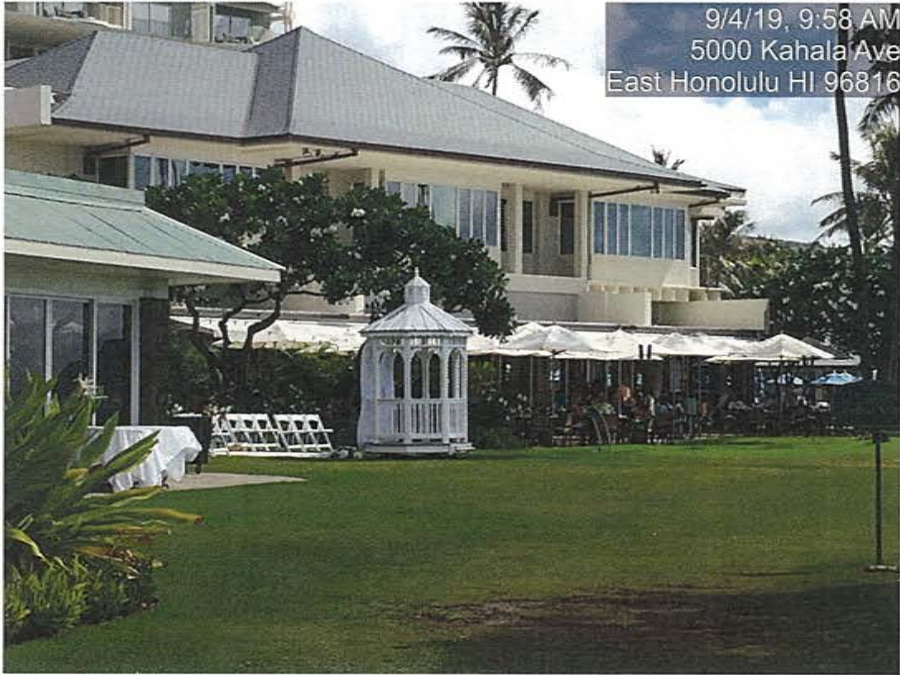


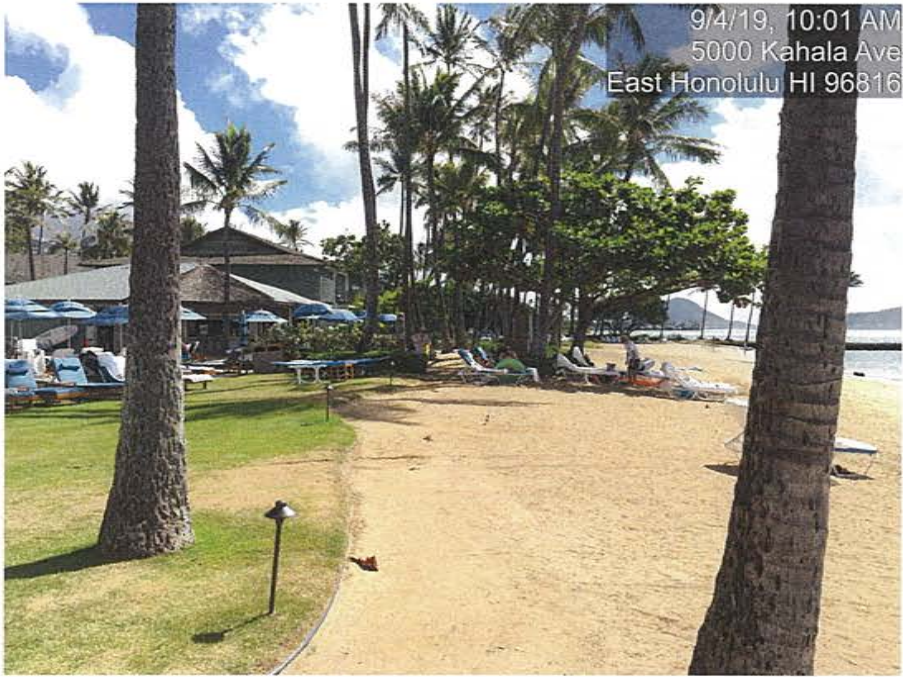
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5000 Kahala Ave
East Honolulu HI 96816

EXHIBIT "D" 9-4-19

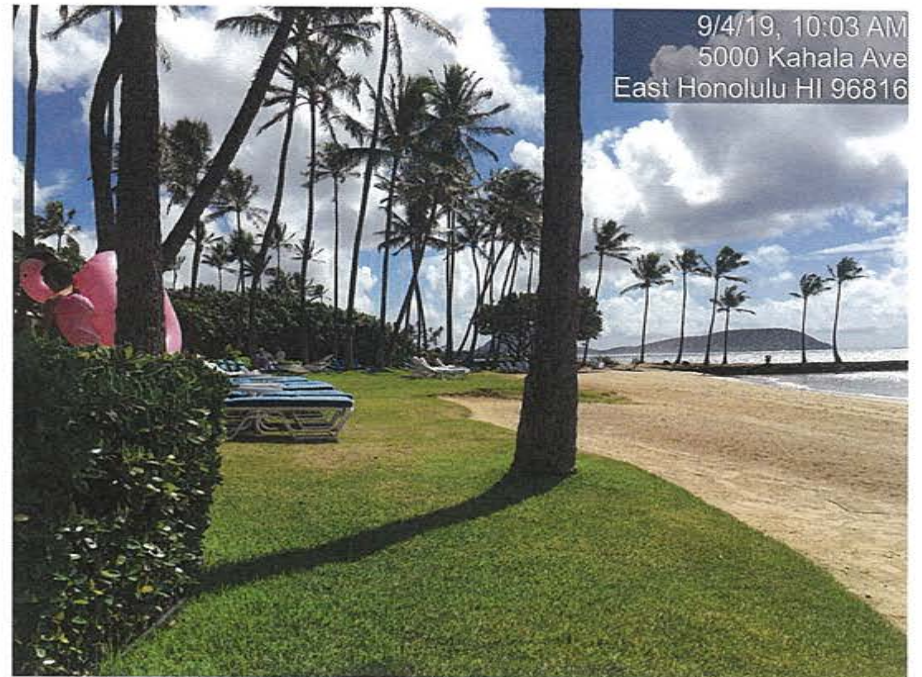




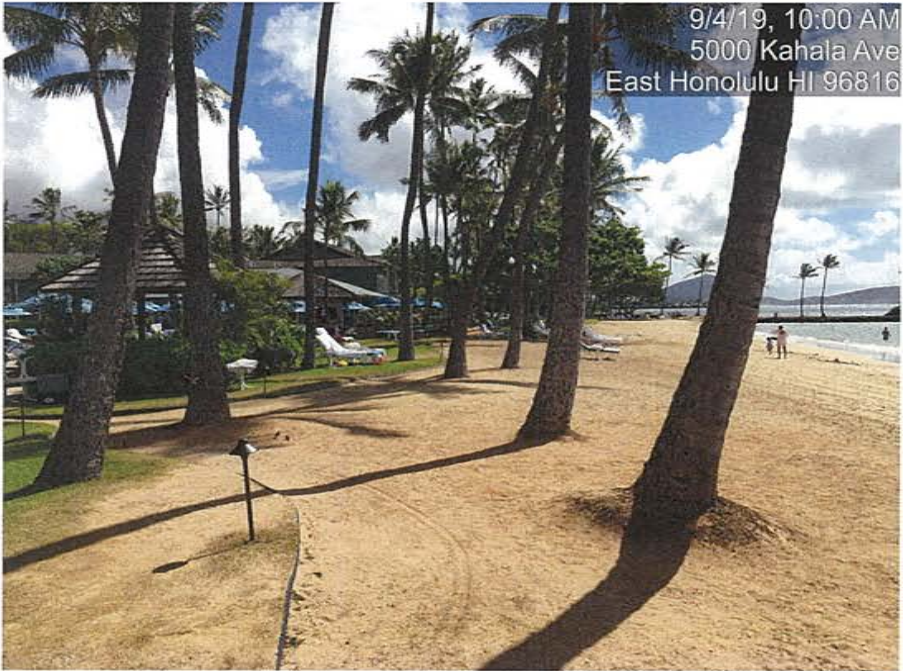




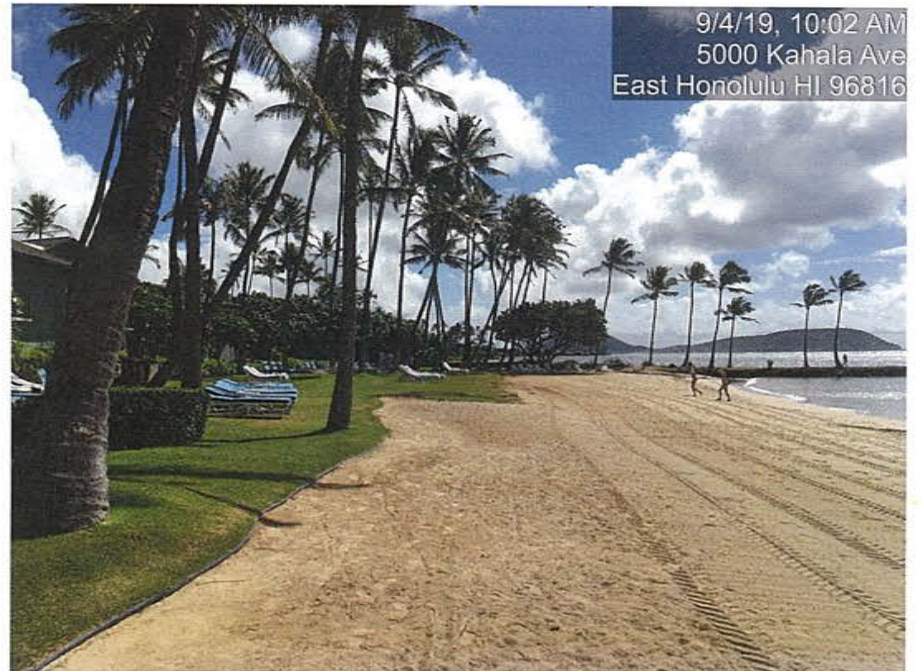
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5000 Kahala Ave
East Honolulu HI 96816



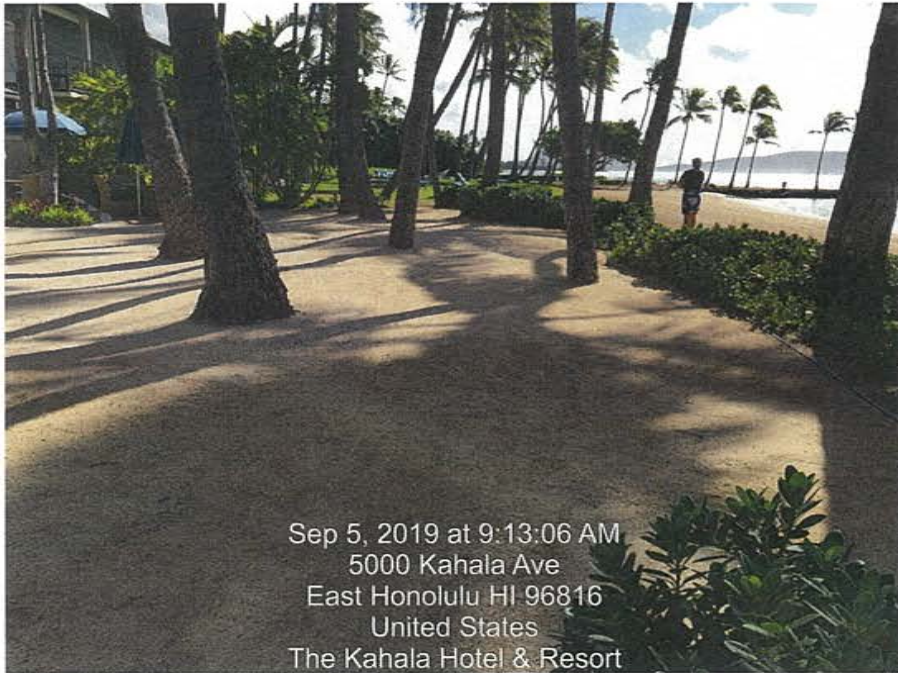
9/4/19, 10:03 AM
5000 Kahala Ave
East Honolulu HI 96816



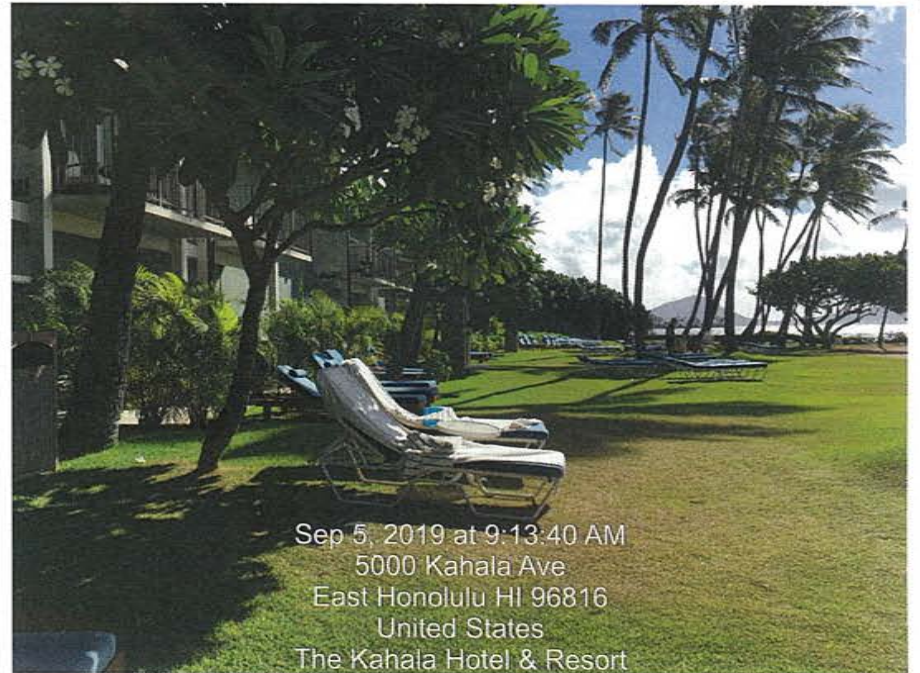
9/4/19, 10:00 AM
5000 Kahala Ave
East Honolulu HI 96816



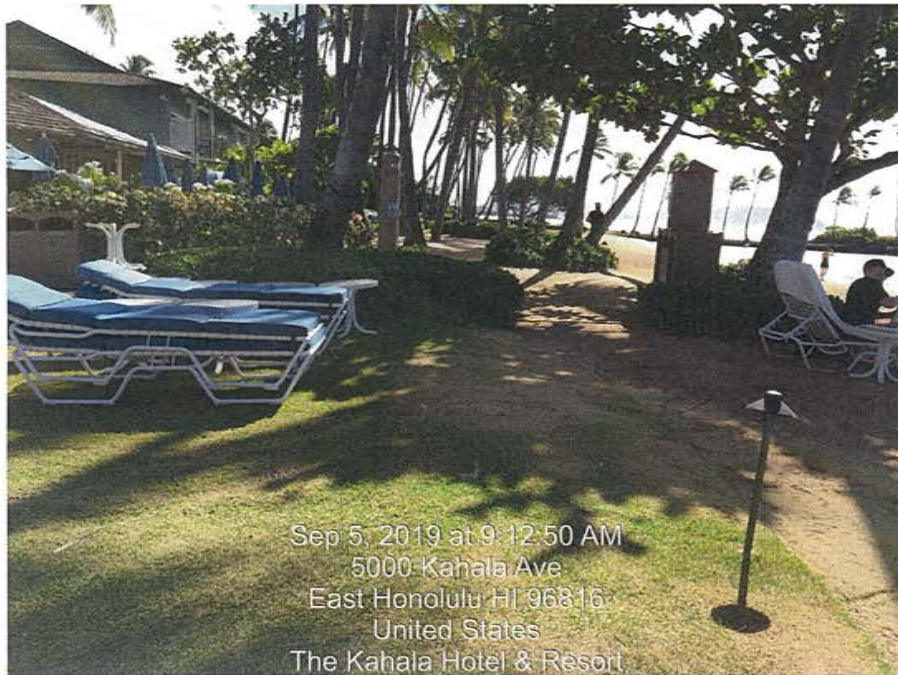
9/4/19, 10:02 AM
5000 Kahala Ave
East Honolulu HI 96816



Sep 5, 2019 at 9:13:06 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

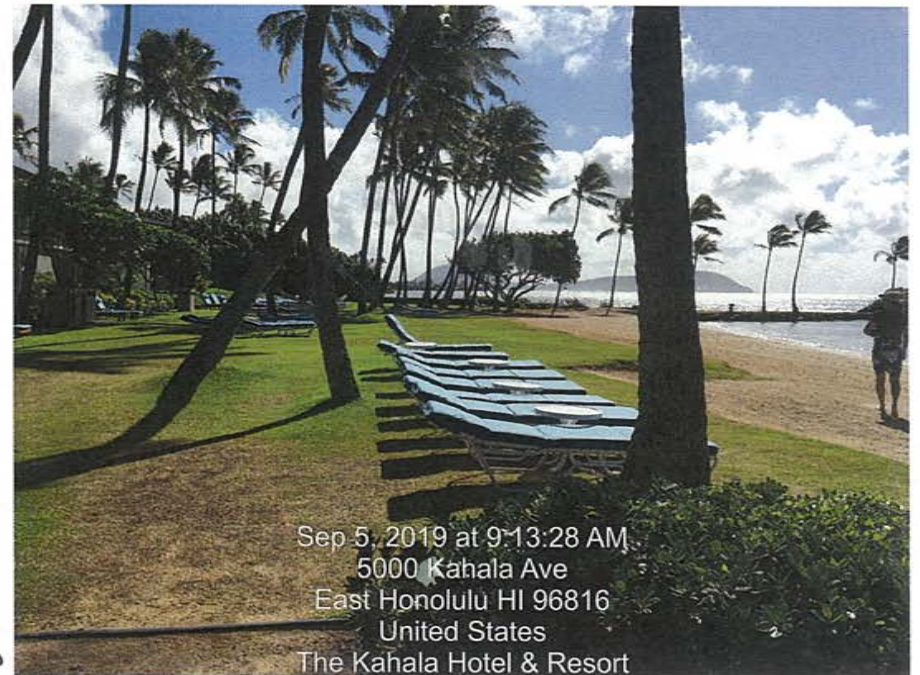


Sep 5, 2019 at 9:13:40 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

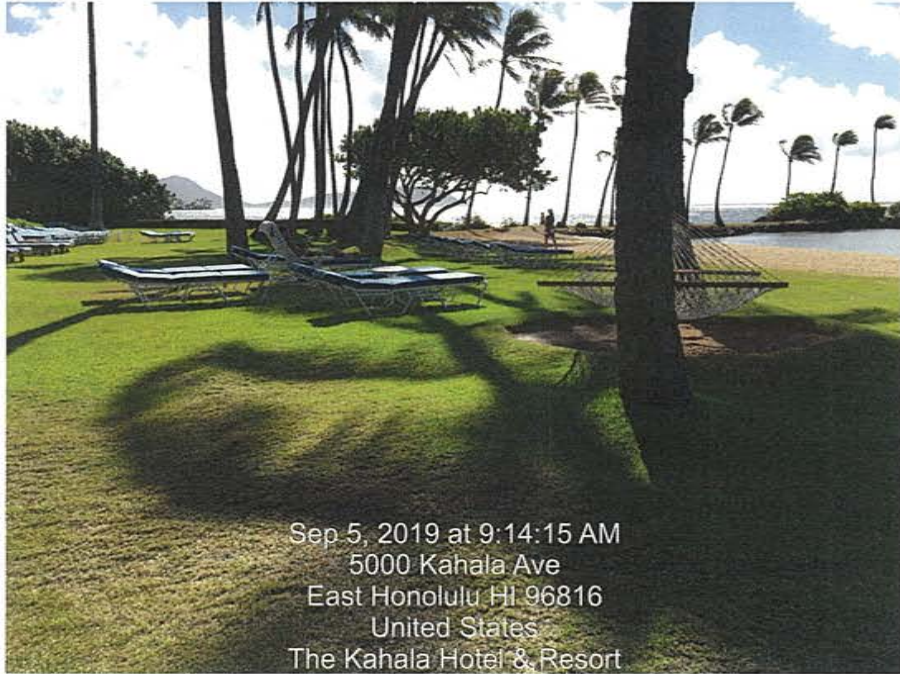


Sep 5, 2019 at 9:12:50 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

EXHIBIT "D"
9-5-19



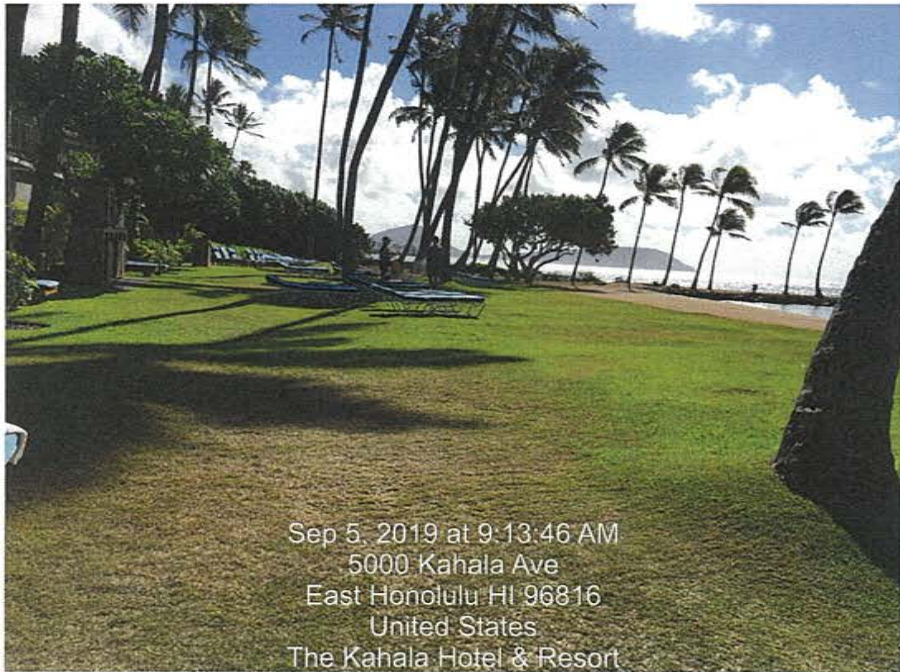
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



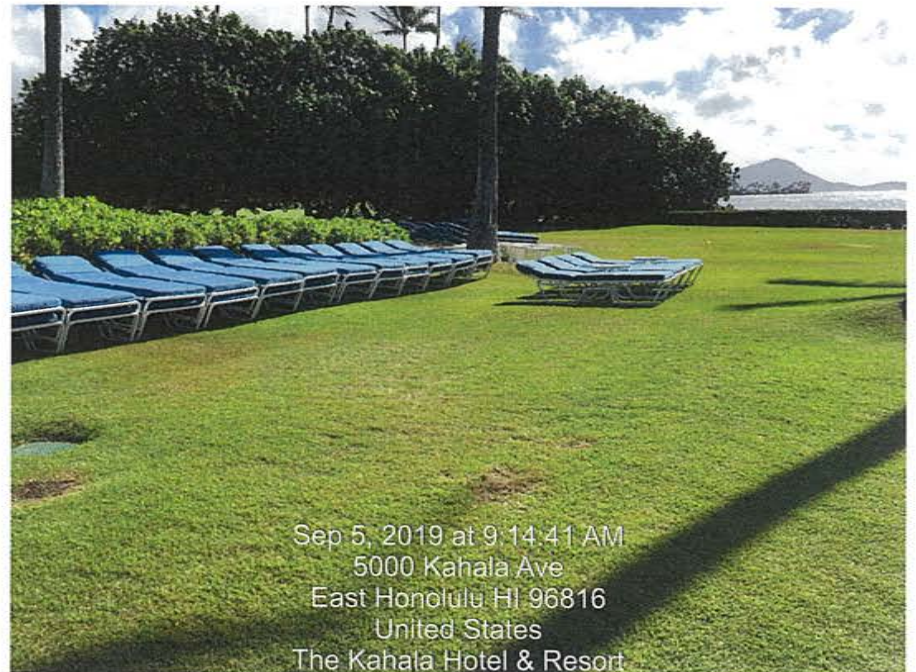
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



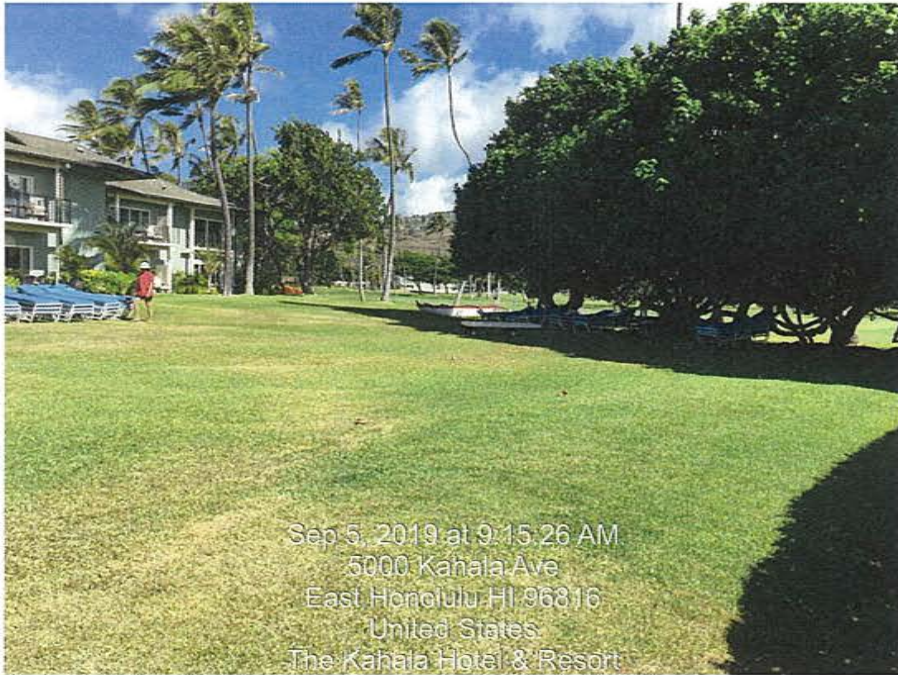
Sep 5, 2019 at 9:14:49 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



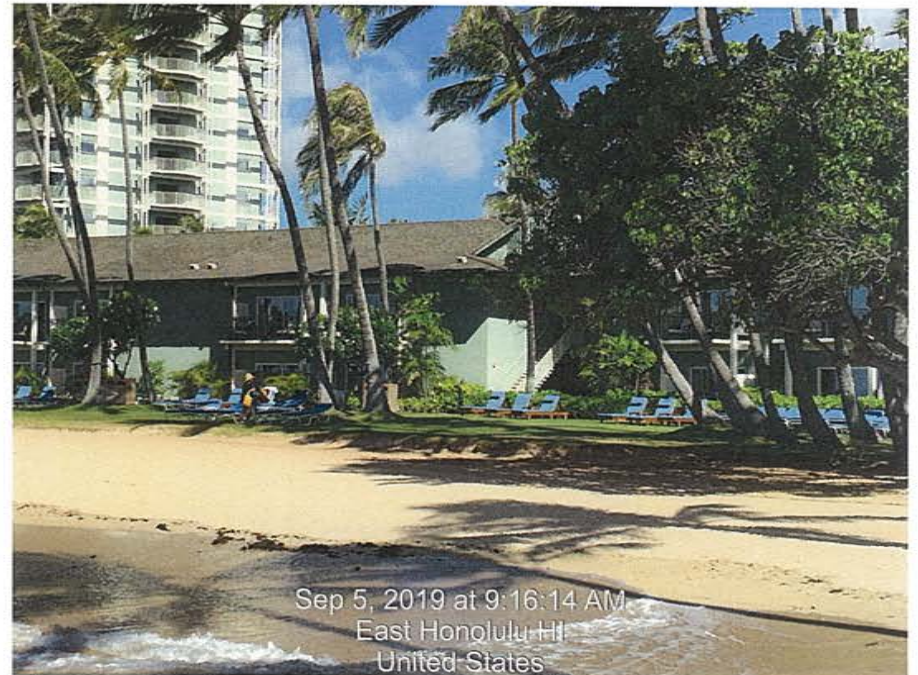
Sep 5, 2019 at 9:13:46 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



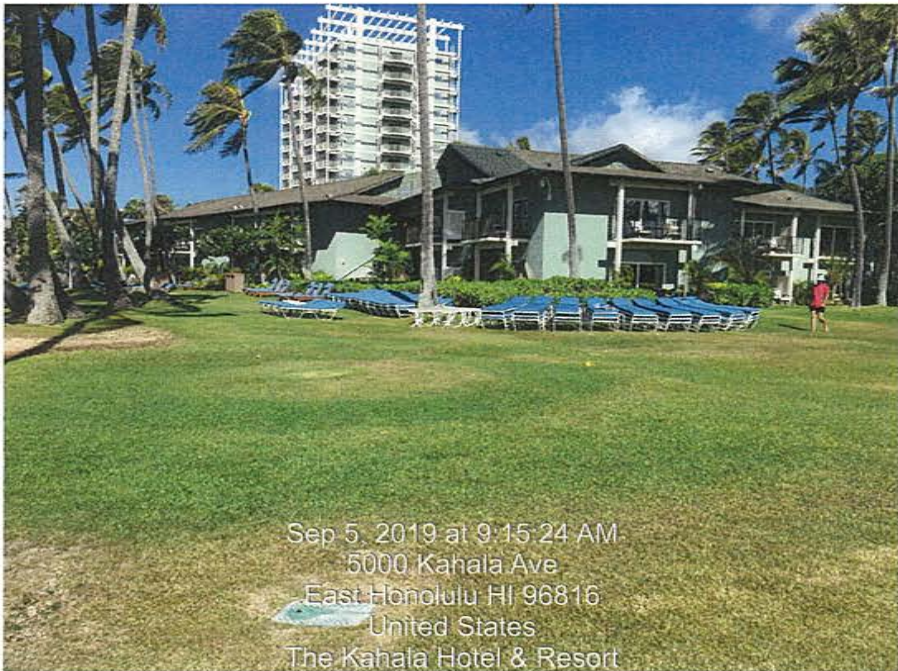
Sep 5, 2019 at 9:14:41 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



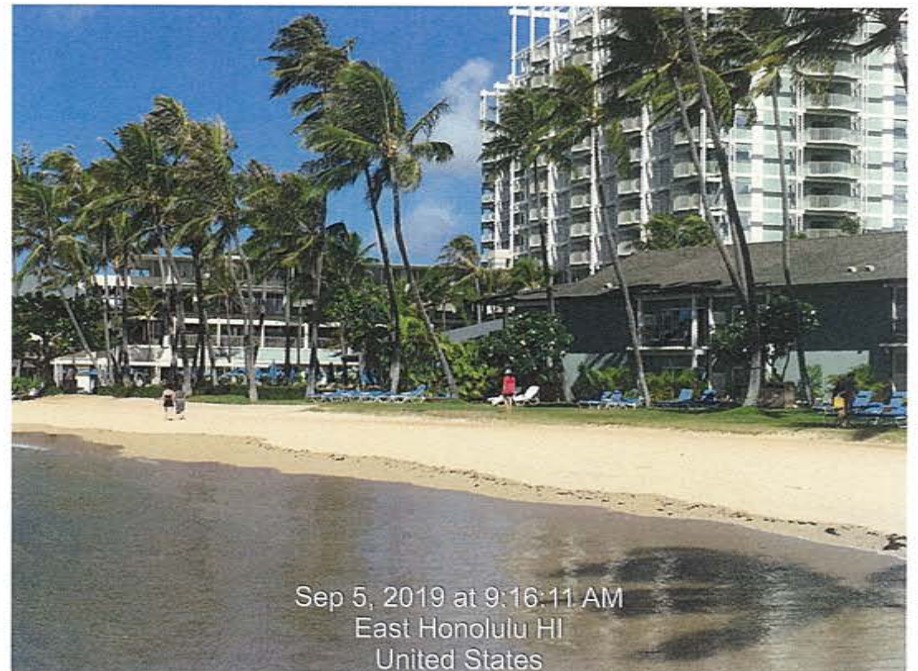
Sep 5, 2019 at 9:15:26 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



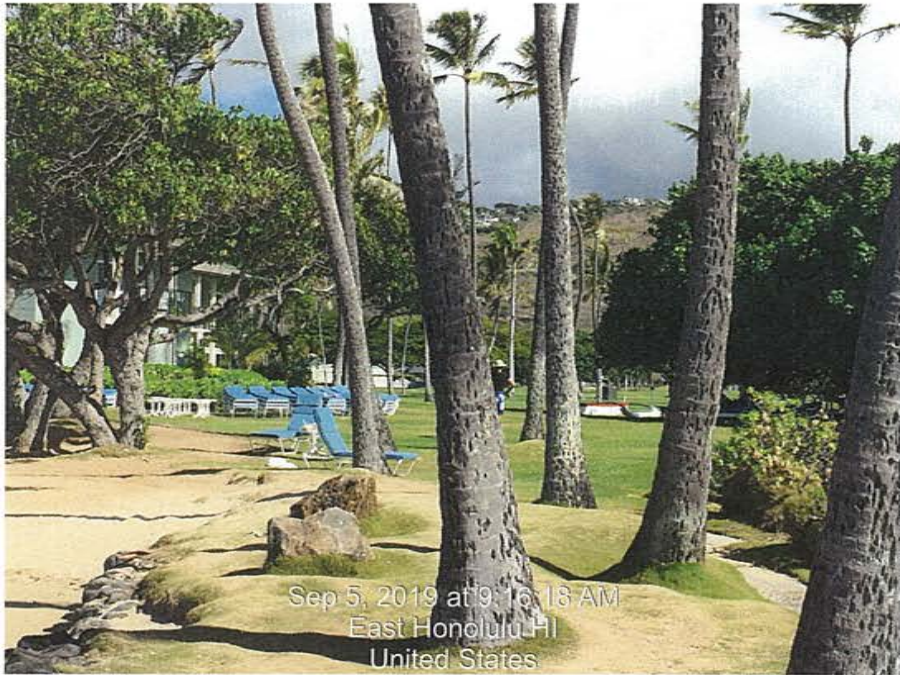
Sep 5, 2019 at 9:16:14 AM
East Honolulu HI
United States



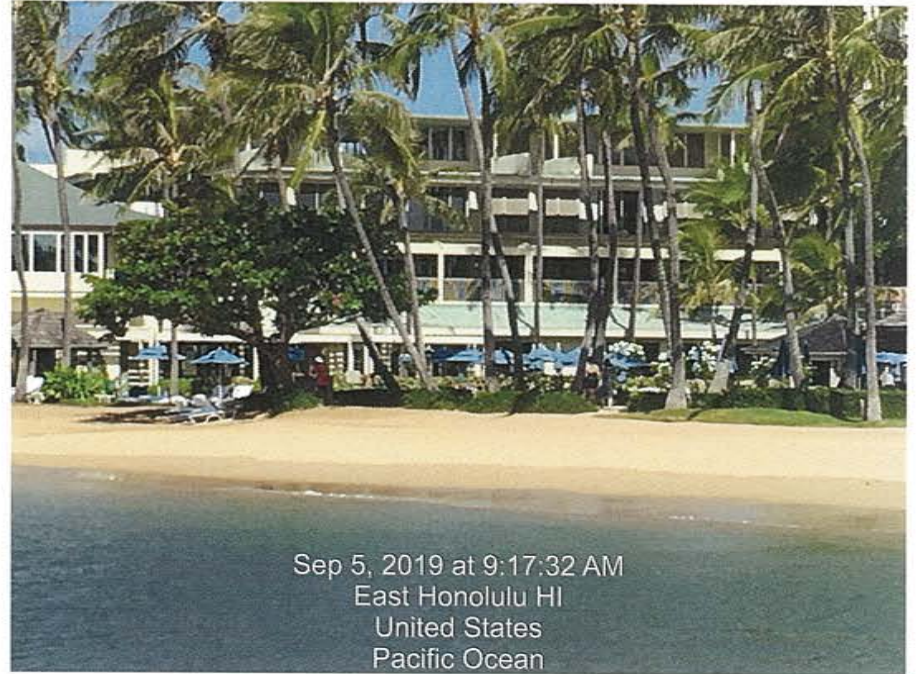
Sep 5, 2019 at 9:15:24 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



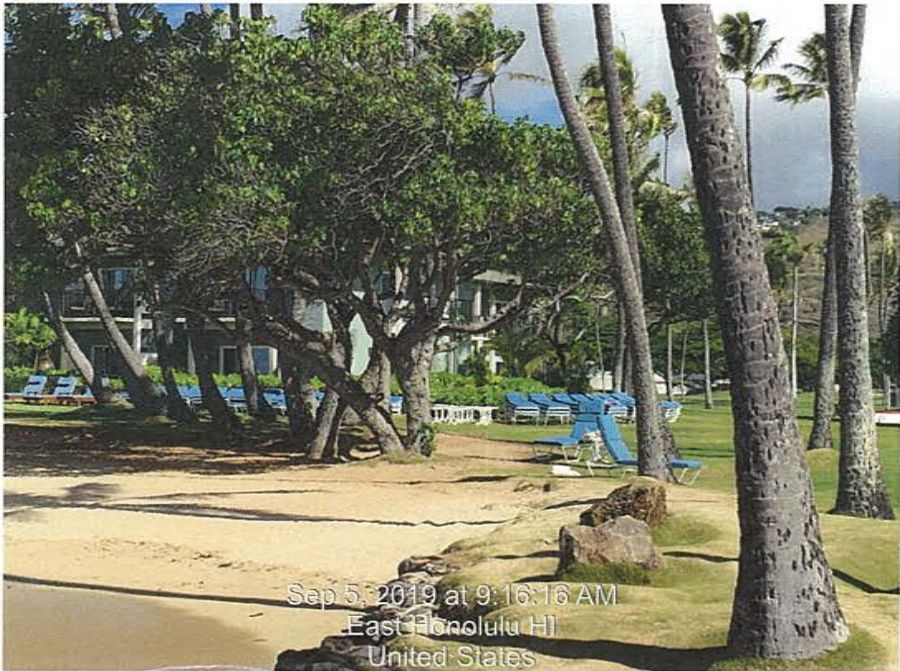
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United States



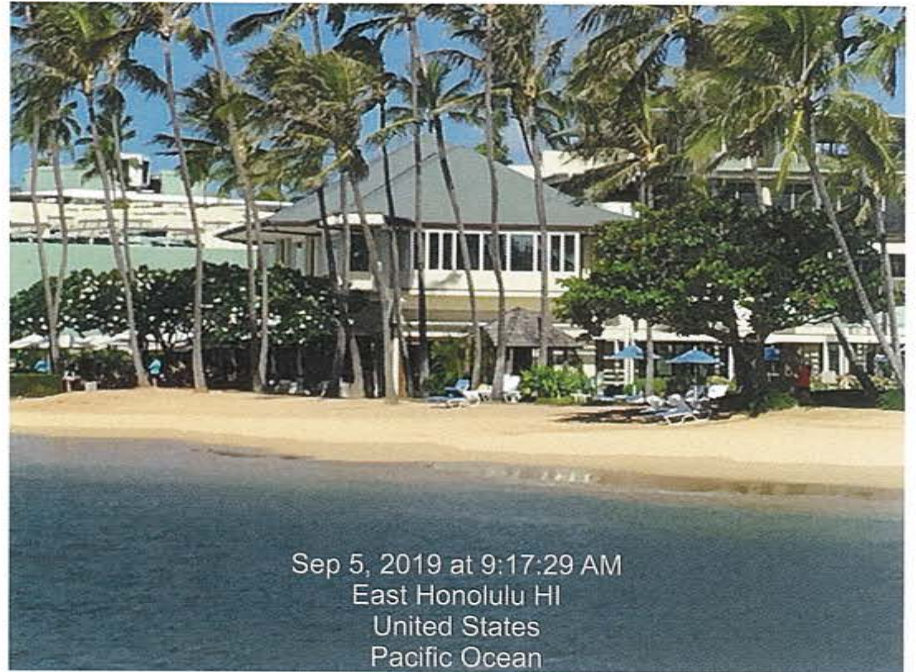
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United States



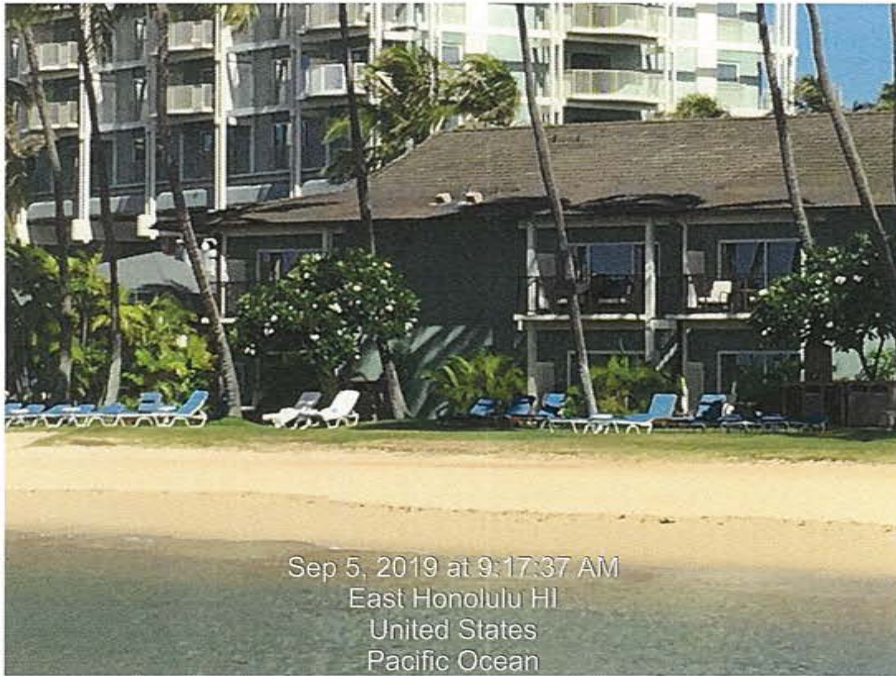
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United States
Pacific Ocean



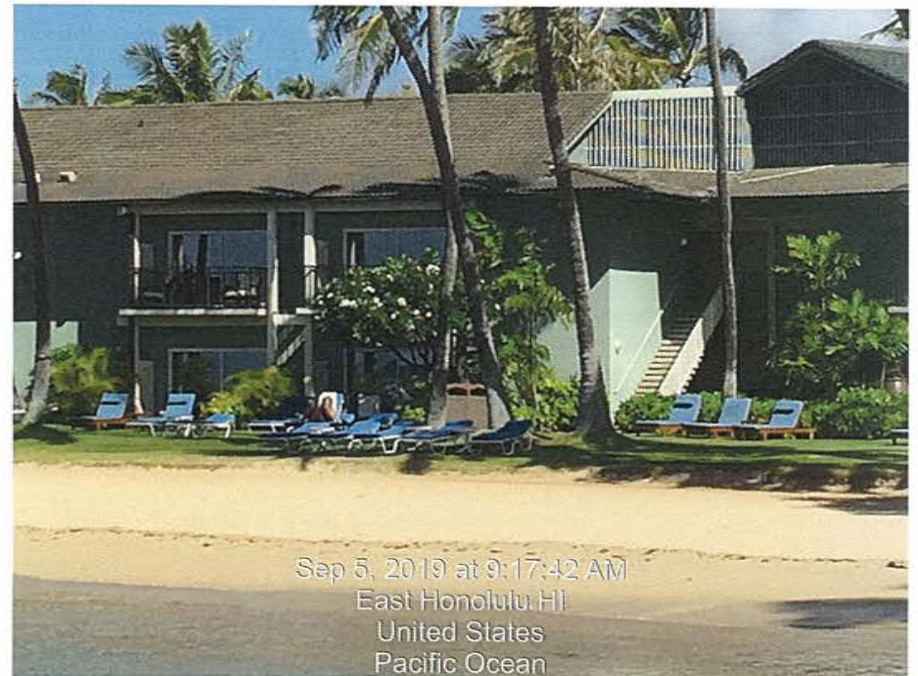
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United States



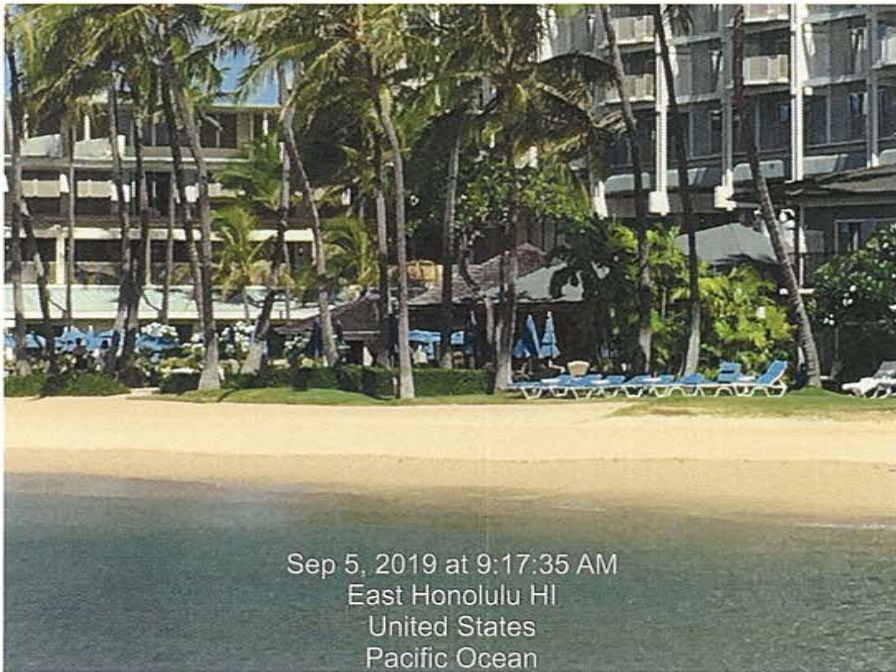
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United States
Pacific Ocean



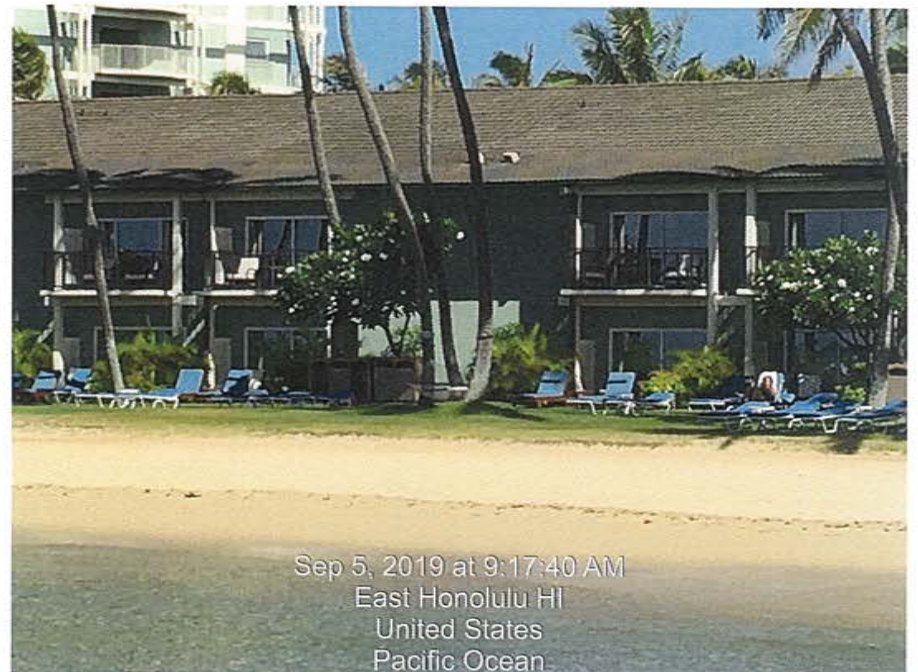
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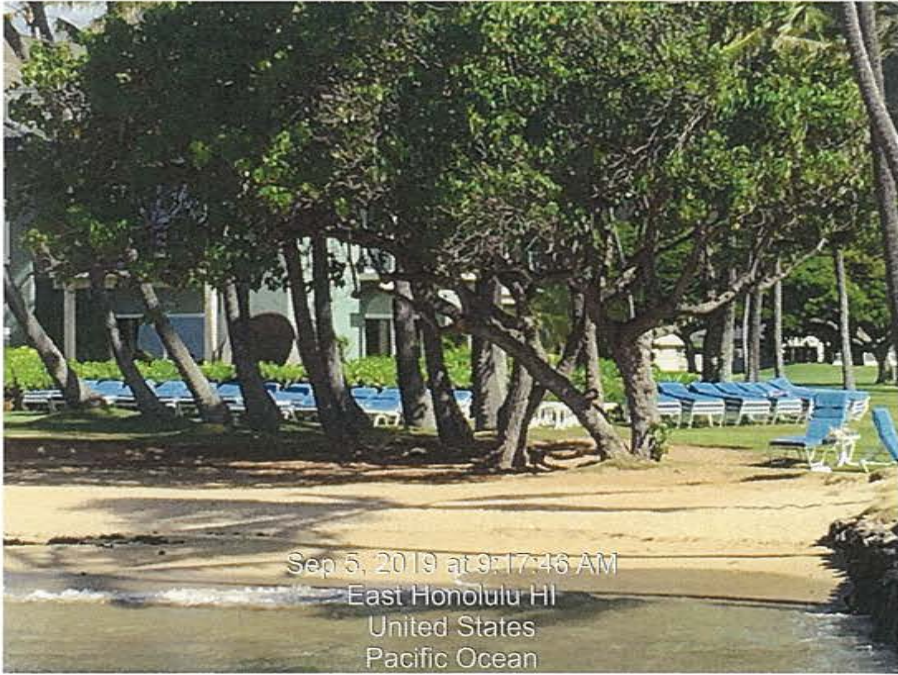
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United States
Pacific Ocean



Sep 5, 2019 at 9:17:35 AM
East Honolulu HI
United States
Pacific Ocean



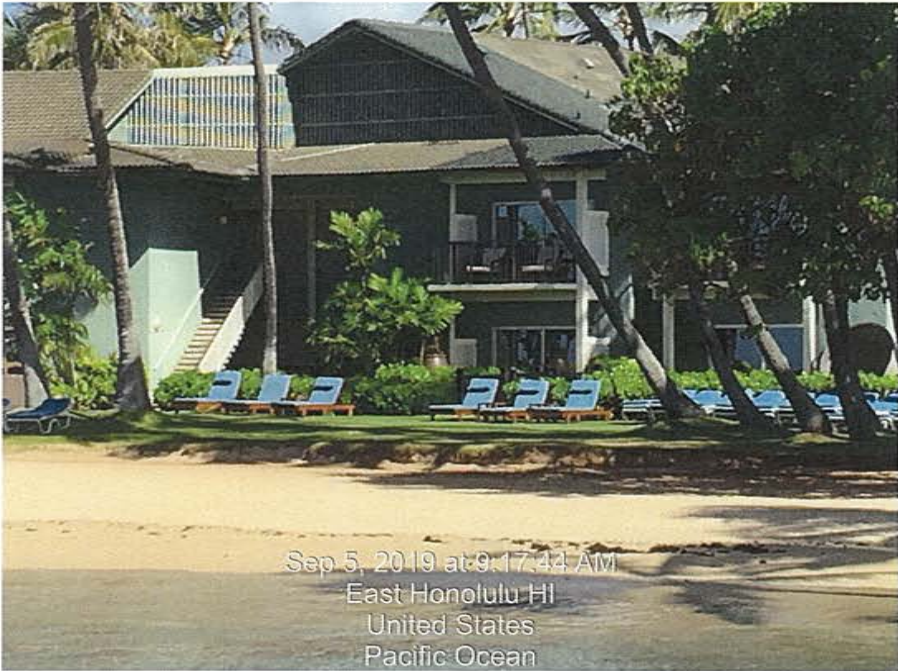
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United States
Pacific Ocean



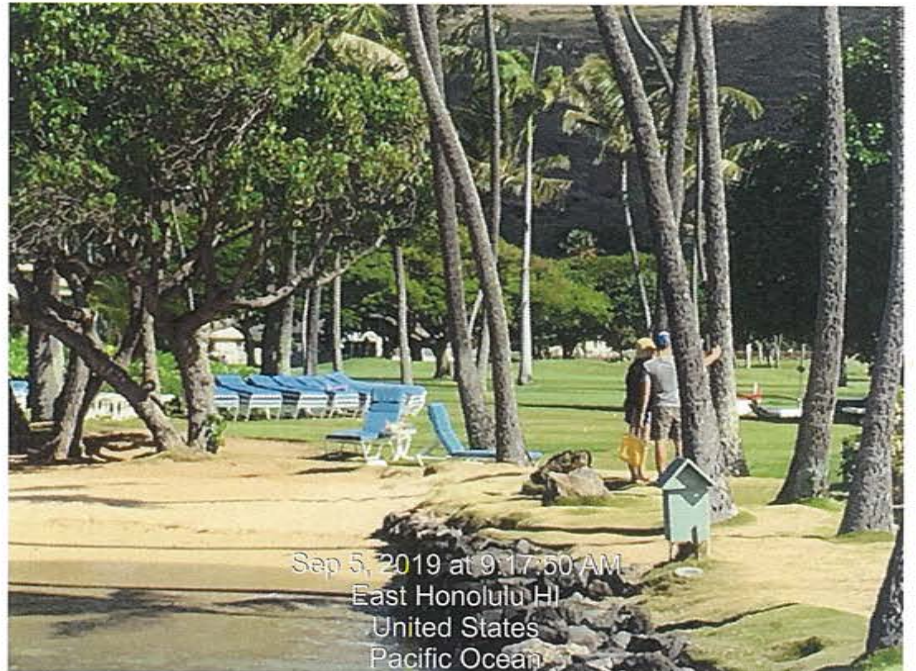
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United States
Pacific Ocean



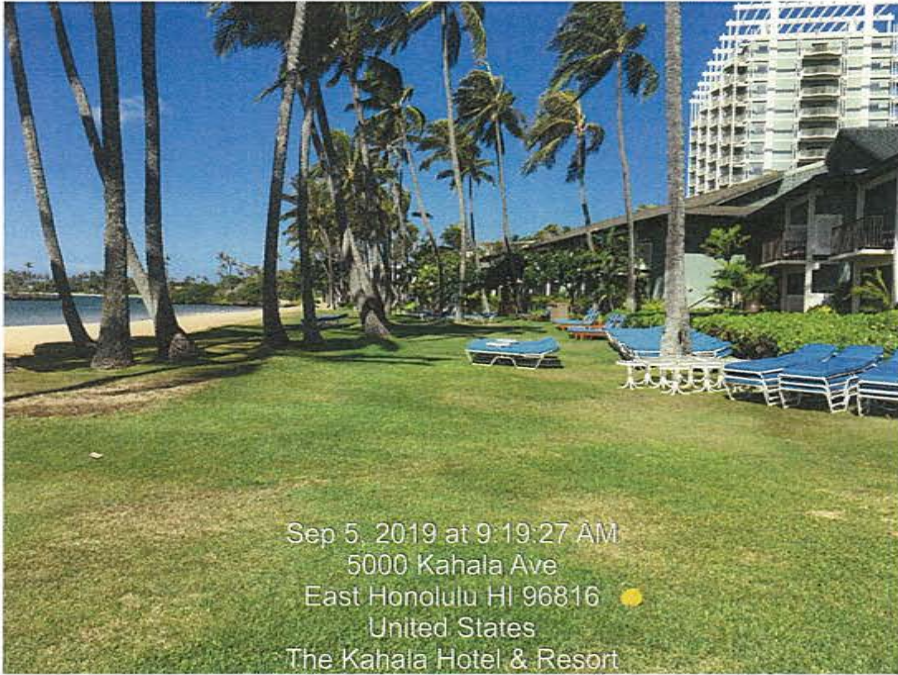
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East Honolulu HI 96816
United States



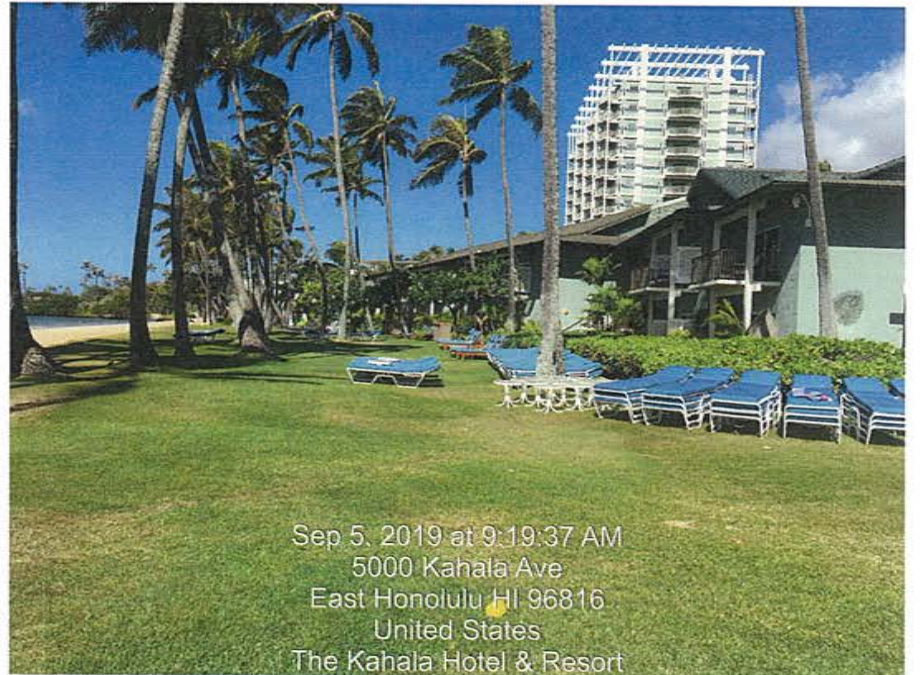
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United States
Pacific Ocean



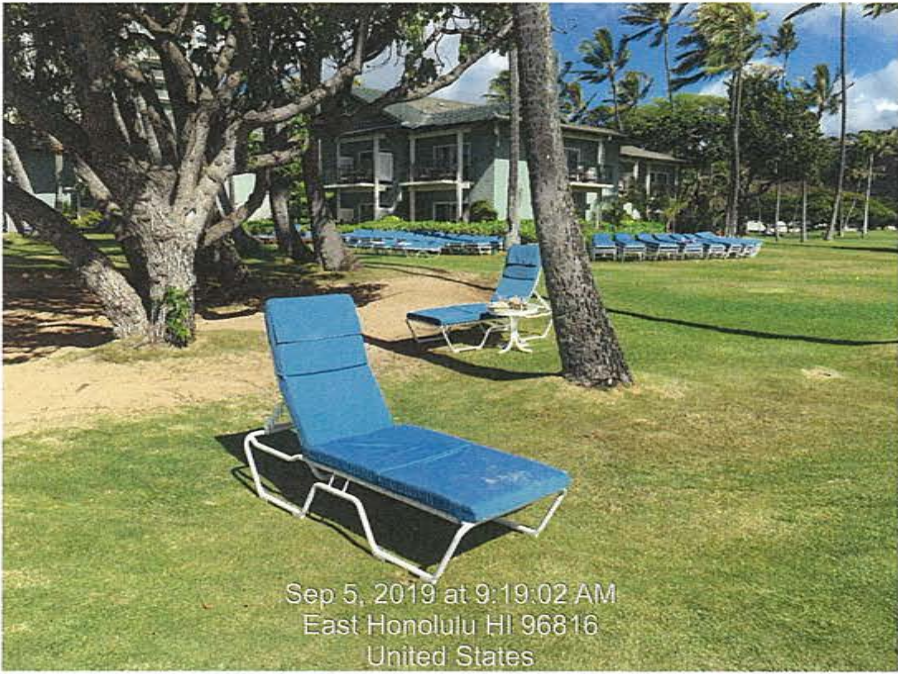
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United States
Pacific Ocean



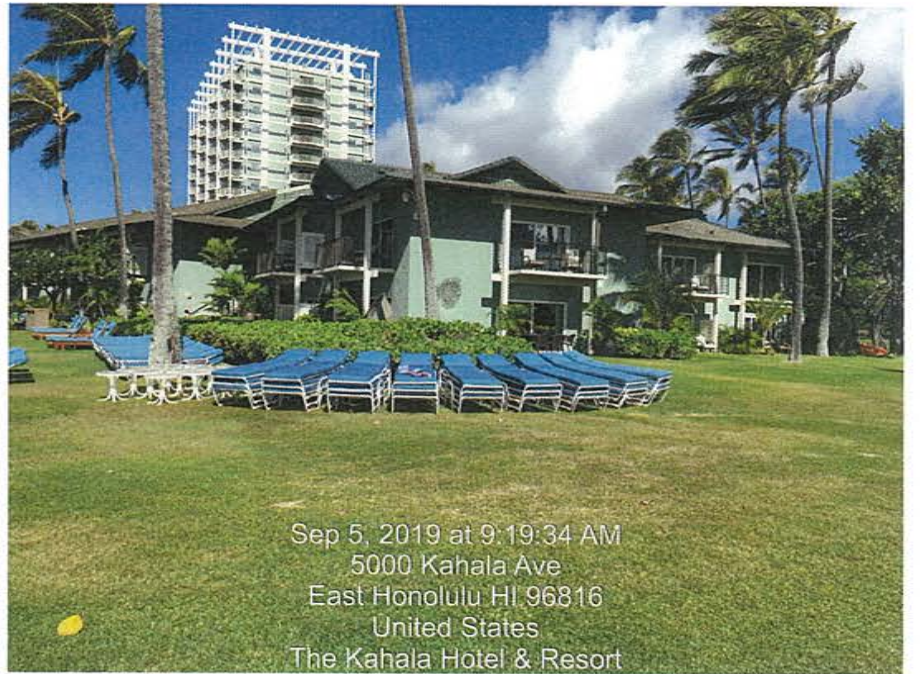
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



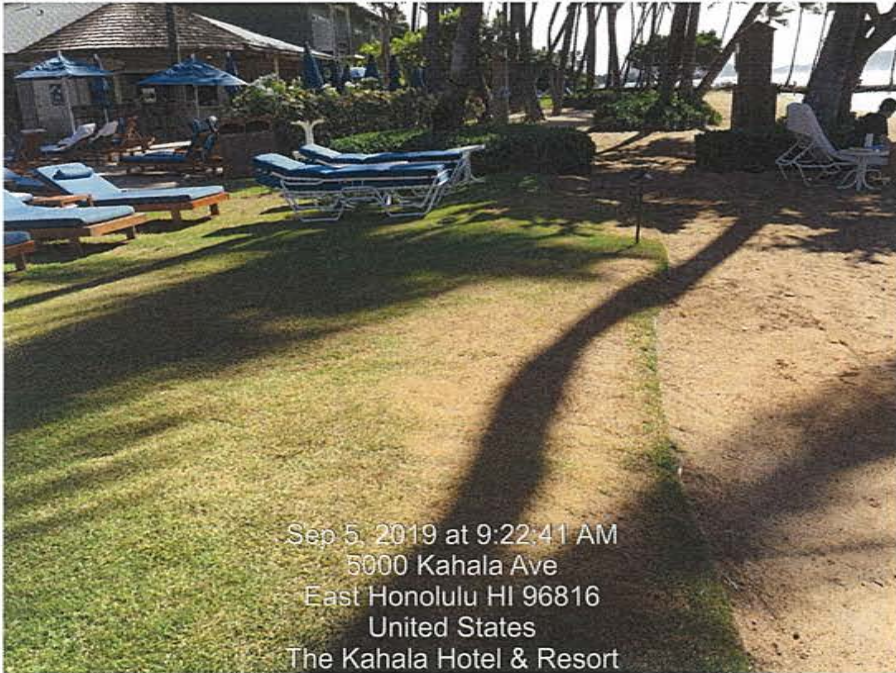
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



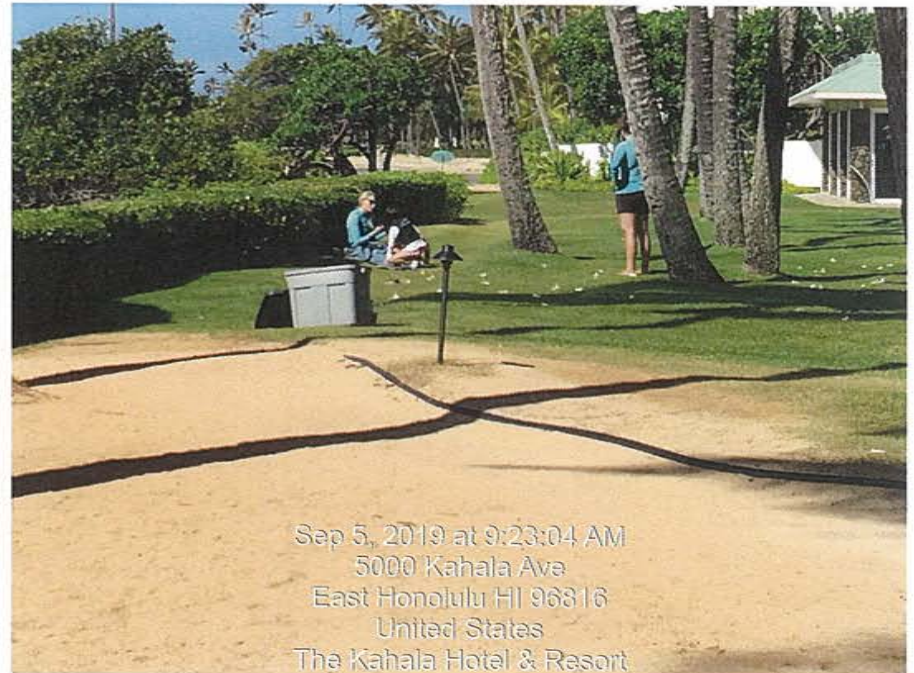
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East Honolulu HI 96816
United States



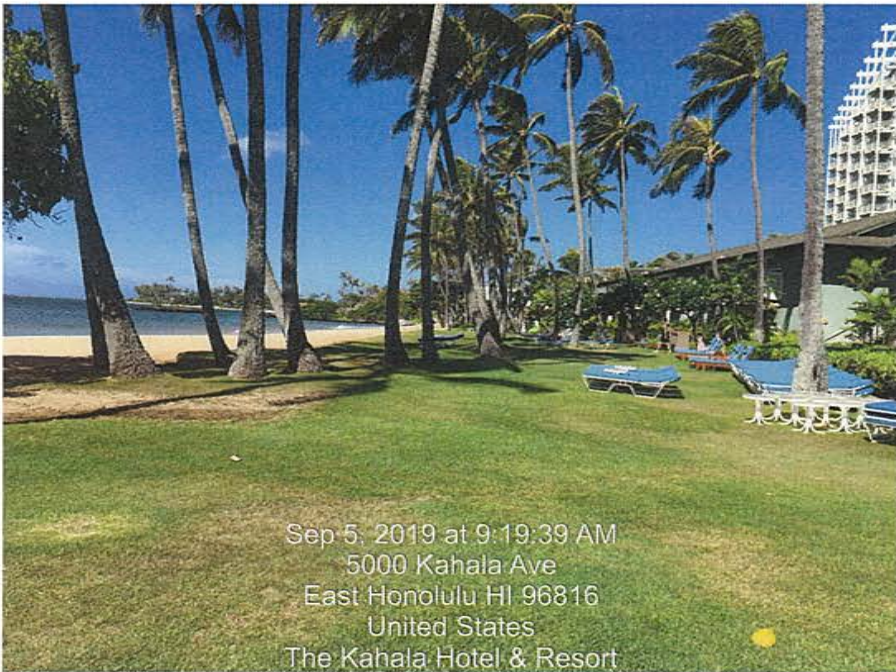
Sep 5, 2019 at 9:19:34 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



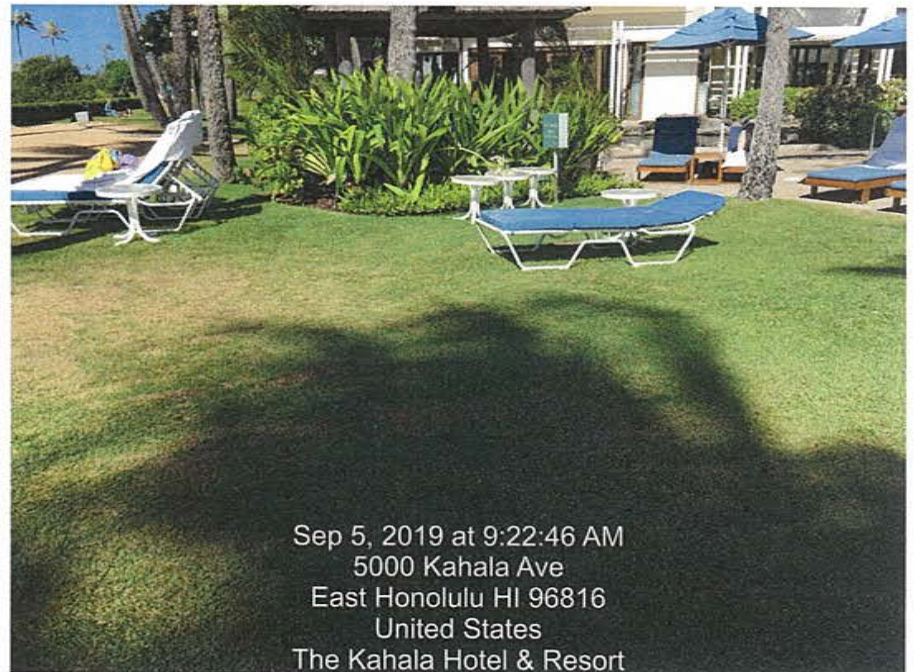
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



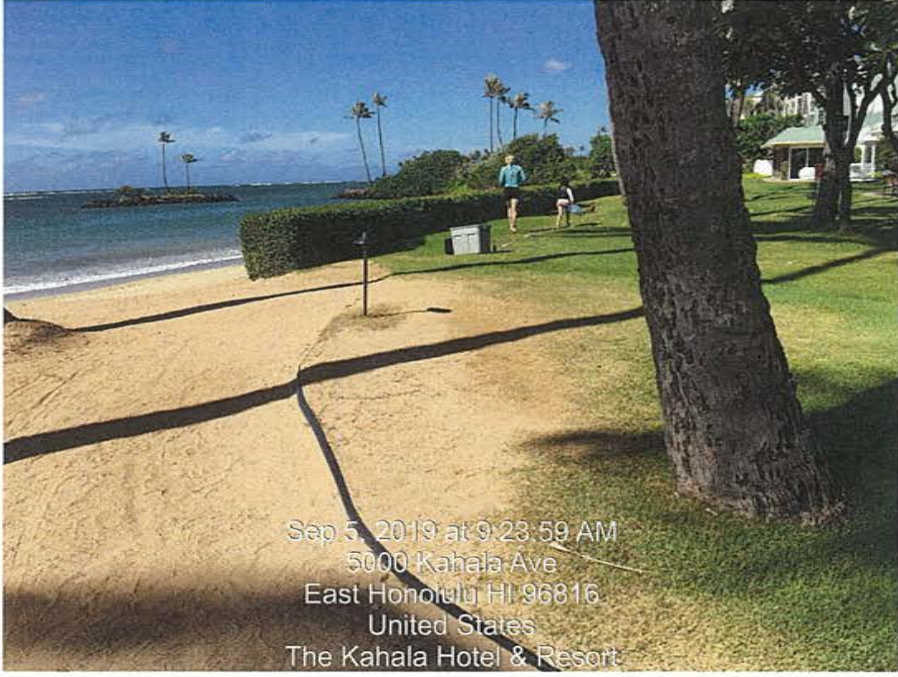
Sep 5, 2019 at 9:23:04 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Sep 5, 2019 at 9:19:39 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



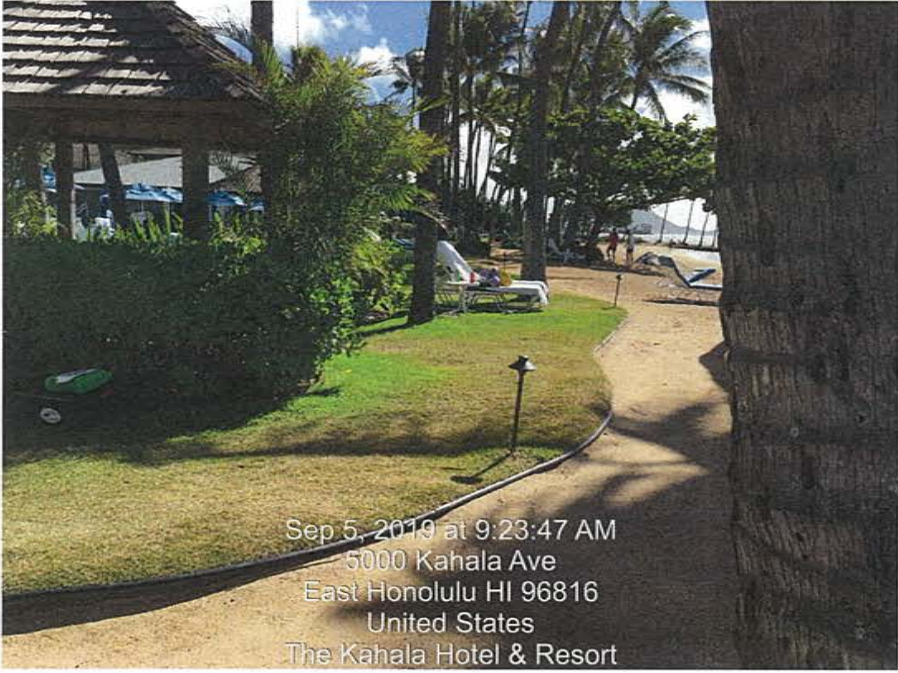
Sep 5, 2019 at 9:22:46 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Sep 5, 2019 at 9:23:59 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



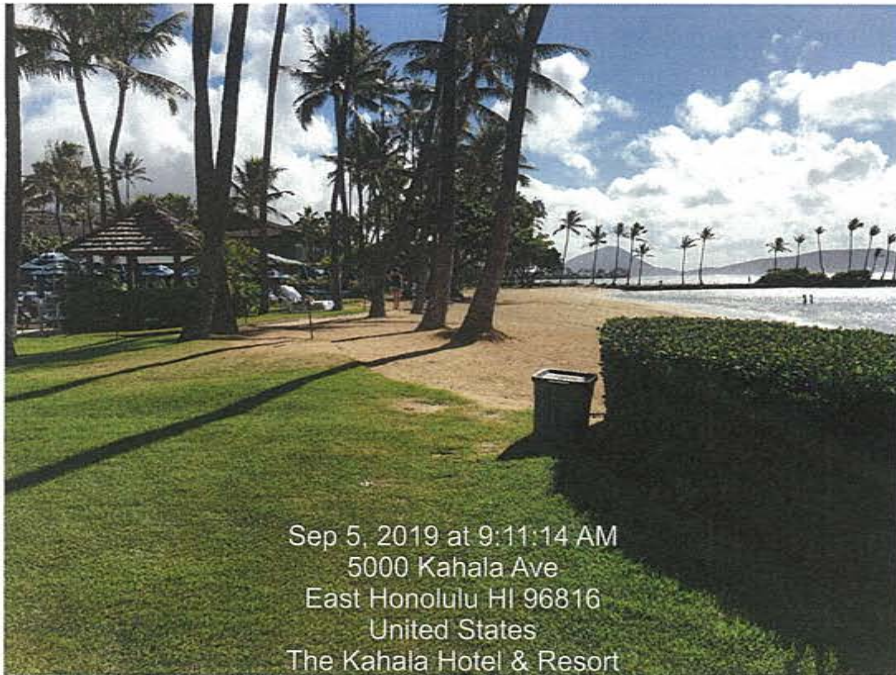
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East Honolulu HI 96816
United States



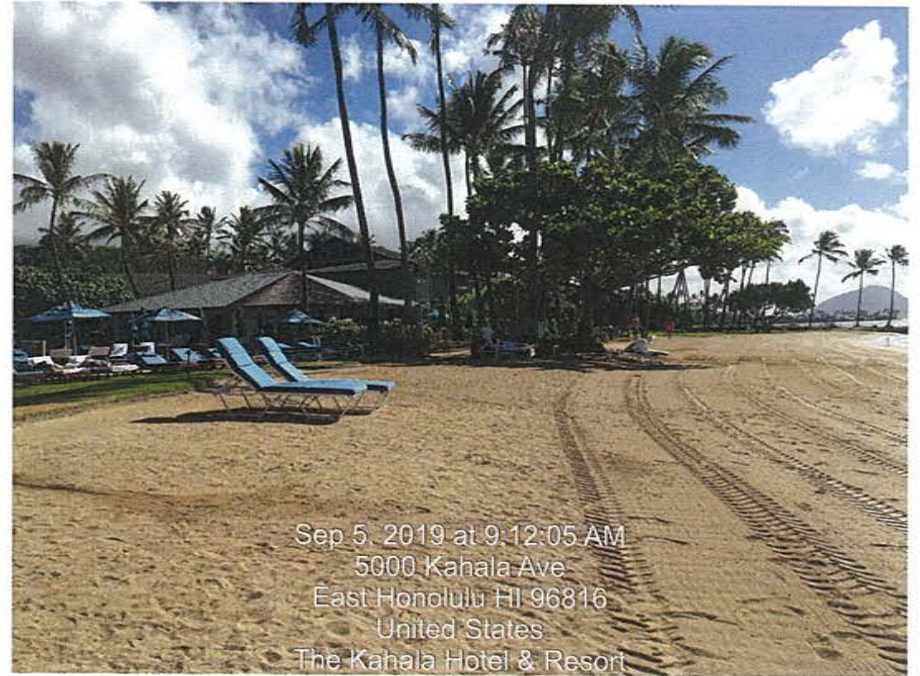
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



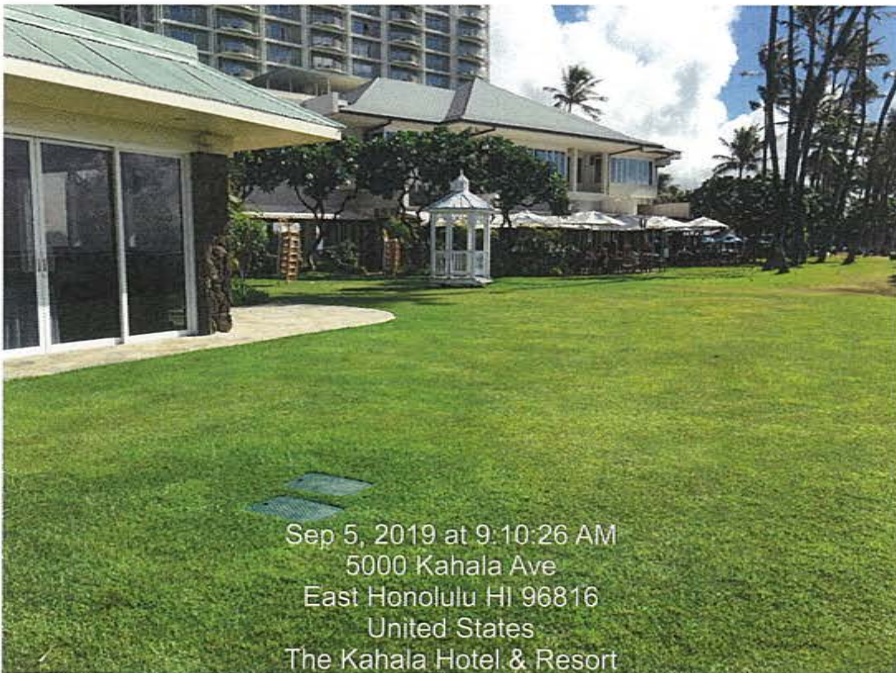
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United States



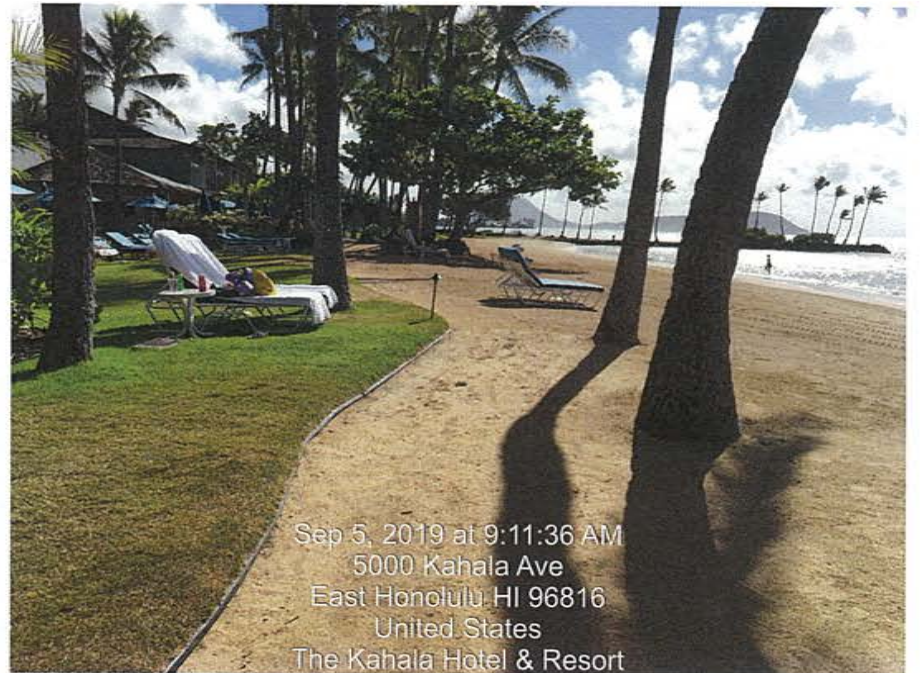
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



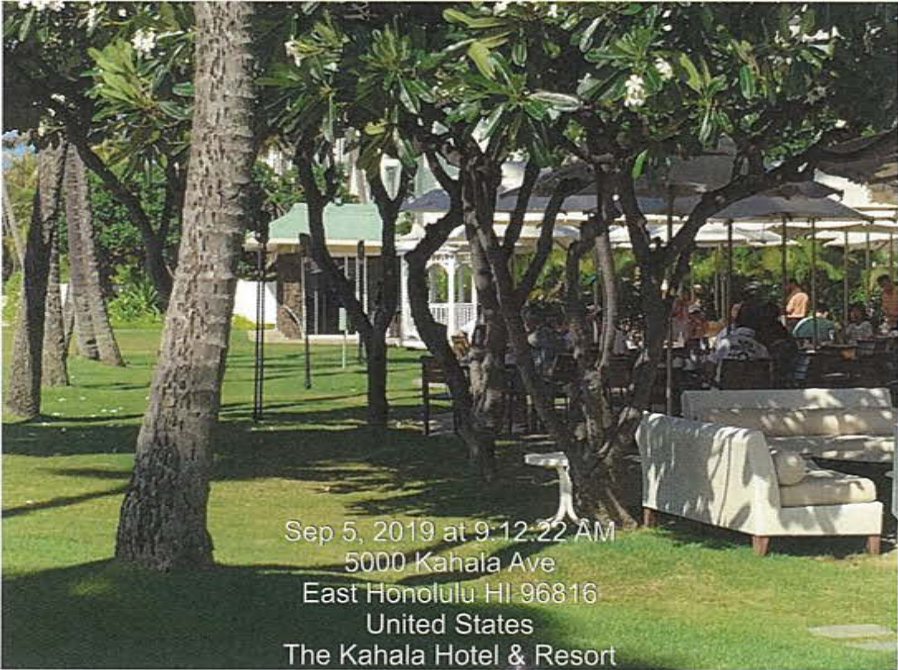
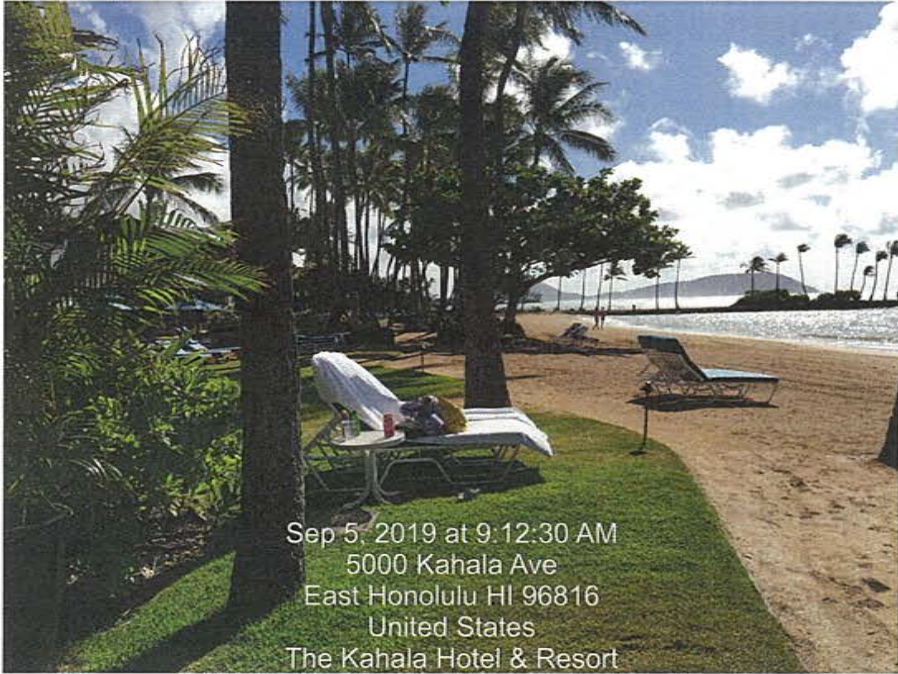
Sep 5, 2019 at 9:12:05 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Sep 5, 2019 at 9:10:26 AM
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East Honolulu HI 96816
United States
The Kahala Hotel & Resort

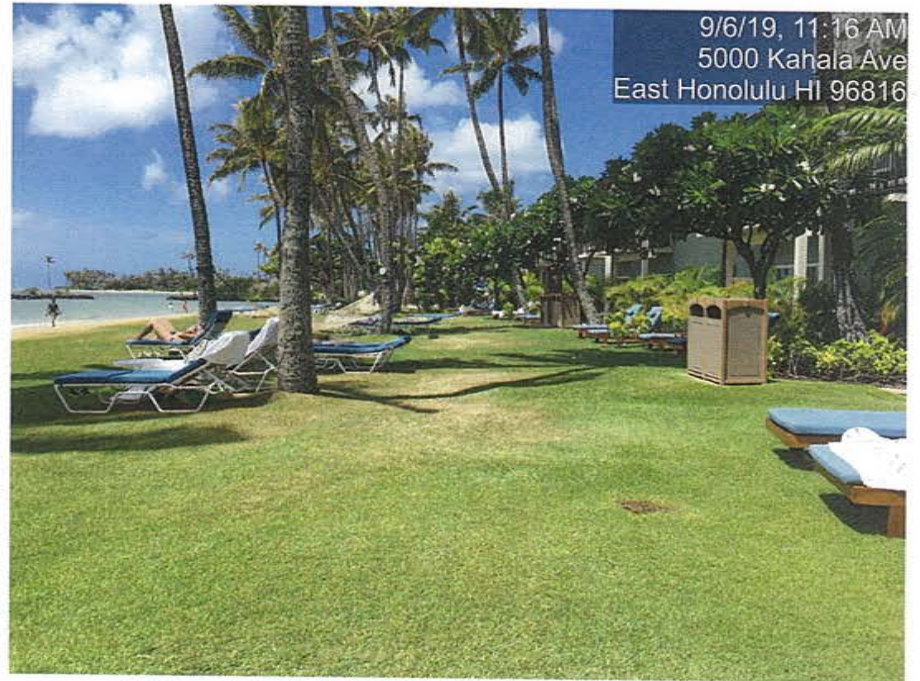


Sep 5, 2019 at 9:11:36 AM
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United States
The Kahala Hotel & Resort

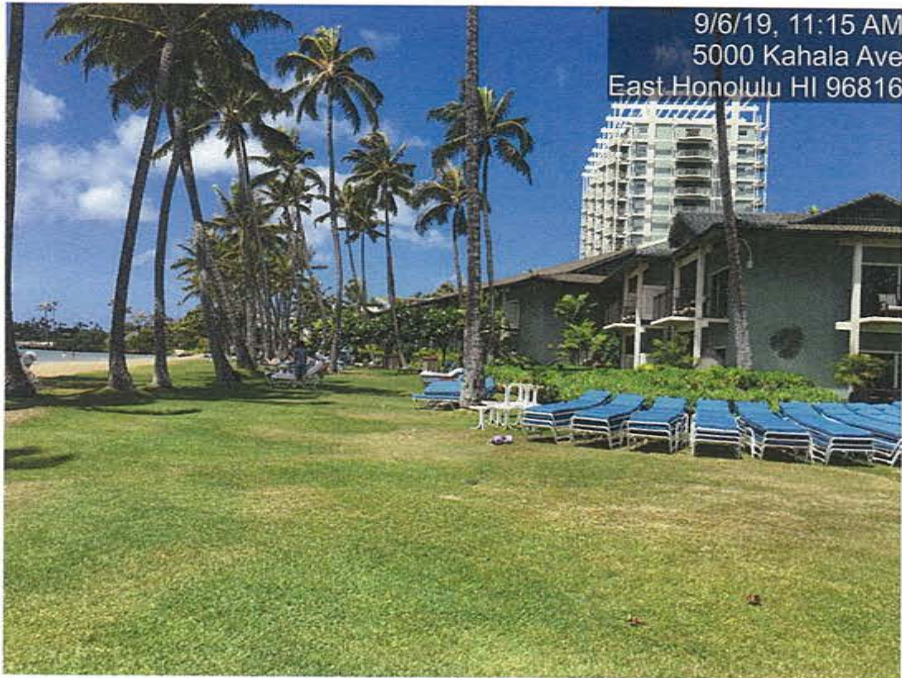




9/6/19, 11:15 AM
5000 Kahala Ave
East Honolulu HI 96816



9/6/19, 11:16 AM
5000 Kahala Ave
East Honolulu HI 96816

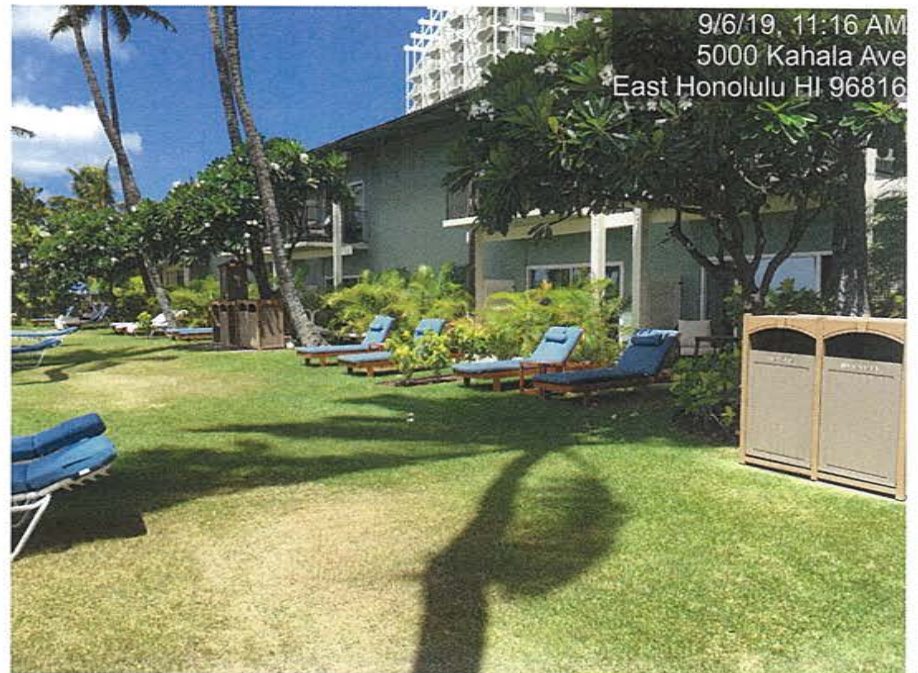
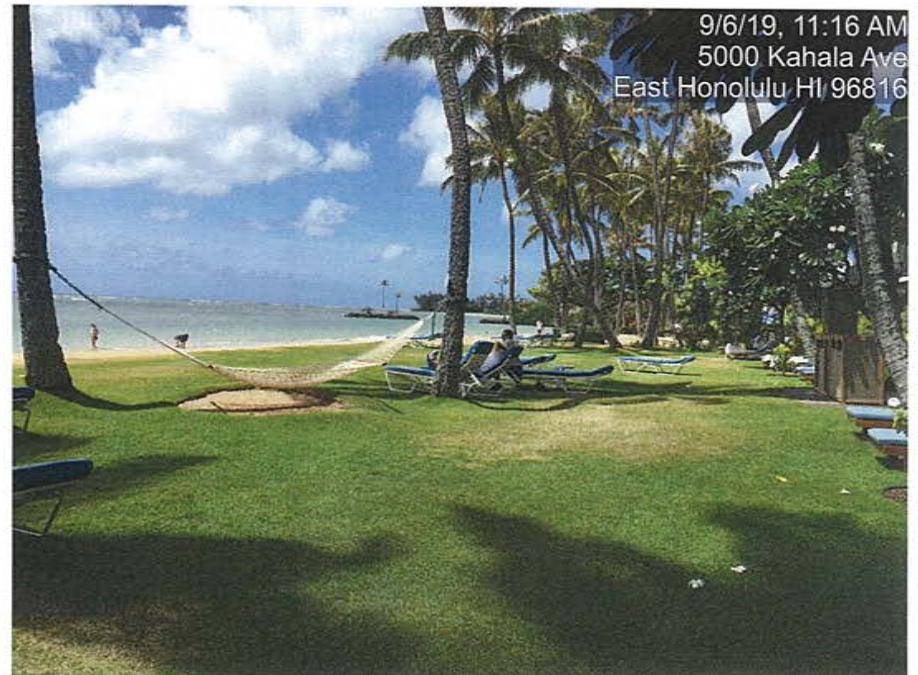


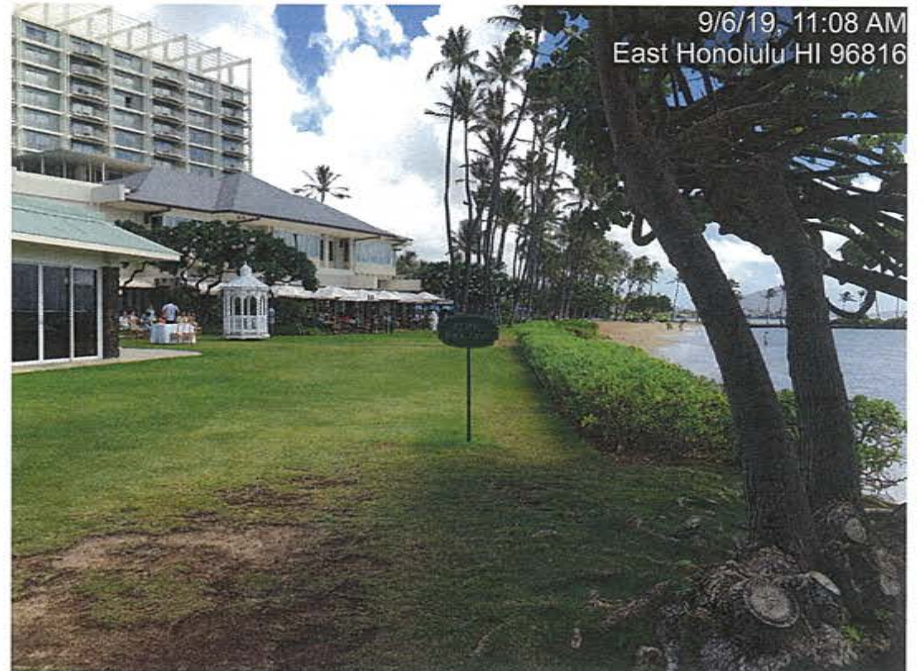
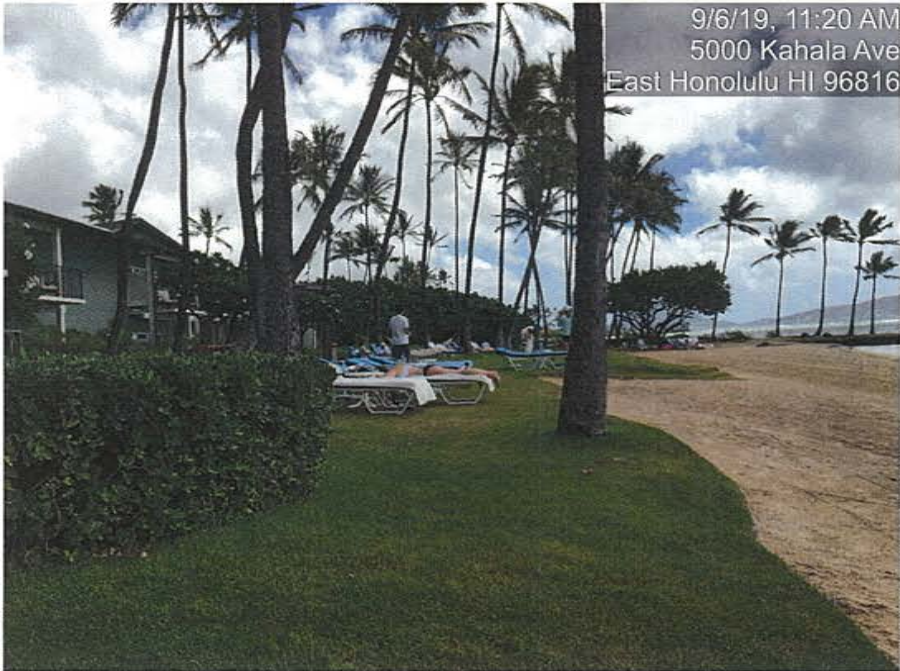
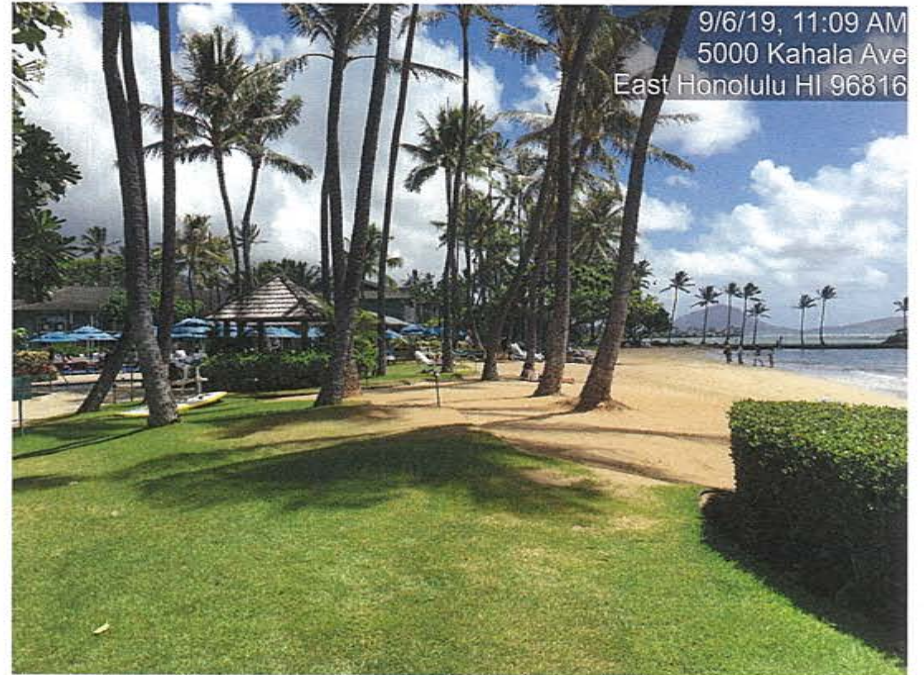
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5000 Kahala Ave
East Honolulu HI 96816

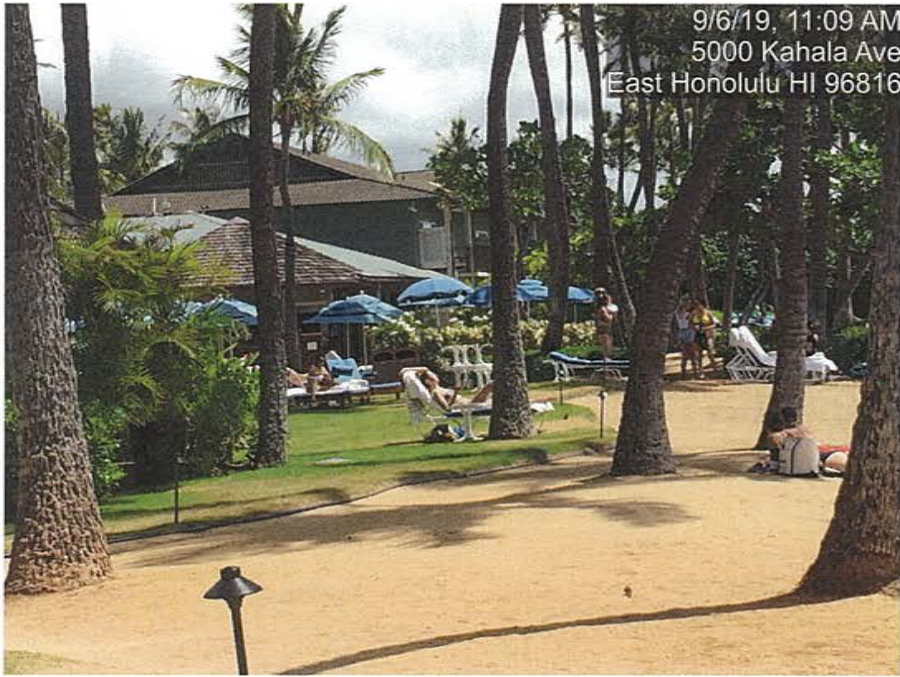


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5000 Kahala Ave
East Honolulu HI 96816

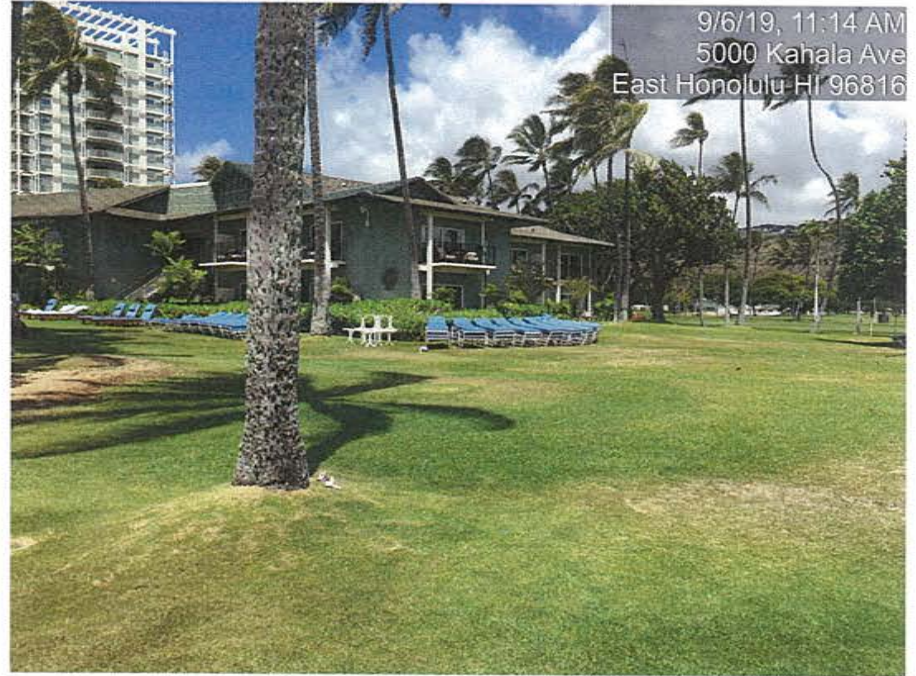
EXHIBIT "D" 9-6-19



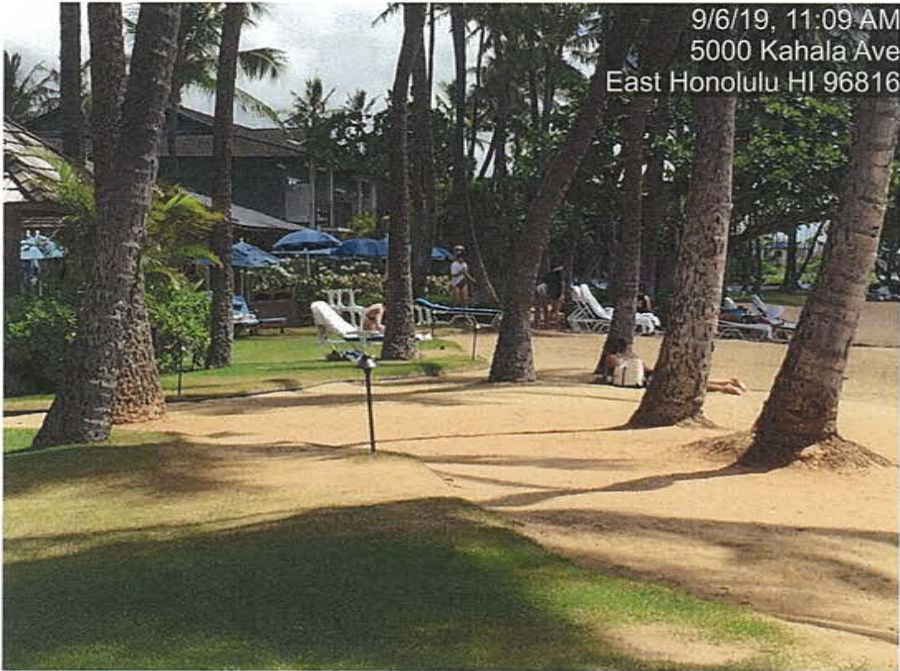




9/6/19, 11:09 AM
5000 Kahala Ave
East Honolulu HI 96816



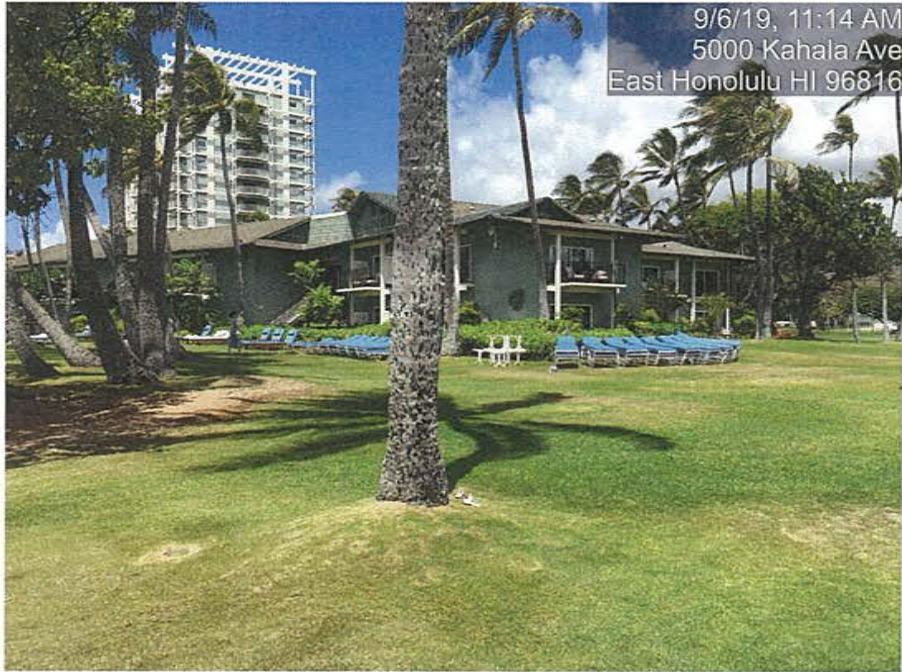
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5000 Kahala Ave
East Honolulu HI 96816

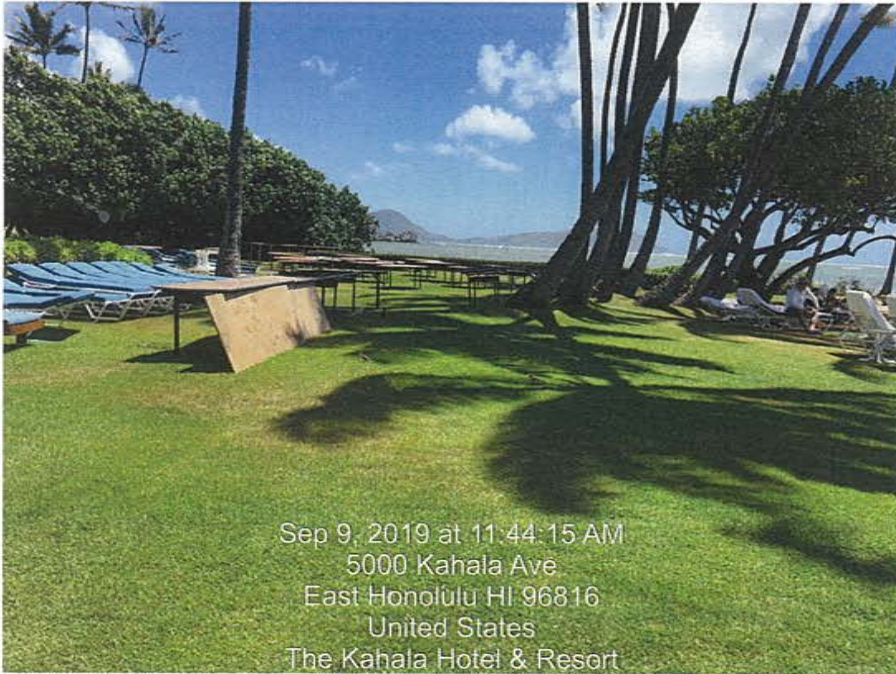


9/6/19, 11:09 AM
5000 Kahala Ave
East Honolulu HI 96816



9/6/19, 11:14 AM
5000 Kahala Ave
East Honolulu HI 96816

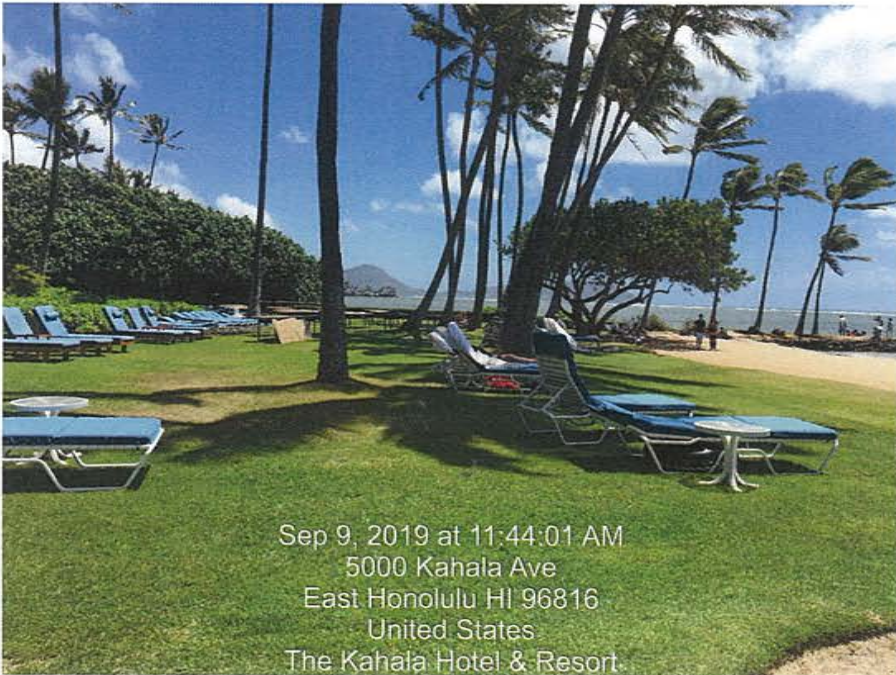




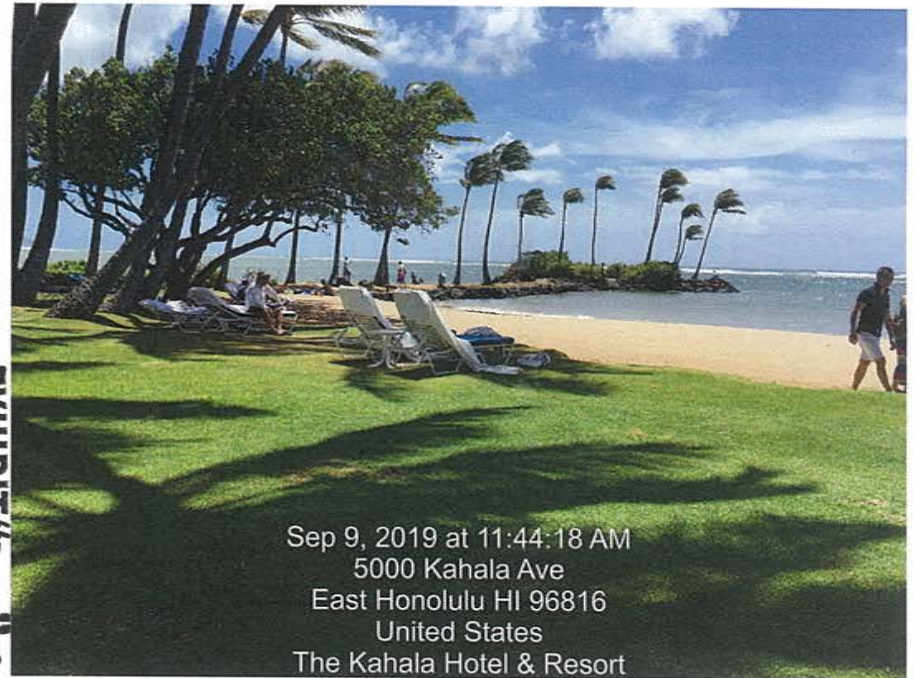
Sep 9, 2019 at 11:44:15 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Sep 9, 2019 at 11:44:25 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

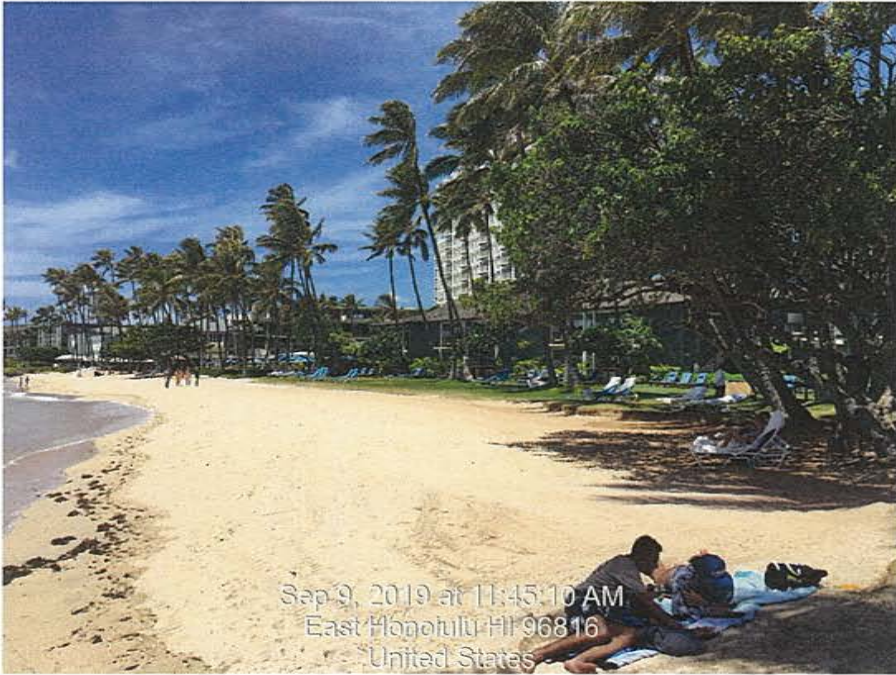


Sep 9, 2019 at 11:44:01 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort

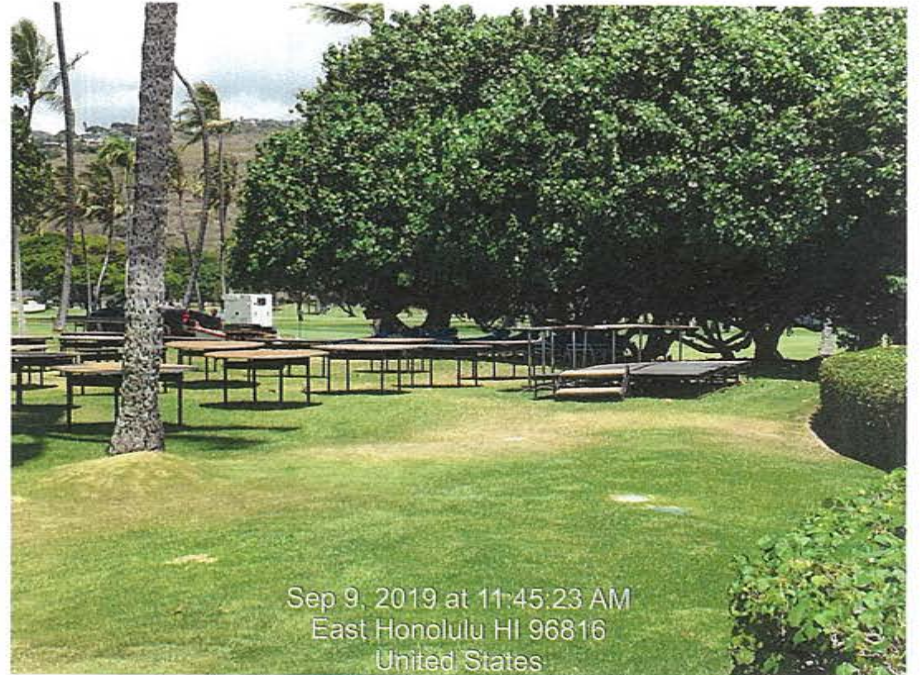


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United States
The Kahala Hotel & Resort

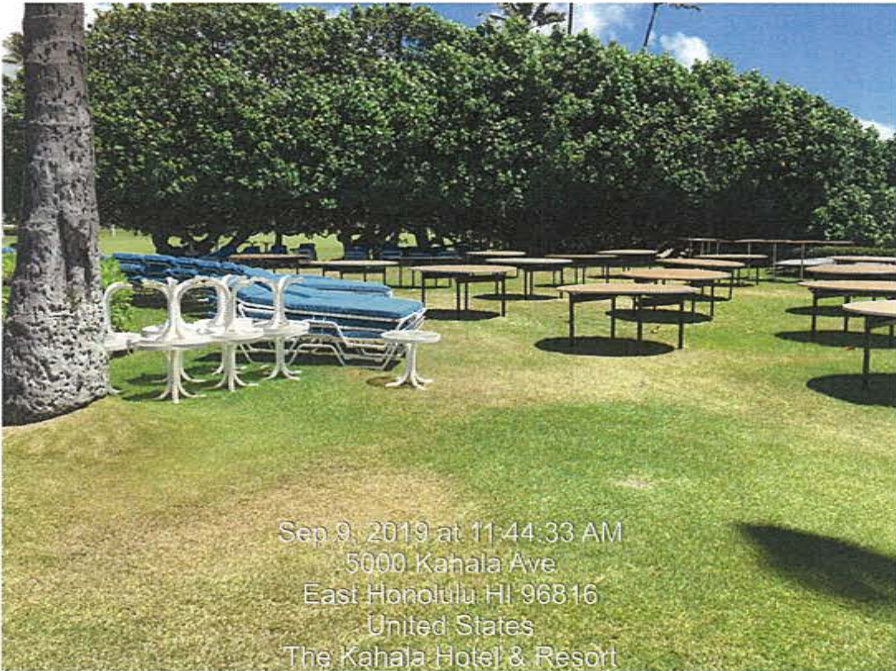
EXHIBIT "D" 9-9-19



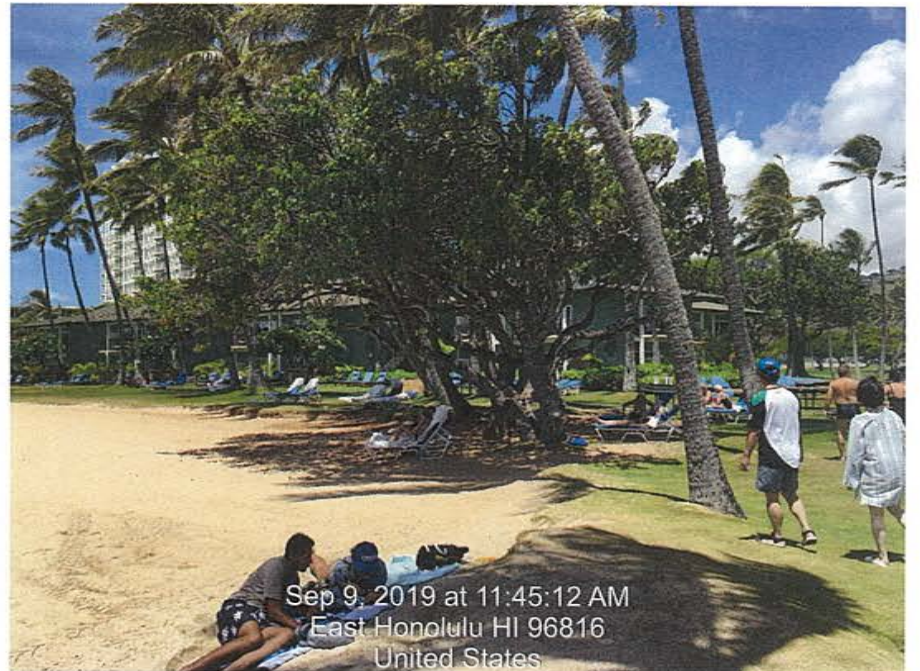
Sep 9, 2019 at 11:45:10 AM
East Honolulu HI 96816
United States



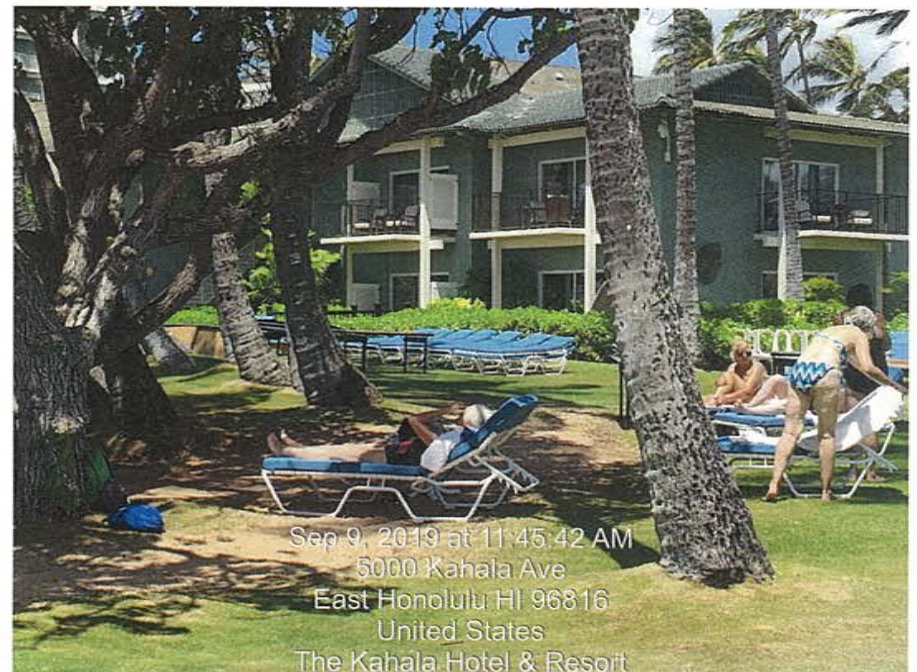
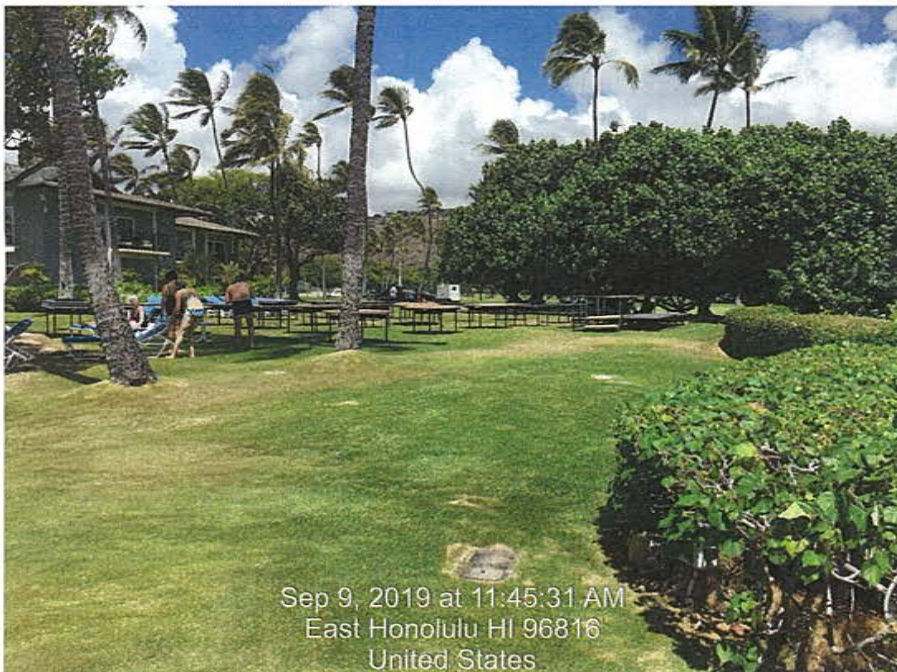
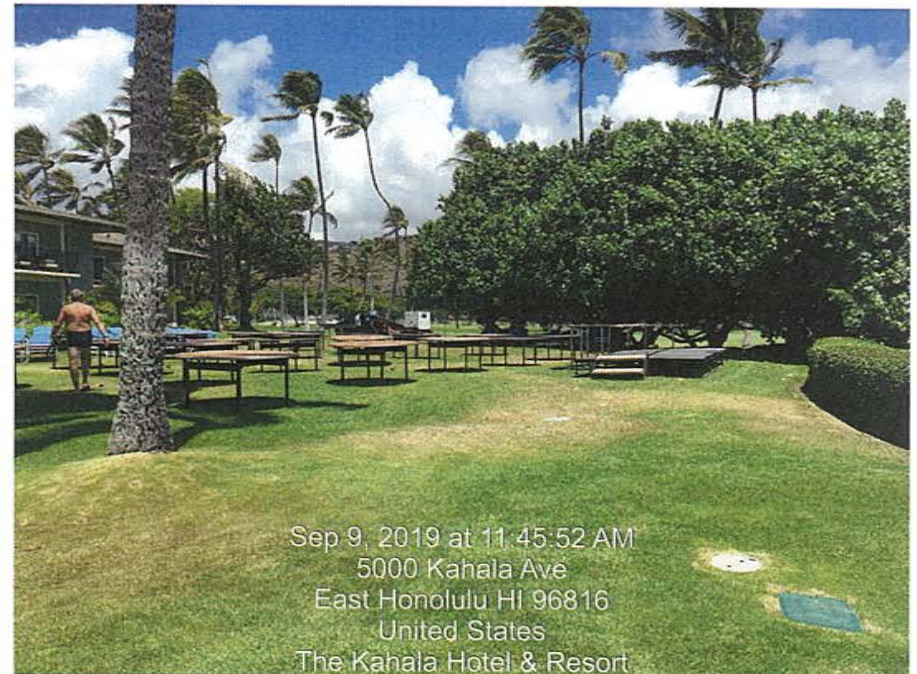
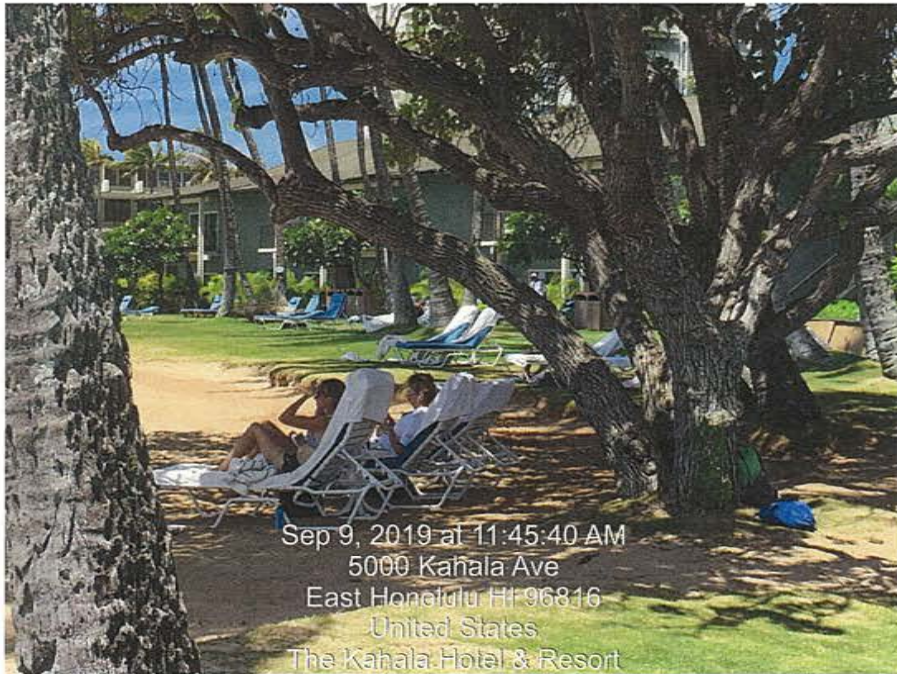
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United States

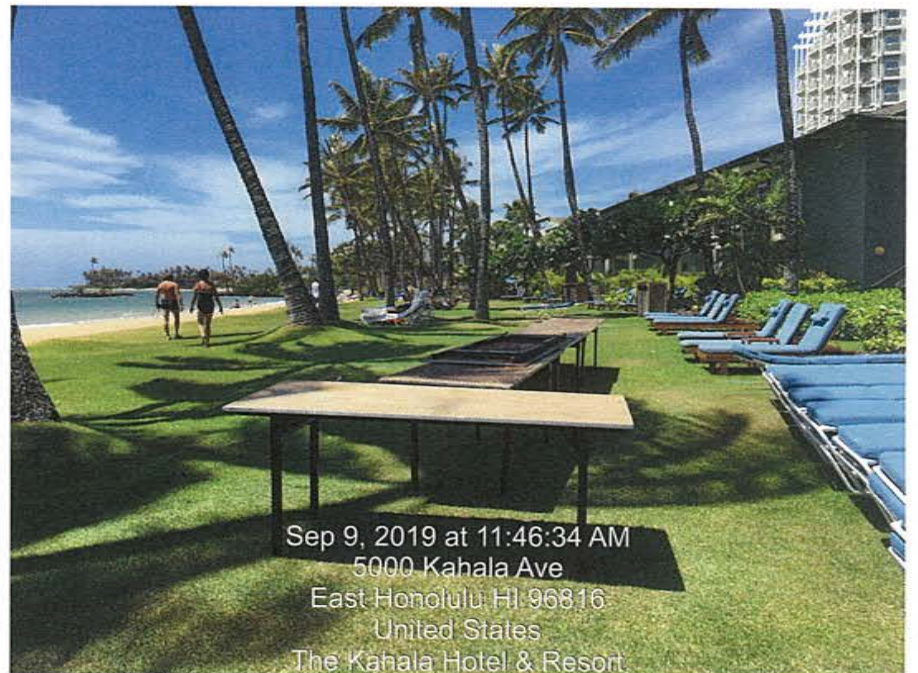
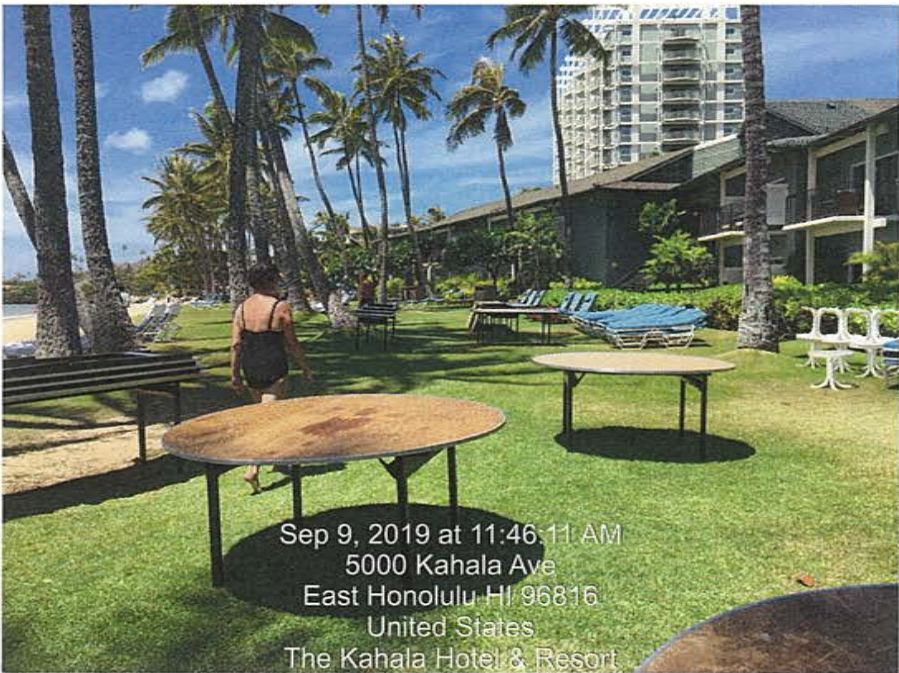
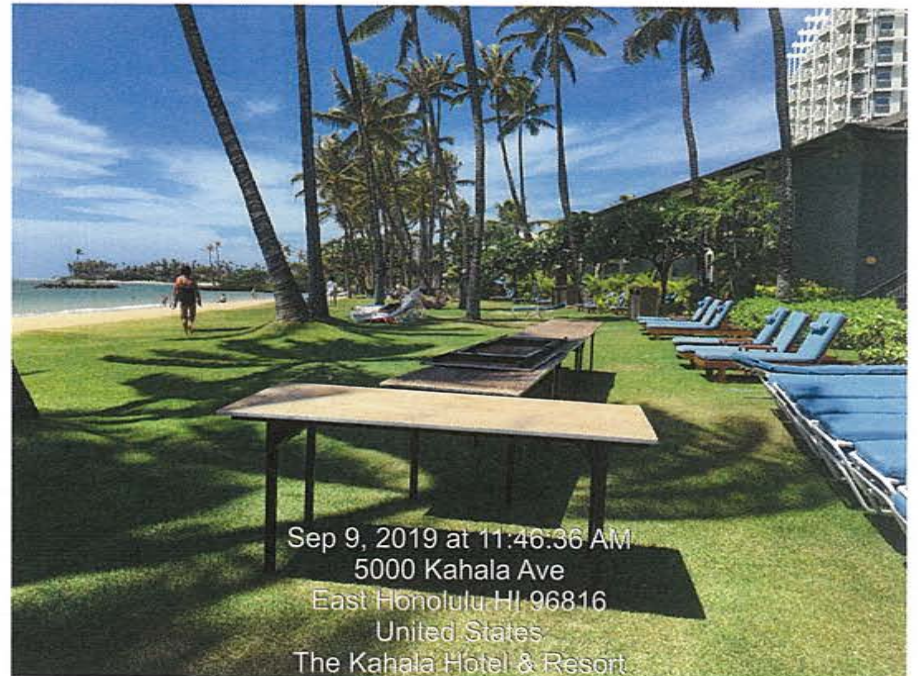
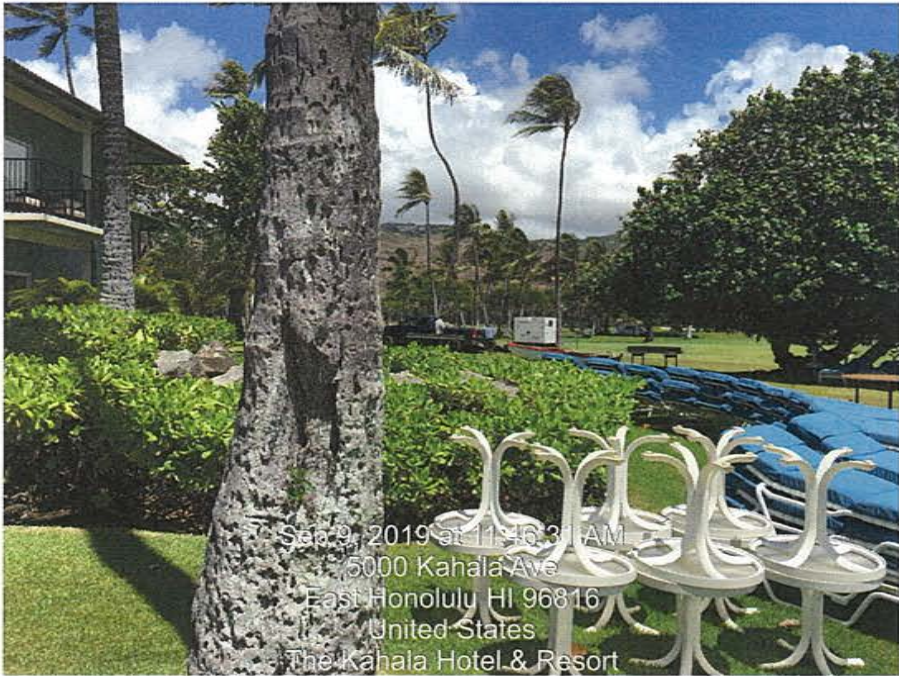


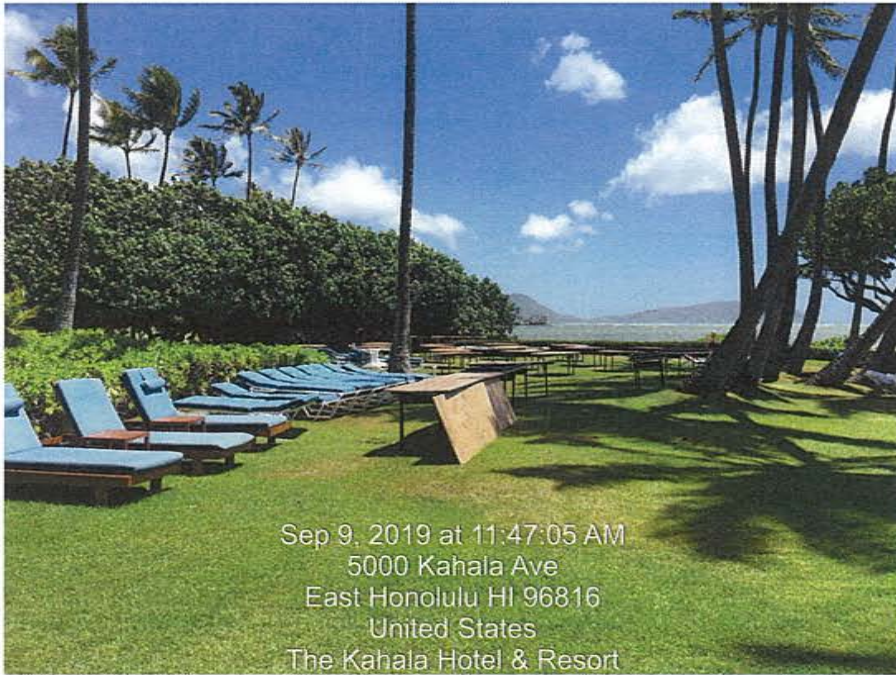
Sep 9, 2019 at 11:44:33 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Sep 9, 2019 at 11:45:12 AM
East Honolulu HI 96816
United States



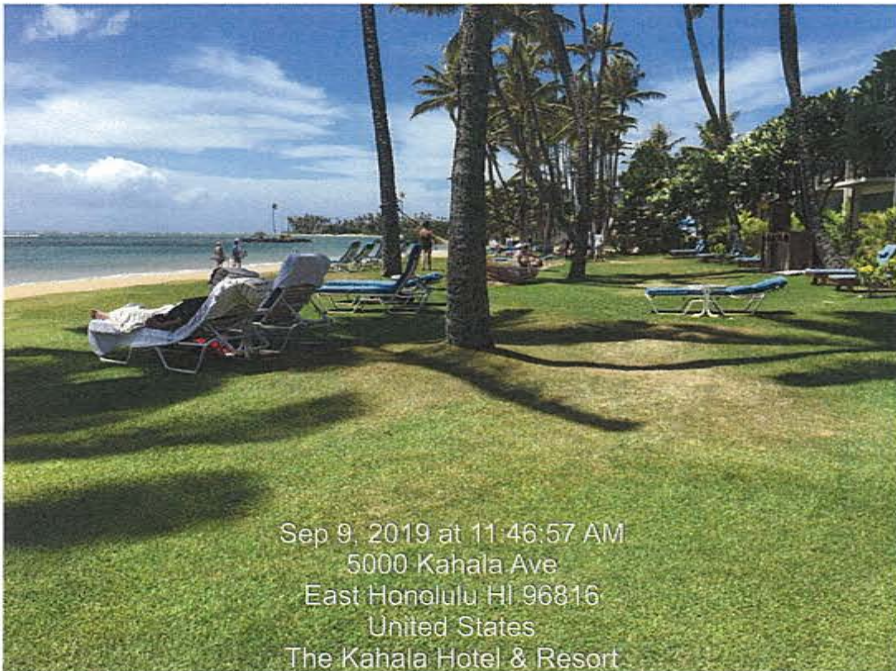




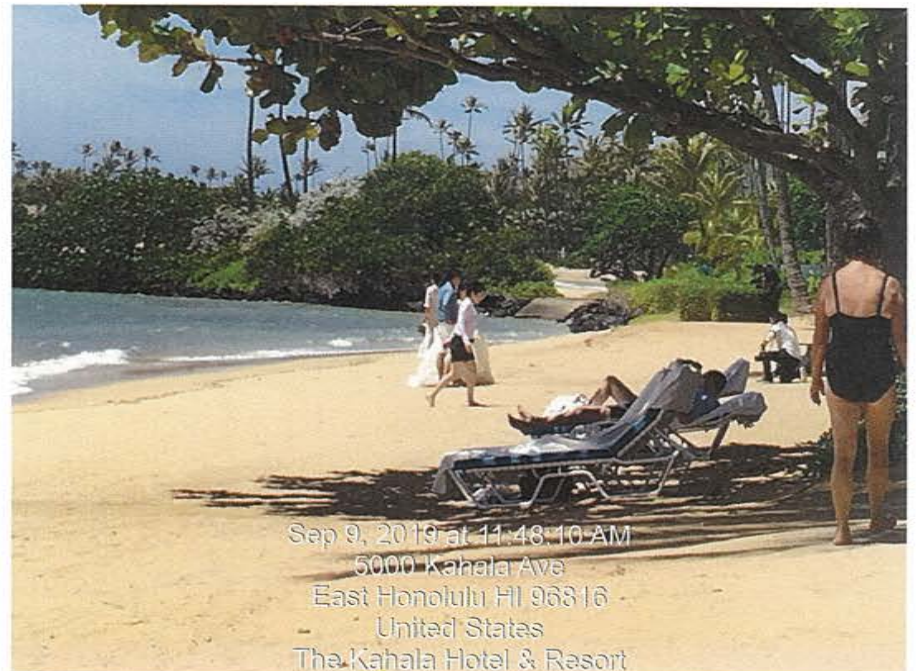
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East Honolulu HI 96816
United States
The Kahala Hotel & Resort



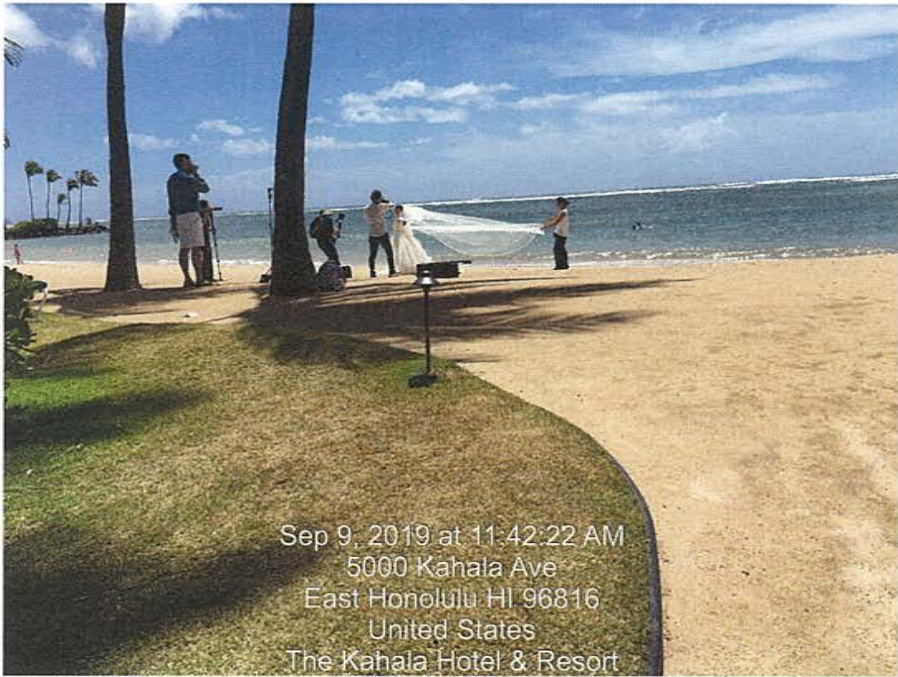
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East Honolulu HI 96816
United States
The Kahala Hotel & Resort



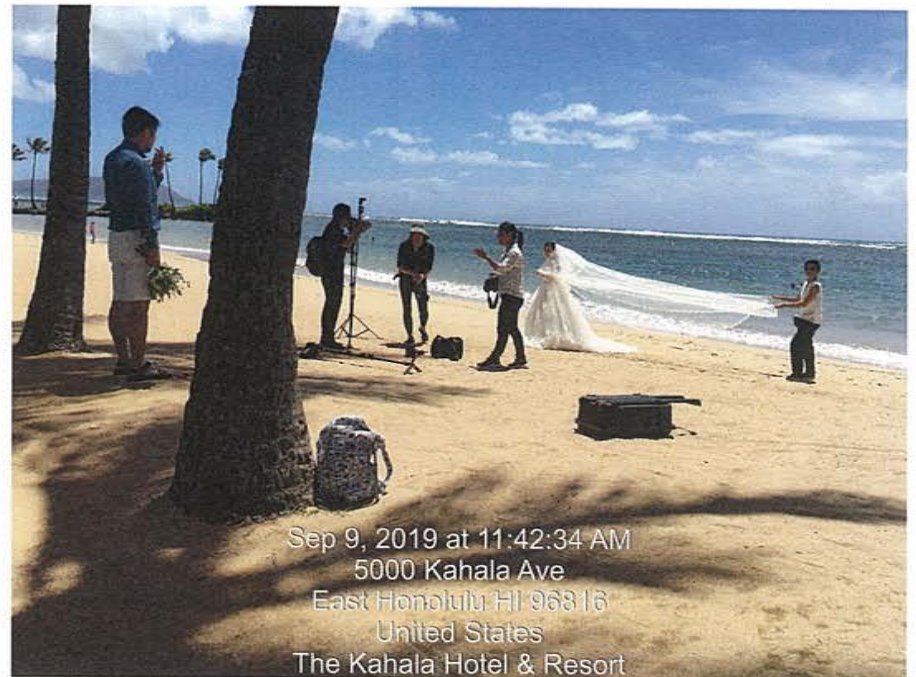
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East Honolulu HI 96816
United States
The Kahala Hotel & Resort



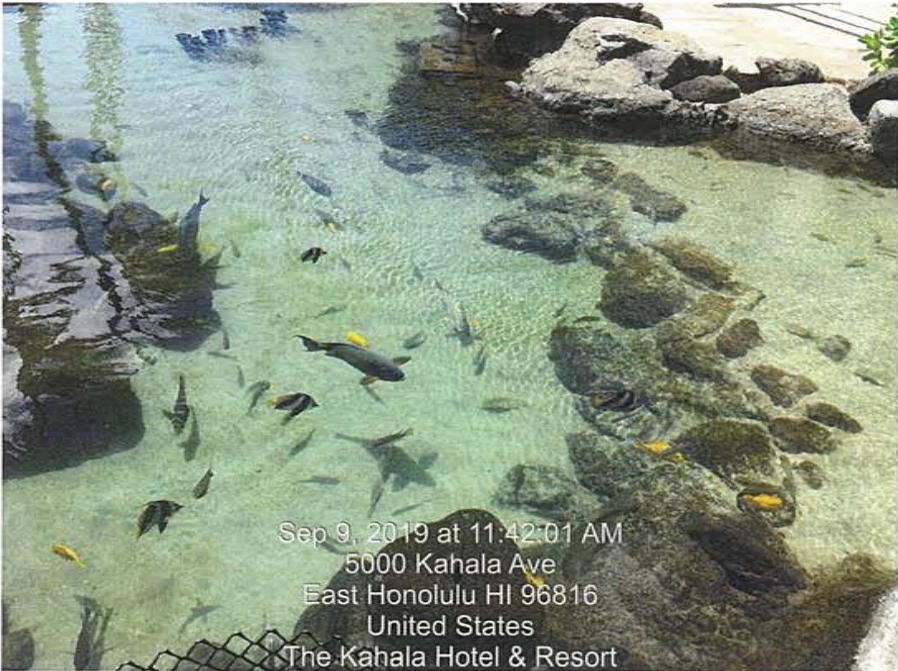
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East Honolulu HI 96816
United States
The Kahala Hotel & Resort



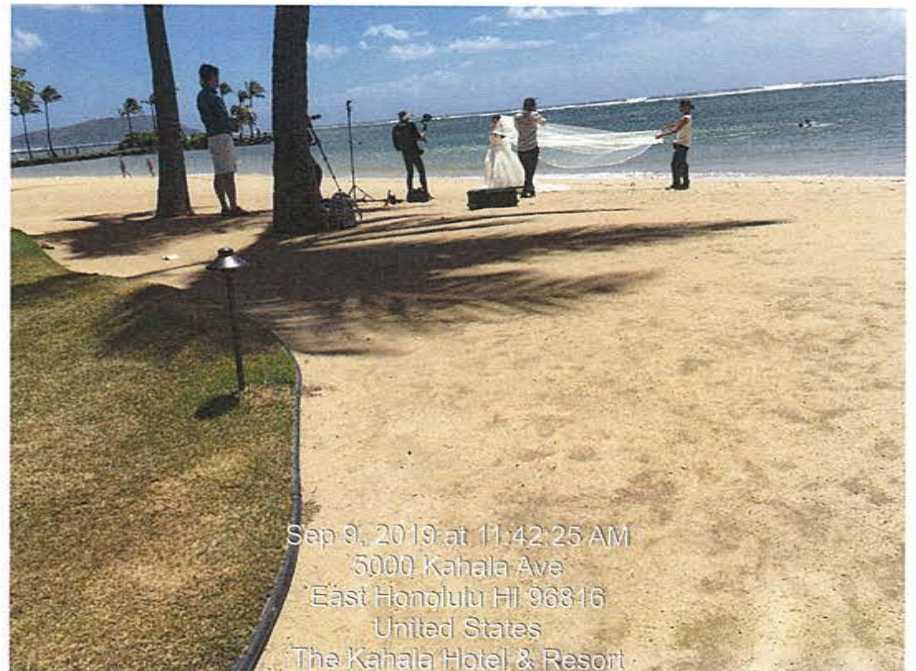
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5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



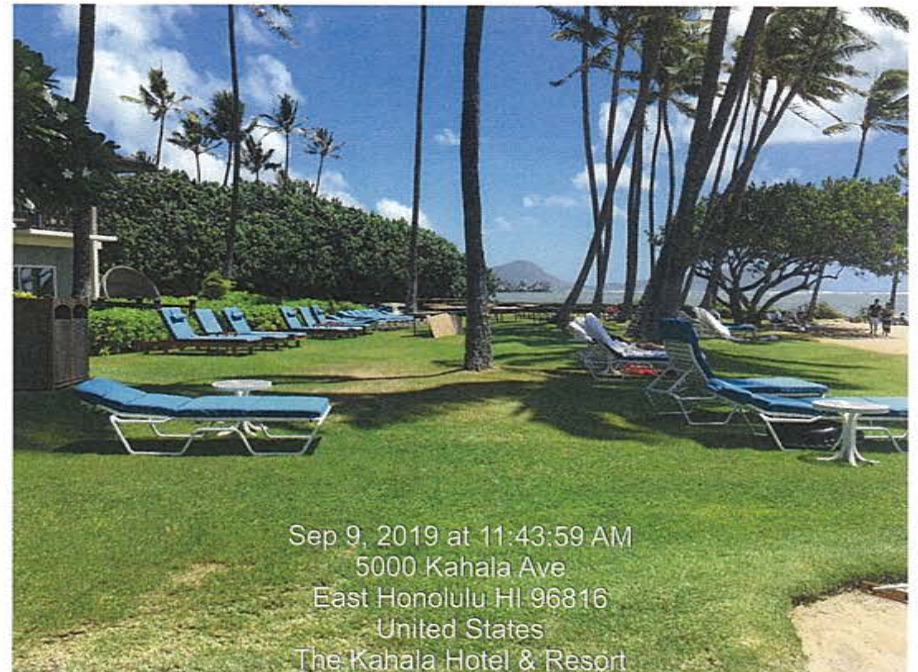
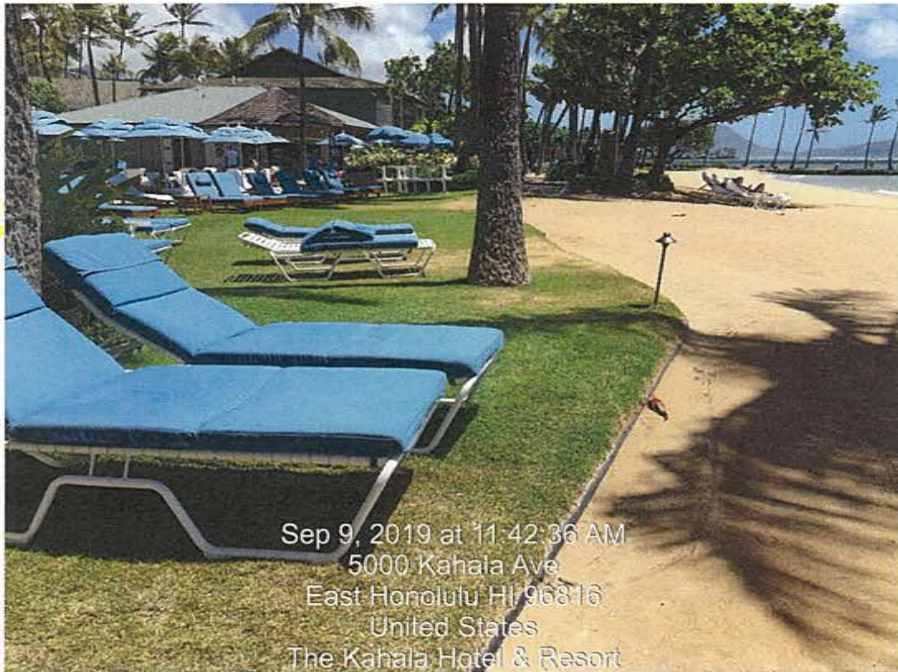
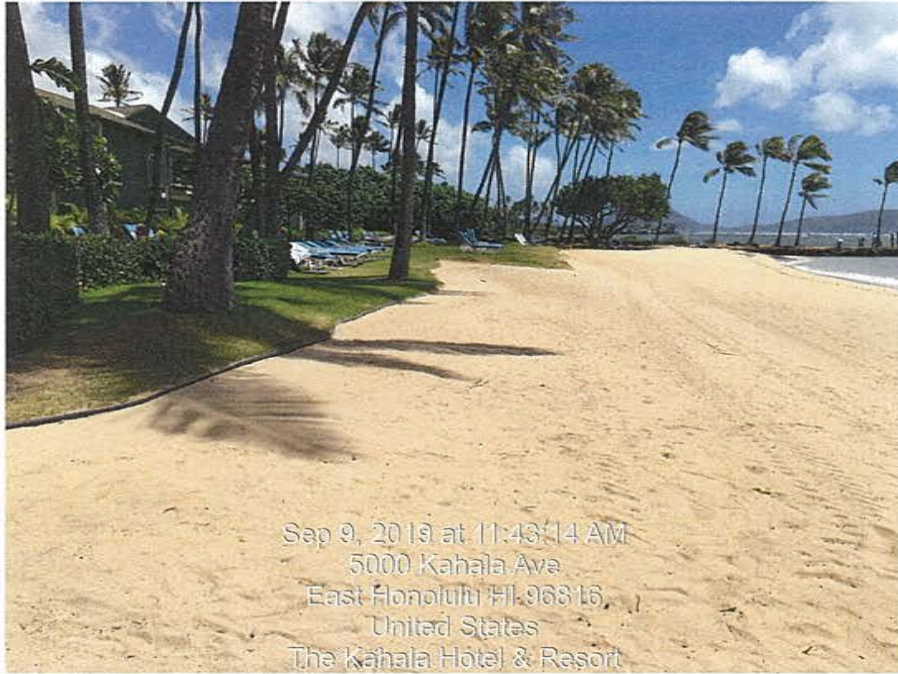
Sep 9, 2019 at 11:42:34 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Sep 9, 2019 at 11:42:01 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



Sep 9, 2019 at 11:42:25 AM
5000 Kahala Ave
East Honolulu HI 96816
United States
The Kahala Hotel & Resort



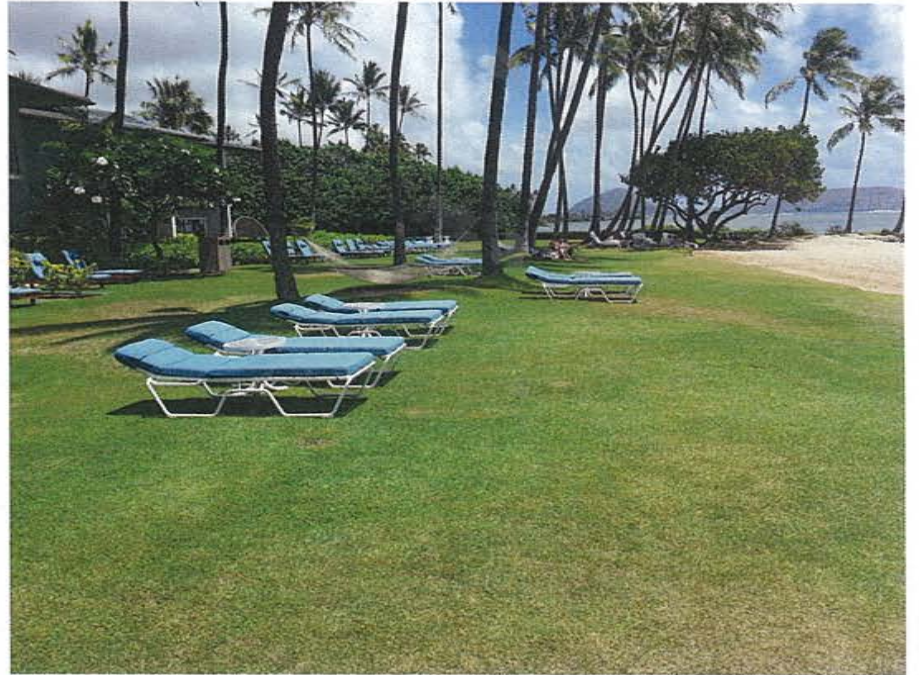
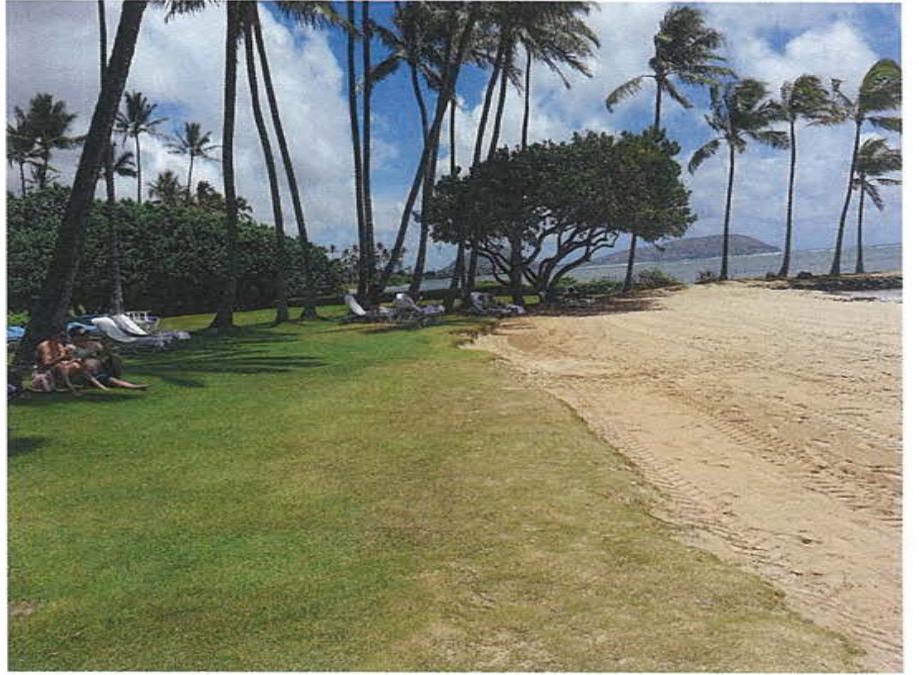
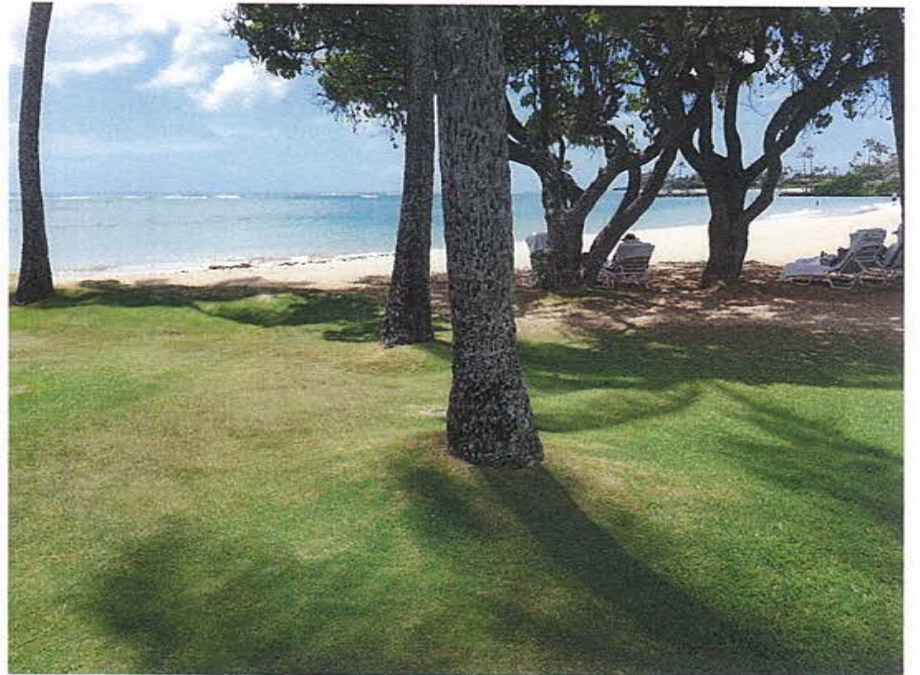
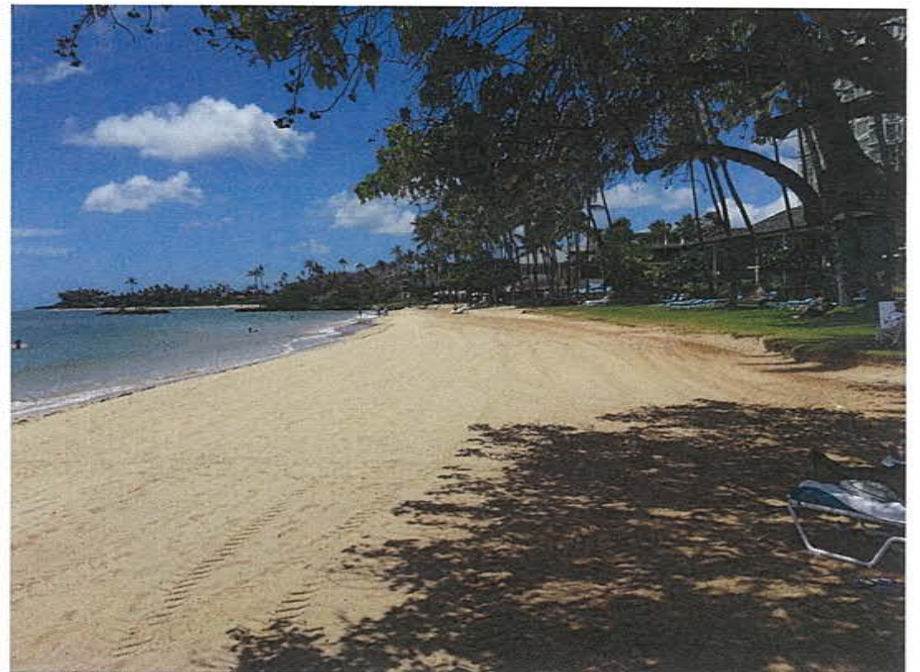
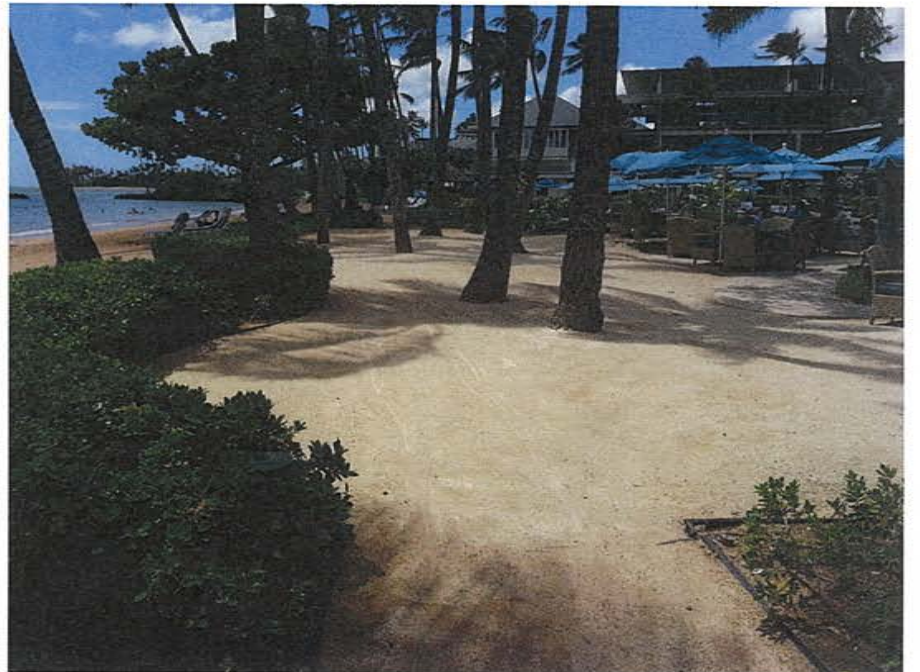
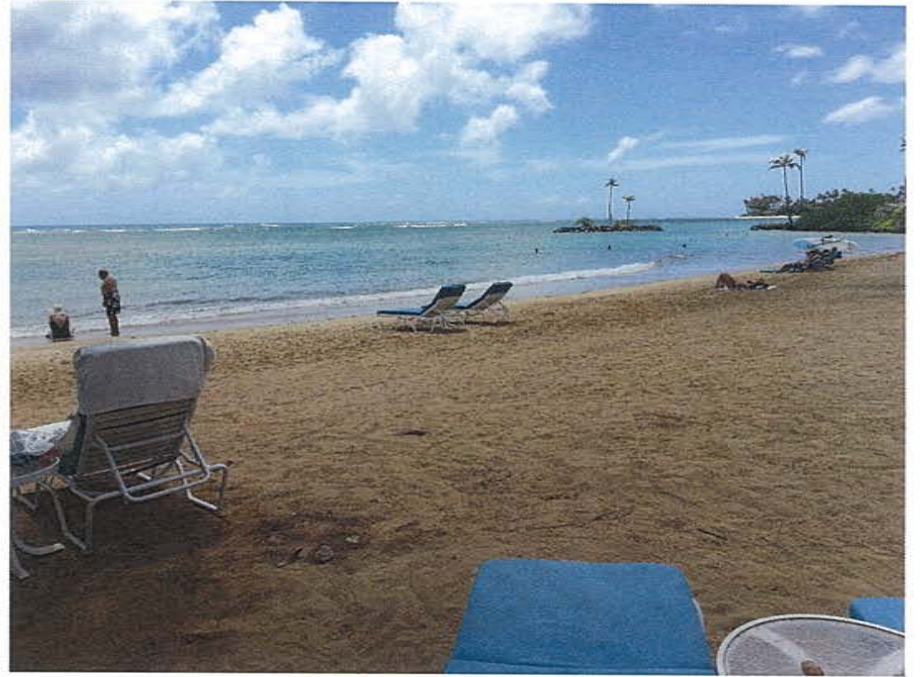
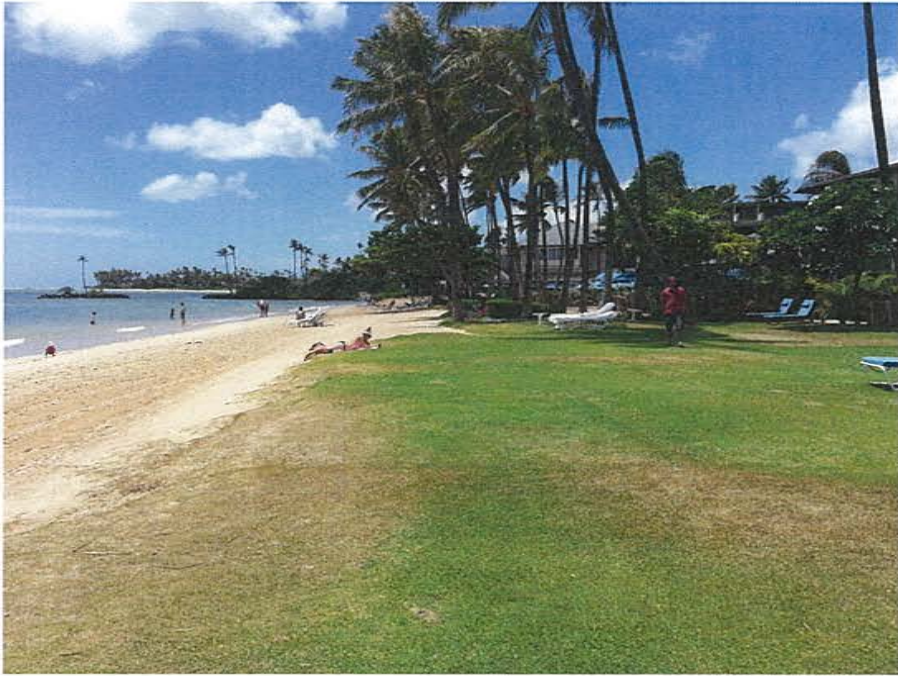
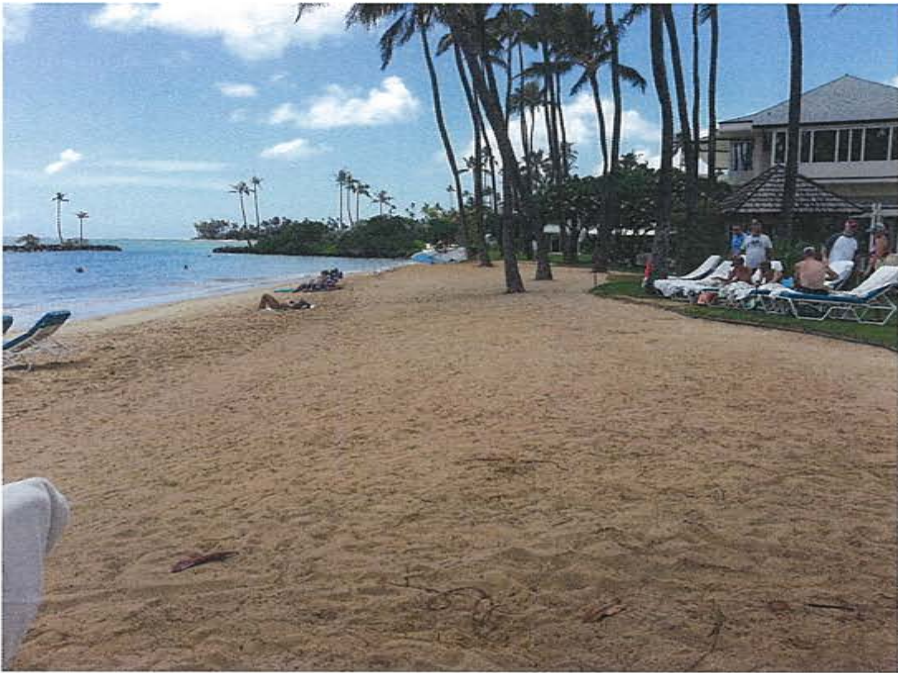


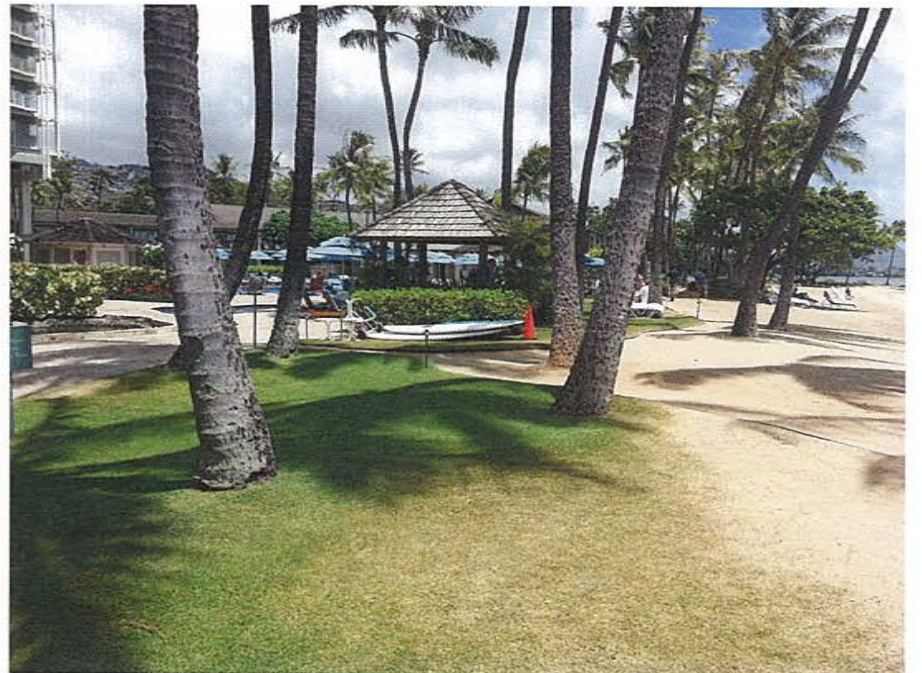
EXHIBIT "D" 9.10.19

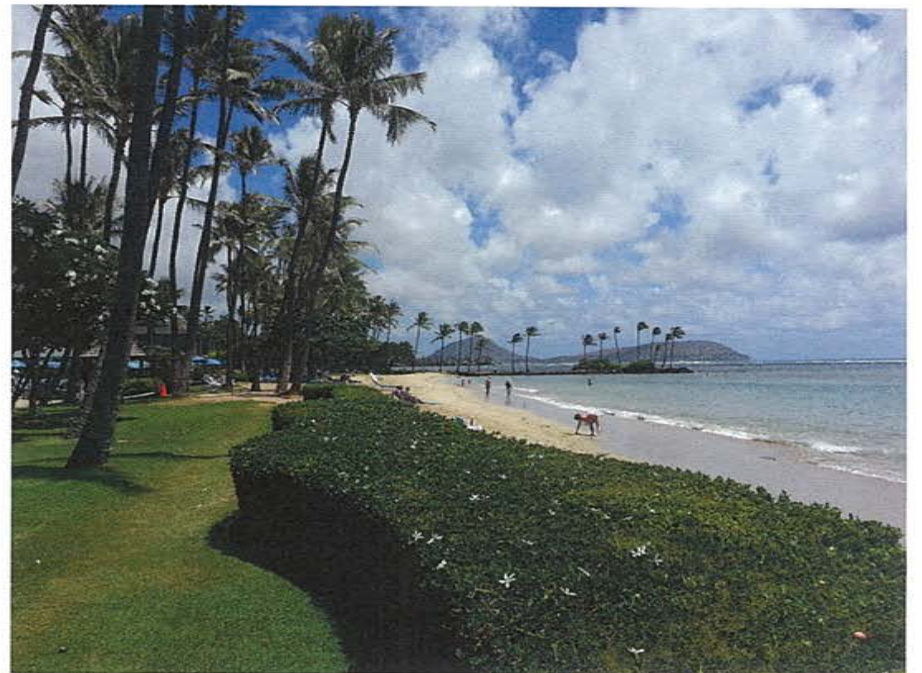


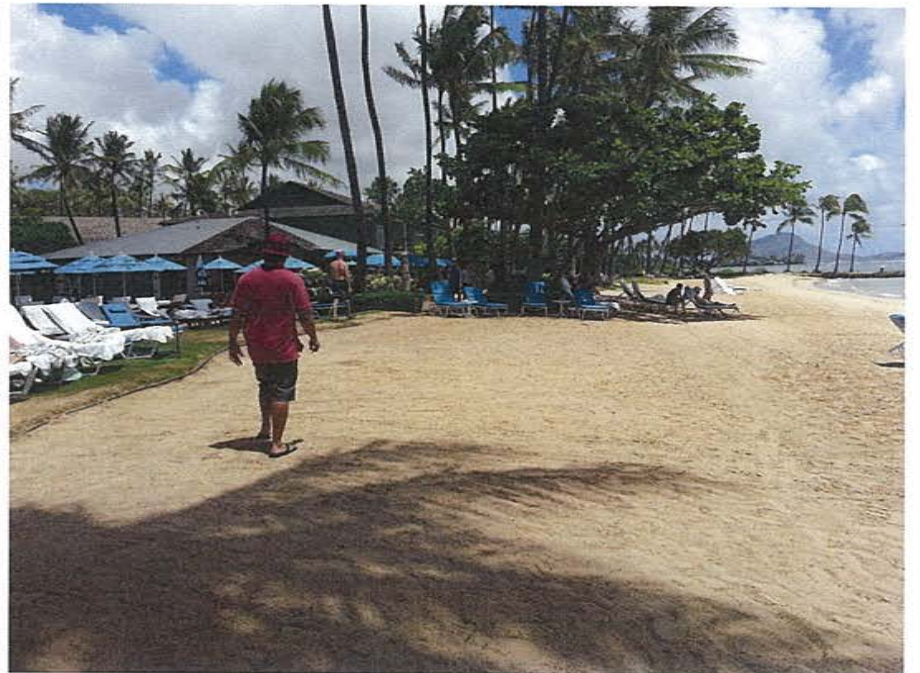
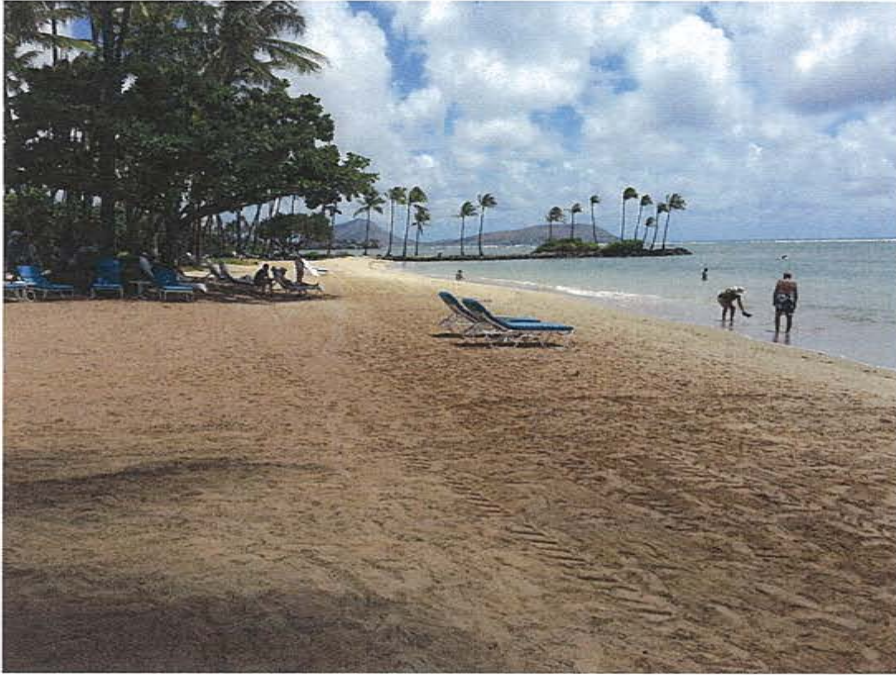














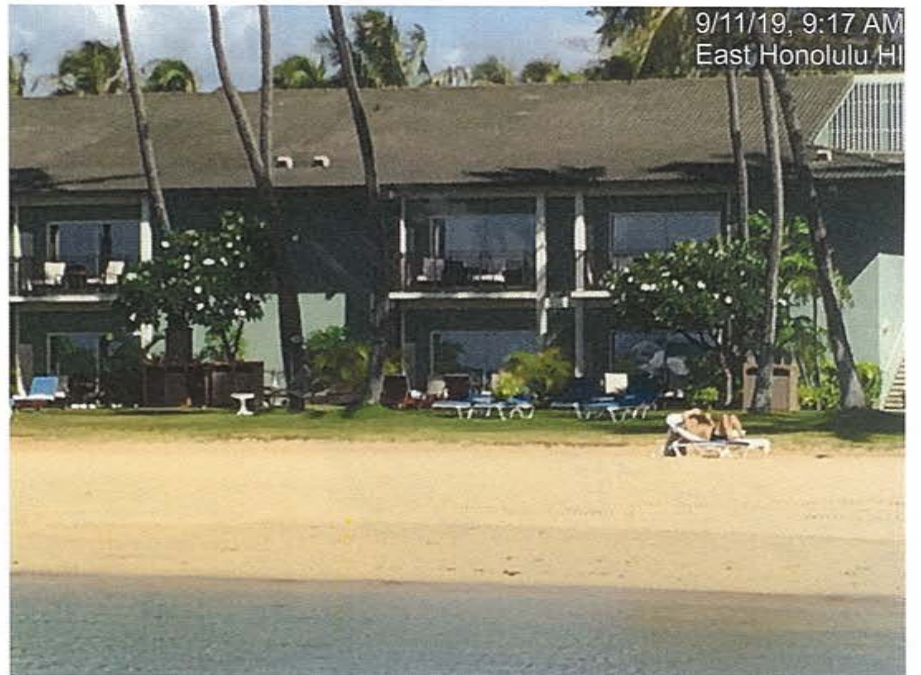
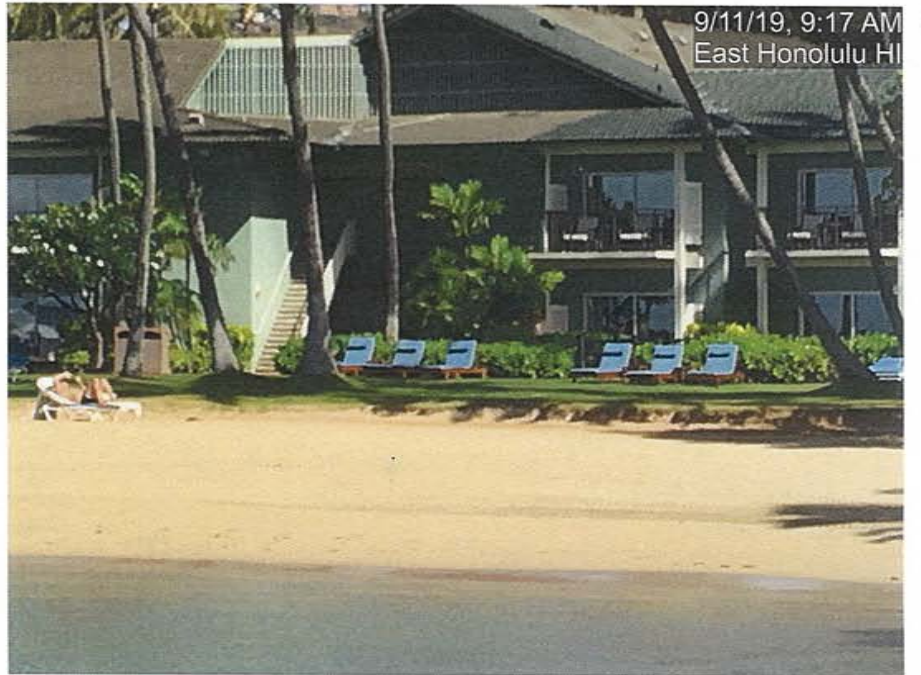
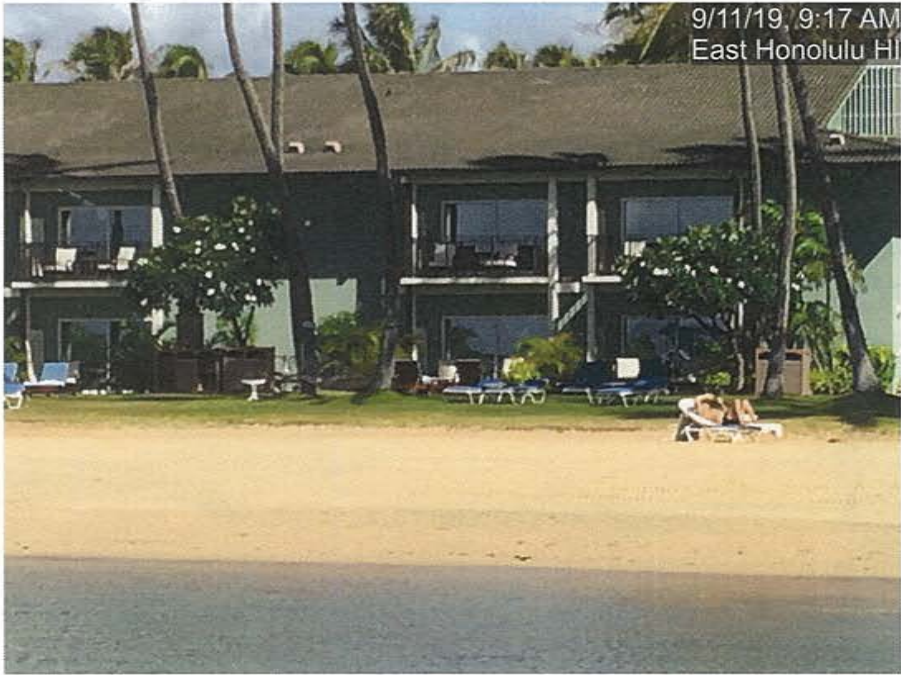
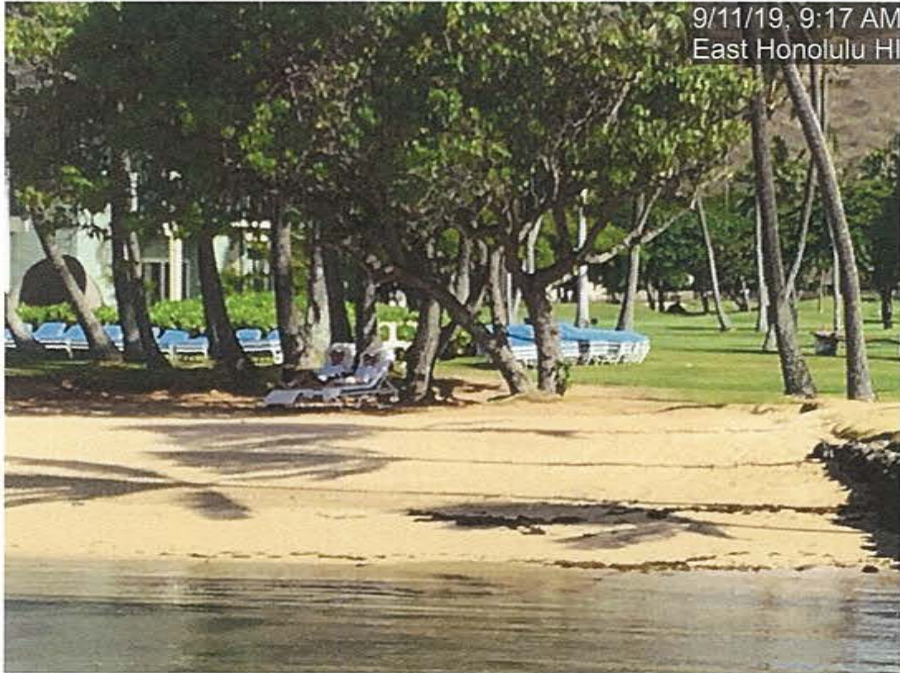


EXHIBIT "D" 9-11-19



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East Honolulu HI



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5000 Kahala Ave
East Honolulu HI 96816



9/11/19, 9:17 AM
East Honolulu HI



9/11/19, 9:17 AM
East Honolulu HI



9/11/19, 9:21 AM
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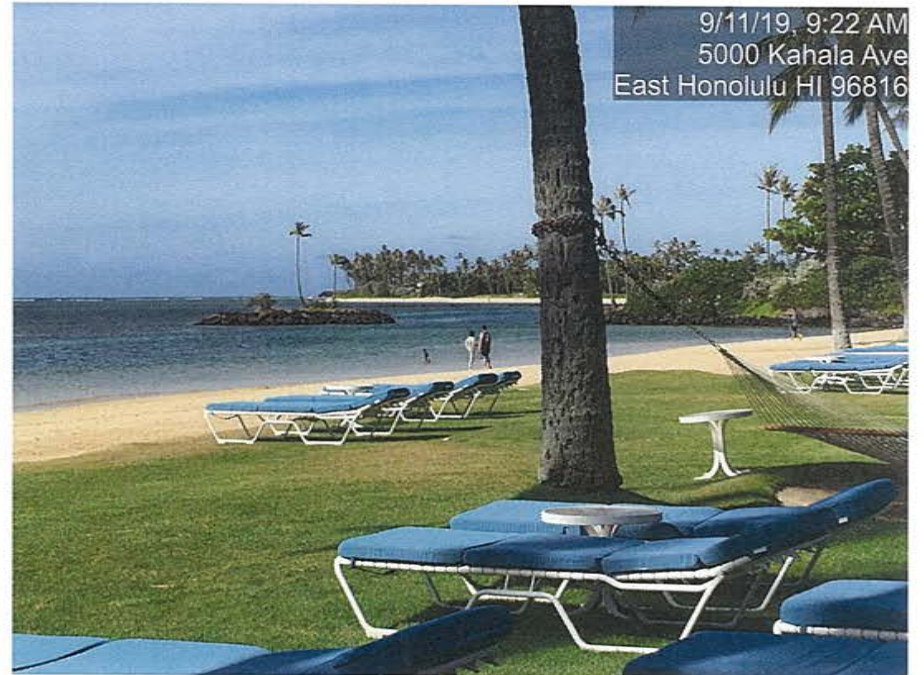
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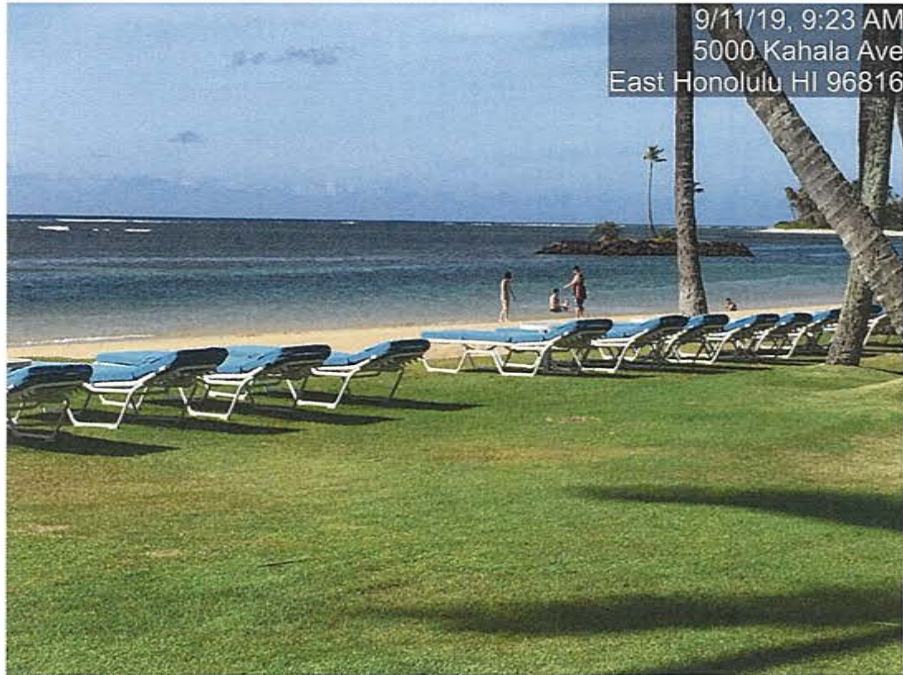


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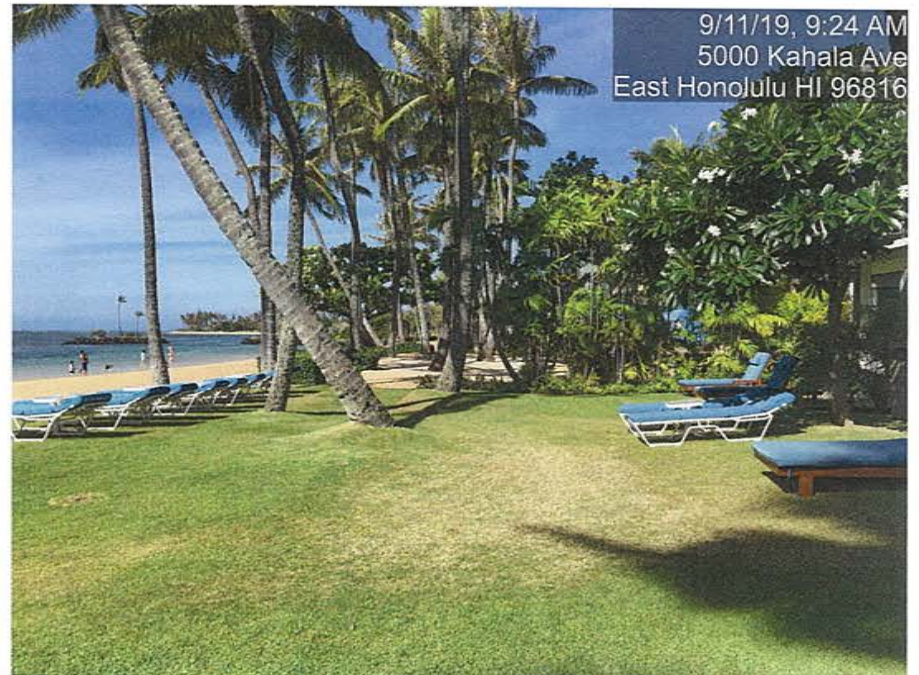


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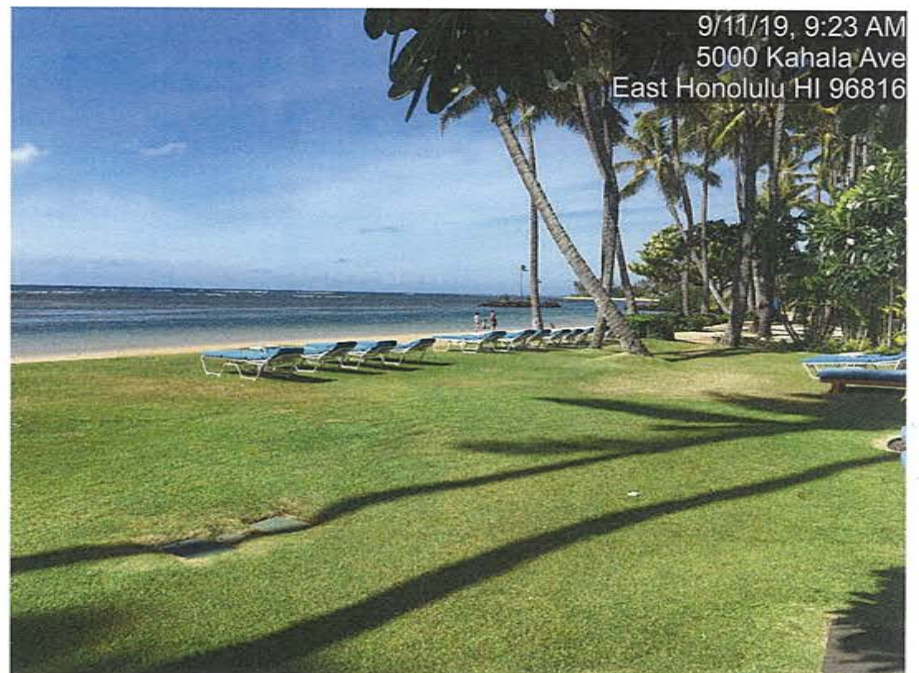
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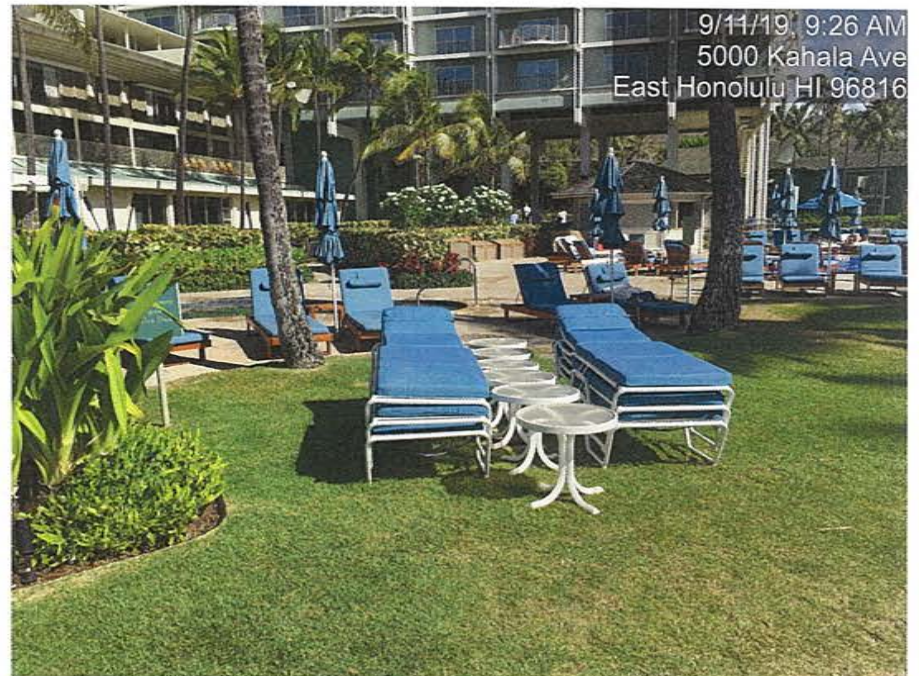
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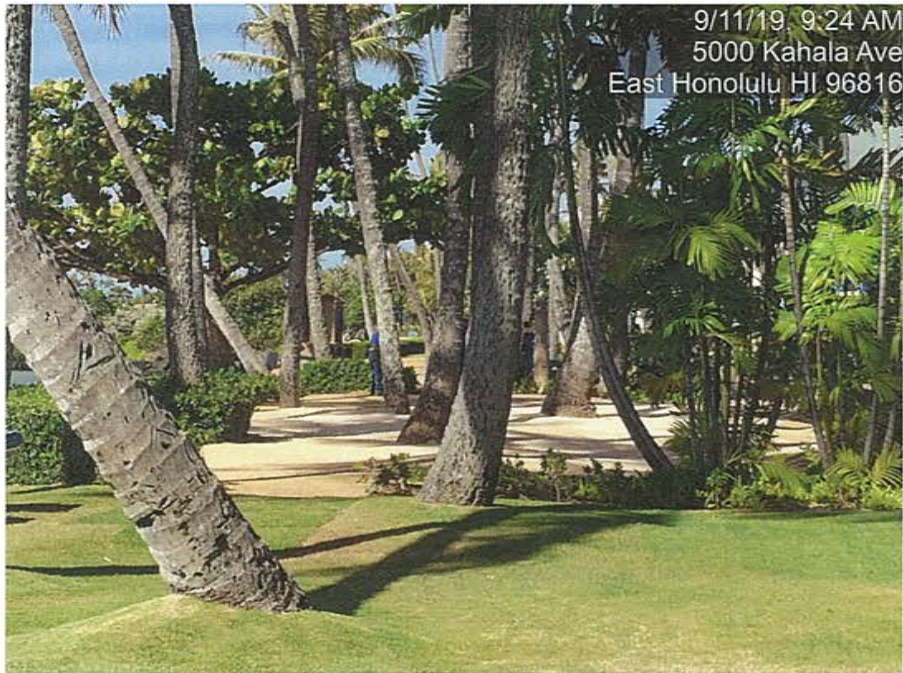
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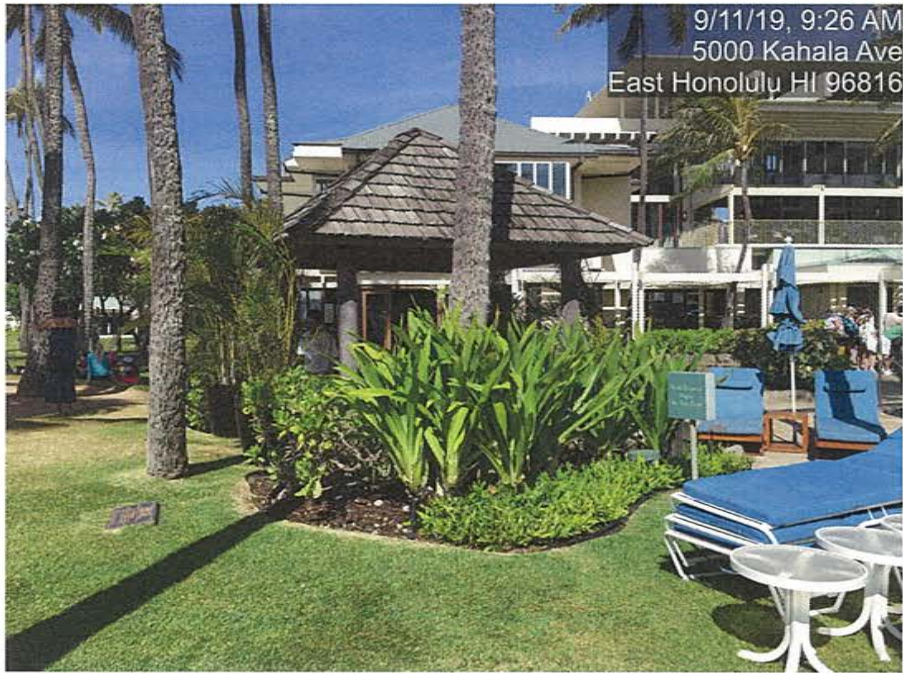
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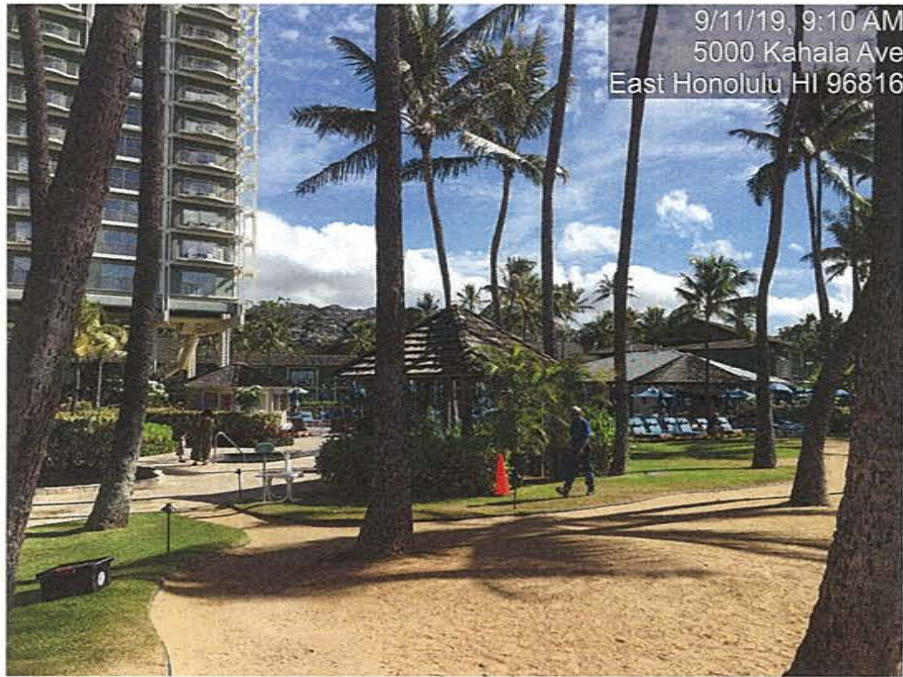
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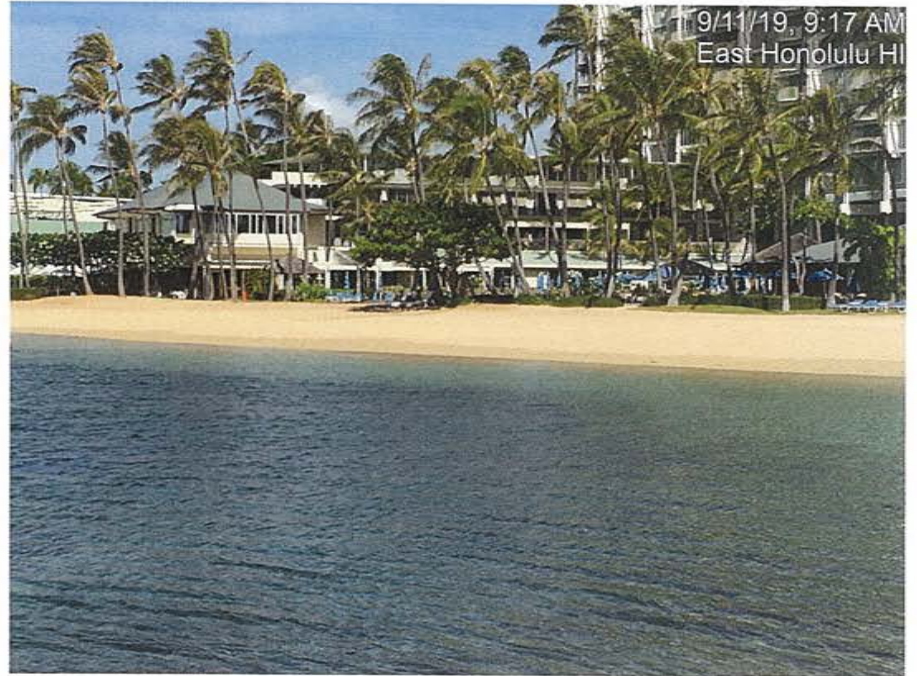
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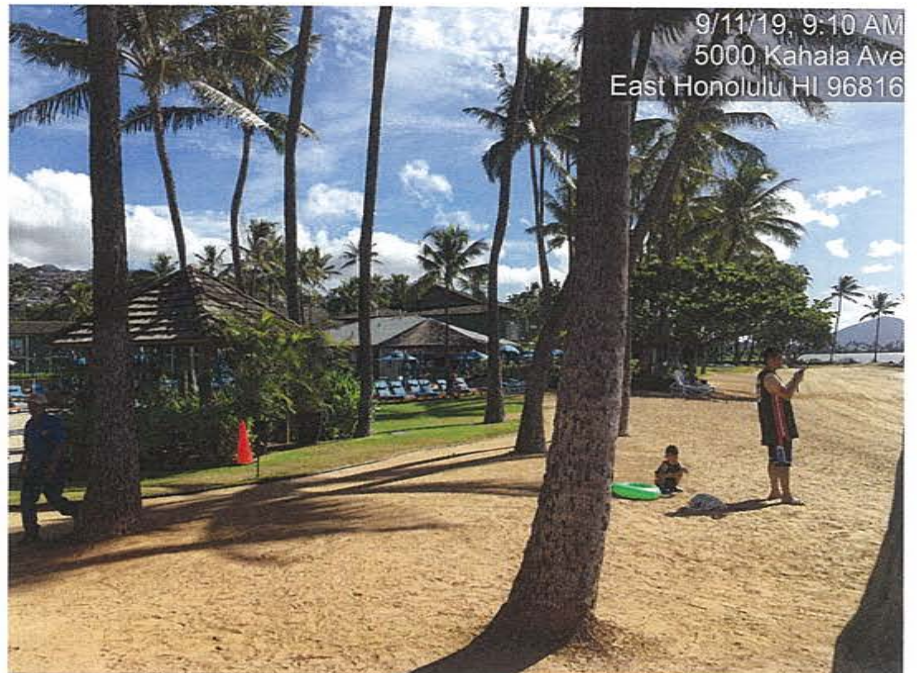
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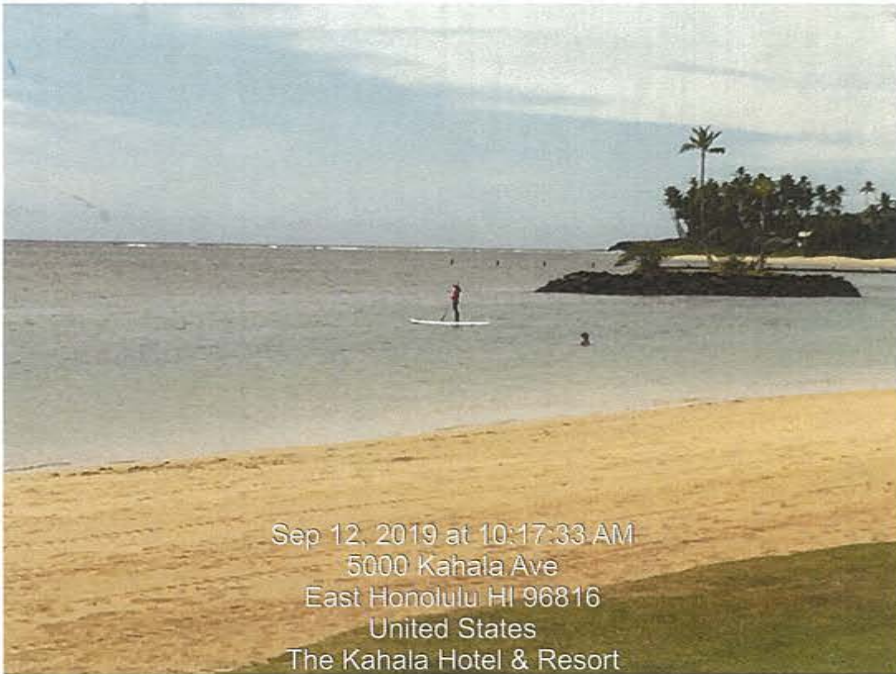
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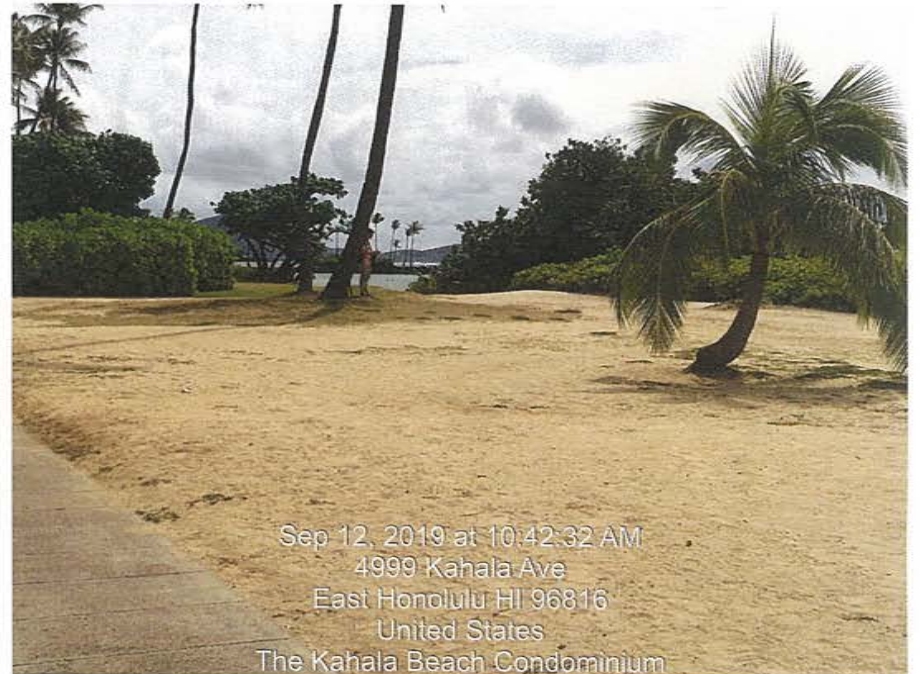
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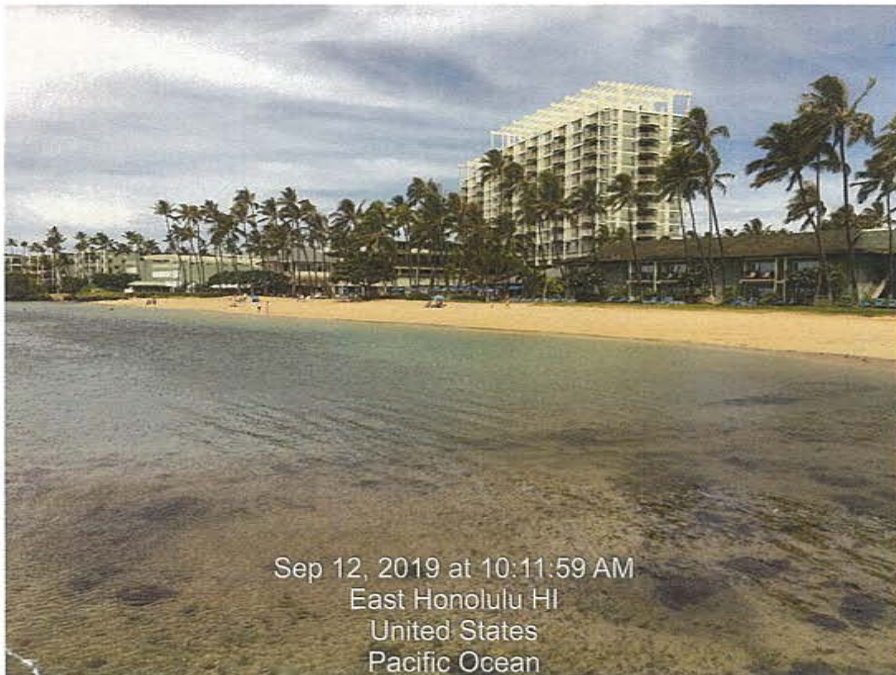




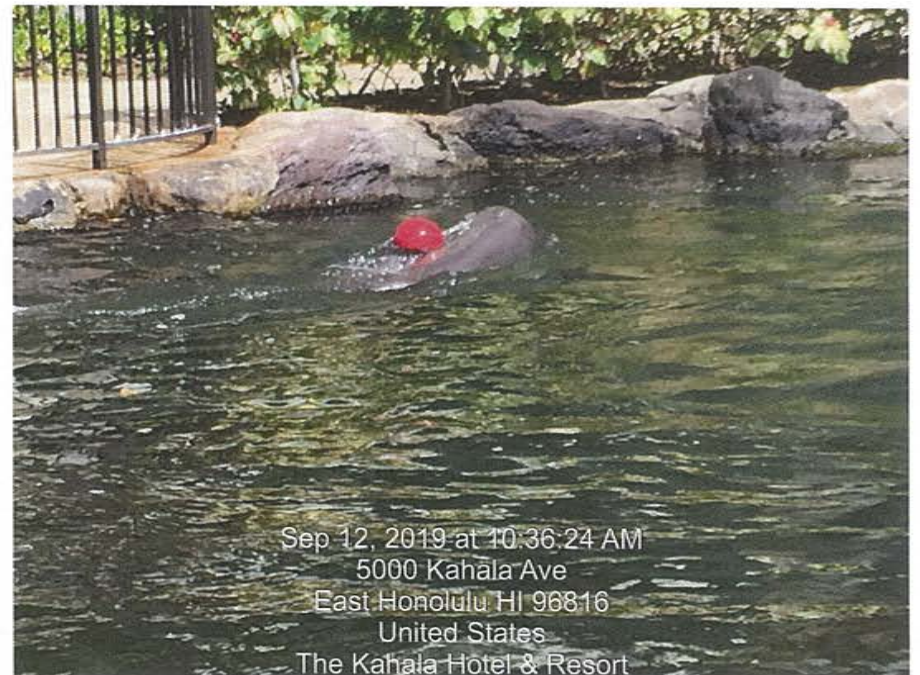
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United States
The Kahala Beach Condominium

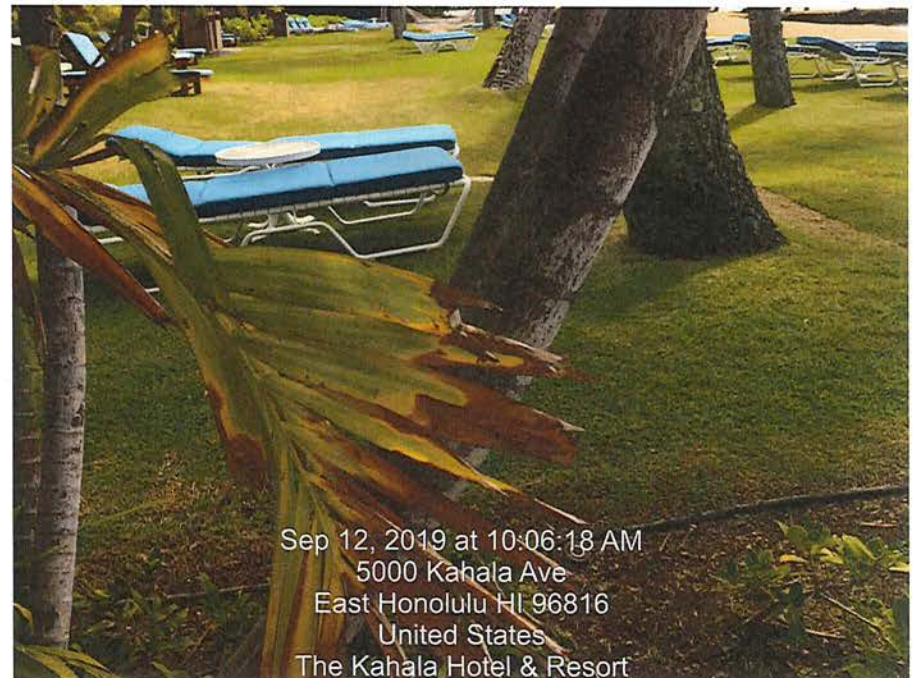
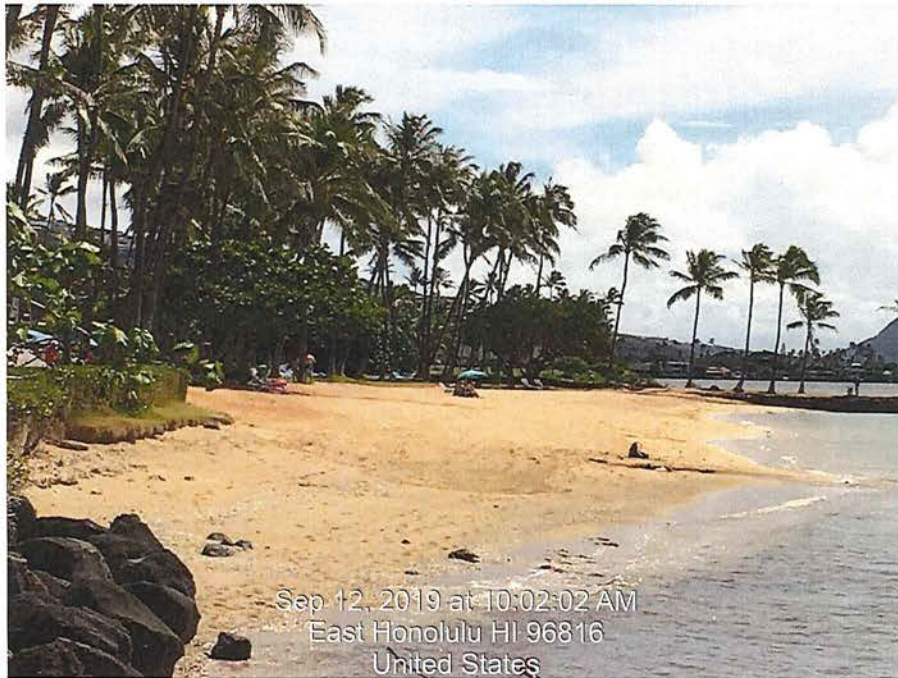
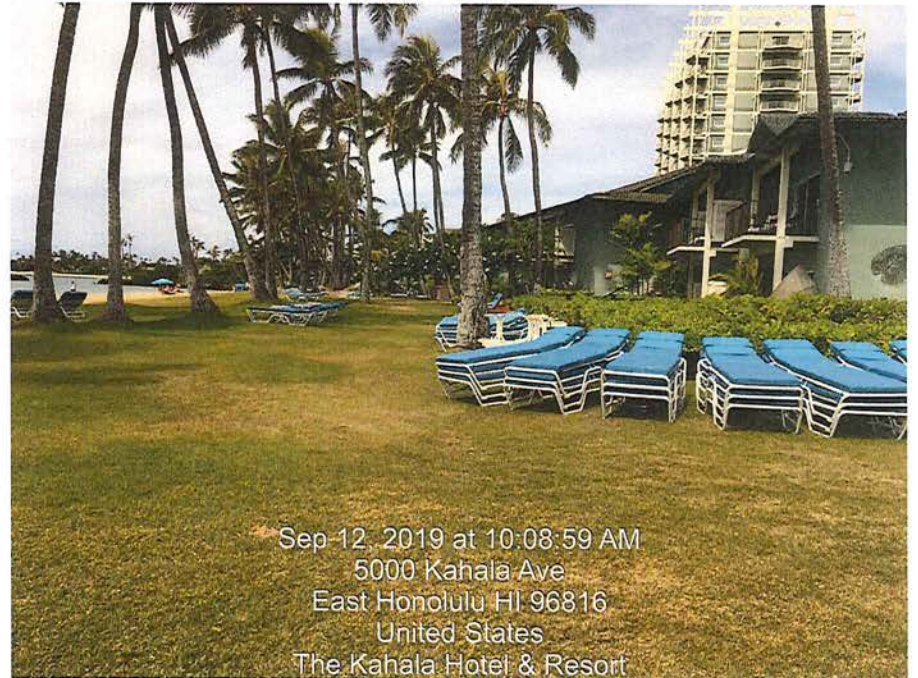
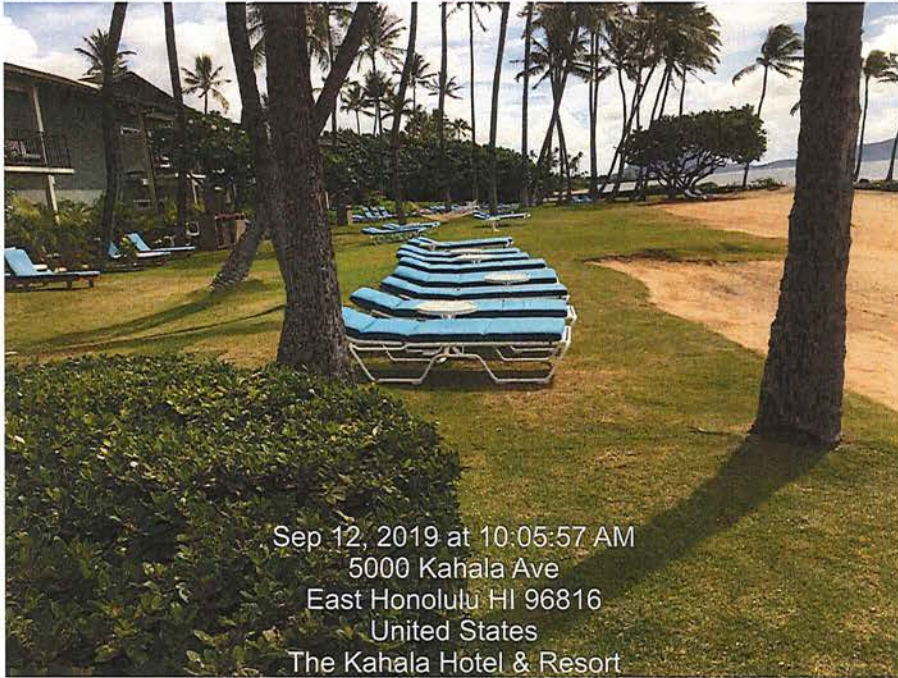


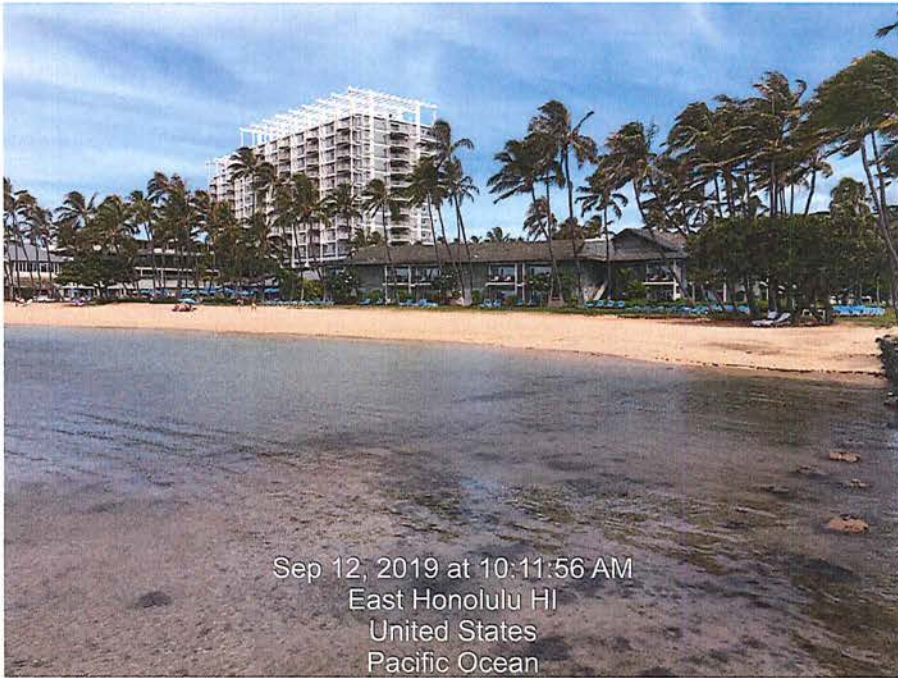
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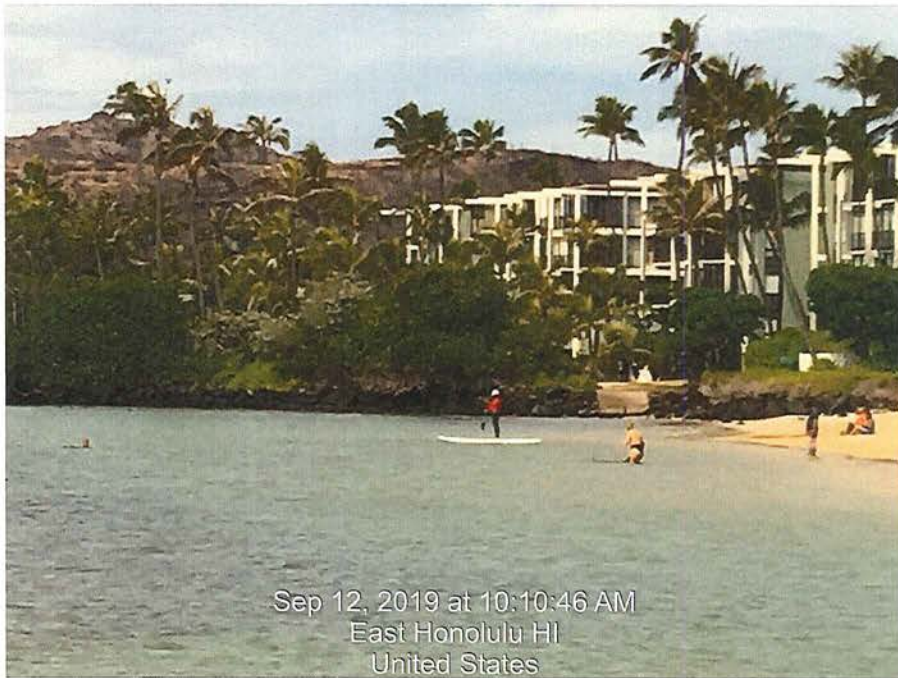
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The Kahala Hotel & Resort

EXHIBIT "D" 9-12-19





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United States

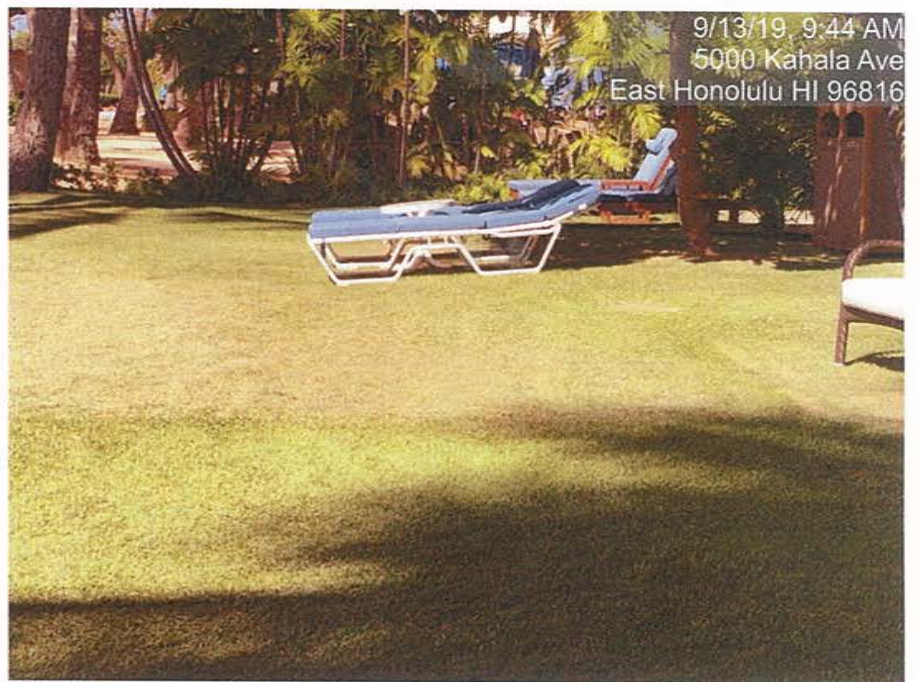
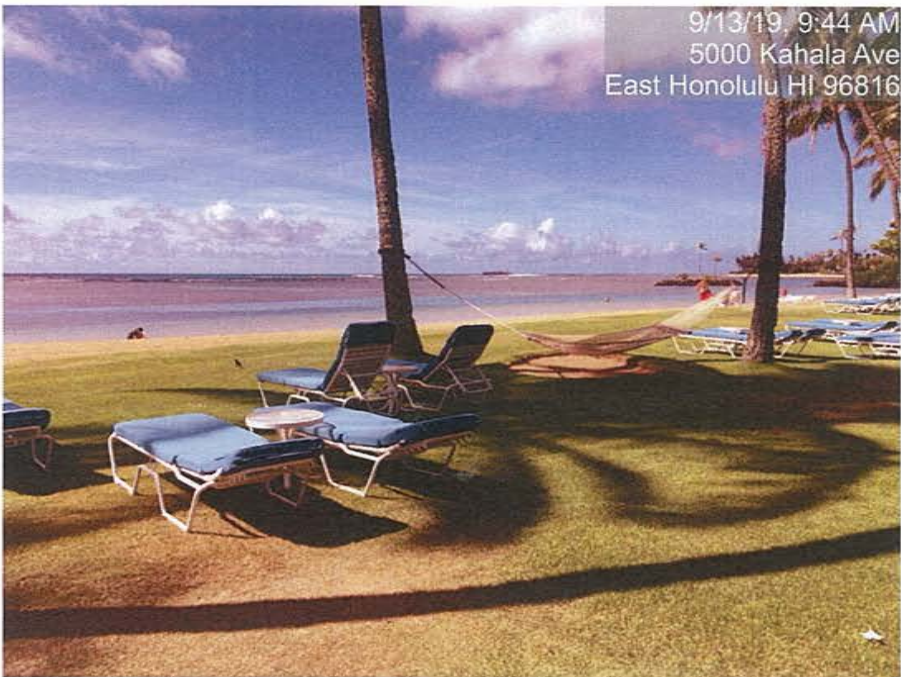
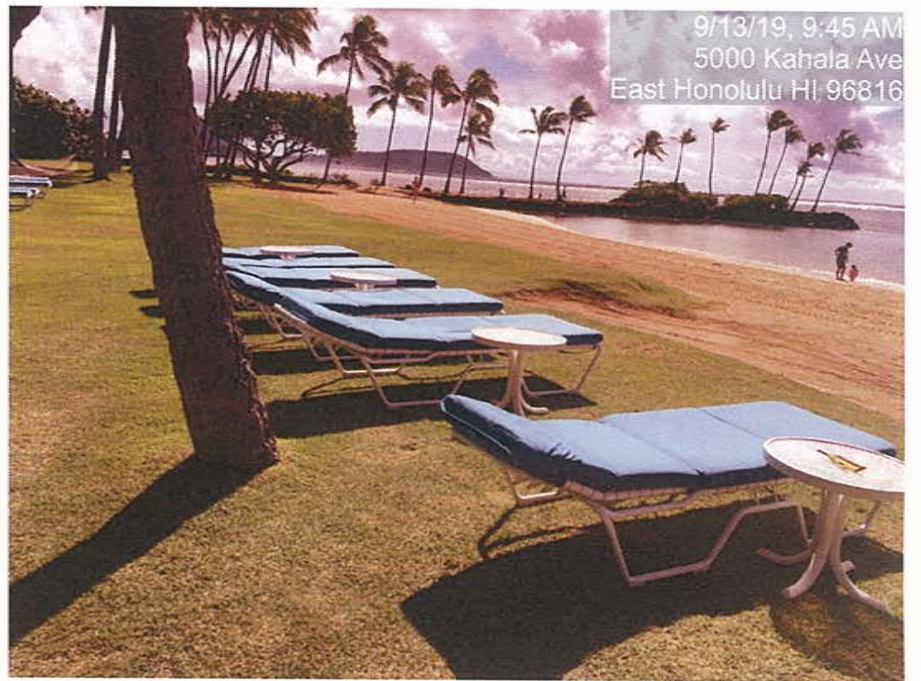


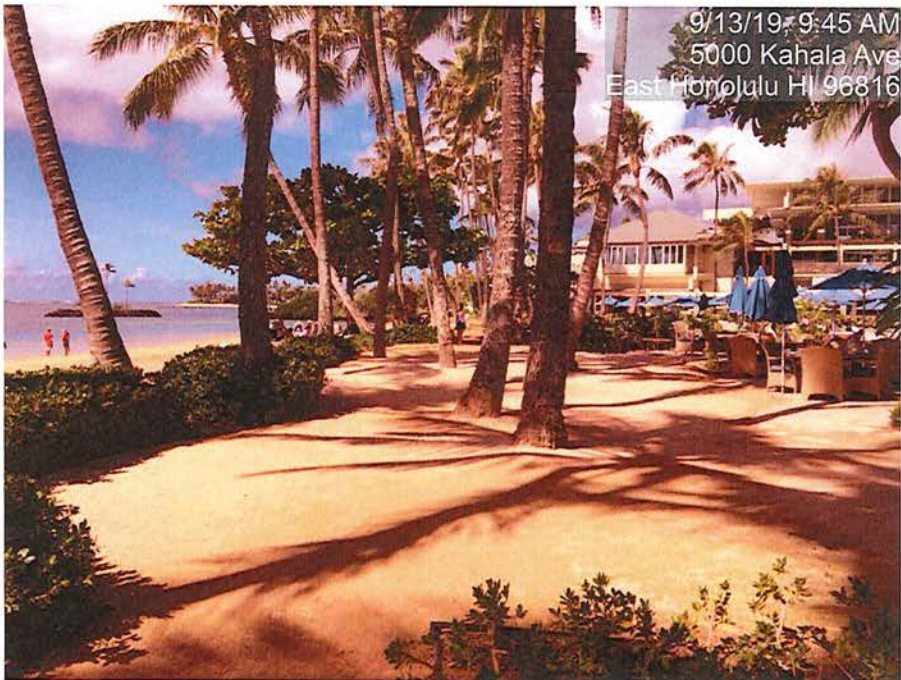
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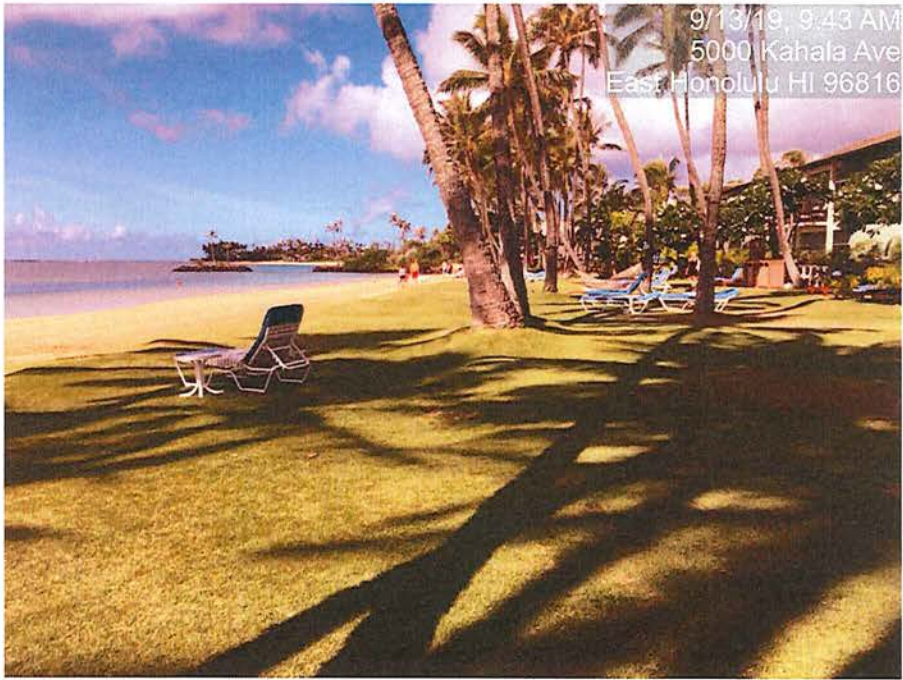


EXHIBIT E

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1, Hawaii Administrative Rules (HAR):


Project Title:	Annual renewal of Revocable Permit No. 7915, Resorttrust Hawaii LLC, permittee.
Project / Reference No.:	RP 7915.
Project Location:	Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023:041.
Project Description:	Annual renewal of revocable permit and reduction of items allowed in the revocable permit.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "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," and 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 uses have occurred at the location since late 1960s.
Action May Have Significant Impact on Particularly Sensitive Environment?	No. There are no particularly sensitive environmental issues involved with the proposed use of the property.
Analysis:	As described in the submittal, similar uses have been conducted on the subject location since 1960s. The proposed use will involve negligible or no expansion or change of use beyond that previously existing.
Consulted Parties:	Office of Conservation and Coastal Lands and Division of Boating and Ocean Recreation.

EXHIBIT E

Recommendation:

That the Board find 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 F

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Hawai'i Revised Statutes Annotated
Division 1. Government
Title 13. Planning and Economic Development
Chapter 205A. Coastal Zone Management (Refs & Annos)
Part I. Coastal Zone Management

HRS § 205A-2

§ 205A-2. Coastal zone management program; objectives and policies

Currentness

(a) The objectives and policies in this section shall apply to all parts of this chapter.

(b) Objectives.

(1) Recreational resources;

(A) Provide coastal recreational opportunities accessible to the public.

(2) Historic resources;

(A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

(3) Scenic and open space resources;

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

(4) Coastal ecosystems;

(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

(5) Economic uses;

(A) Provide public or private facilities and improvements important to the State's economy in suitable locations.

EXHIBIT " F "

(6) Coastal hazards;

(A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.

(7) Managing development;

(A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

(8) Public participation;

(A) Stimulate public awareness, education, and participation in coastal management.

(9) Beach protection;

(A) Protect beaches for public use and recreation.

(10) Marine resources;

(A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

(c) Policies.

(1) Recreational resources;

(A) Improve coordination and funding of coastal recreational planning and management; and

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

(ii) Requiring replacement of coastal resources having significant recreational value including, but not limited to surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;

- (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
 - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
 - (v) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;
 - (vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;
 - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and
 - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6;
- (2) Historic resources;
- (A) Identify and analyze significant archaeological resources;
 - (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
 - (C) Support state goals for protection, restoration, interpretation, and display of historic resources;
- (3) Scenic and open space resources;
- (A) Identify valued scenic resources in the coastal zone management area;
 - (B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
 - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
 - (D) Encourage those developments that are not coastal dependent to locate in inland areas;
- (4) Coastal ecosystems;

- (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
 - (B) Improve the technical basis for natural resource management;
 - (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
 - (D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
 - (E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures;
- (5) Economic uses;
- (A) Concentrate coastal dependent development in appropriate areas;
 - (B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
 - (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
 - (i) Use of presently designated locations is not feasible;
 - (ii) Adverse environmental effects are minimized; and
 - (iii) The development is important to the State's economy;
- (6) Coastal hazards;
- (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;

(B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;

(C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and

(D) Prevent coastal flooding from inland projects;

(7) Managing development;

(A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;

(B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and

(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process;

(8) Public participation;

(A) Promote public involvement in coastal zone management processes;

(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and

(C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts;

(9) Beach protection;

(A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;

(B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities;

(C) Minimize the construction of public erosion-protection structures seaward of the shoreline;

(D) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and

(E) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor;

(10) Marine resources;

(A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;

(B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;

(C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;

(D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and

(E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

Credits

Laws 1977, ch. 188, § 3; Laws 1993, ch. 258, § 1; Laws 1994, ch. 3, § 1; Laws 1995, ch. 104, § 5; Laws 2001, ch. 169, § 3; Laws 2010, ch. 160, § 5, eff. June 2, 2010.

Notes of Decisions (9)

H R S § 205A-2, HI ST § 205A-2

Current through Act 286 of the 2019 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. Some statute sections may be more current; see credits for details.