

1638-A Mikahala Way
Honolulu, HI 96816

October 19, 2020

David Kimo Frankel's Testimony in Opposition to the Renewal of Revocable Permit S-7915 for the Kahala Hotel, Item D-5 on the 10/23/20 Agenda

Chair Case and members of the board,

It is unfortunate that the staff submittal – largely written by a deputy attorney general (although signed by Barry Cheung) – does not present a fair, balanced, or accurate picture. Nor does it make clear what you are approving.

I. The Origins and Purpose of Lot 41

In the early 1960s, the Kāhala Hilton Hotel Company, Inc., Bishop Estate and others wanted the City Council to rezone property to allow for resort use. To convince the Honolulu City Council to rezone the property, the trustees of Bishop Estate issued a statement in which they pledged to “create a good beach.” Honolulu Star Bulletin, August 9, 1960. The trustees pledged:

In front of the hotel and indeed extending westward past the golf clubhouse and the public park to Kapakahi Stream, the developer would create a good beach. The beach will be designed to improve conditions due to the Kapakahi Stream and must have the approval of State officials. **All the beach seaward from the Estate's land court makai boundary would belong to the State and the public would have free access to it across the park and enjoyment of the beach area.**

See also Honolulu Advertiser, April 24, 1960 at A2. In the microfilm files in City Hall are a slew of petitions submitted by Vince Esposito, asking the Honolulu City Council to rezone the property so that the public could benefit from the beach. The re-zoning bill was vetoed, but overridden based, in part, on the promises that if the land was re-zoned, this new public beach would be created.

In 1963, the hotel and others agreed “to construct such beach and swimming area for and on behalf of the State.” The Board of Land and Natural Resources entered into an agreement with them in which all the parties understood and agreed that what is now Lot 41 “**shall be used as a public beach.**” It is unfortunate that the staff submittal fails to include the agreement itself, or the key language in that agreement. Please, do not think the beach was created out of the goodness of the hotel's heart. It was created in order to obtain zoning for the hotel. And please, keep in mind that Lot 41 has been dedicated in a Land Court document, to be “used as a public beach.”

Here is what the area looked like decades ago:

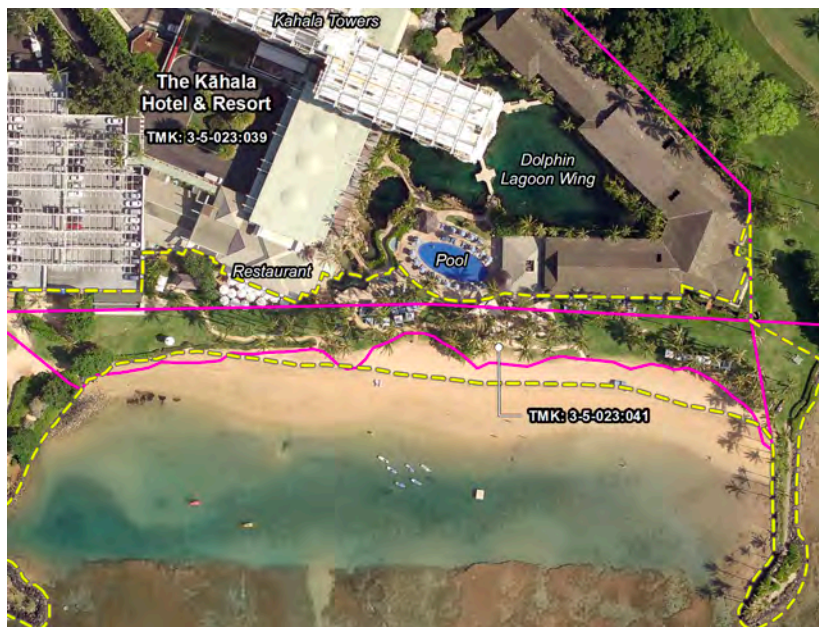


Figure 10. A 1966-1967 aerial image of The Kahala Hotel. Notice the dredged area fronting the beach and the clean white sand spread over the project area. Image courtesy UH-SOEST.

DEAPP – Archaeological Assessment
The Kahala Hotel & Resort
Wai'aleale for Ahupua'a, Honolulu (I'ima) District, Island of O'ahu
July 2016



In the 1960s and 1970s, virtually the entire area makai of the hotel property was sandy. The area was— as all the parties had originally agreed – “used as a public beach.” In the 1980s, part of the area was landscaped with grass. Lot 41 is now grassy, for the most part – even though it is supposed to be “used as a public beach.” The area outlined in pink below is Lot 41 (the photo is clearly taken at very low tide – the makai pink line marks the upper wash of the waves).



II. Resorttrust Hawaii’s Pattern of Noncompliance

The staff submittal’s claim that the hotel has been “generally cooperative” is misleading. Resorttrust Hawaii has engaged in a pattern and practice of violating the law, violating the terms of its permit, and excluding members of the public. Here are many examples:

1. The hotel has cordoned off portions of the sandy area (makai of the Lot 41) for a private reception. Here are two photographs taken by then-KITV reporter and now-KHPR reporter Catherine Cruz on April 25, 2017:



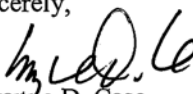
2. In July 11, 2016, Chair Case informed the hotel:

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

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

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

Sincerely,


Suzanne D. Case
Chairperson

Nevertheless, weddings continued to be held. Resorttrust has continually lied about when the weddings stopped. In a June 23, 2018 letter to you, the Sierra Club and four members of the community documented not one, but two weddings that took place on Lot 41 on May 26, 2018 – two years after Chair Case informed the hotel that such weddings were not authorized. Here are photographs taken of those weddings the hotel profited from after being told to stop:



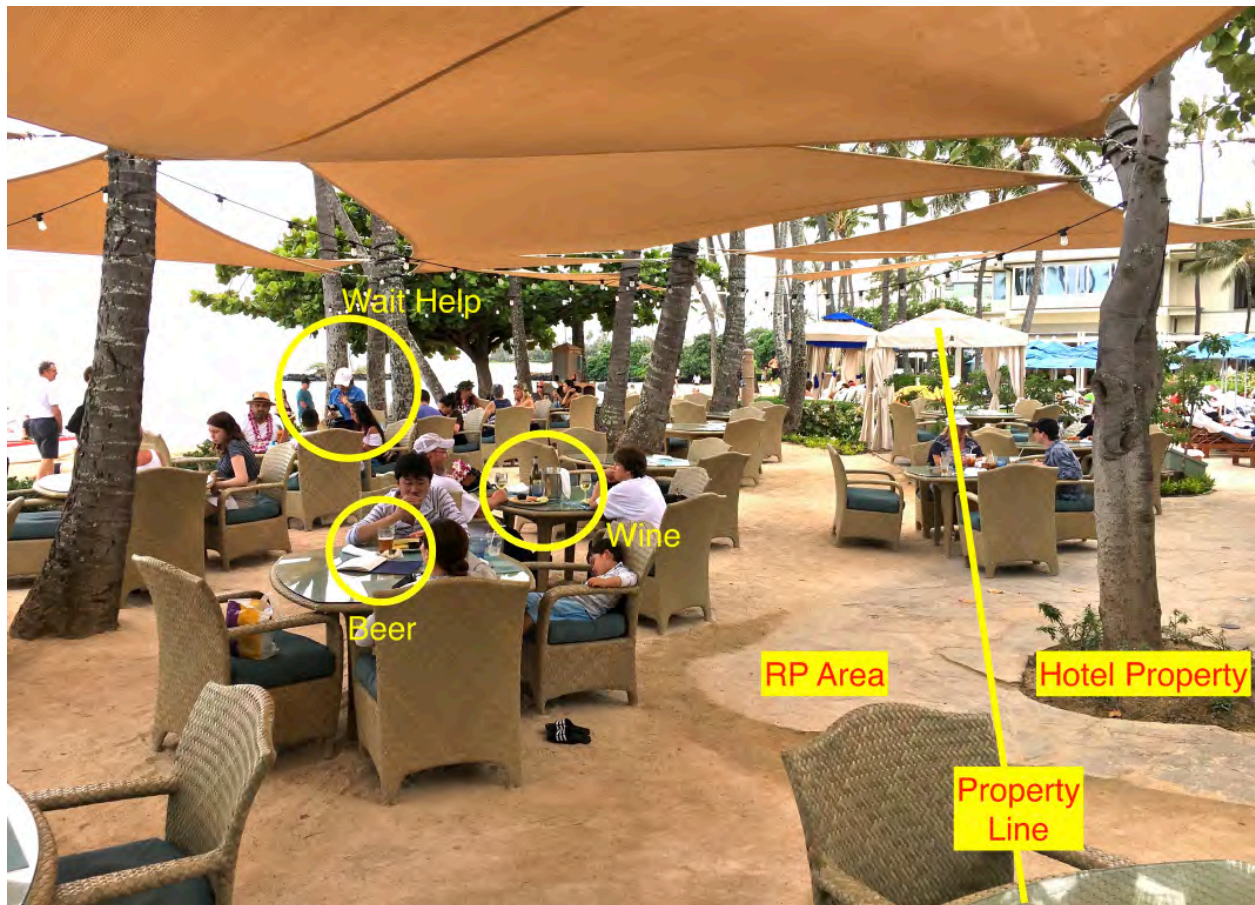
3. Here is the row of rental cabanas on the beach – an unauthorized use of unencumbered land (see HAR § 13-221-35) on one of the king tide days in 2017:



Cabana Tent

Enjoy your beach experience in the comfort of a spacious cabana tent overlooking the Kahala Beach. Tents have enough room for two full lounge chairs and a side table. \$165 per day before 3:00pm, \$85 after 3:00pm

4. Here's the illegal restaurant that the hotel operated on land that BLNR had previously decided should be used "as a public beach":



5. HAR § 13-221-35 prohibits commercial activities on unencumbered lands (such as the area ma kai of Lot 41. Nevertheless, on its website in December, the hotel advertised surf lessons on the beach.

[CONTACT CONCIERGE](#)

Surf Lessons

Standing up on a surfboard has never been so easy! There will be a brief instructional demonstration and practice on the beach prior to heading out to the surf zone. At The Kahala Hotel & Resort, we utilize the outrigger canoe to access the surf. We provide each participant with reef walkers, a rash guard, a leash, and a surfboard. Our surf instructor will imbue you with the confidence, motivation, and knowledge needed to stand up on your first surfing experience.

\$150 per person (private lesson) for 90 minutes or \$125 per person (semi-private lesson) for 90 minutes.

Enjoy a complimentary introduction to Surf class with Hans Hedemann Surf School daily from 9:15am - 9:45am for Guests staying at The Kahala Hotel & Resort. Please inquire at the Pool Kiosk.

Kayaks

6. In 2017, while walking to the beach in front of the Kahala Hotel, staff at the hotel attempted to stop me from traversing Lot 41.

7. In March of this year, I witnessed a hotel employee kicking members of the public off of Lot 41.

There are other examples. Yes, many of these problems have been resolved. But please, do not assume, as the staff submittal suggests, that the hotel has been “generally cooperative.” The hotel’s smooth-talking attorneys have misled you again and again. And please do not treat the issues that I and others raise as trivial concerns.

III. A Distorted Picture of the Hotel’s Use of Public Land.

A Trumpian use of statistics presents an inaccurate picture of the hotel’s use of public land. The staff submittal parrots the hotel’s statistical analysis that the hotel only occupies either 3% or 6% of the parcel of land. That picture is misleading in so many ways.

Consider a driver stuck in rush-hour traffic on H-1 headed downtown from east Honolulu. There is empty space between the driver and concrete barrier separating traffic. There is empty space between the driver’s lane and the next lane, and the lane beyond that. And the shoulder is empty. And there are no cars headed east on the other side of the barrier. One could argue that more than 50% of H-1 is free of cars. But we all know that the statistic presents a distorted picture of all the drivers stuck in traffic. The hotel – and your staff – present a distorted picture of how much land the hotel is authorized to use.

The hotel and your staff are including in the denominator vast areas that virtually no member of the public could, or would want to, occupy. That includes the eastern peninsula where there really is no room to sit. It also includes the area in front of the main restaurant. For those of you unfamiliar with the area, there is a hedge on the Diamondhead side (or left side in the aerial photograph) of the lot that essentially prevents anyone on the grass from getting into the water, or seeing the ocean. Local folks do not sit in that area. Nor does the hotel put its chairs out there for guests – because no one wants to sit there. But that area includes more than half of the land area in the revocable permit. It is not the quantity of space (that it incorrectly calculates – ignoring the space between chairs that is empty, but that is unusable by anyone else) that is important; it is the quality. The hotel wants its guests to have exclusive use of the best portions of Lot 41. Here are pictures that no statistic can show:





This is what you are authorizing. Please notice: no hotel guests are using these chairs.

IV. **Ambiguous Staff Recommendation.**

If you vote to approve the staff recommendation, no one will know what it is that you have authorized. The staff recommends that you approve the continuation of Revocable Permit No. 7915. Do you know what that permit says? It allows for the exclusive use of 3,263.5 square feet of the area. But page 5 of the staff submittal say that the board reduced the area to 1,492.6 square feet in 2019. So, are you being asked to continue the permit as it was issued (3,263.5 square feet), or as it was changed (1,492.6 square feet)? The answer should be obvious, but the staff submittal is poorly worded.

And what is authorized on those square feet? Why would you not be clear? How difficult can that be? The permit needs to be re-written, at the very least to reflect the new conditions – if that is what you intend.

V. **Impairing Public Use of the Area Dedicated to be “Used as a Public Beach.”**

According to your official minutes of November 9, 2018, when you approved this revocable permit, you included a condition that “3. Public access shall be allowed in the permit area, **to the extent the area is not in use as allowed by the Revocable Permit.**” The revocable permit itself states, “19, Public access shall be allowed on the Premises, **to the extent the area is not occupied for a use allowed under the Permit.**” In other words, you’ve prioritized private use of an area that is supposed to be “used as a public beach.”

Contrast this condition with what the Hawai‘i Supreme Court has declared a half dozen times: any balancing between public and private purposes must begin with a presumption in favor of public use, access, and enjoyment. You’ve flipped the presumption upside down. Instead of beginning with a presumption favoring public use of public land dedicated as a public beach,

you've authorized private use, and only allowed public access to the extent that the area is not use by an adjacent hotel – a hotel that occupies six acres of land that it can use for the very same purposes. Why allow the hotel to exclude members of the public?

The most obvious manifestation of exclusion of the public comes in the form of pre-setting chairs. Pre-setting of chairs has been less problematic in 2020 with the collapse of tourism. But pre-setting has occurred on occasion. Local folks have been flocking to the beach – yet the hotel has, at times, continued pre-setting chairs (when no hotel guests are around to occupy them) in order to exclude locals. Unfortunately, the hotel appears to be interpreting paragraph 18 of the revocable permit to bar pre-setting of only certain items, but not those identified in paragraph A.1.3. Why else would the hotel have pre-set chairs on June 7 at 9:30 a.m.?

VI. A Better Way

There is a better way. The permit should be clear. As it was between 1986 and 1993 when BLNR granted a revocable permit that authorized the maintenance of Lot 41, but barred commercial uses, and required public access and use. The permit stated, “The general public shall be permitted access to the sandy beach area and be permitted to use the permit premises for beach related recreational activities.” It also explicitly stated, “No commercial activity will be allowed on the premises.” The 1986-1993 revocable permit demonstrates that there is no need now to allow commercial or exclusive uses of Lot 41 to ensure its maintenance. You can ensure maintenance without giving the hotel rights that impair public uses of public property. The hotel and its guests benefit directly from the hotel's maintenance activities on Lot 41 and the area makai of it.

You should specifically vote on new conditions – that should be included in a new revocable permit:

- No commercial activity (as that term is defined in HAR § 13-221-2) is allowed on Lot 41 or the area makai of Lot 41.
- The general public shall be permitted access to the sandy beach area and be permitted to use Lot 41 for beach related recreational activities.
- No pre-setting of chairs (i.e. placement of chairs or other furniture without accompanying a hotel guest) on Lot 41 or the area makai of Lot 41.
- The Permittee shall ensure that its employs and contractors comply with the terms of this permit and shall be responsible for any violations.

Because Lot 41 has been dedicated to be used a public beach, there should be no exclusive use of it by a private party. Hotel guests are free to use Lot 41 – to the same extent that local folks are. But they should not be privileged in having the hotel reserve the best spots for them.

/s/ David Kimo Frankel

October 20, 2020

Tyler Ralston
PO Box 10528
Honolulu HI 96816

Tyler Ralston's testimony in OPPOSITION to Renewal of Revocable Permit S-7915 for the Kahala Hotel, Item D-5 on the 10/23/20 BLNR agenda.

Dear BLNR Chair Case and Members of the Board,

Please do not renew revocable permit S-7915, until it has been re-drafted to be objective, accurate, clear, and with changes to what is allowed.

Page 2 includes the sentence "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." There is conspicuous omission of the fact that Lot 41 was also originally designated as beach and is still technically a beach for all to use.

Page 2 reads regarding the year 1968, "Since that time the Hotel has always had a revocable permit and the permit was always for recreation and maintenance only." Yet RTH has violated this stated use with copious amounts of commercial activity to include a restaurant, alcohol service, cabana and other furniture rental on Lot 41 for years, generating millions of dollars annually on the parcel while paying the State less than \$1360 a month for the RP. In other words, RTH has not abided by the terms of the RP in which the Lot is to be used for recreation and maintenance only, have not cooperated, and have made a large amounts of revenue at the State's expense.

Page 2 to 3 reads "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]." And page 9 reads in part, "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." How is charging \$1360 a month for this RP even close to generating adequate amounts of "sorely needed" income? With this in mind, the BLNR should be charging many times its current fee of \$1360 a month for the RP. The State is giving away the exclusive use of the best portions of this prime ocean front lot in Kahala, so that an out-of-State corporation can use it to further their profits. This costs the residents of Hawaii in the use of these portions of the parcel, and it costs the State sorely needed revenue for the protection and management of these kinds of lands. RTH will say they spend a certain amount of funds to maintain the property and that amount can be counted toward the total cost they pay for the RP, and that what they pay saves the State from those costs. The reality is the State doesn't drive an internal combustion sand-raking vehicle down the rest of Kahala beach every day to gather up coral rocks, nor does the State pay staff to rake leaves off the rest of Kahala beach, nor does the State hire landscapers to trim bushes along Kahala beach. The costs that RTH spends on the parcel do not save the State those same costs. RTH pays those costs because it wants to make the parcel look nice for its guests, and and what they pay are not funds that would be otherwise spent by the State.

Page 3 mentions that "From time to time over the years, members of the community made some complaints about the Hotel's use of the property." To be accurate and clear, there have been many complaints from both members of the community and from organizations such as

the Sierra Club, Livable Hawaii Kai Hui, Hawaii's 1000 Friends, Malama Maunalua, The Surfrider Foundation, and many more. A cursory look at testimony submitted for previous BLNR meetings will show this to be accurate.

Page 3 says the "The Hotel was generally cooperative and RTH in particular made strong efforts to work with the community and cooperate with the department." This is patently incorrect. To be clear, the hotel has SAID they are making strong efforts to work with the community, but in reality their actions have been anything but this. They have consistently twisted and skewed information, continued to violate the terms of their RP for as long as they could possibly get away with it, and created new problems that the community is unhappy with. If they were making strong efforts to work with the community, there would be cooperation from the hotel with the community and there would be no need for RTH to hire a team of lawyers to fight the community all along the way like they have done.

Related to the EA and significant intensification of the property that RTH previously wanted, page 3 mentions "In the end, RTH chose not to pursue this out of respect for the community." This is an absurd statement that is blatantly biased in favor of RTH. Does the author of this Staff Submittal know for a fact that RTH chose not to pursue this...out of respect for the community? Does the author believe everything that RTH leaders or lawyers say? Does the author take an objective accurate look at the facts surrounding the issue? A more obvious conclusion and one that is more consistent with RTH's demonstrated behavior, would be that RTH realized they were seriously damaging their reputation and looking at a drawn out expensive legal battle, so they pulled back because they wanted to protect their image and not waste their funds. An, objective, and accurate Staff Submittal would have instead stated "In the end, RTH chose not to pursue their intensified interests."

Page 3, regarding a list of items RTH wanted to place on the Premises, the Staff Submittal says "There was extensive public input - both in favor of and in opposition to the request." This is also inaccurate and biased toward the hotel. A simple review of previous testimony submitted will show that there was very minimal if any public support for RTH's proposed list of items, and there were large amounts of public opposition. Again, the Staff Submittal is biased toward the hotel with inaccuracies.

Page 4, again inaccurately lists the square footage covered by the "allowed" uses. The area approved at 3263.5 and then later at 1,492.6 square feet only reflects the dimensions of the items, and does not include the personal space around those items, that the item when used by a human actually occupies. This is an inaccurate, deceptive way to present this, and is biased in favor of the hotel.

Page 5 says "RTH remained very interested in working with the community. It therefore asked the Board to further limit use of the permit area." This inaccurate statement assumes that RTH asked to limit their use of the permit area BECAUSE they were very interested in working with the community. Does the author of this Staff Submittal know this is in fact the reason they asked to further limit use of the permit area? If so, how does the author know this? That would be an odd thing for the author of the Staff Submittal to know, or for anyone in DLNR or even BLNR to know. It raises a lot of questions and substantial skepticism. I have been a vocal protector of Lot 41, one of the most in fact, and I can say with certainty that RTH has not demonstrated genuine interest in working with me. Twice they invited me to meet with them on their property. The first time I went, their hired consultant Peter Young was not at all willing to work with me. I chose not to go the second time as I knew it would be a waste of time given the leadership of the Hotel was not genuinely interested in working together. There have been countless Waialae Kahala Neighborhood Board meetings and a few BLNR meetings at which both myself and Hotel leadership have attended, and never once have they shown a genuine interest or genuine action in working with me or the community. Lots of gracious hospitality

industry words and talk coming from them which is good at smoothing things over and sounds really nice on the surface...but no genuine action and certainly no substance that would suggest genuine interest in working with the community.

Page 5 says "RP 7915 requires two (2) public corridors, Mauna to makai, on the Koko Head side of the Premises, between the beach chairs allowed under the RP;" First, the whole parcel is supposed to be public, so it's pointless to designate two public corridors. Second, RTH is allowed to ask the public to leave those public corridors if the public is sitting on a towel there or using it in another way. How public is this if a private company can have the public removed from the "public" corridors?

Page 6 says "Of note, RTH has instructed all Hotel employees that food and beverage service should not be provided on the Premises." Once again, very odd that this obvious practice of not turning a public beach into a private restaurant, and not serving alcohol in an area where one does not have a liquor license to do so, consistent with State LAW ,has to be stated in the Staff Submittal as if to highlight that RTH is doing something great for the community by instructing their employees to do what is simply the Law in the first place. This is bias in favor of the Hotel.

Page 6 says "In the 2019 submittal, staff detailed community concerns at that time." And then there is no mention or summary of the numerous concerns raised by the community. This is compared to subjective inaccuracies that pump up RTH, that are laced throughout the Staff Submittal. Again, oddly biased in favor of the hotel, while minimizing the concerns of the community.

Page 7 says "Staff does not believe the RP significantly reduces the access for or diminishes the value to the public." I am the public. I have made it clear many times that the value of the area for me, has been greatly diminished because of RTH's allowed uses under the RP, and my access has been significantly reduced. How can I play frisbee with a friend, or set up a picnic blanket or my own umbrella in the prime center portion or prime Eastern portion of the Premises when the area is clogged with 70 beach chairs preset by the hotel? The Staff Submittal statement is simply inaccurate and again biased in favor of RTH.

On page 7, the author of the Staff Submittal writes, "The Premises is maintained at the highest level of scenic and open space." Is there some sort of official levels of maintenance chart or document in DLNR books or something...or is this just a purely subjective statement based on some sort of made up levels of maintenance that the author personally fancies? If the way RTH maintains the premises is considered to be maintained at the "highest level of scenic and open space", would it be appropriate for the BLNR to then apply the same maintenance standards to Kalalau Valley (because it is also a scenic and open space)...fertilize the plants, prune everything in site, plant some zoiysa grass and keep it tightly mowed, install landscape lighting, preset 70 beach chairs, etc.?

Page 10 reads in part, "In any event, a few isolated violations (if any) do not mean that the RP should not be continued." This statement is inaccurate. There have been many, many violations of the terms of the RP, including violations of laws for the area, perpetrated by RTH over the years. My previous testimonies show photos of alcohol being served on the parcel without a liquor license, a restaurant on the parcel, commercial activity, and more. RTH committed these violations day after day for years. Each instance of these on each day, is a violation. This amounts to thousands of violations. The author of the Staff Submittal has again minimized the violations and problems and biased the language in favor of RTH.

Page 10 also reads in part, "At most, the Board may wish to direct staff to devote even more of its limited resources to enforcement in this particular area." If the land has been designated as

a property particularly well suited for income generation to support management of these kinds of lands, why is it that BLNR greatly under charges for the RP, and then the author of the Staff Submittal writes a passive aggressive statement on page 10 like the one mentioned above? It would instead be logical and appropriate for the author to recommend that the BLNR vote to greatly increased the monthly RP fee to increase staff in order to further enforce the particular area. Again, the Staff Submittal is biased in favor of the RTH.

Please also do not approve an RP as long as it allows for any exclusion of the public on any part of the Premises (e.g. pre-setting of beach chairs excludes the public from using that area of land where the chairs are preset).

Please make clear in the RP that no commercial activity is allowed on, or to cross the Premises to the sandy beach or ocean (e.g. do not allow a surf school instructor to carry a SUP commercially rented on Hotel property, across the Premises to the ocean for the customer. This is commercial activity on the Premises and should not be allowed.)

Please ensure that the permittee is responsible for any violations of the RP that its contractors commit.

And finally, please do not approve this renewal until the Staff Submittal is re-drafted in a manner that is objective, accurate, and clear.

Sincerely,

Tyler Ralston

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October 22, 2020

VIA ELECTRONIC MAIL (blnr.testimony@hawaii.gov)

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

Re: Testimony In Support Of Oct. 23, 2020 Agenda Item D.5 - Annual
Renewal of Revocable Permit No. 7915; Resorttrust Hawaii, LLC,
Permittee; Waialae, Honolulu, Oahu, Tax Map Key: (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, which was effective January 1, 2020 ("**2020 RP**"). See **Exhibit 1**, enclosed. We respectfully request that the Board of Land and Natural Resources ("**BLNR**") renew the 2020 RP for the year 2021 in accordance with the terms recommended in the DLNR staff submittal and consistent with the uses and areas identified in the 2020 RP.

Under the 2020 RP, within the approximately 1.280 acres of State-owned land (referred to herein as the "**RP Premises**"),¹ the BLNR authorized RTH to use approximately 1,492.6 sq. ft. for specified uses. The 2020 RP represents a significant reduction from what the BLNR had approved for the Hotel's uses under the 2019 RP and in prior years. Under the 2019 RP (effective January 1, 2019), the BLNR authorized the Hotel to use some 3,236.5 sq. ft. of the RP

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.

Premises.² The use and occupancy area under the 2020 RP is considerably smaller (1,492.6 sq. ft.). RTH now seeks renewal of that same reduced area RP for the year 2021.

The limited scope of the 2020 RP is in large part due to RTH's request that the BLNR reduce the specific use areas permitted under the 2019 RP. For 2020, RTH eliminated several of the previously approved use areas and requested that the BLNR reduce the scope of the RP accordingly. Specifically, for the 2020 RP, RTH requested that the BLNR eliminate the following uses and areas, all of which the BLNR had approved for the 2019 RP:

- (i) KOKK Storage Area (approx. 560 sq. ft. of which had been on the RP Premises);
- (ii) Outrigger Canoe Storage Area (approx. 216 sq. ft. of which had been on the RP Premises);
- (iii) Beach Chair Storage Area (approx. 468 sq. ft. of which had been on the RP Premises);
- (iv) Clam Shell Loungers (390 sq. ft. of which had been on the RP Premises);
- (v) Cabana Tents (approx. 1,000 sq. ft. of which had been on the RP Premises); and
- (vi) Trash Cans (approx. 32 sq. ft. of which had been on the RP Premises).

For the year 2020, RTH also requested, and the BLNR approved, a use area of approximately 1,322.1 sq. ft. for low profile, light weight beach chairs with small tables, that could be preset for use by Hotel guests, as documented in the 2020 RP.

As such, the total specified use and occupancy area under the 2020 RP is 1,492.6 sq. ft., a significant reduction of more than 1,700 sq. ft. from what the BLNR had approved for the 2019 RP. For context, enclosed as **Exhibit 2** is an overhead photo taken on August 17, 2019 showing the RP Premises, the Hotel property, and the beach; **Exhibit 3** provides photos that were taken on September 19, 2019, of the open sandy beach fronting the RP Premises.³ These photos are consistent with RTH's current request for renewal of the 2020 RP.

As the current DLNR staff report acknowledges, per RTH's 2019 submittal, 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, all are free to bring their own food onto the

² The text of the 2019 RP stated 3,263.5 sq. ft. but that was a typo; the actual figures used in the use table in the 2019 RP added up to 3,236.5 sq. ft. A copy of the 2019 RP can be found at the DLNR 2019 staff report <https://dlnr.hawaii.gov/wp-content/uploads/2019/10/D-7a.pdf>, see pdf pages 33 - 46. We incorporate by reference the DLNR 2019 staff report and all exhibits thereto, including RTH's detailed request to the BLNR and accompanying documents and photographs.

³ These photos were originally provided as Exhibits 13 and 14 of RTH's October 8, 2019 submittal to the BLNR. See <https://dlnr.hawaii.gov/wp-content/uploads/2019/10/D-7a.pdf> at pdf pages 141 - 145.

RP Premises, but the Hotel is not providing any service outside of the confines of the Hotel property). Moreover, we wish to acknowledge the submittals from the City and County of Honolulu Department of Planning and Permitting and the State Office of Planning sent to DLNR in October 2019 (and which were provided as Exhibit G to the 2019 DLNR staff report) that were supportive of the 2020 RP.

After reviewing RTH's 2019 request for the reduced scope RP for the year 2020, by letter to DLNR dated October 18, 2019 the Department of Planning and Permitting determined that the proposed renewal of the RP "did not require either a Shoreline Setback Variance or Special Management Area approval pursuant to Chapter 23 and Chapter 25, Revised Ordinances of Honolulu, respectively." See **Exhibit G** enclosed (October 18, 2019 letter).

Additionally, by e-mail dated October 22, 2019, the State of Hawaii Office of Planning, deemed the "lead agency" under Hawaii Revised Statutes Chapter 205A (the law governing the Coastal Zone Management Area), determined that the renewal of RP 7915 with the reduced scope as proposed by RTH, would not create significant impacts on public access to and along the beach and shoreline or on ocean recreation. *Id.* (October 22, 2019 e-mail). The Director of the Office of Planning also noted: "Ongoing collaboration between the public and private sectors, and the funding support from the permit will benefit the recreational use and beach protection in the subject area of the Premises." *Id.* RTH does not seek any expansion of the use and occupancy area authorized under the 2020 RP.

Renewal of the 2020 RP 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 2020 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 DLNR staff report dated February 25, 2011, for agenda item D-10.⁴ 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 be available for all to use and enjoy.⁵ In a time when Hawaii businesses and government services are struggling to survive due to the disastrous impacts of the pandemic, such rental payments and services should be more important than ever.

⁴ For an excerpt of the 2011 DLNR staff report see DLNR 2019 staff report at <https://dlnr.hawaii.gov/wp-content/uploads/2019/10/D-7a.pdf>, pdf pages 116 - 118.

⁵ Notwithstanding the COVID 19 pandemic and the associated devastating effect on Hawaii's tourism industry, RTH estimates that its costs to keep the RP Premises and the sandy beach area clean and well maintained for the enjoyment of all are similar to the costs in 2019 - approximately \$69,400 a year.

The 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 RP rent and avoided maintenance 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.

The RP Premises is adjacent to the Hotel and has been used and maintained by the owners of the Hotel since it 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 such economic growth, and at this point potentially the very survival of the visitor industry. 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 reported last year, pre-pandemic, the Hotel employed 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. In these extraordinarily challenging times, it is more important than ever that the Hotel be in a position to offer amenities at least somewhat comparable to what its long-term returning guests have come to expect. Although the significant reduction in uses permitted under the RP (reduced at RTH's request) has caused some disappointment and guest cancellations, overall the 2020 RP represents what RTH believes is an appropriate accommodation of the varying interests. Since acquiring the Hotel late in 2014, RTH has strived to maintain its unique position in Hawaii's vital visitor industry, while being a good neighbor and steward of the RP Premises and adjacent beach.

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
October 22, 2020
Page 5

We respectfully request that the Board of Land and Natural Resources permit RTH to continue to use and maintain the subject properties pursuant to a renewal of the Revocable Permit consistent with the terms recommended in the DLNR staff report.

Sincerely,

CARLSMITH BALL, LLP

/s/ Jennifer A. Lim

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

Enclosures

cc: The Kahala Hotel & Resort

4824-9206-8047.1.067396-00006

DEC 26 20

DAVID Y. IGE
GOVERNOR OF HAWAII



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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 20, 2019

Ref. No.: RP 7915

Resorttrust Hawaii, LLC
c/o Jennifer Lim
Carlsmith Ball LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

Dear Permittee:

Subject: Revocable Permit No. 7915; Honolulu, Oahu, TMK (1) 3-5-023:041

Enclosed, for your records, is one fully executed copy of the above referenced document, effective as of January 1, 2020.

If you have any questions, please do not hesitate to contact us at 587-0430. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Cheung".

Barry Cheung
District Land Agent

Enclosure

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 20th day of December, 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, 2020, ("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:

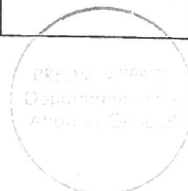
A. The Permittee shall:

- 1.1 Occupy and use the Premises for the following specified purposes and under the following conditions:

Cabana hale, beach shower, tower caddy, hammock, and beach chair with accompanying tables.

- 1.2 Ensure the specified purposes mentioned in paragraph A.1.1 shall not exceed their respective count and approximate dimensions as noted in the following table.

Item	Dimensions (ft)	Area Per Item (sq. ft.)	Count	Total Seats	Total Area (sq. ft.) on State Property
Cabana Hale	8' x 9'	72 (only half of this	1	N/A	36



		item is on State property			
Beach Chairs (pair) with small table	5.7' x 6.4'	36.5	23	46	839.5
Beach Shower	8' x 8'	64	1	N/A	64
Tower Caddy	2' x 6'	12	1	N/A	12
Hammock	13' x 4.5'	58.5	1	1	58.5
Beach Chairs Setup - 4 Chairs with 2 tables	12.4' x 6.4'	79.4	3	12	238.2
Beach Chairs Setup - 6 Chairs with 3 tables	19.1' x 6.4'	122.2	2	12	244.4
Total Seats				71	
Total Use & Occupancy Area					1,492.6

- 2.1 Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, the sum of (a) TWO THOUSAND SIXTY AND 00/100 DOLLARS (\$2,060.00) for the period from January 1, 2020 to January 31, 2020 and (b) monthly rent in the sum of ONE THOUSAND THREE HUNDRED SIXTY AND 00/100 DOLLARS (\$1,360.00) from February 1, 2020 to December 31, 2020 payable in advance by the first of each and every month.

- 2.2 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 the sum of \$2,720.00 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 cancelled or 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, 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.1.2, above, beach chairs, umbrellas, shade devices, mats, towels and other similar 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 in 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 meeting held on October 25, 2019.

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

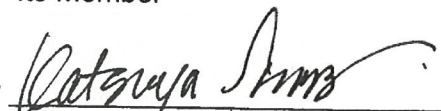
APPROVED AS TO FORM:


WILLIAM J. WYNHOFF
Deputy Attorney General

Dated: 11/26/19

STATE

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

By 
Katsuya Shiba
Its Senior Vice President

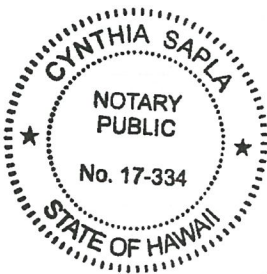
And by N/A
N/A
Its N/A

PERMITTEE



STATE OF HAWAII)
City and) SS.
COUNTY OF)
Honolulu)

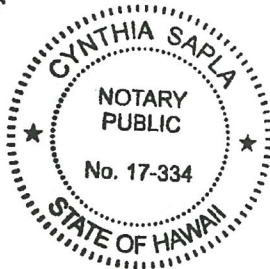
On this 10 day of December, 2019, before me personally appeared Katsuya Shiba and N/A, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

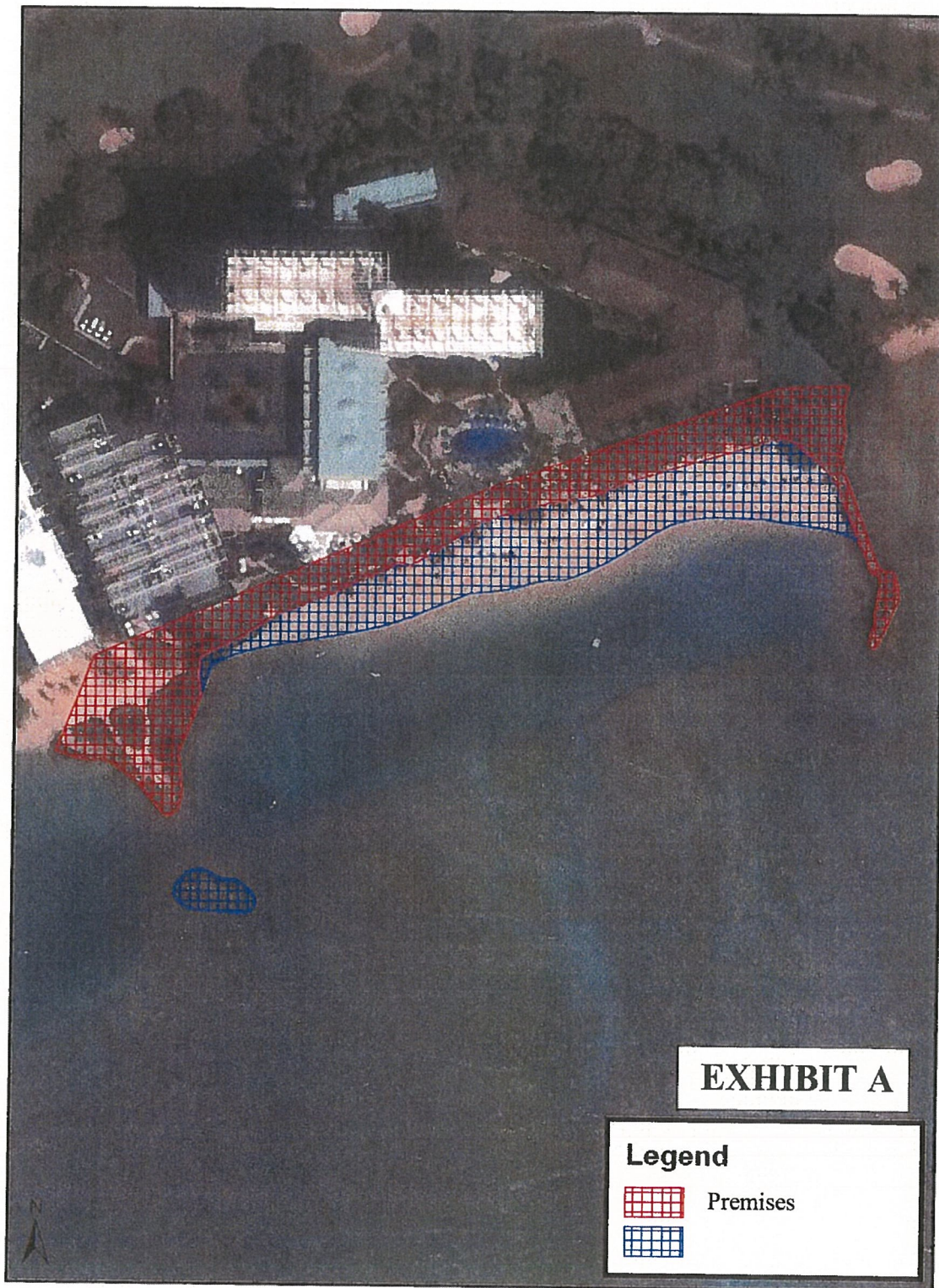


Cynthia Sapla
Notary Public, State of Hawaii

Cynthia Sapla

My commission expires: AUG 20 2021

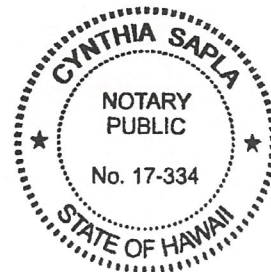
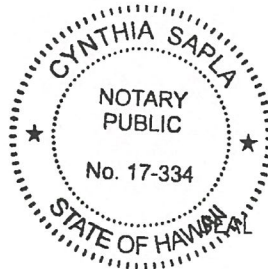




787923_1

PRELIM. APPR'D.
Department of the
Attorney General

Doc Date: 12/10/2019 # Pages: 12
Notary Name: Cynthia Sapla First Circuit
Doc. Description: DLNR Revocable
Permit
[Signature] 12/10/2019
Notary Signature Date
NOTARY CERTIFICATION





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 2

Notes:
 Aerials are related to Government Survey Map/Map Sheet 18.44" 25.
 Street Photography taken August 11, 2018.

PHOTO NO. 1-2018-0-2
 1/8, 2018, 1/22

R. M. TOWELL CORPORATION

2018 with 2017, 2018, 2019
 Hawaii, Oahu, 2018
 August 11, 2018

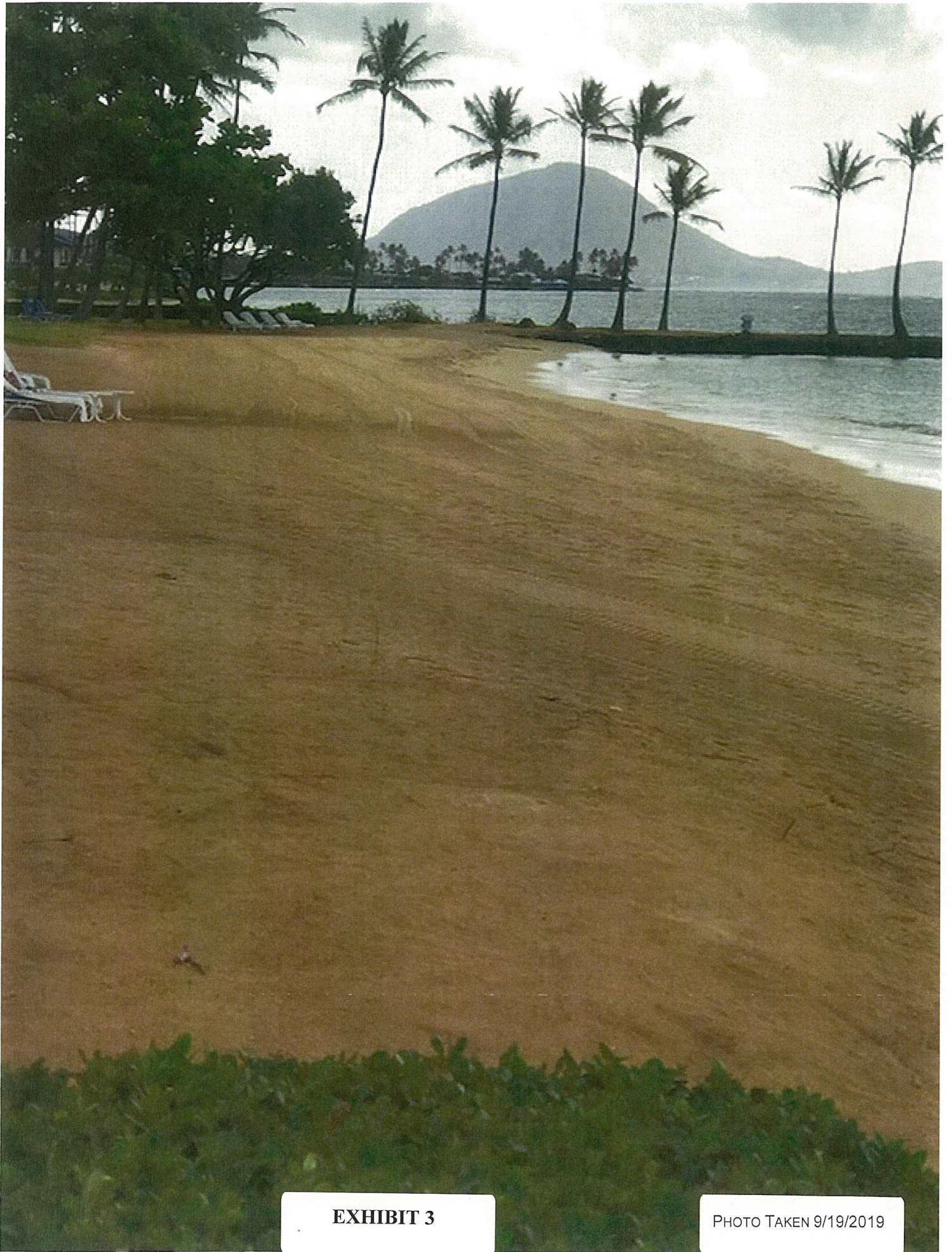


EXHIBIT 3

PHOTO TAKEN 9/19/2019

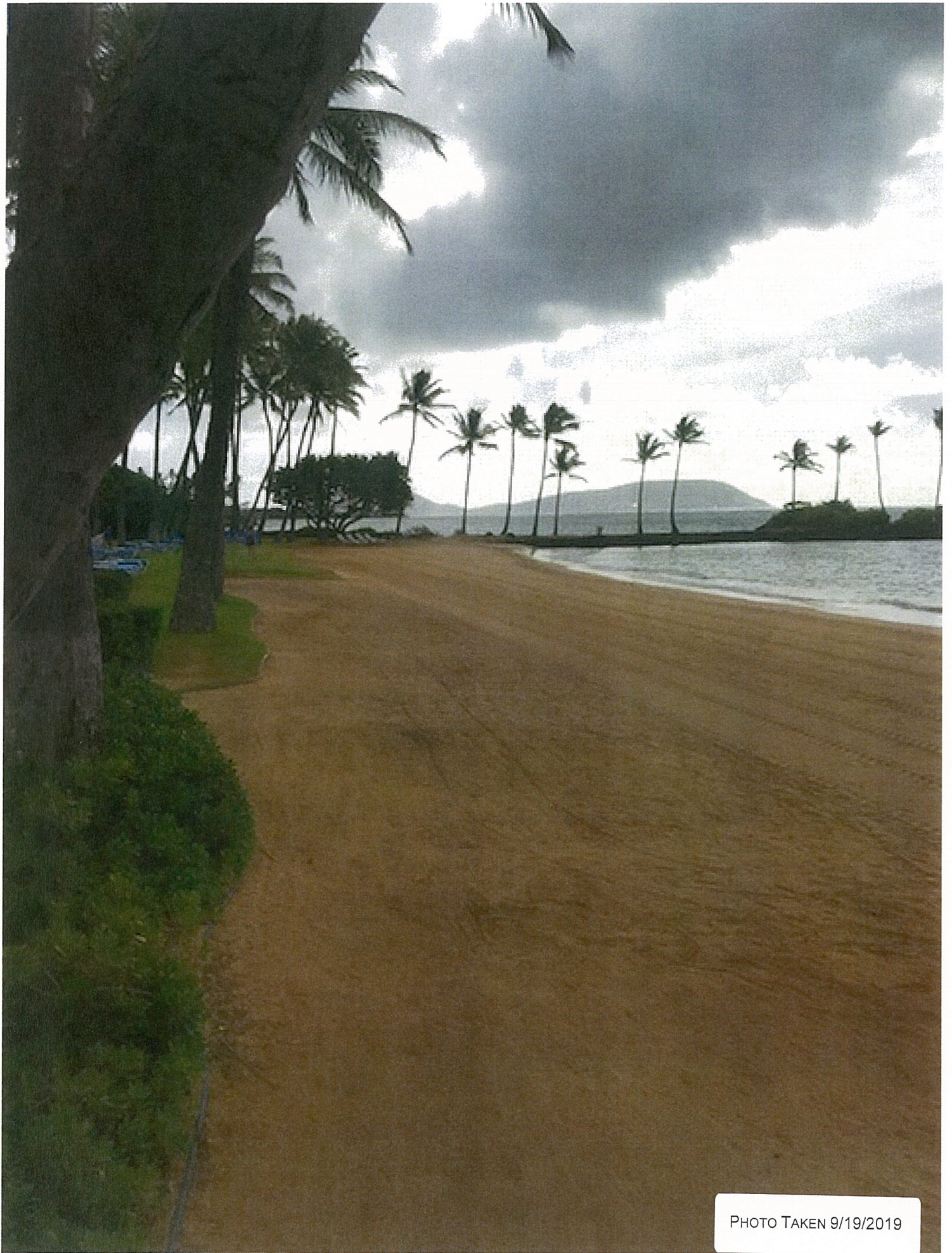


PHOTO TAKEN 9/19/2019



PHOTO TAKEN 9/19/2019

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

October 18, 2019

2019/ELOG-2015(ST)

Mr. Barry W. Cheung
Department of Land and Natural Resources
Land Division
Kalanimoku Building
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

Dear Mr. Cheung:

SUBJECT: Environmental Assessment Requirement
Renewal of Revocable Permit No. 7915
Resorttrust Hawaii, LLC
Kahala Hotel and Resort - Beachfront Operations
5000 Kahala Avenue and State-Owned Parcel - Waialae
Tax Map Key 3-5-023: 041

This responds to your email, received on October 11, 2019, requesting that the Department of Planning and Permitting comment on exempting the above-referenced permit from the preparation of an Environmental Assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS).

We note that the Revocable Permit (Permit) exclusively involves the use of Parcel 41, which is artificially created land within the State Land Use Conservation District, over which the City and County has no administrative control. As such, we offer no position on your compliance with the environmental disclosure requirements of Chapter 343, HRS.

However, after reviewing your draft submittal to the Board of Land and Natural Resources (Submittal), we understand that all commercial activities have been removed from the Permit area. In particular, the clamshell loungers and cabana tents, which were previously within the shoreline setback area, have been removed and replaced with lightweight lawn chairs and small drink stands. We previously determined that

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EXHIBIT "G"

Mr. Barry W. Cheung
October 18, 2019
Page 2

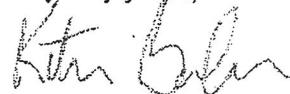
such movable furniture, without food and drink service, did not require either a Shoreline Setback Variance or Special Management Area approval, pursuant to Chapter 23 and Chapter 25, Revised Ordinances of Honolulu, respectively. We also note that Condition A.1.2 of the draft Permit document specifies that should the Applicant desire to resume commercial activities, appropriate City and County authorization will be required.

We do suggest that the renewed Permit include a revised map diagram for "Exhibit B," to illustrate the authorized location for the updated elements, as is outlined in the chart on page 5 of your Submittal. We also suggest that this exhibit illustrate the location of two required public corridors mentioned on page 6.

Lastly, we are unclear on how the Permit area is now 55,757 square feet, which is 22,879 square feet larger than the 32,860 square feet that is the recognized area of Parcel 41. Footnote 4 on page 6 of the Submittal indicates that the area was generated by computer, but it would be helpful if the increased permit area was clearly explained.

Should you have any questions, please contact Steve Tagawa, of our staff, at 768-8024.

Very truly yours,


for Kathy K. Sokugawa
Acting Director

cc: Department of Land and Natural Resources,
Office of Conservation and Coastal Lands
Corporation Council

From: Evans, Mary Alice [REDACTED]
Sent: Tuesday, October 22, 2019 11:24 AM
To: Tsuji, Russell Y [REDACTED]
Cc: Cheung, Barry W [REDACTED]
Subject: RE: 343 exemption for Kahala renewal permit

Good morning Russell and Barry --

The Office of Planning may be listed as a Consulted Party on the Notification of Exemption. OP's Coastal Zone Management staff have provided the following comments:

After a careful review on the information provided by the email, including reduction in the use of the Premises from 3237 square feet to 1243 square feet (approximately 6% to 2% of the total), and the proposed uses from the revocable permit, we do not identify significant impacts on public access to and along the beach and shoreline, and on ocean recreational activities if the conditions of the subject revocable permit are fully implemented and enforced. Ongoing collaboration between the public and private sectors, and the funding support from the permit will benefit the recreational use and beach protection in the subject area of the Premises.

Mahalo, Mary Alice

Mary Alice Evans
Director, Office of Planning
Department of Business, Economic Development & Tourism
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813
[REDACTED]