

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

September 13, 2024

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

Ref: 23OD-072

OAHU

Grant of Perpetual, Non-Exclusive Easement to Resorttrust Hawaii, LLC for Drainage Purposes, Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023: portions of 041 and seaward.

APPLICANT:

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

LEGAL REFERENCE:

Sections 171-13, 17, and 53, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located at Waialae, Honolulu, Oahu, identified by Tax Map Key: (1) 3-5-023: portions of 041 and seaward, as shown on the attached maps labeled **Exhibit A1** and **A2**.

AREA:

Easement D-1	2,983 square feet
Easement D-2	2,190 square feet
Easement D-3	<u>7,527 square feet</u>
Total: 12,700 square feet	

See **Exhibit B**, more or less, further subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

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

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7915, Resorttrust Hawaii, LLC, Permittee, for cabana hale, beach shower, towel caddy, hammock, and beach chairs with accompanying tables.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove pipelines over, under and across State-owned land for drainage purposes.

TERM:

Perpetual.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules Section (“HAR”) 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." Part 1, Item No. 39 that states, “creation or termination of easement, covenants, or other rights in structures or land.” See **Exhibit C**.

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>

APPLICANT REQUIREMENTS: Applicant shall be required to

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Process and obtain subdivision approval at Applicant's own cost; and
- 4) Obtain the prior concurrence of the Legislature and approval of the Governor pursuant to §171-53(c), HRS.

ADDITIONAL INFORMATION SINCE JANUARY 2024:

The subject was originally scheduled for January 26, 2024 Board meeting, under agenda item D-5. The Board Secretary received a written testimony dated January 24, 2024 from the community members advising the Board of the maintenance performance under Revocable Permit No. 7915 issued to the applicant, RTH. A copy of the testimony is attached as **Exhibit D** for the Board's reference. Upon request from RTH, the request was withdrawn from the January 24, 2024 agenda to allow RTH investigate the issues raised in the testimony.

Pursuant to an email from RTH's counsel dated August 7, 2024, RTH advised that its personnel could not locate the pipe photographed sticking out of the water on the makai of the Diamond Head side islet, during their visit on July 23, 2024 at 9:40 am at the lowest tide of that day. Additionally, RTH's consultant visited the property on April 11, 12, and 15, 2024 to conduct their surveys for the drainage easements and were unable to find this pipe during those visits.

Other items mentioned in the public testimony are "abandoned water line or electrical conduit littering the western groin leading out to the islet" and "abandoned in-ground, electrical box with no lid." Staff visited the site on August 8, 2024 around 7:10 am and noticed that the electrical box was covered and nothing like a pipe sticking out from the ocean or other debris found in the water. The conduit housing the waterline and power cable is still at the location, to facilitate the maintenance of the islet pursuant to the requirement under the above-mentioned Revocable Permit No. 7915.¹

Staff brings the subject request on today's agenda for the Board's consideration.

REMARKS:

RTH operates the hotel on the abutting private property located at TMK (1) 3-5-023:039 pursuant to a ground lease with Kamehameha Schools. At the annual renewal request for RP 7915 considered by the Board at its meeting on October 28, 2022, it was brought to the attention of the Board that there were two (2) discharge pipes and two (2) storm drains installed as part of the original hotel development, without any land disposition granted by the Board. The subject request is a follow-up of October 2022 action.

¹ Under a separate agenda item on the same Board meeting, RTH requested termination of RP 7915 and a new revocable permit be issued for maintenance purposes only.

RTH, through its counsel, turned in an application in July 2023 requesting a land disposition pursuant to the discussion at the 2022 Board meeting. The application covered the following:

- 12-inch wide and 65 feet long Diamond Head lagoon outfall, “Cooling Water Outlet #1”
- 24-inch wide, 230 feet long Koko Head lagoon outfall, “Cooling Water Outlet #2”
- 24-inch wide Diamond Head stormwater outfall “Storm Water Outlet”

As shown on **Exhibit E**, RTH described the proposed use of the pipelines in addition to the original development of the hotel back in the 1960s.

The applicant contends that the lagoon outfalls (lagoon easement) and the stormwater outfall (drainage easement) were built during the construction of the hotel and beach area in the 1962-1963 time period, which predates the creation of the conservation district and special management area. The Department has no evidence to contradict the applicant’s account.

To be sure, in connection with RTH’s application for an easement, staff inquired with the staff at the Office of Conservation and Coastal Land (OCCL) on whether a CDUA/CDUP is required for the lagoon or stormwater outfalls that are believed to have been built at the time of constructing the hotel and beach back in the 1962-1963 time period. OCCL responded that “since the outfalls were installed prior to the advent of the Conservation District and appears to be nonconforming, the OCCL does not object to the granting of an easement for the three outfalls, and a Conservation District Use Permit is not required.”

Staff noted, from a plan in a conservation district use application (CDUP) file dated 1975 (**Exhibit F**) regarding an extension of one of the drainpipes built in the 1960s, that there was another drainpipe originating from the existing swimming pool. RTH explained the fourth pipe was actually built on hotel’s property based on the plans provided by the hotel. So, the subject request only pertains to the three (3) pipelines mentioned above. The 1975 Board submittal pertaining to the above-mentioned CDUP-OA-632 is attached as **Exhibit G**. The extended portion is part of current Easement D-3 as shown on Exhibit B.

Based on the information provided by RTH, the two lagoon outfalls are covered by a Department of Health National Pollutant Discharge Elimination System Permit No. HI0021942. Department of Health, Clean Water Branch, confirmed the same information and further advised that no permit is required for the storm water outlet.²

The above descriptions show regulatory approval of the drainage outfall or pipeline from multiple governmental agencies including the Board through the Office of Conservation and Coastal Lands and others. However, a formal land disposition was not obtained.

² Generally, staff notes that during the development of shoreline properties, there are often drainage type improvements shown or placed on public land that had received approvals by various regulatory agencies, but often neglected to obtain a formal land disposition from the Board. A past example includes a storm drain culvert designed to serve a coastal highway.

The Department of Facility Maintenance, Department of Planning and Permitting, and Division of Aquatic Resources have no comments/objections to the subject request.

The Commission on Water Resource Management, Office of Hawaiian Affairs, Department of Parks and Recreation, and Board of Water Supply have not responded to the request for comment before the deadline.

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 11-200.1, 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 subject requests to be applicable in the event of a change in the leasehold interest of the abutting parcel described as Tax Map Key: (1) 3-5-023:039, provided the succeeding lessee has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Resorttrust Hawaii, LLC covering the subject area for drainage 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 term easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key (1) 3-5-023:039, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS;
 - D. Terms and conditions of Conservation District Use Permit No. OA-632;

- E. Review and approval by the Department of the Attorney General;
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- G. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



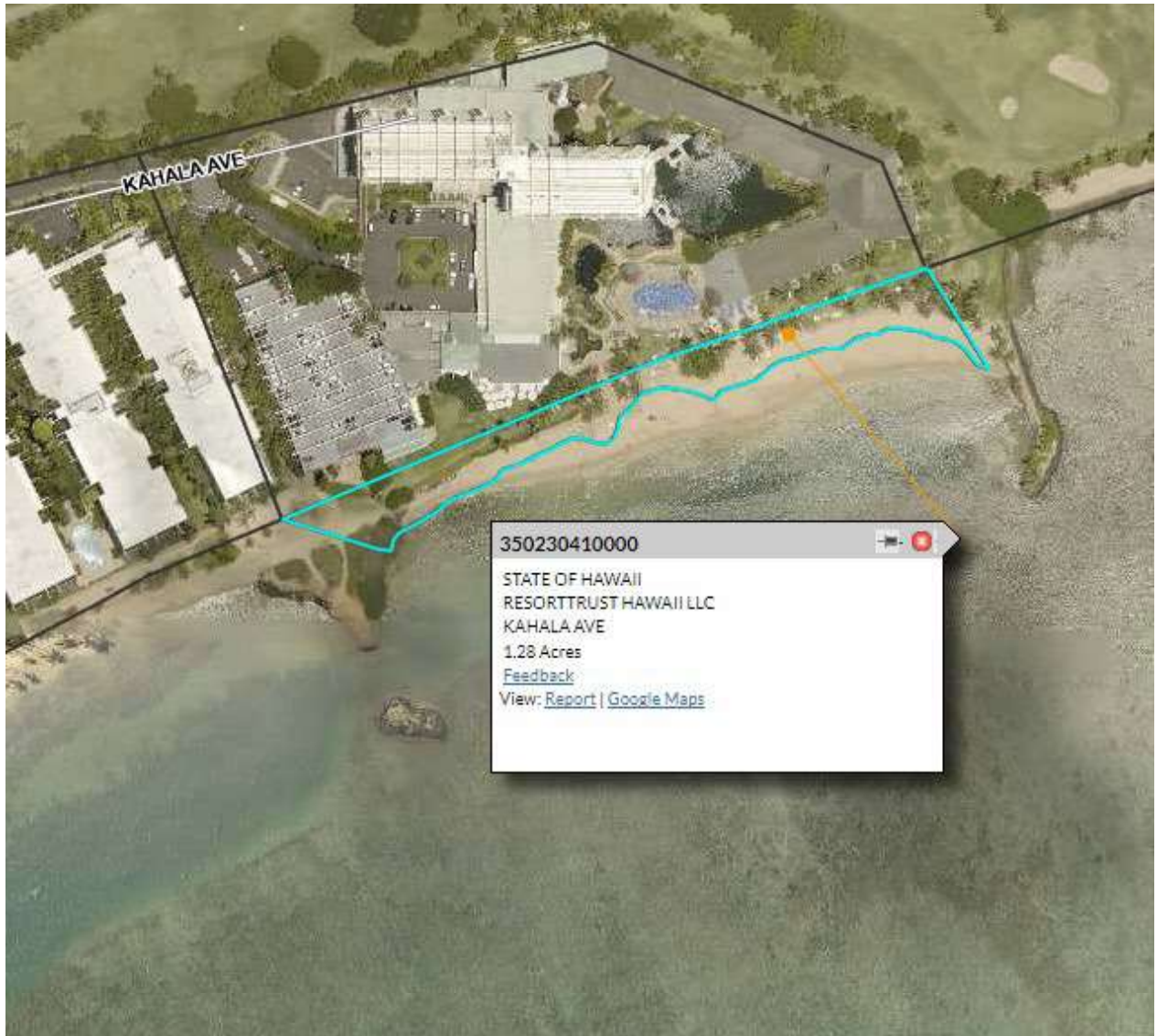
Dawn N. S. Chang, Chairperson





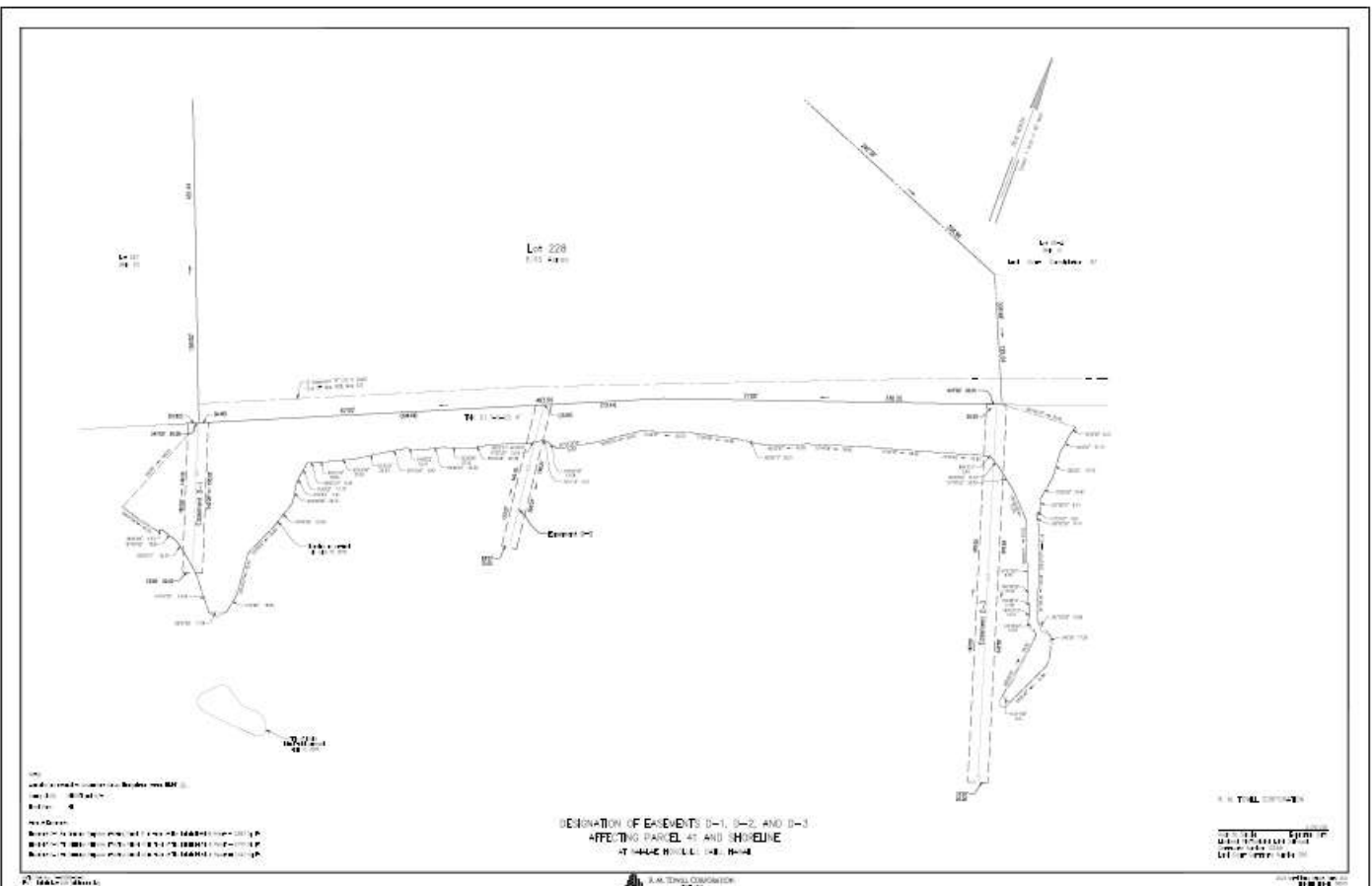
TMK (1) 3-5-023:041

EXHIBIT A1



TMK (1) 3-5-023:041

EXHIBIT A2



EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Grant of Perpetual, Non-Exclusive Easement to Resorttrust Hawaii, LLC.

Reference No.: PSF 23OD-072

Project Locations: Waialae, Honolulu, Oahu, TMK (1) 3-5-023: portions of 041 and seaward

Project Description: The request is regarding the issuance of land disposition for pipelines for drainage and stormwater outfalls placed on State land when the abutting hotel was developed in the 1960s.

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

Exemption Class No.: In accordance with Hawaii Administrative Rules Section 11-200.1-15 and -16 and the exemption list for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." Part 1, Item No. 39 that states, "creation or termination of easement, covenants, or other rights in structures or land."

Cumulative Impact of Planned Successive Actions in Same Place Significant? Staff believes that there would be no significant cumulative impact.

Action May Have Significant Impact on Particularly Sensitive Environment? Staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties: Agencies as noted in the submittal.

EXHIBIT C

Analysis: Staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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

January 24, 2024

Tyler Ralston's STRONG OPPOSITION to "Grant of Term, Non-Exclusive Easement to Resorttrust Hawaii, LLC for Drainage Purposes, Waialae, Honolulu, Oahu Tax Map Key: (1) 3-5-023: portions of 041 and seaward". Item D-5 on the 1/26/24 BLNR agenda.

Dear Chair Chang and Members of the Board,

Please do not grant an easement for drain pipes to Resorttrust under the current terms recommended by DLNR.

Despite Resorttrust's claim that they are good stewards of the land, the facts show a different story. For example, when one of the very same 12" pipes that the proposed easement is for, was leaking hundreds or thousands of gallons of effluent every day for many years, the hotel did nothing to repair the leak. It was only when the public demanded that the DOH take action by compelling Resorttrust to repair the pipes or face hefty fines, did Resorttrust then repair the pipes.

The photo below shows Resorttrust's large pipe that they allowed to leak effluent onto the public beach for many years.



More examples of Resorttrust's poor stewardship of the area are evidenced by photos below, taken on 1/24/24.

The photo below shows Resorttrust's abandoned water line or electrical conduit littering the Western groin leading out to the islet.



The photo below shows Resorttrust's abandoned in-ground electrical box with no lid and disconnected wires inside, and large broken concrete slab chunks littering the Western groin.



The photo below shows Resorttrust's abandoned water line or electrical conduit littering the ocean floor between the Western groin and the islet.



The photo below shows Resorttrust's abandoned PVC water pipe sticking up from the ocean floor approximately 6' feet deep, between the Western groin and the islet. At low tide this pipe extends out of the water as shown in the photo and is a hinderance to swimmers in the lagoon.



At the BLNR meeting on 12/15/23, Resorttrust leadership sat before you and claimed that they follow the terms of RP S-7915. In actuality, they violated the terms of their RP on every of the many days I visited Lot 41 in 2023 before the BLNR meeting and every day after the BLNR meeting, by presetting many more than the 70 lounge chairs allowed by the terms of the RP.

It would be inappropriate and premature to grant Resorttrust an easement for the drain pipes when they have consistently violated the terms of their RP for Lot 41 and continue to demonstrate poor stewardship of the land and water by leaving their abandoned water lines, electrical boxes and electrical conduits to litter the area.

Before granting an easement, at minimum, it would be appropriate to 1). formally acknowledge based on video evidence that Resorttrust violated the terms of their RP since the BLNR meeting on 12/15/23 at which the RP was renewed, and 2). require Resorttrust to remove their trashy and dangerous abandoned water lines and electrical conduits on the Western groin and in the water.

If and when an easement for the drain pipes is then granted, it would also be appropriate to charge Resorttrust a fee for all the years of past use of State land for the pipes that they have never paid for, as well as charge a monthly or annual fee going forward of an amount appropriate for such a use of valuable State land.

Please do not grant an easement as currently recommended by DLNR.

Sincerely,



Tyler Ralston

1638-A Mikahala Way
Honolulu, HI 96816
davidkimofrankel@gmail.com

Testimony on the Staff Submittal Regarding RTH's Pipes on Public Land
Item D-5 on the January 26, 2024 Agenda

Chair Chang and member of the board,

For decades, the Kāhala Hotel has been using public land without BLNR permission and without payment. I raised this issue with BLNR's attorney in 2020. More than a year ago, you asked your staff to address this issue. Unfortunately, the staff submittal is woefully deficient. Please ask your staff to do a better job and rewrite the staff submittal and bring this back to the board at a subsequent meeting.

First, the staff submittal fails to address the most important issue: The hotel must pay for its past, current and future use of public land. The staff submittal fails to address this issue at all. This board has a trust duty. You cannot allow a commercial enterprise to use public land for decades without charge.

Second, the staff submittal fails to address the other unused and abandoned pipes that litter the land and ocean. You should require that the hotel clean up its mess in the ocean -- before giving the hotel anything. Tyler Ralston has photographs of these abandoned pipes.

Third, the staff submittal fails to address the hotel's placement of too many chairs on Lot 41 (the revocable permit parcel) as well as presetting of chairs on the sandy beach. The hotel has not been complying with the terms of its permit. Tyler Ralston has compelling photographs and videos of the hotel's activities on Christmas and New Year's Eve.

Fourth, there appears to be another storm drain on the Koko Head end of the parcel that the staff submittal ignores. It is unclear where stormwater enters this drain, but the makai end is on Lot 41.

Finally, there appear to be inaccuracies in RTH's application that should be corrected.

Aloha,

/s/ David Kimo Frankel

Resorttrust Hawaii, LLC
Application for Easement
ATTACHMENT 1

I. **Description of the Proposed Use**

This request is for one or more easements from the State of Hawai'i Board of Land and Natural Resources ("**BLNR**") to authorize the placement of three (3) existing drainage outfall pipelines located partially within State land identified by Tax Map Key ("**TMK**") No. (1) 3-5-023: 041 (the "**State Parcel**") and the offshore areas adjacent to the State Parcel indicated on Attachment 2 (figure showing general location outfall pipelines (not to scale)) adjacent to TMK No. (1) 3-5-023: 039 (the "**Hotel Parcel**"). See Attachment 3 (TMK map) for general vicinity of the State Parcel and Hotel Parcel. The Hotel Parcel is owned by Resorttrust Hawaii, LLC ("**RTH**") and is the location of the Kahala Hotel & Resort (the "**Hotel**"). The subject land is in the State Land Use Conservation District and is within the Special Management Area ("**SMA**").

The Hotel, including development of the beach area fronting the Hotel and the State Parcel, were developed in the early 1960s. The beach and swimming area fronting the Hotel Parcel and State Parcel were also developed pursuant to an Agreement dated February 15, 1963, by and among the State of Hawai'i; the Kahala Hilton Hotel Company, Inc. (then-owner of the Hotel), Charles J. Pietsch, Jr. and David T. Pietsch, as "Owners", the Waiialae Country Club, Sheraton Hawaii Corporation, and the Trustees under the Will and of the Estate of Bernice P. Bishop (the "**1963 Agreement**").

Construction of the Hotel, and beach area pursuant to the 1963 Agreement, took place approximately in the 1962-1963 time period. Construction for and placement of the two (2) lagoon outfall pipelines and the stormwater outflow (each described in more detail below) are believed to have taken place during this time. One lagoon outfall is located along the Koko Head groin, the other lagoon outfall is located toward the center of the Hotel property (referred to as the Diamond Head lagoon outfall), and the storm water system and outfall within the Diamond Head groin. See Attachment 2. The Koko Head lagoon outfall (Serial No. 002) and the Diamond Head lagoon outfall (Serial No. 001) are referred to collectively as the "**Lagoon Outfalls**".

The stormwater outfall collects stormwater from the Hotel's drainage system through surface intake drains in the Hotel's driveway and other paved areas along the western border of the Hotel property. The drainage system crosses the State Parcel before discharging into the ocean through a common approximately 24-inch outfall pipe which is believed to be shared with a similar stormwater drainage system from a condominium project on an adjacent parcel (TMK No. (1) 3-5-023: 002). RTH's understanding is that the storm waters from the Hotel and the adjacent condominium project flow through separate pipelines beneath the State Parcel.

The Diamond Head stormwater outfall consists of an approximately 24-inch wide pipe which ends approximately at the endpoint of the Diamond Head groin.

EXHIBIT E

The Diamond Head lagoon outfall consists of an approximately 12-inch wide concrete pipe that is approximately 16 inches wide at the end outfall, which is located approximately 65 feet from the shoreline.

The Koko Head lagoon outfall consists of an approximately 24-inch wide pipe. The length of the outfall pipeline from the coastline is approximately 230 feet long.

The locations of all three outfalls are generally as shown on Attachment 2.

No improvements are proposed as part of this easement request. The request is solely for one or more easements for the existing outfalls.

2. Existing Permitting

As discussed above, the beach are fronting the Hotel, including the Diamond Head and Koko Head groin areas, were developed pursuant to the 1963 Agreement, along with Department of Transportation, Harbors Division, Permit No. 1164, approved on August 13, 1962, and the approval from the City and County of Honolulu dated September 18, 1962.

Construction of the Hotel, including the stormwater outfall and Lagoon Outfalls, in the early 1960s predates both the creation of the Conservation District and the Special Management Area ("SMA"). Hawai'i Revised Statutes ("HRS") Chapter 205, establishing the four state land use districts, was enacted in 1963 as Act 205. In 1977, the City & County of Honolulu ("City") adopted the SMA ordinance.

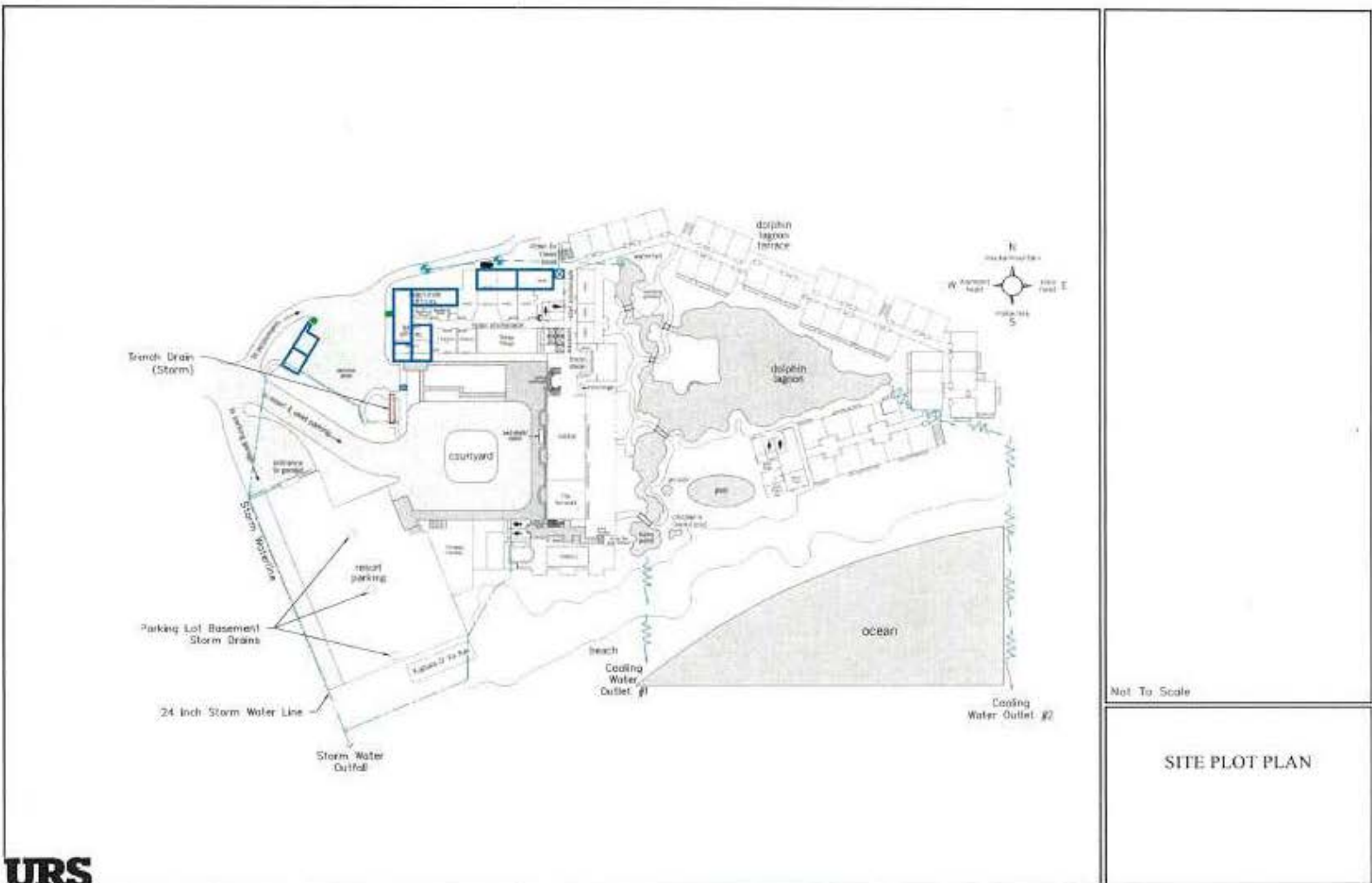
Conservation District Use Permit No. OA-2/4/75-634 was approved by the DLNR Office of Conservation and Coastal Lands ("OCCL") on or about June 13, 1975 following a May 9, 1975 Board of Land and Natural Resources meeting for the extension of the Koko Head Outfall. By letter dated May 16, 2019, the OCCL approved the Hotel's request to minor maintenance and repair of the Diamond Head Outfall (Correspondence OA 19-168).

No SMA approval is required for the requested easement(s). Under HRS Chapter 205A, a SMA permit is required where there is "development" in the SMA. Under HRS § 205A-22, the term "development" does not include "(10) Creation or termination of easements, covenants, or other rights in structures on land[.]"

The drain effluent that originates from the Hotel lagoon which supports porpoises and reef fish and is also used to cool the Hotel's central air conditioning system heat exchanges, so the quality of the water discharged from the Lagoon Outfalls is compatible with the reef environment. The Lagoon Outfalls are covered by a State of Hawai'i Department of Health ("DOH") National Pollutant Discharge Elimination System ("NPDES") Permit No. HI0021942.

The surface runoff from paved areas along the western side of the Hotel into the storm drain system is composed entirely of storm water with no known pollutants. By letter dated January 26, 2015, DOH confirmed that discharges consisting solely of storm water do not require a NPDES permit. Therefore, the stormwater outfall does not require a NPDES permit.

ATTACHMENT 2



Not To Scale

SITE PLOT PLAN



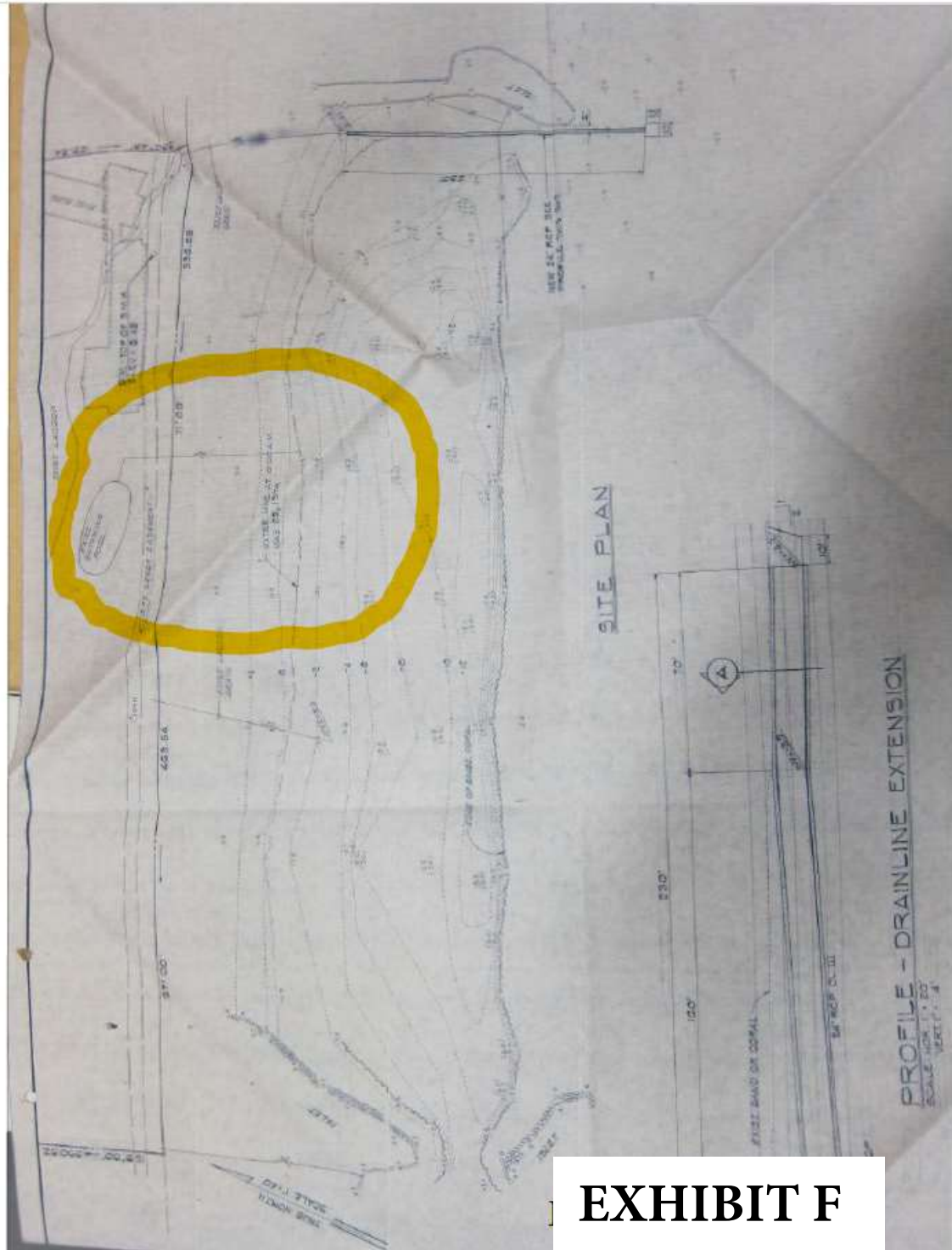


EXHIBIT F

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

DATE: June 13, 1975
TIME: 10:00 A. M.
PLACE: Conference Room
State Office Building
Wailuku, Maui

ROLL
CALL

Chairman Christopher Cobb called the meeting of the Board of Land and Natural Resources to order at 10:30 A. M.

MEMBERS

PRESENT

Mr. Christopher Cobb
Mr. Moses W. Kealoha
Mr. Larry Mebau (excused at 2:30 P. M.)
Mr. Manuel Moniz, Jr. (arrived at 11 A. M.)
Mr. Hisao Munechika
Mr. Shinichi Nakagawa

STAFF

Mr. Edgar A. Hamasu
Mr. Johnson Wong
Mr. Tom Tagawa
Mr. Michio Takata
Mr. Robert T. Chuck
Mr. Gene Renard
Mrs. Esther Ueda
Mrs. Joan K. Moriyama

OTHERS

Mr. Peter Garcia (DOT)
Mr. Richard Chang and Mr. Hiram
Kamaka (F-26)
Mr. Wendell F. Crockett (H-2)
Mr. Herbert Grieco (H-3)

ITEM H-11 CONSERVATION DISTRICT USE APPLICATION FOR EXTENSION OF PRIVATE
DRAINLINE, WAIALAE, OAHU (KAHALA HILTON)

ACTION The Board, by unanimous action, approved the Findings of Fact and Decision and Order for the subject application as submitted.

EXHIBIT G

George R. Ariyoshi
GOVERNOR OF HAWAII



DIVISIONS:
CONSERVATION
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 631

HONOLULU, HAWAII 96809

June 13, 1975

File OA-2/4/75-634

180-Day Expires: 8/4/75

FINDINGS OF FACT AND DECISION AND ORDER
Conservation District Use Application for
Extension of Private Drainline, Waialae, Oahu

I. FINDINGS OF FACT

Applicant:

DLNR/Division of Land Management at the request of
Wilson, Okamoto and Associates (for Kahala Hilton)
1150 S. King Street
Suite 800
Honolulu, Hawaii 96814

Use Requested:

Extension of Private Drainline

Location:

Waialae, Oahu
Offshore area adjacent to TMK: 3-5-23:39
Area of Use: approximately 720 square feet

Description of Area:

The project area lies within the offshore Conservation zoned lands fronting the Kahala Hilton Hotel.

The existing drainline ends at the shoreline, west of the existing groin along the east end of the hotel property.

On January 15, 1975, the applicant's consultants, Wilson, Okamoto and Associates, conducted a brief marine biological reconnaissance of the swimming area and surrounding reef top. The data obtained from this survey is summarized as follows:

From the swimming area, the shoreline and substratum has a depth of 2-3 feet, is sandy with few bits of coral rubble. Below the 3 foot depth, the substratum becomes covered with a thick layer of silt that extends to the seaward reef. The reef extends seaward approximately 1500 feet, and tends to reduce the size of waves along the shoreline. The reef top is flat with cracks and crevices. The central and western portions of the reef top appears to have less sediment than eastern

Findings of Facts
Page 2

portions.

The reef top sediment is generally a thin layer that gives the algae and coral rubble a "dusty" appearance.

No organisms were seen on top of the silt in the swimming lagoon, however, the presence of many holes in the silt indicated the presence of large numbers of polychaete worms, alpheid shrimps and portunid crabs.

The reef top does not have a great variety or number of fish and crustaceans. It appears that the general smoothness of the reef top provides little habitat space for fishes and crustaceans and therefore numbers are sparse (Fishes - 6 species, 31 individuals; Crustaceans - 2 species, 11 individuals). A few other invertebrates were observed on the reef top and include sea urchin (3 species), sea cucumbers (2 species), brittle stars (1 species), molluscs (3 species) and one tiny (2") colony of coral. Several small coral colonies of Pocillopora meandrina were observed along the top edge of the dredge cut away from the project area along the swimming area.

Frustrated algae appeared to be the dominant aspect of the reef top area. Algae belonging to 14 different genera were common on nearly all hard surfaces of the reef top.

Description of Proposed Use:

The proposed project consists of extending the existing 24" lagoon drain 230 feet into the ocean. The purpose of the drain extension is to eliminate a dangerous condition at the existing outlet. The present outlet is submerged approximately four feet below the sandy beach resulting in a "sand boil" that is very hazardous and dangerous, especially to young children who are attracted by the boil. The manager of the hotel has seen a very young child disappear completely into the hole - only quick action by her father possibly averted a serious situation. The owners (Kahala Hilton) intend to construct the drain as soon as all designs, approvals and permits are completed or obtained. Estimated construction time is 30 calendar days. The discharge from the drainline is approximately 1,500 to 2,000 gallons per minute. The rate of flow will remain essentially unchanged with the extension.

The applicant points out that there should be no change in the impact on water quality after completion of the project. There will be temporary impact during the construction period. Water quality may be slightly disturbed caused by the digging and placing of the drainline extension. Some trash could enter the water during construction. Steps will be taken to minimize the above effects.

Findings of Facts
Page 3

The character of material along the drainline extension is sand, silt and mud for approximately 130 feet, then reef coral to the outlet. The contractor will be required to keep his work area down to a minimum and his contract time will be such that the work will be accomplished as expeditiously as possible to minimize adverse construction impact. Estimated excavation totals 127 cubic yards with backfill at 66 cubic yards. All surplus material will be hauled to an approved landfill site. Upon completion, maintenance should be reduced to a bare minimum.

In accordance with Act 246, the Department has determined that an EIS is not required for the project on the basis that the proposed pipeline expansion is not significant.

Summary of Comments Received:

The Department of Land Utilization of the City and County of Honolulu states that they have examined the proposal under the Shoreline Setback Rules and Regulations. The drawings and text provided do not indicate that construction is contemplated mauka of the Shoreline. If this interpretation is correct, the Dept. of Land Utilization has no objections to nor comments on the proposal. The applicant should be aware, however, that any grading or construction activity contemplated within the shoreline setback would require prior approval in the form of a variance by the Zoning Board of Appeals.

The Board of Water Supply has no objections to the proposal.

The Department of Health has no objections, on the basis that the applicant will comply with all applicable Public Health Regulations.

The Dept. of Transportation has issued Harbors Division Shorewaters Construction Permit No. 1590 for this project.

The Corps of Engineers comments that they are currently processing a permit application, PODCO-O 1161-SD, for this work.

The Division of Land Management points out that Kahala Hilton will need to acquire a drainage easement for the project.

State Parks has no known park interests.

DOWALD has no objections to the proposal.

The Division of Forestry states that the project site is far removed from forestry's activity and should have no adverse effect on their program.

The Division of Fish and Game responds that the project will destroy a small amount of reef-flat habitat in the area of the trenching. Also, temporary turbidity and siltation will occur due to the trenching.

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They further point out that during a site visit, it was observed that ocean organisms along the shoreline consisted mostly of algal vegetation. Although one small school of goatfish was noticed, animal species in the area of the algal covered reef were sparse. For the most part, the bottom was composed of coral rubble, fine sand and mud. Due to the fine particulate bottom material, even slight agitation produced heavy turbidity.

Since the drain effluent originates from the lagoon which supports porpoises and reef fish, the discharge quality should be compatible with the reef environment.

Also, extension of the drain will serve to remove a dangerous condition from the beach area.

Fish and Game recommends that maximum effort be expended during the construction to insure that turbidity and siltation be kept to a minimum.

Summary of Public Hearing:

In accordance with Section 183-41 HRS and Section (4) and (5) of Regulation No. 4, a public hearing was held on May 9, 1975, to receive testimony on the application.

The only persons to testify on the application were George Higashima, Chief Engineer at the Kahala Hilton and Henry Hoshide, engineer for the project.

Mr. Higashima pointed out that the well on the property is located about 200 feet from the hotel's waterfall. The well has a flow of about 200 gpm. Brackish water from the well goes through the air conditioning system, over the waterfall, into the lagoon and out the drain. Mr. Higashima submitted a water analysis of the lagoon and ocean water taken in November, 1974.

Mr. Hoshide, pointed out that they had submitted an application to the Corps of Engineers including an environmental assessment. With respect to turbidity, he pointed out that the beach area is important to the hotel therefore, they will do everything they can to keep turbidity down.

Staff Analysis and Recommendation:

The proposed drain extension will alleviate an existing dangerous situation along the shoreline which is used for recreational purposes. Comments and testimonies on the application indicate that no significant adverse environmental effects are anticipated from the proposed project.

Staff recommends approval of the Drainline Extension Use, subject to the following conditions:

1. The applicant shall comply with Sections 2C and 2F of Regulation No. 4.
2. The applicant shall notify the Division of Forestry upon the commencement and at the completion of all work.

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3. The applicant shall obtain approval from the City and County for any work to be performed within the Shoreline Setback area.
4. The applicant shall take appropriate preventative measures prior to and during construction of the project to prevent degradation of the offshore waters of the State.
5. Prior to commencing any work or activity on State owned lands, proper clearances and permits shall be obtained from the Division of Land Management.
6. The applicant, its successors and assigns shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission, and not occasioned through the fault of the State, of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit and also any loss, liability, claim or demand for property damage, personal injury and death arising out of or relating to or connected with the granting of this permit, and not occasioned through the fault of the State.

II. DECISION AND ORDER

Based on the above Findings of Fact, it is the decision of the Board of Land and Natural Resources that the application for the Private Drainline Extension Use be approved subject to the conditions as recommended by staff.

I hereby certify that the foregoing is the Findings of Fact, and Decision and Order rendered by the Board of Land and Natural Resources on June 13, 1975.

Dated at Honolulu, Hawaii, this 20th day of June, 1975.

C Cobb

CHRISTOPHER COBB
Chairman of the Board