

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 No. 24OD-107

OAHU

Termination of Revocable Permit No. S-7915 to Resorttrust Hawaii, LLC; Issuance of Revocable Permit to Resorttrust Hawaii, LLC for Maintenance and Landscaping 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:

Section 171-55, 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 1**.

AREA:

1.280 acre, more or less.

ZONING:

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

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7915, (“RP7915”), Resorttrust Hawaii, LLC, Permittee, for recreational and maintenance purposes at a monthly rent of \$1,485.00.

CHARACTER OF USE:

Maintenance and Landscaping Purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

Gratis. See Remarks section.

COLLATERAL SECURITY DEPOSIT:

Not applicable.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) § 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 negligible or no expansion or change of use beyond that previously existing.” Part 1, Item 44, that states “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing”.

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>

BACKGROUND:

The requested location was built at the cost of the private property owners and tenants around 1963 pursuant to a permit issued by the Department of Transportation, Harbor Commissioners. Since 1968, revocable permits were issued to the abutting hotel operators for recreational or recreational and maintenance purposes.

At its meeting of September 15, 2018, agenda item D-13, as amended by its action of

November 9, 2018, agenda item, D-18, the Board authorized the issuance of a revocable permit to RTH.<sup>1</sup> RP 7915 was issued on January 29, 2019 covering 3,263.50 square feet of State land for recreational and maintenance purposes limited to storage area, cabana hale, cabana tents, beach shower, towel caddy, hammock, trash cans, beach chair storage, clam shell loungers, beach chairs, and outrigger canoes storage.

At the Board meeting of October 25, 2019, under agenda item D-7, RTH requested a reduction of the revocable permit area from 3,263.50 square feet to 1,392.60 square feet covering a portion of the cabana hale, beach shower, towel caddy, hammock, and beach chairs and accompanying tables. RP 7915 was updated on December 20, 2019 indicating the changes in the revocable permit area and items allowed.

Pursuant to other conditions in RP 7915, RTH is required to maintain the beach area makai of the revocable permit area, allow public access over the entire revocable permit area in addition to establishing two (2) twenty-foot wide pathways for public pedestrian access.

RTH, through its counsel's letter dated August 12, 2024 (**Exhibit 2**), requested the revocable permit area be further reduced to 64 square feet to accommodate the beach shower, while other items allowed in the current revocable permit be removed.

Further, RTH is seeking a clarification on the maintenance responsibility and requested a gratis rent given the maintenance obligation for RTH under the revocable permit.

#### REMARKS:

##### Reduction in revocable permit area and item allowed.

A site visit on August 8, 2024 around 7:30 am did not show any beach chairs or any accompanying tables set up. Staff noted that two beach chairs were placed on the beach but they were apparently used by an individual. The cabana hale, towel caddy, and trash cans were removed from the revocable permit area. In short, only the beach shower and the hammock were left on the revocable permit area during the site visit. RTH is planning to remove the hammock from the requested revocable permit and continues allowing the general public to use the shower facility at no charge. Staff does not have any objection to the reduction in the area as well as item allowed.

##### Maintenance responsibility

Current language in RP 7915 states that “[RTH] 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”. The map referred in the revocable permit is shown on **Exhibit 3**, with the hatched red area representing the revocable permit premises and the hatched blue depicting the beach to be maintained by RTH.

The islet on the Diamond Head side of the premises is part of the area to be maintained by RTH pursuant to RP 7915. There is a conduit in the nearshore water housing the powerline and the fresh waterline that connect the landscaped area on the islet to the portion of the

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<sup>1</sup> November 9, 2018, D-18 can be downloaded from <https://dlnr.hawaii.gov/wp-content/uploads/2018/11/D-18.pdf>

permit premises mauka of the shoreline (Exhibit 3 is not detailed enough to show the location of the powerline or waterline). Further, there are lighting systems and irrigation improvements on other parts of the revocable permit area that are not depicted in Exhibit 3.

Upon approval of today's request, staff will work the Department of the Attorney General on appropriate language for the permit conditions.

Staff believes the purpose of the revocable permit at this location should be maintenance and landscaping purposes.

Gratis rent

RTH requests the Board issue a revocable permit at gratis rent due to the reduced footprint of RTH's use but with continued maintenance responsibility for the entire premises. Based on the letter dated August 6, 2018 from RTH's previous counsel, which was attached as Exhibit 7 in the 2018 submittal, RTH spent approximately \$27,420 a year on landscape maintenance and beach grooming, plus \$25,600 a year on the trimming within the State parcel. The current figures for same expenses in 2024 would have increased from the 2018 total of \$53,020.

The new revocable permit, if approved today, would be a passive use of the land, with no preset items allowed by the Board, no commercial activities, full public access, landscaping at RTH's cost, and provision of liability insurance protecting the State. Land Division has no objection to the gratis rent considering the actual expense spent by RTH to maintain the grounds that is open to the public.

Staff did not solicit comments from other agencies on the requested revocable permit as the proposed use does not expand the current uses on the location.

The 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.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and section 11-200.1-16, 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 as a de minimis activity.
2. Based on the testimony and facts presented, find that approving the revocable permit, under the conditions and rent set forth herein, would serve the best interests of the State.
3. Termination of Revocable Permit No. S-7915 upon issuance of the subject revocable permit.

4. Authorize the issuance of a revocable permit to Resorttrust Hawaii, LLC, covering the subject area for maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Barry Cheung*

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Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



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Dawn N.S. Chang, Chairperson





**TMK (1) 3-5-023:041**

**EXHIBIT 1**

## CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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1001 BISHOP STREET  
HONOLULU, HAWAII 96813  
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WWW.CARLSMITH.COM

DIRECT DIAL NO.  
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JYAMAMURA@CARLSMITH.COM

OUR REFERENCE NO.:  
067396-6

August 12, 2024

**VIA E-MAIL BARRY.W.CHEUNG@HAWAII.GOV**

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

Re: 2025 Renewal of RP No. S-7915 - Resorttrust Hawaii, LLC (dba Kahala  
Hotel & Resort)

Dear Mr. Tsuji and Mr. Cheung:

On behalf of Resorttrust Hawaii, LLC ("**RTH**"), the permittee under Revocable Permit No. S-7915 ("**RP 7915**"), RTH requests that the Board of Land and Natural Resources ("**BLNR**") renew RP 7915 for the year 2025 subject the changes outlined below. The primary changes requested are to: (1) delete the pre-setting of lightweight beach chairs, towel caddy, and hammock uses, as well as other non-maintenance uses that were allowed under RP 7915 in the past, (2) clarify RTH's maintenance activities, and (3) provide for gratis rent given the maintenance-only nature of the uses requested.

Section A.1.1. Revise the specified purposes allowed under the RP to "Beach shower and maintenance of the Premises and beach area (identified on Exhibit B), including but not limited to irrigation and lighting."

Section A.1.2. Replace the table in this section with the following:

Item	Dimensions (ft.)	Area Per Item (sq. ft.)	Count	Total Seats	Total Area (sq. ft.) on State Property
Beach Shower	8' x 8'	64	1	N/A	64

HONOLULU

HILO

KONA

MAUI

# EXHIBIT 2

Mr. Russell Tsuji  
Mr. Barry Cheung  
August 12, 2024  
Page 2

Total Use & Occupancy					64
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Exhibit A - Include a label in the legend that identifies the blue areas as the "Beach".

Because RTH is requesting essentially a maintenance-only RP, and RTH expends significant funds on maintenance of the Premises on behalf of the State on an annual basis, as well as pays the real property taxes asses against the Premises, RTH request that the 2025 RP rent be gratis. Accordingly, the rental provisions in the revised RP Sections 2.1 and 2.2, should be deleted.

No other changes to the terms and conditions of the RP are requested.

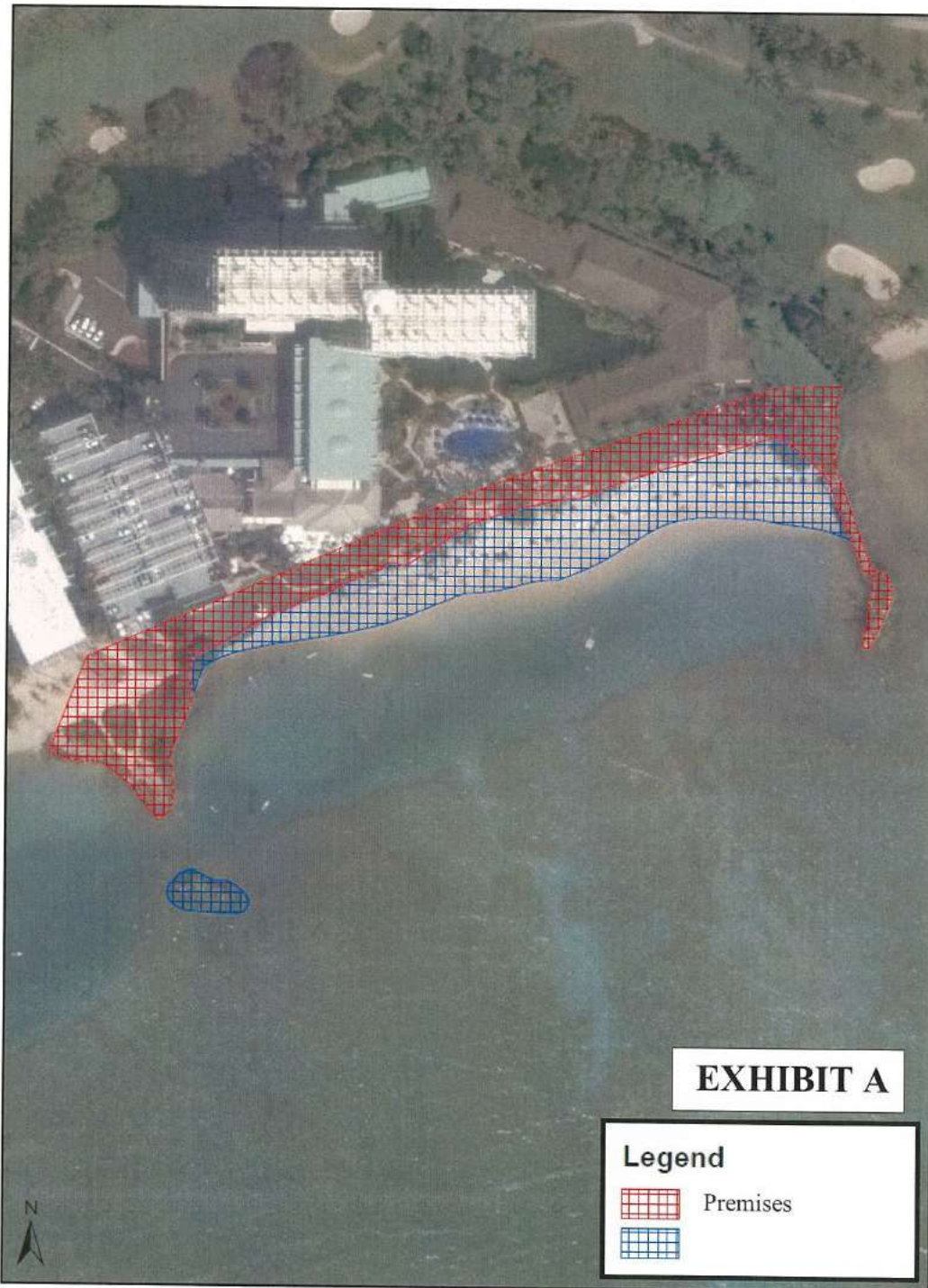
We appreciate BLNR's attention and consideration of this request. Please feel free to reach out to the undersigned with any questions.

Sincerely,

  
Jon T. Yamamura  
Onaona P. Thoene

cc: Joe Ibarra, Vice President & General Manager, RTH





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**EXHIBIT 3**