

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

October 10, 2014

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

PSF No.: 11OD-097

OAHU

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

APPLICANT:

Resorttrust Hawaii, LLC, a domestic limited liability company.

LEGAL REFERENCE:

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

LOCATION:

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

AREA:

40,460 square feet, more or less.

ZONING:

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

TRUST LAND STATUS:

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

CURRENT USE STATUS:

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

CHARACTER OF USE:

Recreational and maintenance purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

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

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation.". See **Exhibit B**.

DCCA VERIFICATION:

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

REMARKS:

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

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

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

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

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

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

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

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

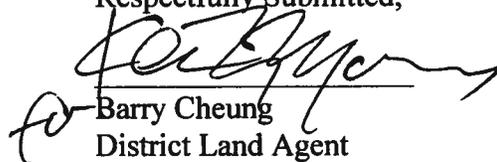
Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

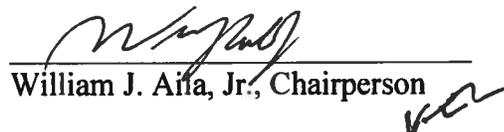
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to Resorttrust, LLC covering the subject area for recreational and maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Permittee shall not place improvements, preset beach equipment, or conduct wedding ceremonies;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a right-of-entry permit to Resorttrust, LLC covering the subject area for recreational and maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Permittee shall not preset and beach equipment, place or store any improvements, or conduct surfing instruction or wedding ceremonies at the subject location; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aifa, Jr., Chairperson



TMK (1) 3-5-023:041

EXHIBIT A1

EXHIBIT A

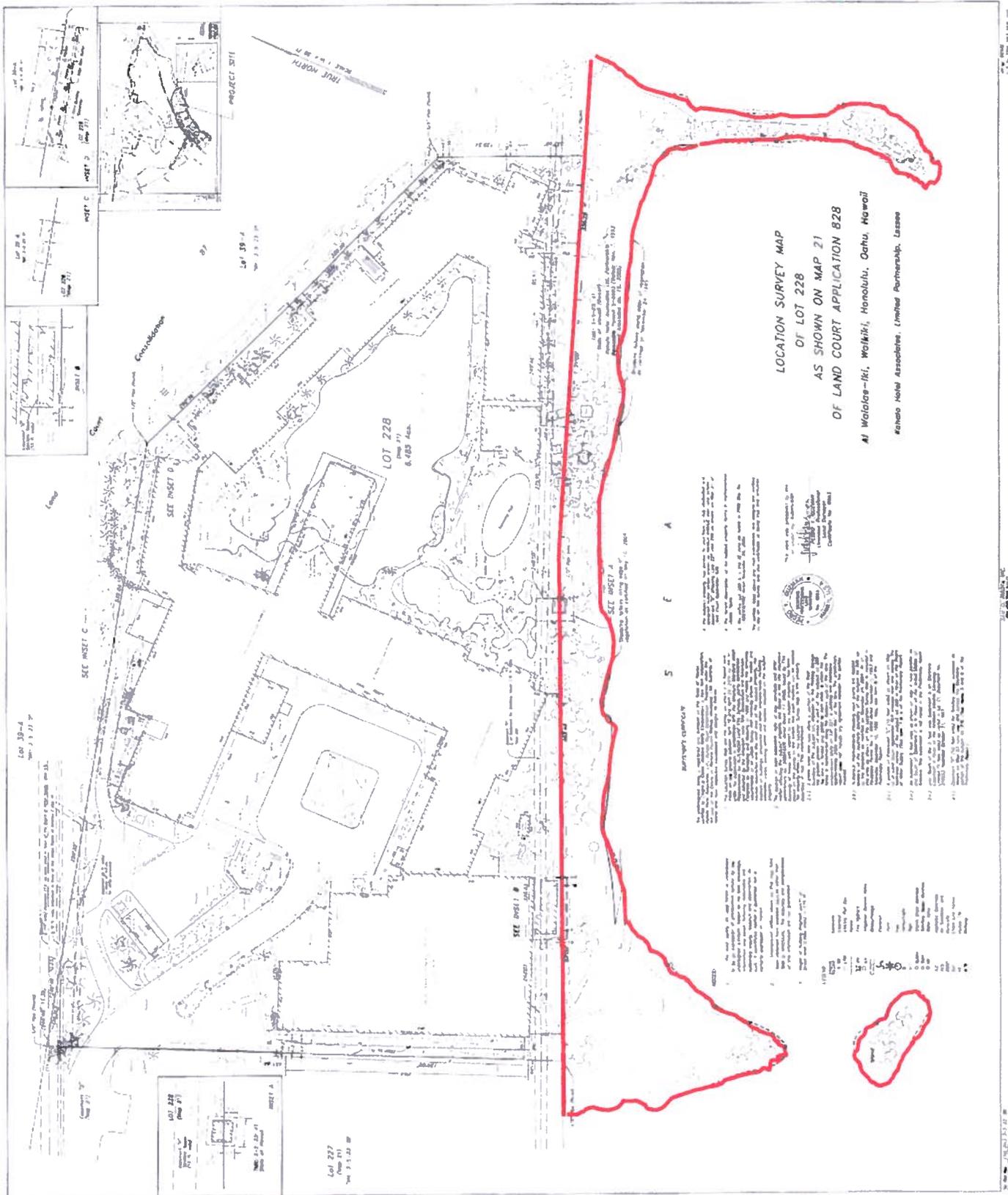


EXHIBIT A

EXHIBIT "A2"

EXEMPTION NOTIFICATION

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

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

Project / Reference No.: PSF 11OD-097

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

Project Description: Recreational and maintenance purposes

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

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

Consulted Parties: Not applicable

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



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

EXHIBIT B