

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

May 27, 2016

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

OAHU

Enforcement of Unauthorized Use of Public Lands for Aerial Fireworks Display coordinated by Kahala Hotel on the Beach fronting Kahala Hotel, Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023:041.

PURPOSE:

Enforcement of unauthorized use of aerial fireworks display on public lands.

LEGAL REFERENCE:

§171-6, Hawaii Revised Statutes (HRS), as amended.

BACKGROUND:

Around mid-January 2016, the Division received a report from a Board member regarding an aerial firework display that occurred at the subject location on the New Year’s Eve of 2015. Since there was no record of any prior approval from the Board authorizing such event, the Division approached the counsel representing the adjoining Kahala Hotel, which is owned by Resorttrust Hawaii, LLC, for confirmation and more information.

Kahala Hotel, through its counsel, acknowledged the occurrence of the event, and indicated that the event happened “at the end of the Koko Head Peninsula”. For the Board’s reference, a map showing the location is attached as **Exhibit A**.

The current hotel management took over operations of the hotel in October 2015, while the leasehold interest of the hotel was conveyed to the current owner in October 2014. In the past, the Board had issued revocable permits¹ to the abutting hotel owners over the subject Parcel 41 for recreational and maintenance purposes. It is the Division’s position that the permitted uses under the revocable permits do not cover aerial firework display. Therefore, the aerial firework display described above is considered as an unauthorized use of State lands.

¹ The current hotel owner is conducting due diligence to obtain a term easement over the area under the revocable permit. Staff will bring the request for the easement to the Board at a later date.

According to the hotel management, the hotel hired a local event organizer who sub-contracted the actual fireworks display to a mainland vendor for the 2015 event. Neither the event organizer nor the fireworks vendor was aware of the requirement for a permit from the Board, in addition to the firework permit from the Honolulu Fire Department (HFD). For the Board's reference, the fireworks vendor obtained the HFD permit on December 10, 2015 (**Exhibit B**). There was no reported damage to the subject location.

Based on the findings, staff recommend the Board declare that the fireworks display described above was an unauthorized use of public lands and impose fine and collect administrative costs and expenses pursuant to §171-6 (15), HRS, which state, in part, as follows:

“(15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

(A) Fined not more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists; ...

(D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.”


Staff recommends the Board impose a fine, and administrative costs and expenses of \$1,000 and \$500 pursuant to §171-6 (15) (A) and (D), respectively.

If an application for a permit from the Board was submitted prior to the event, the Board could have approved the application, subject to payment of rent, and late surcharge, if appropriate. Other aerial fireworks display on Oahu typically requires a 500-square foot staging area and a 250-foot radius for safety zone. The required area would amount to a one-time payment of \$550. Staff recommends the Board authorize the collection of the retroactive rent in the amount of \$550, in addition to the fines, costs and expenses requested above.


RECOMMENDATION: That the Board declares:

1. That the aerial fireworks display described above was an unauthorized use of State lands and a violation of the provisions under Chapter 171, Hawaii Revised Statutes;

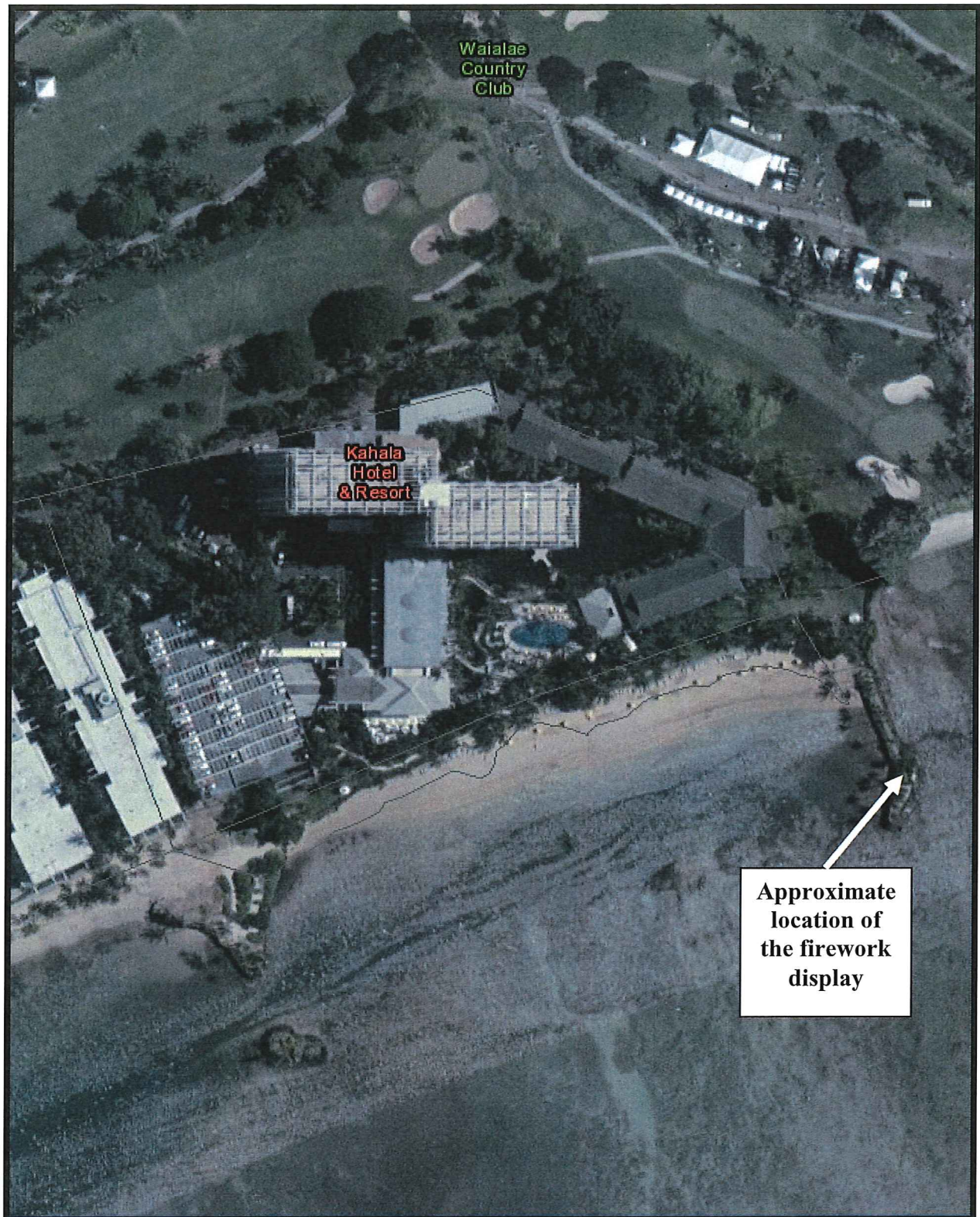
2. That Resorttrust Hawaii, LLC be fined \$1,000 for unauthorized use of public lands pursuant to §171-6, HRS associated with the subject violation;
3. That Resorttrust Hawaii, LLC shall pay \$500 for administrative costs pursuant to §171-6, HRS associated with the subject violation;
4. That Resorttrust Hawaii, LLC shall pay \$550 in retroactive fee for the aerial fireworks display described above;
5. That Resorttrust Hawaii, LLC shall pay all fines, costs, and fees amounting to \$2,050 within fourteen (14) days of the date of the Board's action; and
6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson





TMK (1) 3-5-023:041

EXHIBIT A

HONOLULU FIRE DEPARTMENT
PERMIT FOR DISPLAY OF FIREWORKS/ARTICLES PYROTECHNIC

Permit No. P15-078
Permit Fee \$110 #17478
Inspection Fee \$700 #17479
Date Received 11/20/15 SW

THIS PERMIT SHALL BE PROMINENTLY DISPLAYED IN PUBLIC VIEW AT EACH PERMITTED LOCATION

CHECK ONLY ONE EVENT OUTDOOR DISPLAY OF FIREWORKS
 ARTICLES PYROTECHNIC BEFORE A PROXIMATE AUDIENCE

Name Pyro Spectaculars, North Phone No. _____
Address 5301 Lang Ave. Age _____
McClellan, Ca. 951652

PERSON CONTROLLING THE FIRING, IF DIFFERENT THAN PERMITTEE

Name David Best COF# 0-48A Phone No. _____
Address _____ Age _____
Pleasanton, Ca 94588

FIRING OF FIREWORKS/ARTICLES PYROTECHNIC

Name of Display Kahala New Years Eve
Location Address 5000 Kahala Ave, Hon 96816 TMK # _____
Firing Date 12/31/15 Firing Time 11:59 pm
Fireworks Class 1.3G Quantity See Synopsis

HOSH Certificate of Fitness: Provided
Insurance Certificate or Policy: Provided
Surety Company/Two Individual Sureties: Provided
Plot Plan of Firing Area: Provided

Permittee shall obtain all required permits and approvals from applicable county, state, and federal agencies, as necessary, to conduct the fireworks display.

GENERAL PERMIT PROVISIONS AND PROHIBITIONS:

- A permit may only be issued to a person 18 years of age or older.
- Permits are nontransferable.
- Permits are valid only when the fireworks/articles pyrotechnic are used at the site, date, and time indicated on this permit.
- Permits may be revoked, denied, or suspended if not in compliance with Hawaii Revised Statutes (HRS) Chapter 132D; Revised Ordinances of Honolulu (ROH) Chapter 20, Article 6; and the City and County of Honolulu's Rules and Regulations Relating to Fireworks.

I have read the above and certify that the information contained herein is accurate and that I will abide by all conditions set forth above.

Carina Hernandez for Pyro Spectaculars North, Inc.
Print Name of Applicant Signature of Wholesaler/Date
[Signature] Signature of Applicant/Date
Fireworks/Articles Pyrotechnic Type Quantity

FOR OFFICIAL USE ONLY

Permit APPROVED DENIED
[Signature] TS 12/10/2015
Fire Chief Date

THIS PERMIT IS NOT AN ASSURANCE THAT THE USE OF FIREWORKS/ARTICLES PYROTECHNIC DOES NOT POSE A THREAT TO THE SAFETY OF PERSONS AND PROPERTY. YOU MAY BE HELD RESPONSIBLE FOR DAMAGES RESULTING FROM YOUR USE OF FIREWORKS/ARTICLES PYROTECHNIC. THE COUNTY DOES NOT BEAR RESPONSIBILITY FOR DAMAGE, WHICH MAY RESULT FROM YOUR USE OF FIREWORKS/ARTICLES PYROTECHNIC TO YOURSELF OR OTHERS. ANY PERSON VIOLATING ANY PROVISION OF HRS CHAPTER 132D; ROH CHAPTER 20, ARTICLE 6; AND THE CITY AND COUNTY OF HONOLULU'S RULES AND REGULATIONS RELATING TO FIREWORKS SHALL BE SUBJECT TO THE PENALTIES PROVIDED IN HRS SECTION 132D-14 AND/OR ROH SECTION 20-6.9.

White - HFD
Canary - Applicant
Pink - Wholesaler
HFD-111213 (0)

Revised 02/13

EXHIBIT B