

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

August 23, 2013

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

PSF No.: 13KD-117

Kauai

Issuance of Right-of-Entry Permit onto Unencumbered State Beach Land to Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club for Beach Cleaning and Maintenance, Stream Mouth Maintenance, Storm Maintenance and Leveling of Recreational Areas; Kalapaki Beach, Kalapaki, Lihue, Kauai, Tax Map Key: (4) 3-5-002:seaward of 002.

APPLICANT:

Essex House Condominium Corporation, a foreign profit corporation dba Kauai Marriott Resort & Beach Club (Applicant).

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kalapaki, Lihue, Kauai identified as Tax Map Key: (4) 3-5-002:seaward of 002., as shown on the attached Exhibit A.

AREA:

1 acre, more or less.

ZONING:

State Land Use District: Conservation  
County of Kauai CZO: Urban

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:

Vacant and unencumbered.

CHARACTER OF USE:

Beach Cleaning and Maintenance, Stream Mouth Maintenance, Storm Maintenance and Leveling of Recreational Areas purposes.

TERM OF RIGHT-OF-ENTRY:

October 1, 2013 to September 30, 2014.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See attached Exhibit B.

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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."

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

REMARKS:

Applicant has been issued a right-of-entry permit every year since 1999 for beach cleaning and maintenance of Kalapaki Beach fronting the Kauai Marriott Resort and Beach Club, daily leveling of the beach volleyball courts that are used by the public and hotel guests, and storm and stream mouth maintenance of Nawiliwili stream whenever it is blocked or meanders north creating a hazard to beach users. Maintenance of Nawiliwili stream mouth is necessary since the stream is privately owned.

Applicant has maintained the unencumbered State beach land without cost to the State. Accordingly, staff is recommending rent payment be gratis.

Comments were solicited from:

State Agencies:

DOH	Pollutants in stream, refer to Clean Water Branch
DLNR – Historic Preserv.	No response by suspense date
DLNR – OCCL	No response by suspense date <sup>1</sup>
OHA	No response by suspense date

County Agencies

County Planning	No response by suspense date
Parks & Recreation	No response by suspense date
Public Works	No response by suspense date

Staff is requesting the Board to authorize the Chairperson to renew the right-of-entry for up to two additional one-year periods at the Chairperson's discretion

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 right-of-entry permit to Essex House Condominium Corporation dba Kauai Marriott Resort & Beach Club covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

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<sup>1</sup> OCCL in the past has concurred with this project and the exemption notification under HRS 343 for the project.

- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
- C. The Chairperson is authorized to renew the right-of-entry for up to two additional one-year periods at the Chairperson's discretion.

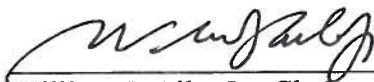
Respectfully Submitted,



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Marvin Mikasa  
Land Agent

APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson

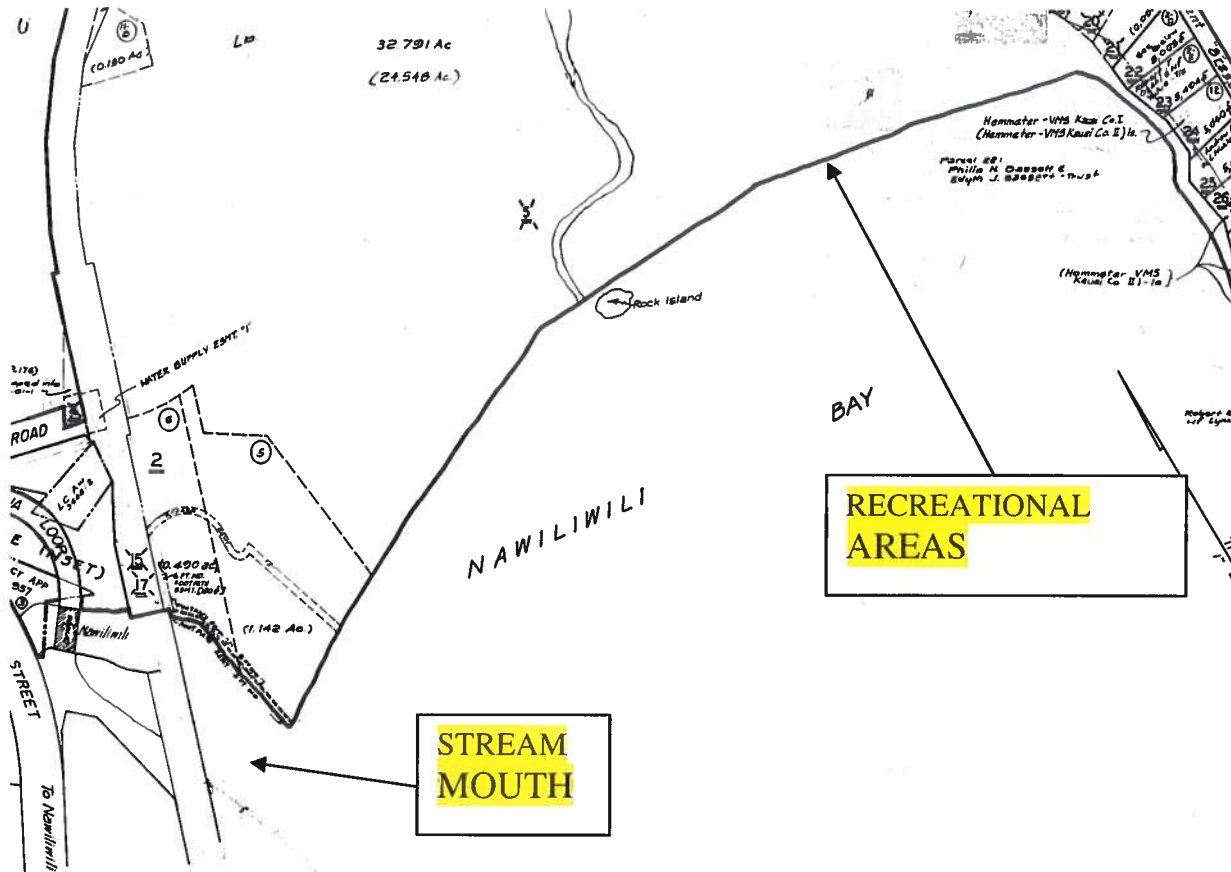


EXHIBIT 'A'

KAUAI MARRIOTT RESORT and BEACH CLUB  
KALAPAKI BEACH  
TMK: (4) 3-5-002:seaward 002



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

## **EXEMPTION NOTIFICATION**

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

**Project Title:** Right of Entry Permit to Kauai Marriott Resort and Beach Club for Beach Cleaning and Maintenance, Stream Mouth Maintenance, Storm Maintenance and Leveling of Recreation Area, Tax Map Key: (4) 3-5-002: fronting 002.

**Project / Reference No.:** 13KD-117 ROE – Kauai Marriott

**Project Location:** Kalakapi Beach, Lihue, Kauai

**Project Description:** Right of Entry for Unencumbered State Beach

**Chap. 343 Trigger(s):** Use of State Unencumbered Beach

**Exemption Class No. and Description:** In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be 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 Exemption Class No.4, that states: "Minor alterations in the conditions of land, water, or vegetation."

**Consulted Parties:** The Office of Conservation and Coastal Lands was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project.

**Exemption Item Description from Agency Exemption List:** N/A



**EXHIBIT B**

The exemption is appropriate, as issuing a right of entry permit will not result in any material change to the property, as the applicant's use of the beach is limited by the terms and conditions of the ROE permit. As the beach facilities has been in existence for a long period of time, an ROE for maintaining the unencumbered State beach and Nawiliwili Stream should not result in any significant cumulative impact.

Recommendation:

It is anticipated 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.

  
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William J. Aila, Jr., Chairperson

  
  
\_\_\_\_\_  
Date