

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

December 12, 2014

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

PSF No.: 14HD-191

Hawai'i

Deny Lessee's Request for an Extension of Lease Term Pursuant to Act 219, Session Laws of Hawaii 2011, General Lease No. 3029, Reed's Bay Resort Hotel, Ltd., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:022.

Approve a One-Year Holdover and Subsequent Month-to-month Revocable Permit for General Lease No. 3029, Reed's Bay Resort Hotel, Ltd., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:022.

APPLICANT AND REQUEST:

Reed's Bay Resort Hotel, Ltd. is requesting an extension of General Lease No. 3029 pursuant to Act 219 Session Laws of Hawaii (SLH) 2011 which authorizes the extension of hotel and resort leases along the Banyan Drive area of Hilo, Hawaii.

LEGAL REFERENCE:

Sections 171- 36(b), 171-40, 171-55, Hawaii Revised Statutes, as amended, and Act 219 SLH 2011.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:022, as shown on the attached map labeled Exhibit A.

AREA:

1.19 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Hotel and Resort

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the issuance of a revocable permit upon expiration of the lease is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1. Refer to attached Exhibit D.

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>

CURRENT USE STATUS:

Encumbered by General Lease No. 3029, Reed's Bay Resort Hotel, Ltd., Lessee, for resort-hotel purposes. Lease to expire on March 14, 2015. The last rental reopening occurred on May 25, 2002 and was for the remainder of the lease term.

LEASE CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

TERM OF LEASE:

Original term of 21 years, commencing on September 13, 1945 and expiring on September 12, 1966.

Extension of lease dated November 16, 1962 extended the term changing the expiration of lease to March 14, 2015. Last rental reopening for remaining lease period occurred on December 17, 2005.

LEASE ANNUAL RENTAL:

Current rent is \$23,860.00, due in semi-annual installments of \$11,930.00 on March 14 and September 14 of each year.

RENTAL REOPENINGS:

Reopenings established by the agreement for extension of lease were at the end of the 20th and 40th years of the term, on March 14. The last rental reopening occurred on December 17, 2005.

HOLDOVER LEASE COMMENCEMENT DATE:

March 15, 2015.

HOLDOVER LEASE ANNUAL RENT:

\$23,860.00 billed in two equal semi-annual installments.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2016.

REVOCABLE PERMIT CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

REVOCABLE PERMIT RENT:

Rent under the revocable permit shall be determined by independent appraisal paid for by the applicant.

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an independent appraisal to determine the rent payable under the revocable permit to be issued as of March 15, 2016.

BACKGROUND:

On 6/30/1944, General Lease No. 3029 was sold at public auction to John and Charlotte Smith for residential purposes. The initial lease term was for 21 years commencing 9/13/1945 and expiring 9/12/1966. The lease was assigned from John and Charlotte Smith to Juliette and Richard Furtado and Phoebe and George Gedge on 12/31/1946. The lease was again assigned from Juliette Furtado, et al. to Juliette and Richard Furtado on 7/05/1956.

Lessees Juliette and Richard Furtado qualified as disaster victims under Section 87 of Act 32, Sessions Laws of Hawaii 1962. The lease was subsequently extended on 11/14/1962 for a period of fifty-three (53) years terminating on 3/14/2015 with rental re-opening twenty (20) and forty (40) years from the most current lease agreement. The Board approval included a condition that in the event the lessees decided to put the demised premises to a use other than residential prior to 9/12/1966, there would be an immediate re-negotiation of the rental for a twenty-year period with the new rent to be established by an appraisal based on the proposed new use.

At its meeting of 12/17/1965, the Board consented to the assignment of lease from Juliette and Richard Furtado, assignor, to Nalei, Incorporated (Nalei), assignee, and the use of the lease was changed from residential to hotel/resort.¹ This resulted in a change in the rental amount from \$280.00 per annum to \$8,112.00 per annum.

¹ No building plans on file.

On 2/27/1970, Nalei was served a notice of default for delinquent rent, allowing 60 days to cure said default. Nalei subsequently filed bankruptcy and a trustee was appointed to operate the hotel and to find a buyer for the lease. Then, at its meeting of 9/08/1972 under agenda item F-20, the Board consented to the assignment of lease from Ralph S. Aoki, Trustee in Reorganization of Nalei, Inc., a Hawaii corporation, in bankruptcy No. 70-26, U.S. District Court, as assignor, to James G. Y. Ho, husband of Florence J. Ho and Dr. Shinkichi Shimabukuro, husband of Betty Z. Shimabukuro, General Partners doing business as Polynesian Pacific Resorts, as assignee.

Further, at its meeting of 9/28/1979 and as a result of foreclosure proceedings, the Board under agenda item F-1-e, consented to the assignment of lease from James G. Y. Ho, Florence J. Ho, Dr. Shinkichi Shimabukuro and Betty Z. Shimabukuro, assignor, to Yorkwood Savings and Loan Association, a New Jersey Corporation, assignee. At the same meeting, the Board, under agenda item F-1-f, consented to the assignment of lease from Yorkwood Savings and Loan Association, as assignor, to David De Luz unmarried; Ronald Carl Robertson, husband of Joann Robertson; John Tolmie and Linda Ann Tolmie, husband and wife, and Puna Shores, Incorporated, assignees.

At its meeting of 9/24/1982 the Board approved the following assignments: 1) F-1-c, assignment of lease with assumption of mortgage from Ronald C. Robertson and Puna Shores, Inc., assignors (1/8 undivided interest, respectively) to David De Luz, assignee: 2) F-1-d Ronald C. Robertson and Puna Shores, Inc., assignors (1/8 undivided interest, respectively) to John Tolmie, assignee: 3) F-1-e, John and Linda Tolmie, Assignors (1/4 undivided interest) to John Tolmie, assignee. Thereafter the lease managed by David De Luz and John Tolmie doing business as Polynesian Pacific Hotel.

In 1982, the Board approved various commercial subleases including Spencer Enterprises, Inc. (health & fitness spa), Canton Gardens, Inc. (restaurant), Doris Nakayama Realty and Teruo Morigaki Realty.

At its meeting of 2/27/1998 under agenda item D-2, as amended, the Board approved the after-the-fact agreement of sale and subsequent assignment of lease from David De Luz and John Tolmie, assignor, to Reeds Bay Resort Hotel, Ltd. (Lessee). The amendment included provisions for an increase in liability insurance and the requirement of a performance bond.

The leasehold property has been utilized as a condominium apartment since the 1980s. The Lessee had requested a change in use for the property from hotel to condominium use similar to General Lease No. 3269 (Country Club-Hawaii, Inc.).² At its meeting of 2/27/1998, agenda item D-3, the Board deferred a request for the conversion of GL 3029 to a condominium property regime or a limited equity housing cooperative due to outstanding issues regarding rent and insurance compliance. Lessee has bought back most of the rental units and the property is currently being utilized for hotel purposes.

² At its meeting of February 13, 1987 under agenda item F-2, the Board consented to the assignment of lease from Richard M. Jitchaku, as assignor, to Country Club Hawaii, Inc. (Herb Arata, principal), as assignee. The submittal also included a provision for the formation of a Horizontal Property Regime allowing the individual units on the property to be converted into condominium apartments and created the Association of Apartment Owners of Country Club Hawaii, Inc.

REQUEST:

Lessee Reed's Bay Resort Hotel, Ltd. operates an apartment/hotel business on the premises in two separate cinder block buildings of one and three stories. The apartment/hotel units are located in the three-story structure on the Hamakua side of the property and to the left of the entrance/lobby. Approximately 58 of the 63 rooms are currently available for transient accommodations. There is a small front desk for the hotel operation. A restaurant once operated above the single story building on the Puna side, however it burned down in 1983 and was never rebuilt. The layout includes a small swimming pool located between the two structures. See Exhibit B attached.

Lessee is requesting a 15-year extension from the end of the current lease set to expire on March 15, 2015 in order to amortize the cost of the improvements necessary to upgrade the hotel. In compliance with the terms and conditions of Act 219, the Lessee plans to restore the property to 100% transient accommodation.

Act 219 Session Laws of Hawaii 2011 authorizes the Board of Land and Natural Resources to extend hotel or resort leases (that have not been sold or assigned within the past five years) up to an additional fifty-five (55) years. As a condition to the extension, the Lessee must commit to substantial improvements to the existing facilities. "Substantial improvements" means any renovation, rehabilitation, reconstruction or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds fifty per cent (50%) of the market value of the existing improvements that the Lessee or the Lessee and developer install, construct, and complete by the date of completion of the total development."

The act also stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and determine: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amounts.

Lessee Reed's Bay Resort Hotel, Ltd. has submitted a cost proposal for improvements and renovations in excess of \$706,000. The Lessee has also provided staff with a Summary Appraisal Report dated October 16, 2013 indicating the value of the existing improvements at approximately \$1,297,000.

The proposed renovations consist of electrical upgrades, ADA upgrades, roof repairs as well as improvements to the lobby, swimming pool, guest rooms and corridors, restoration of the restaurant and repairs to the parking lot. Under the proposal, all the existing structures, originally constructed in 1960s, will be retained, and no new construction of buildings is planned. A draft engineering report for this property estimated the remaining useful life of the improvements at 12 to 15 years. The informal Banyan Drive Task Force established at the request of area legislators and with Governor Abercrombie's concurrence, wants to see the Banyan Drive area revitalized. Allowing the Lessee to continue operations at the premises under a fixed lease of 15 years will likely not facilitate the revitalization of the area that the task force and other

community members are looking for. Staff sent a draft of this submittal to the task force for comment, and a copy of their response letter dated November 18 is attached as Exhibit C.

Unfortunately, staff is unable to recommend a lease extension in this case. Although the Lessee appears to satisfy the basic requirements set forth in Act 219 Session Laws of Hawaii 2011, the low valuation of the property as determined by the Summary Appraisal Report and the proposed renovations submitted by the Lessee do not warrant a 15-year lease extension continuing the use of the existing buildings. Staff believes the site has greater potential.³

ONE YEAR HOLDOVER AND REVOCABLE PERMIT:

Due to the potential liability and attendant problems of illegal habitation of vacant property, staff believes it is in the best interest of the State to have the property remain occupied until a Banyan Drive redevelopment plan can be implemented.

As an alternative to the Lessee's request for a lease extension, staff is recommending a one-year holdover (pursuant to HRS §171-40) and subsequent month-to-month revocable permit (HRS §171-40 & -55). This would provide an opportunity for the Lessee to continue its hotel operations until such time that a redevelopment plan for the Banyan Drive area can be implemented.

Staff is recommending the annual rent for the holdover period to remain at the current annual rent of \$23,860.00. The lease stipulates that at the end of the lease term, all improvements shall become the property of the Lessor. However, staff is recommending that the Board allow Lessee to retain title to all improvements notwithstanding the expiration of the holdover period and issuance of a revocable permit, on the condition that Lessee agree to pay for the removal of the improvements and restoration of the land to a condition acceptable to the Board at the end of the revocable permit should the Board exercise its discretion to require removal. The rent payable under the revocable permit will be determined by independent appraisal contracted for by the Department but paid for by Lessee, and will be based on land value only. The performance bond will be twice the monthly rental under the permit.

RECOMMENDATION: That the Board:

1. Deny the Lessee's request for extension of lease pursuant to Act 219 SLH 2011 for General Lease No. 3029 for the reasons cited above.
2. Authorize a one-year holdover of General Lease No. 3029 for the period of March 15, 2015 to March 14, 2016, 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 holdover of lease

³ The only fixed lease extension Lessee is eligible for (aside from the one-year holdover), is the extension allowed by Act 219 SLH 2011. The ten-year extensions other lessees apply for, such as the Kanoelehua Industrial Area lessees, are not available to Reed's Bay Resort Hotel, Ltd. because its lease is already at (and in fact exceeds) the maximum 65-year term permitted by HRS Chapter 171.

- form, as may be amended from time to time;
- b. The annual rent for the one-year holdover period will be \$23,860.00, billed in two equal semi-annual amounts of \$11,930.00 each;
 - 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. Declare that, after considering the potential effects of the proposed issuance of a revocable permit upon expiration of the lease, 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.
4. Authorize the issuance of a revocable permit effective March 15, 2016 to Reed's Bay Resort Hotel, Ltd. covering the subject area for resort and hotel 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. Notwithstanding the expiration of the holdover period and the issuance of a revocable permit to Reed's Bay Resort Hotel, Ltd., all existing improvements (excluding archaeological/historic sites, if any) shall remain the property of Reed's Bay Resort Hotel, Ltd. In the event of the termination of the revocable permit, the Board shall have the option of requiring the Reed's Bay Resort Hotel, Ltd. to remove such improvements at its sole cost and expense and to restore the land to a condition acceptable to the Board, or to allow Reed's Bay Resort Hotel, Ltd. to surrender title to the improvements to the Board;
 - c. The initial monthly rental amount will be determined by appraisal and subject to annual review. The performance bond shall be equal to twice the monthly rent;
 - d. Review and approval by the Department of the Attorney General; and

- e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



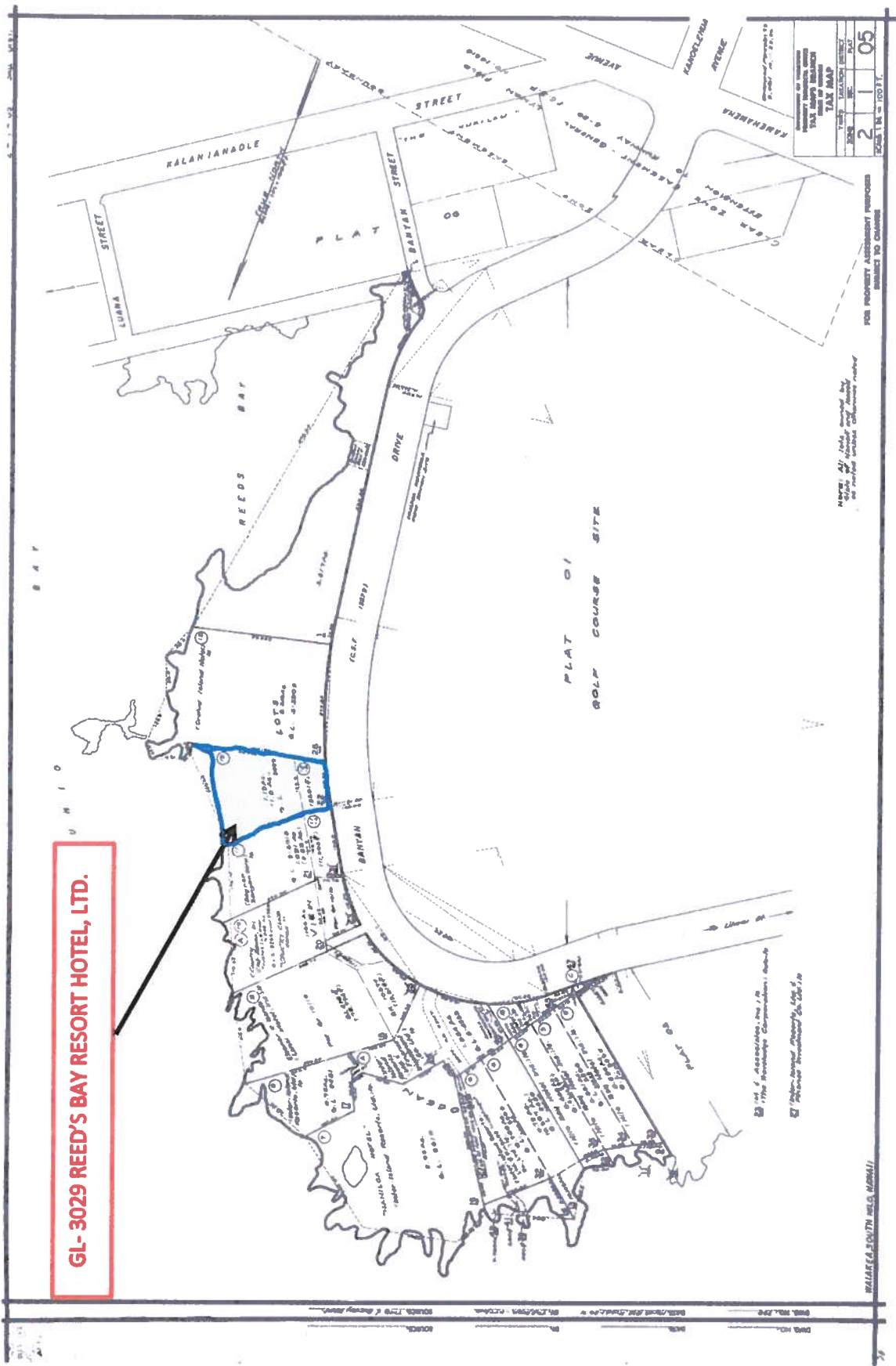
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aifa, Jr., Chairperson





GL-3029 REED'S BAY RESORT HOTEL, LTD.

EXHIBIT A

EXHIBIT A

REED'S BAY RESORT HOTEL

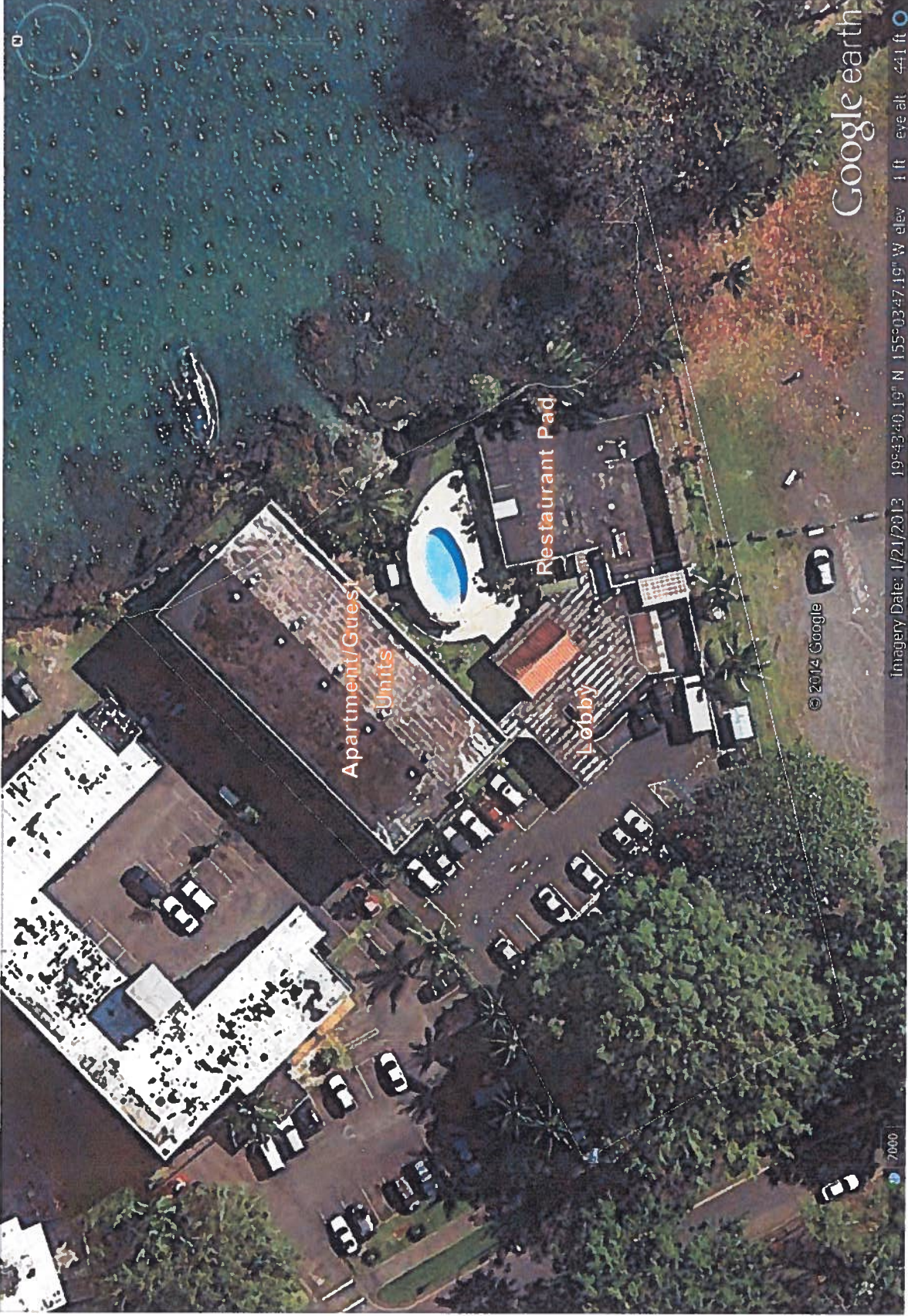


EXHIBIT B

November 18, 2014

Kevin E. Moore
State Lands Assistant Administrator
Department of Land and Natural Resources, Land Division
1151 Punchbowl Street, #220
Honolulu, HI 96813

Dear Mr. Moore:

As members of the Banyan Drive Task Force, we thank you for the opportunity to comment on the Land Board's proposed course of action for the renewal of the "Reed's Bay Lease". We think the Land Board's proposed course of action is consistent with our Task Force's position that Banyan Drive needs to be revitalized. While we sympathize with Reeds Bay's request for a fixed extension, our group feels that it is in the overall best interest of the community to establish a long range redevelopment plan prior to committing any of the State's limited and precious resources in the area.

Banyan Drive has historically been East Hawaii's hub of resort activities. The Banyan Drive Task Force envisions a revitalized Banyan Drive with much improved visitor accommodations. We believe between the Hawai'i Volcanoes National Park, other East Hawaii visitor attractions, and the advent of Eco-Tourism, Banyan Drive will return to a small, but thriving tourist destination. The benefits will be the local businesses, the approximately 1200 hotel and visitor industry workers who drive over 200 miles per day round trip for work in Kona, and the East Hawaii Community will have many options not presently available. For these reasons, we strongly believe that a master planned redevelopment of Banyan Drive is the best course of action.

Sincerely,

Banyan Drive Task Force

George Applegate
Kaiu Kimura
Craig Takamine
Barry Taniguchi
Bob Williams

EXHIBIT C

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 12, 2014

EXEMPTION NOTIFICATION

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

Project Title: Issuance of a Revocable Permit to Reed's Bay Resort Hotel, Ltd., for Hotel/Resort Purposes

Project / Reference No.: PSF 14HD-191

Project Location: Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:022

Project Description: Lessee is requesting a 15-year extension from the end of the current lease set to expire on March 15, 2015 in order to amortize the cost of the improvements necessary to upgrade the hotel. In compliance with the terms and conditions of Act 219, the Lessee plans to restore the property to 100% transient accommodation. Lessee Reed's Bay Resort Hotel, Ltd. has submitted a cost proposal for improvements and renovations in excess of \$706,000.

Under the proposal, all the existing structures, originally constructed in 1960s, will be retained, and no new construction of buildings is planned. A draft engineering report for this property estimated the remaining useful life of the improvements at 12 to 15 years. The informal Banyan Drive Task Force established at the request of area legislators and with Governor Abercrombie's concurrence, wants to see the Banyan Drive area revitalized. Allowing the lessee to continue operations at the premises for 15 years will likely not facilitate the revitalization of the area that the task force and other community members are looking for.

As an alternative to the Lessee's request for a lease extension, staff is recommending a one-year holdover (pursuant to HRS §171-40) and subsequent month-to-month revocable permit (HRS §171-40 & -55). This would provide an opportunity for the Lessee to

EXHIBIT D

continue its hotel operations until such time that a redevelopment plan for the Banyan Drive area can be implemented.

Chap. 343 Trigger(s):

Use of State Land

Exemption Class No.:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the issuance of a revocable permit upon expiration of the lease 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".

Consulted Parties

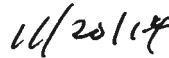
Not applicable

Recommendation:

That the Board find the issuance of a revocable permit for the continued hotel/resort use of the property 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

