

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

December 7, 2023

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

Ref: RP 7915

Oahu

Annual Renewal of Revocable Permit No. S-7915; Resorttrust Hawaii, LLC,  
Permittee; Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023: portions of 041.

BACKGROUND:

Since Resorttrust Hawaii, LLC became the permittee of the previous revocable permit (RP) for recreational and maintenance purposes over the State parcel designated as tax map key (1) 3-5-023:041 in 2016, staff has brought the RP to the Board annually asking for renewal. At its meeting of November 9, 2018, under agenda item D-18, the Board authorized the issuance of a new RP [#7915] with specific permitted uses. In 2020, upon the request from the permittee, the permitted uses were further restricted to “cabana hale, beach shower, towel caddy, hammock, and 70 beach chairs with accompanying tables”. In addition, the permittee is required to establish and maintain two (2) twenty-foot wide, mauka to makai, pathways for public pedestrian access on the Koko Head side of the premises; and maintain, at its own cost, the sand beach located seaward of the premises.

At its meeting of October 23, 2020, under agenda item D-5,<sup>1</sup> a detailed background of the development of the subject area since 1960s and responses to community concerns were elaborated.

The map of RP 7915 attached as **Exhibit 1** indicates the RP area (1.28 acres) in red and the abutting beach in blue. The red area is the fast/reclaimed land<sup>2</sup> and the blue area is the

<sup>1</sup> <https://dlnr.hawaii.gov/wp-content/uploads/2020/10/D-5.pdf>

<sup>2</sup> HRS 171-53 allows reclaimed lands to be leased or even sold in fee to an abutting landowner under certain conditions. HRS 171-53 provides:

**§171-53 Reclamation and disposition of submerged or reclaimed public land.** (a) Any submerged public land or land beneath tidal waters shall not hereafter be reclaimed by private abutting owners, except as hereinafter provided.

(b) **As to presently reclaimed land**, the board of land and natural resources, after finding that its disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located and after giving public notice in accordance with section 171-16(d) of its intention to dispose, **may dispose of it, without recourse to public auction, to the abutting owner, by sale or lease**; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value or fair

beach/sand area formed when the abutting fee owners obtained approval from the Board in 1960s to create a beach on a prior rocky shoreline at the location.

The permittee also erected signage to delineate the mauka boundary of the State parcel, i.e., RP area, as well as signage indicating the public is welcome on the reclaimed portion of the State parcel (i.e., grassy area) mauka of the shoreline, as directed by the Board at its meeting of October 23, 2020, under agenda item D-5.

For the Board’s information, the Department has not been made aware of any complaints regarding public access to the subject RP area (i.e., grassy area) since October 2020.

Recently, the Department received an email from David Frankel regarding (1) the number of preset beach chairs exceeding the number allowed in the subject revocable permit, (2) unauthorized commercial activity, (3) two permanent plaques, and (4) discharge pipes. The email also questioned a potential violation of Act 227, Session Laws of Hawaii 2023, regarding the preset beach chairs.

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market rental of the submerged public land, but if the reclaimed land has been filled or made otherwise, it shall be disposed of at the fair market value or fair market rental of the reclaimed land.

(c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, **may lease state submerged lands and lands beneath tidal waters** under the terms, conditions, and restrictions provided in this chapter; provided that the authorization of the legislature shall not be required for leases issued under chapter 190D; and provided further that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of state submerged lands or lands beneath tidal waters used for moorings, cables, or pipelines; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to the reclaimed lands shall remain in the State.

(d) Whenever in connection with reclaimed lands or the reclamation of submerged lands or lands beneath tidal waters by authority of law, the board deems it advantageous to the State in order to settle the rights (littoral or otherwise), if any, of an abutting owner, to create public beaches, or to consolidate the holdings of public lands in the vicinity or provide public ways or access to the public lands, it **may, with the prior approval of the governor, sell, lease, or transfer by way of an exchange, without recourse to public auction** but subject to the limitations contained in section 171-50 and to the other provisions of this chapter, lands having the status of public lands. [L 1962, c 32, pt of §2; am L 1965, c 239, §28; Supp, §103A-50; am L 1967, c 234, §3; HRS §171-53; am L 1981, c 199, §2; am L 1987, c 367, §2; am L 1999, c 176, §1; am L 2000, c 261, §§3, 5; am L 2002, c 68, §2 and c 103, §1(2); am L 2005, c 129, §2]

#### Note

Lease of submerged lands at Ala Wai boat harbor exempt from legislative authorization. L 2011, c 197, §8.

#### Cross References

Ala Wai boat harbor; leases, see §200-2.6.

Reclamation of lands, see chapter 173.

Act 227 (SLH 2023) (**Exhibit 2**) prohibits the presetting of “commercial beach equipment on any beach under the jurisdiction of the department unless the customer is physically present for the immediate use of the commercial beach equipment . . .”. The act applies to beaches “[u]nder the jurisdiction of the department, including private beaches in which the State has an easement or other property interest; . . .” In this case, the land area where the permittee places chairs is reclaimed, urban-zoned land under HRS 171-53, and not a beach or sandy beach under Act 227.<sup>3</sup> The beach is located makai of the shoreline while the reclaimed land is located mauka of the shoreline.<sup>4</sup>

Based on an unannounced inspection conducted on October 30, 2023 around 7:00 am, the number of beach chairs preset on the subject revocable permit area was 58. In addition, staff did not observe any unauthorized commercial activities during the same inspection. Staff discussed the two plaques with the current hotel management and the Permittee removed one of the plaques. A copy of the site inspection report, with notes and photos, is attached as **Exhibit 3** for the Board’s reference.

The remaining plaque has been blended into the landscape of the area and it is not physically intrusive at all due to its size. Staff recommends the Board allow the permittee to keep and maintain the plaque pursuant to the subject revocable permit. In the meantime, staff is reviewing the application from the permittee requesting a land disposition for the discharge pipes. According to the department’s records, there were four (4) pipes while the application only covered three (3), with the one connecting to the central swimming pool missing from the application. Permittee’s counsel is working with the hotel management to review the records for a confirmation of the actual number of pipes involved.

Current monthly rent for the subject RP is \$1,442. Staff recommends increasing the monthly rent by the same rate (3%) approved by the Board for many other RPs managed by the Department. The new monthly rent is shown below:

$$\$1,442 \times 1.03 = \$1,485.26, \text{ say } \$1,485.$$

The Office of Conservation and Coastal Lands and Division of Boating and Ocean Recreation have no objection to or comment on the subject request and concur with the

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<sup>3</sup> The urban classification of the subject RP is inconsistent with the zoning classification for public beaches, which are in the conservation district. Rule 13-5-13, Hawaii Administrative Rules (lands seaward of the shoreline fall within the resource subzone of the conservation district).

<sup>4</sup> Act 227 was intended to address the presetting of beach chairs occurring on Waikiki beach, and not on reclaimed lands fronting the Kahala hotel property. Act 227 added a new section in Chapter 200, HRS. Although HRS 200 does not expressly define a “beach” in the context of Act 227, it does offer the following definitions that are instructive:

“Beaches encumbered with easements in favor of the public” means any lands which **lie along the shores of the State** which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.

“**Shoreline**” means the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves.

proposed declaration of exemption from the preparation of an environmental assessment.

HRS 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, Part 1, that states General Exemption Type 1, that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing,” under Part 1, item 44, which states, “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing”. The subject request will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR. (**Exhibit 4**)

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, Hawaii Revised Statutes, and Chapter 11-200.1-15 and -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.
2. Based on the testimony and facts presented, find that approving the renewal of the revocable permit, under the conditions and rent set forth herein, would serve the best interest of the State.
3. Approve the continuation of Revocable Permit No. S-7915 at the rent set forth on a month-to-month basis effective January 1, 2024 for another one-year period through December 31, 2024 at a monthly rent of \$1,485.
4. Reserve and delegate to the Chairperson the right and authority at any time to review and adjust the rental charges for Revocable Permit No. 7915 any time from and after January 1, 2024, where such adjustments will best serve the interests of the State.

Respectfully Submitted,

*Barry Cheung*

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Barry Cheung  
District Land Agent

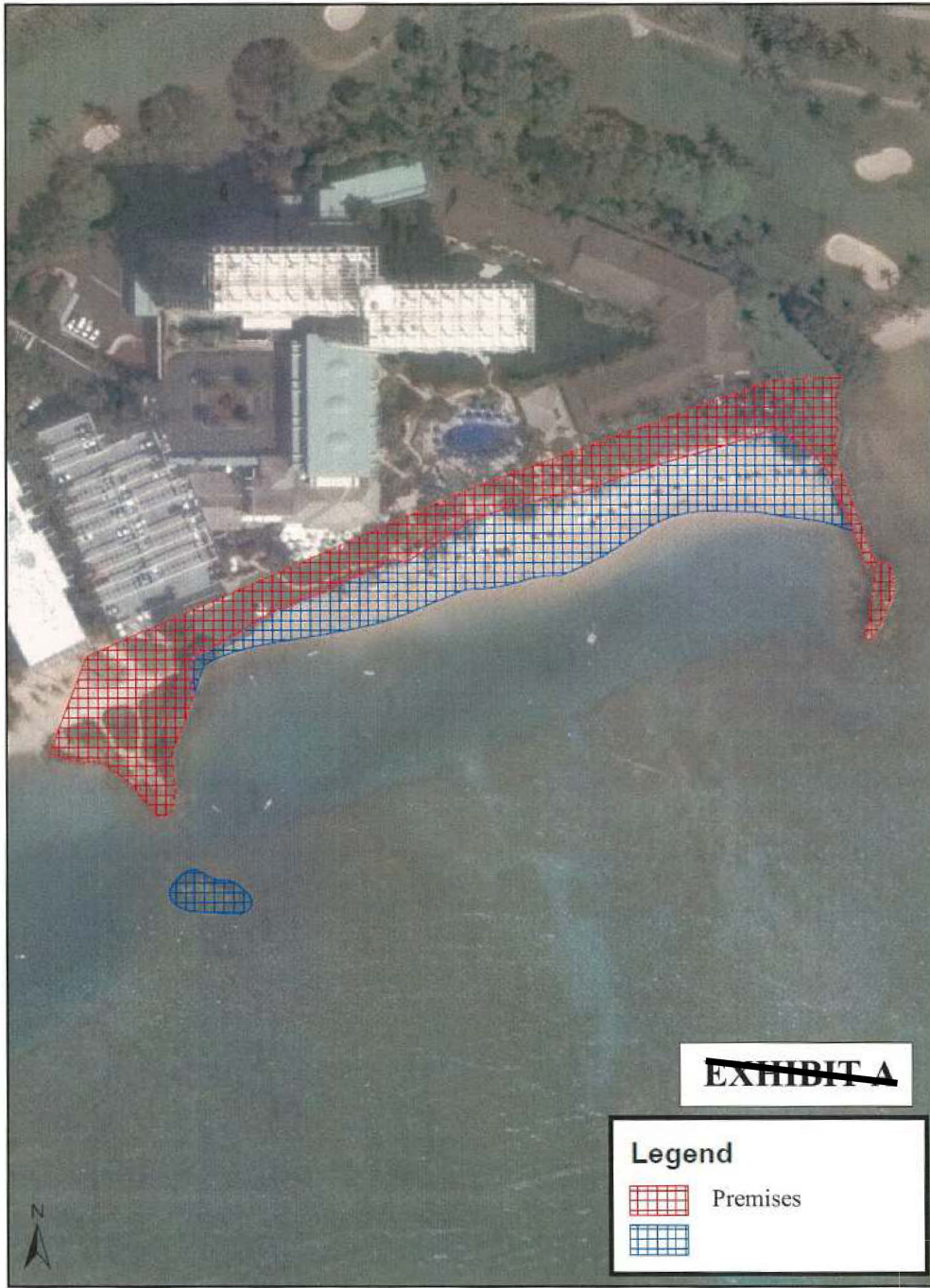
APPROVED FOR SUBMITTAL:




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Dawn N. S. Chang, Chairperson *PCM*

*RT*



# EXHIBIT 1

on JUL 6 2023

THE SENATE  
THIRTY-SECOND LEGISLATURE, 2023  
STATE OF HAWAII

S.B. NO. 67  
S.D. 1  
H.D. 2  
C.D. 1

A BILL FOR AN ACT

RELATING TO COMMERCIAL ACTIVITIES ON BEACHES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 200, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§200- Prohibited commercial activities on certain  
5 beaches; administrative fine. (a) No commercial vendor shall  
6 preset commercial beach equipment on any beach under the  
7 jurisdiction of the department unless the customer is physically  
8 present for the immediate use of the commercial beach equipment.  
9 The commercial vendor shall expeditiously remove the commercial  
10 beach equipment after the customer has finished using it.

11 (b) The department may authorize exemptions to subsection  
12 (a) through rules adopted pursuant to chapter 91.

13 (c) Any commercial vendor who violates subsection (a)  
14 shall be subject to an administrative fine of:

- 15 (1) \$5,000 for a first offense;
- 16 (2) \$10,000 for a second offense; and
- 17 (3) \$15,000 for a third or subsequent offense.

18 (d) This section shall apply to beaches:



1        (1) Under the jurisdiction of the department, including  
2        private beaches in which the State has an easement or  
3        other property interest; and

4        (2) Within a county with a population of more than:

5            (A) Nine hundred thousand; or

6            (B) One hundred thousand but fewer than one hundred  
7            eighty thousand.

8        This section shall not apply to private beaches in which the  
9        State has no property interest.

10        (e) As used in this section:

11            "Commercial beach equipment" means recreational equipment  
12        for rent, including chairs, umbrellas, surfboards, paddleboards,  
13        kayaks, and other non-motorized watercraft equipment.

14            "Preset" means to set up or have physically ready for use  
15        commercial beach equipment by a commercial vendor."

16        SECTION 2. This Act does not affect rights and duties that  
17        matured, penalties that were incurred, and proceedings that were  
18        begun before its effective date.

19        SECTION 3. New statutory material is underscored.

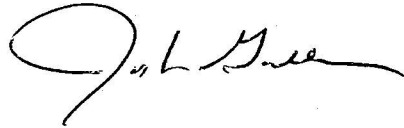
20        SECTION 4. This Act shall take effect upon its approval.



S.B. NO.

67  
S.D. 1  
H.D. 2  
C.D. 1

APPROVED this **6th** day of **July**, 2023

A handwritten signature in black ink, appearing to read "Josh Green". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

GOVERNOR OF THE STATE OF HAWAII



**INSPECTION REPORT**  
Commercial/Industrial/Resort/Other Business

**General Information**

Document Number: GLS \_\_\_\_\_ or RPS 7915

Character of Use See Other section on page 3

Inspection Date: 10/30/2023 Inspection Time: 7:05 am

Land Agent: Barry Cheung

**TENANT INFORMATION**

Name: Resorttrust Hawaii, LLC

Home Phone: n/a

Address: 5000 Kahala Avenue

Business Phone: (808) 739-8603

Honolulu, HI 96816

Fax: (808) 739-8800

Contact Person: Joe Ibarra

Contact Phone: \_\_\_\_\_

**SITE INFORMATION**

TMK: (1) 3-5-023: portions of 041

Area: 1.28 acres

Site Address: n/a

**FISCAL INFORMATION**

ITEM	N/A	CURRENT= COMPLIANCE	DEFAULT = NON-COMPLIANCE	COMMENTS
Rent		<b>X</b>		
Liability Insurance		<b>X</b>		
Fire Insurance	<b>X</b>			
Bond	<b>X</b>			

**FIELD INSPECTION RESULTS** (refer to Field Inspection Worksheet)

ITEM	N/A	COMPLIANCE	NONCOMPLIANCE	COMMENTS
Subleases	<b>X</b>			
Improvements		<b>X</b>		
Premises		<b>X</b>		
Character of Use		<b>X</b>		

**Field Inspection Worksheet**  
**Commercial/Industrial/Resort/Other Business**

**File Review**

**LICENSES/PERMITS/CONSENTS**

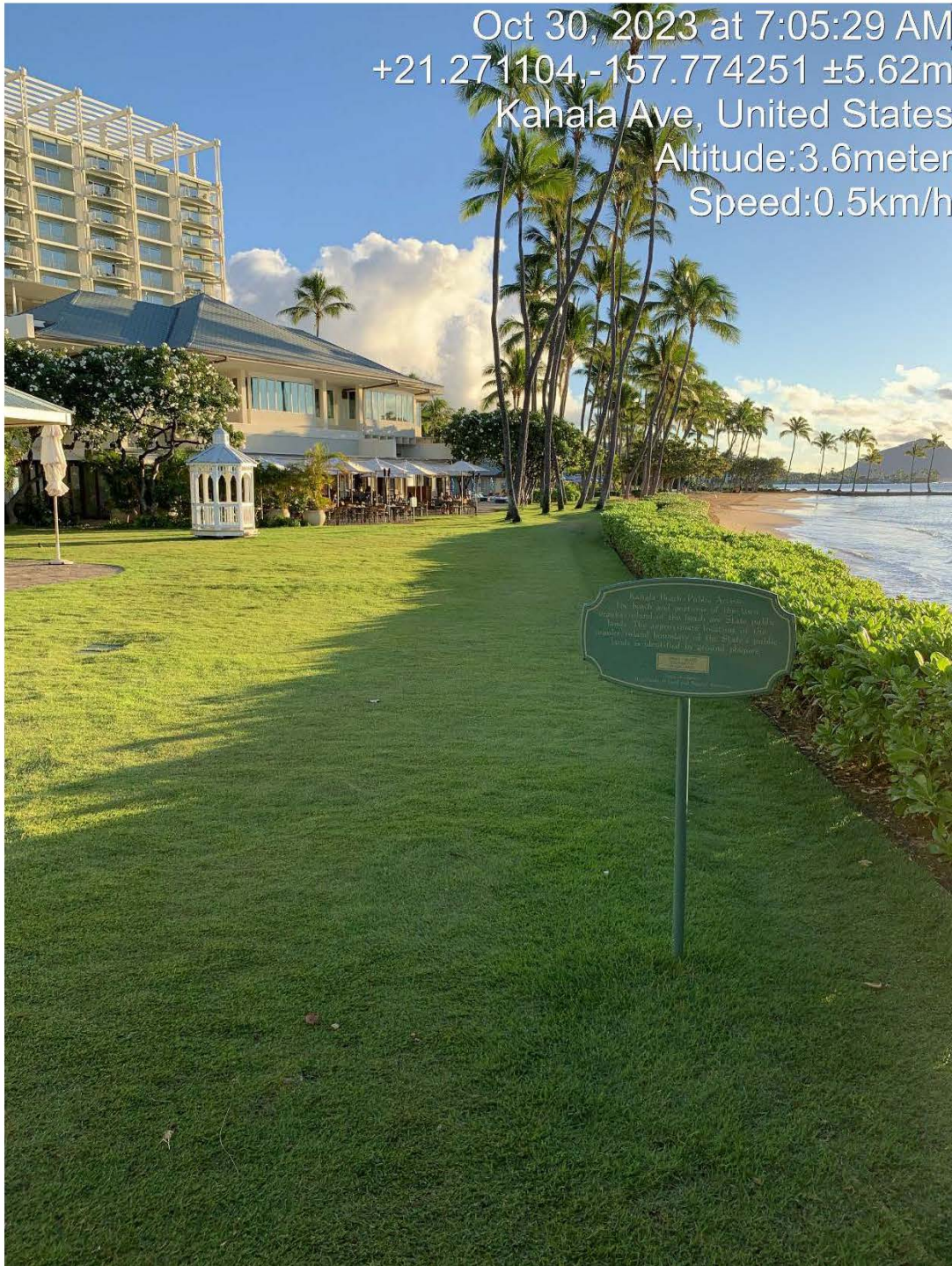
ITEM	DLNR Approval Docs in File			COMMENTS/NOTES/LISTS
	N/A	YES	NO	
Subletting	<b>X</b>			attach copy of list or map if applicable
Improvement Construction Buildings	<b>X</b>			note deadlines for % completion
Improvement Construction Other structures/misc.	<b>X</b>			note deadlines for % completion

**Field Inspection**

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
<b>SUBLEASES</b>				
Consents approved	<b>X</b>			
Use adheres to lease purpose	<b>X</b>			
<b>IMPROVEMENTS</b>				
<u>Buildings/Residences:</u> roof	<b>X</b>			
paint	<b>X</b>			
exterior	<b>X</b>			
interior	<b>X</b>			
<u>Structures:</u> roads	<b>X</b>			Overall, the landscaped area and the beach makai of the RP area were well maintained as observed during the site visit. See photos attached showing various spots of the subject RP area.
walkways		<b>X</b>		
fencelines	<b>X</b>			
others				
<b>PREMISES</b>				
clean, sanitary, orderly		<b>X</b>		
appropriate storage/use of hazardous materials	<b>X</b>			
<b>CHARACTER OF USE</b>				See Other section on page 3.
adheres to lease purpose		<b>X</b>		

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
Other:		X		<p>The subject RP allows the permittee placing the following items: portion of cabana hale, 70 beach chairs with associated small round tables, beach shower, towel caddy, and a hammock. During the subject site inspection, one 10-beach chair and six 8-beach chair groups were noticed. Five and three round tables were placed next to the 10 and 8 beach chairs groups respectively. In short, the total number of beach chairs, which is 58, did not exceed 70 or the number allowed under the subject RP.</p> <p>No commercial activities were noted at the site visit. A few members of the general public and their pets were seen on the beach and the RP area. There was no restriction on any public access observed on the beach as well as the RP area.</p> <p>In addition to the RP, the beach makai of the RP area was well maintained. Photo showing the track marks left by the maintenance equipment is attached in this report.</p> <p>Recent email from the community brought up two plaques being installed on the RP area. One of them honored the dedication of the hotel employees. The size of the plaque was small and it did blend into the surrounding landscape. The hotel management did not have information regarding the other plaque. It appeared that the second plaque was there for an individual, "Yuji Abe", who had no relationship to the hotel, according to the current hotel management. Hotel eventually removed the plaque, as noted from the photo.</p>

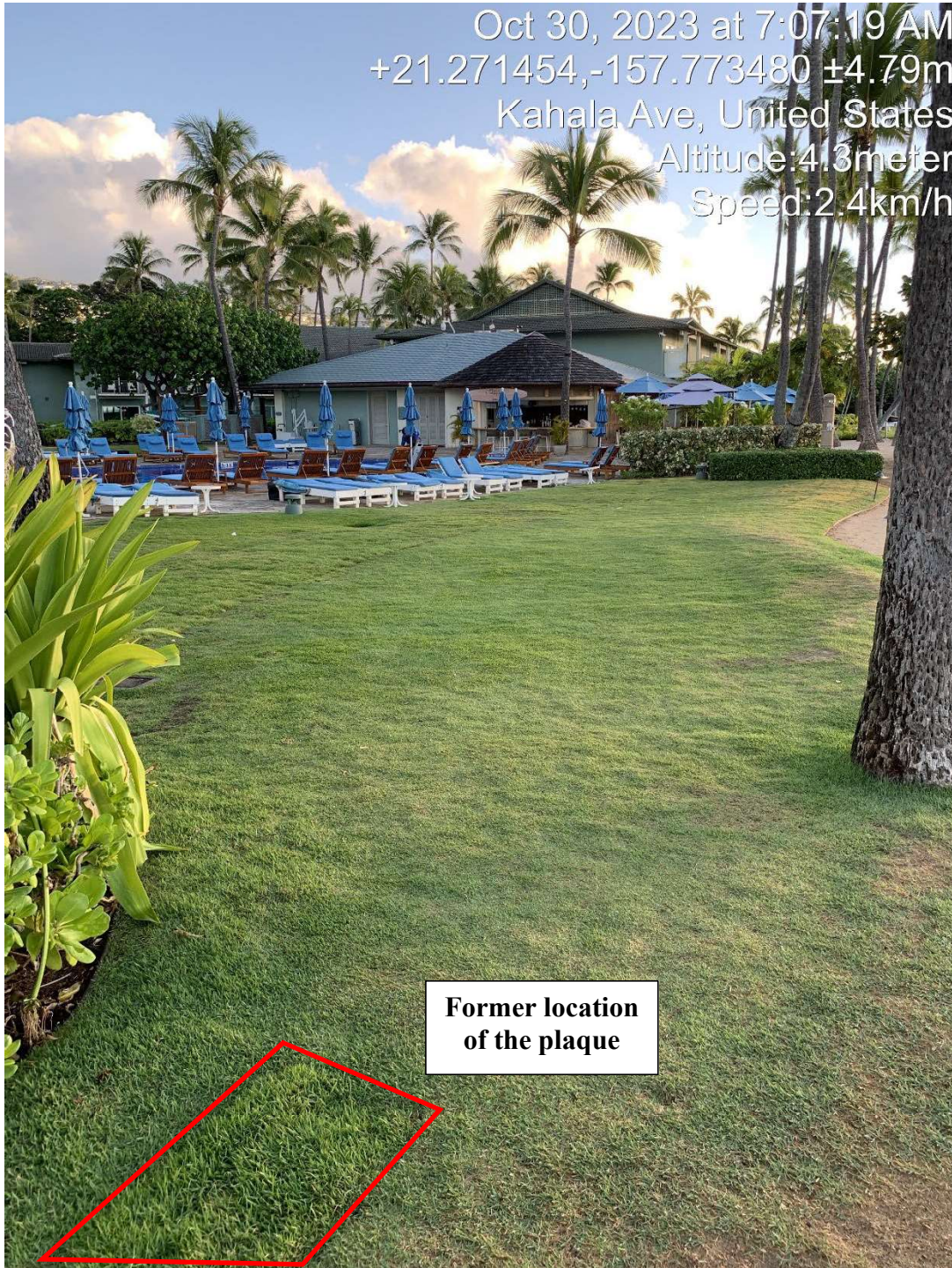
Oct 30, 2023 at 7:05:29 AM  
+21.271104,-157.774251 ±5.62m  
Kahala Ave, United States  
Altitude:3.6meter  
Speed:0.5km/h



Oct 30, 2023 at 7:06:21 AM  
+21.271312,-157.773855 ±4.64m  
Kahala Ave, United States  
Altitude:3.7meter  
Speed:3.3km/h



Oct 30, 2023 at 7:07:19 AM  
+21.271454,-157.773480 ±4.79m  
Kahala Ave, United States  
Altitude:4.3meter  
Speed:2.4km/h





Oct 30, 2023 at 7:07:48 AM  
+21.271532,-157.773271 ±4.79m  
Kahala Ave, United States  
Altitude:2.4meter  
Speed:3.5km/h





Oct 30, 2023 at 7:07:55 AM  
+21.271532,-157.773271 ±4.79m  
Kahala Ave, United States  
Altitude:4.2meter  
Speed:1.5km/h



Oct 30, 2023 at 7:08:45 AM  
+21.271636,-157.772832 ±4.78m  
Kahala Ave, United States  
Altitude:5.2meter  
Speed:2.9km/h





Oct 30, 2023 at 7:09:28 AM  
+21.271713, -157.772633 ±4.82m  
Kahala Ave, United States  
Altitude: 3.4 meter  
Speed: 1.9 km/h



Oct 30, 2023 at 7:09:57 AM  
+21.271726, -157.772535 ±4.79m  
Kahala Ave, United States  
Altitude: 3.5 meter  
Speed: 3.5 km/h







Oct 30, 2023 at 7:11:35 AM  
+21.271753,-157.772454 ±11.79m  
Kahala Ave, United States  
Altitude:3.7meter  
Speed:0.4km/h



Oct 30, 2023 at 7:12:04 AM  
+21.271778,-157.772552 ±4.82m  
Kahala Ave, United States  
Altitude:3.4meter  
Speed:2.3km/h





Oct 30, 2023 at 7:14:50 AM  
+21.271560, -157.773022 ±4.80m  
Kahala Ave, United States  
Altitude: 3.9meter  
Speed: 4.8km/h



Oct 30, 2023 at 7:15:38 AM  
+21.271704, -157.772615 ±4.78m  
Kahala Ave, United States  
Altitude: 3.5meter  
Speed: 0.2km/h





Oct 30, 2023 at 7:15:46 AM  
+21.271704, -157.772615 ±4.78m  
Kahala Ave, United States  
Altitude: 3.5meter  
Speed: 0.2km/h



Oct 30, 2023 at 7:18:57 AM  
+21.271033, -157.774353 ±8.47m  
Kahala Ave, United States  
Altitude: 3.5meter  
Speed: 0.4km/h

## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title: Annual Renewal of Revocable Permit No. S-7915

Project / Reference No.: RP 7915

Project Location: Honolulu, Oahu, abutting TMK: (1) 3-5-023: portions of 041.

Project Description: Renew existing revocable permit for a term of one year.

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

Exemption Class No.: In accordance with 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 minor expansion or minor change of use beyond that previously existing," under Part 1, item 44, which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

Cumulative Impact of Planned Successive Actions in Same Place Significant: No, the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Action May Have Significant Impact on Particularly Sensitive Environment: Staff is not aware of any particularly sensitive environmental issues and use of the area would involve negligible change from what is existing.

Consulted Parties: Agencies as noted in the submittal.

Analysis: Staff believes the request would involve negligible or no expansion or change in use of the subject location beyond that previously existing.

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