

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

January 26, 2024

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

Ref: 23OD-072

OAHU

Grant of Term, Non-Exclusive Easement to Resorttrust Hawaii, LLC for Drainage Purposes, Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023: portions of 041 and seaward.

APPLICANT:

Resorttrust Hawaii, LLC, a domestic limited liability company. ("RTH")

LEGAL REFERENCE:

Sections 171-13, 17, and 53, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located at Waialae, Honolulu, Oahu, identified by Tax Map Key: (1) 3-5-023: portions of 041 and seaward, as shown on the attached maps labeled **Exhibit A1** and **A2**.

AREA:

To be determined, further subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Urban and Conservation
City & County of Honolulu LUO:	Resort (abutting private 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-7915, Resorttrust Hawaii, LLC, Permittee, for cabana hale, beach shower, towel caddy, hammock, and beach chairs with accompanying tables.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove pipelines over, under and across State-owned land for drainage purposes.

TERM:

25 years, which is consistent with other shoreline encroachment easements.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules Section ("HAR") 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources 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." Part 1, Item No. 39 that states, "creation or termination of easement, covenants, or other rights in structures or land." 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>

APPLICANT REQUIREMENTS: Applicant shall be required to

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at

- Applicant's own cost;
- 3) Process and obtain subdivision approval at Applicant's own cost; and
 - 4) Obtain the prior concurrence of the Legislature and approval of the Governor pursuant to §171-53(c), HRS.

REMARKS:

RTH operates the hotel on the abutting private property located at TMK (1) 3-5-023:039 pursuant to a ground lease with Kamehameha Schools. At the annual renewal request for RP 7915 considered by the Board at its meeting on October 28, 2022, it was brought to the attention of the Board that there were two (2) discharge pipes and two (2) storm drains installed as part of the original hotel development, without any land disposition granted by the Board. The subject request is a follow-up of October 2022 action.

RTH, through its counsel, turned in an application in July 2023 requesting a land disposition pursuant to the discussion at the 2022 Board meeting. The application covered the following:

- 12-inch wide and 65 feet long Diamond Head lagoon outfall, "Cooling Water Outlet #1"
- 24-inch wide, 230 feet long Koko Head lagoon outfall, "Cooling Water Outlet #2"
- 24-inch wide Diamond Head stormwater outfall "Storm Water Outlet"

As shown on **Exhibit C**, RTH described the proposed use of the pipelines in addition to the original development of the hotel back in the 1960s.

Staff noted, from a plan in a conservation district use application file dated 1975 (**Exhibit D**), that there was another drainpipe originating from the existing swimming pool. RTH explained the fourth pipe was actually built on hotel's property based on the plans provided by the hotel. So, the subject request only pertains to the three (3) pipelines mentioned above.

Based on the information provided by RTH, the two lagoon outfalls are covered by a Department of Health National Pollutant Discharge Elimination System Permit No. HI0021942. Department of Health, Clean Water Branch, confirmed the same information and further advised that no permit is required for the storm water outlet.¹

The above descriptions show regulatory approval of the drainage outfall or pipeline from multiple governmental agencies including the Board through the Office of Conservation and Coastal Lands and others. However, a formal land disposition was not obtained.

The Office of Conservation and Coastal Lands, Department of Facility Maintenance,

¹ Generally, staff notes that during the development of shoreline properties, there are often drainage type improvements shown or placed on public land that had received approvals by various regulatory agencies, but often neglected to obtain a formal land disposition from the Board. A past example includes a storm drain culvert designed to serve a coastal highway.

Department of Planning and Permitting, and Division of Aquatic Resources have no comments/objections to the subject request.

The Commission on Water Resource Management, Office of Hawaiian Affairs, Department of Parks and Recreation, and Board of Water Supply have not responded to the request for comment before the deadline.

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 11-200.1, 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 subject requests to be applicable in the event of a change in the leasehold interest of the abutting parcel described as Tax Map Key: (1) 3-5-023:039, provided the succeeding lessee has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Resorttrust Hawaii, LLC covering the subject area for drainage 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 term easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key (1) 3-5-023:039, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS;

- D. Review and approval by the Department of the Attorney General;
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson *PCM*

RT



TMK (1) 3-5-023:041

EXHIBIT A1



TMK (1) 3-5-023:041

EXHIBIT A2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Grant of Term, Non-Exclusive Easement to Resorttrust Hawaii, LLC.

Reference No.: PSF 23OD-072

Project Locations: Waialae, Honolulu, Oahu, TMK (1) 3-5-023: portions of 041 and seaward

Project Description: The request is regarding the issuance of land disposition for pipelines for drainage and stormwater outfalls placed on State land when the abutting hotel was developed in the 1960s.

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

Exemption Class No.: In accordance with Hawaii Administrative Rules Section 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." Part 1, Item No. 39 that states, "creation or termination of easement, covenants, or other rights in structures or land."

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?

Staff believes that there would be no significant cumulative impact.

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

Staff believes there would be no significant impact to sensitive environmental or ecological receptors.

EXHIBIT B

Consulted Parties: Agencies as noted in the submittal.

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

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.

Resorttrust Hawaii, LLC
Application for Easement

ATTACHMENT 1

1. **Description of the Proposed Use**

This request is for one or more easements from the State of Hawai'i Board of Land and Natural Resources ("**BLNR**") to authorize the placement of three (3) existing drainage outfall pipelines located partially within State land identified by Tax Map Key ("**TMK**") No. (1) 3-5-023: 041 (the "**State Parcel**") and the offshore areas adjacent to the State Parcel indicated on Attachment 2 (figure showing general location outfall pipelines (not to scale)) adjacent to TMK No. (1) 3-5-023: 039 (the "**Hotel Parcel**"). See Attachment 3 (TMK map) for general vicinity of the State Parcel and Hotel Parcel. The Hotel Parcel is owned by Resorttrust Hawaii, LLC ("**RTH**") and is the location of the Kahala Hotel & Resort (the "**Hotel**"). The subject land is in the State Land Use Conservation District and is within the Special Management Area ("**SMA**").

The Hotel, including development of the beach area fronting the Hotel and the State Parcel, were developed in the early 1960s. The beach and swimming area fronting the Hotel Parcel and State Parcel were also developed pursuant to an Agreement dated February 15, 1963, by and among the State of Hawai'i; the Kahala Hilton Hotel Company, Inc. (then-owner of the Hotel), Charles J. Pietsch, Jr. and David T. Pietsch, as "Owners", the Waialae Country Club, Sheraton Hawaii Corporation, and the Trustees under the Will and of the Estate of Bernice P. Bishop (the "**1963 Agreement**").

Construction of the Hotel, and beach area pursuant to the 1963 Agreement, took place approximately in the 1962-1963 time period. Construction for and placement of the two (2) lagoon outfall pipelines and the stormwater outflow (each described in more detail below) are believed to have taken place during this time. One lagoon outfall is located along the Koko Head groin, the other lagoon outfall is located toward the center of the Hotel property (referred to as the Diamond Head lagoon outfall), and the storm water system and outfall within the Diamond Head groin. See Attachment 2. The Koko Head lagoon outfall (Serial No. 002) and the Diamond Head lagoon outfall (Serial No. 001) are referred to collectively as the "**Lagoon Outfalls**".

The stormwater outfall collects stormwater from the Hotel's drainage system through surface intake drains in the Hotel's driveway and other paved areas along the western border of the Hotel property. The drainage system crosses the State Parcel before discharging into the ocean through a common approximately 24-inch outfall pipe which is believed to be shared with a similar stormwater drainage system from a condominium project on an adjacent parcel (TMK No. (1) 3-5-023: 002). RTH's understanding is that the storm waters from the Hotel and the adjacent condominium project flow through separate pipelines beneath the State Parcel.

The Diamond Head stormwater outfall consists of an approximately 24-inch wide pipe which ends approximately at the endpoint of the Diamond Head groin.

EXHIBIT C

The Diamond Head lagoon outfall consists of an approximately 12-inch wide concrete pipe that is approximately 16 inches wide at the end outfall, which is located approximately 65 feet from the shoreline.

The Koko Head lagoon outfall consists of an approximately 24-inch wide pipe. The length of the outfall pipeline from the coastline is approximately 230 feet long.

The locations of all three outfalls are generally as shown on Attachment 2.

No improvements are proposed as part of this easement request. The request is solely for one or more easements for the existing outfalls.

2. Existing Permitting

As discussed above, the beach are fronting the Hotel, including the Diamond Head and Koko Head groin areas, were developed pursuant to the 1963 Agreement, along with Department of Transportation, Harbors Division, Permit No. 1164, approved on August 13, 1962, and the approval from the City and County of Honolulu dated September 18, 1962.

Construction of the Hotel, including the stormwater outfall and Lagoon Outfalls, in the early 1960s predates both the creation of the Conservation District and the Special Management Area ("SMA"). Hawai'i Revised Statutes ("HRS") Chapter 205, establishing the four state land use districts, was enacted in 1963 as Act 205. In 1977, the City & County of Honolulu ("City") adopted the SMA ordinance.

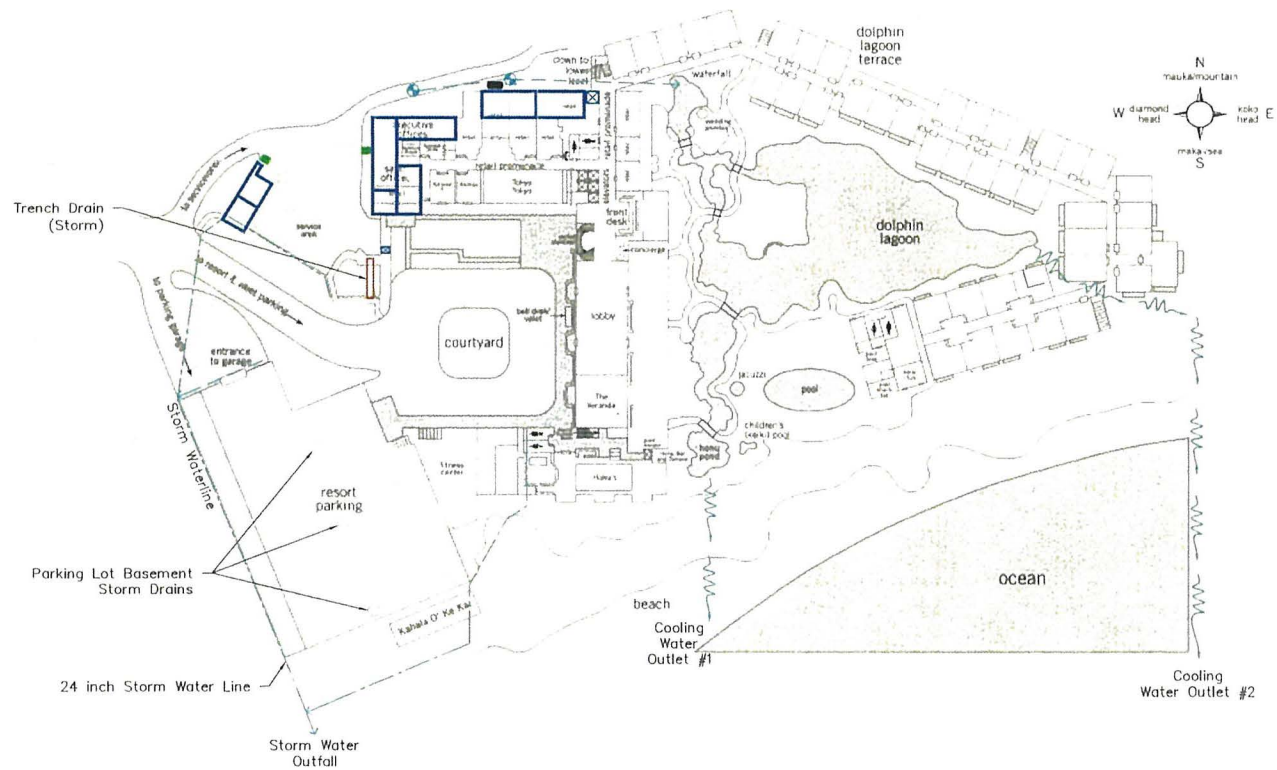
Conservation District Use Permit No. OA-2/4/75-634 was approved by the DLNR Office of Conservation and Coastal Lands ("OCCL") on or about June 13, 1975 following a May 9, 1975 Board of Land and Natural Resources meeting for the extension of the Koko Head Outfall. By letter dated May 16, 2019, the OCCL approved the Hotel's request to minor maintenance and repair of the Diamond Head Outfall (Correspondence OA 19-168).

No SMA approval is required for the requested easement(s). Under HRS Chapter 205A, a SMA permit is required where there is "development" in the SMA. Under HRS § 205A-22, the term "development" does not include "(10) Creation or termination of easements, covenants, or other rights in structures on land[.]"

The drain effluent that originates from the Hotel lagoon which supports porpoises and reef fish and is also used to cool the Hotel's central air conditioning system heat exchanges, so the quality of the water discharged from the Lagoon Outfalls is compatible with the reef environment. The Lagoon Outfalls are covered by a State of Hawai'i Department of Health ("DOH") National Pollutant Discharge Elimination System ("NPDES") Permit No. HI0021942.

The surface runoff from paved areas along the western side of the Hotel into the storm drain system is composed entirely of storm water with no known pollutants. By letter dated January 26, 2015, DOH confirmed that discharges consisting solely of storm water do not require a NPDES permit. Therefore, the stormwater outfall does not require a NPDES permit.

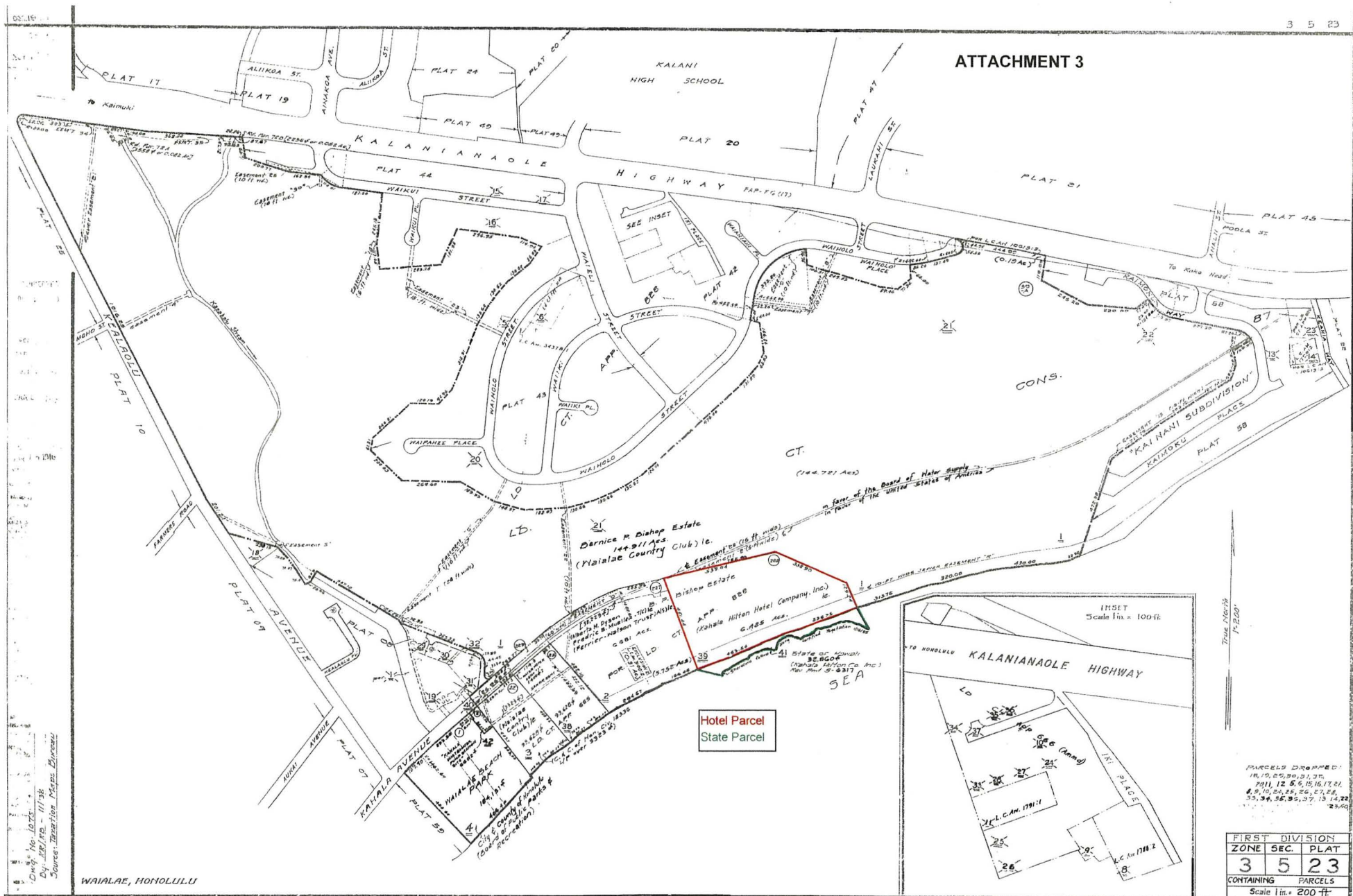
ATTACHMENT 2



Not To Scale

SITE PLOT PLAN

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PARCELS DROPPED:
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FIRST DIVISION		
ZONE	SEC.	PLAT
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CONTAINING		PARCELS
Scale 1 in. = 200 ft.		

94476

EXHIBIT D

