

REPORT TO THE TWENTY- FOURTH LEGISLATURE

AUTHORIZING THE GRANT OF A TERM, NON-EXCLUSIVE EASEMENT COVERING
PORTION OF SUBMERGED LANDS AT LAHAINA, MAUI, FOR DIVE SITE FOR
COMMERCIAL SUBMARINE TOURS



Prepared by

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

In response to Senate Concurrent Resolution 24, Senate Draft 1 (2007)

Honolulu, Hawaii

August 2007

REPORT TO THE TWENTY- FOURTH LEGISLATURE

AUTHORIZING THE GRANT OF A TERM, NON-EXCLUSIVE EASEMENT COVERING PORTION OF SUBMERGED LANDS AT LAHAINA, MAUI, FOR DIVE SITE FOR COMMERCIAL SUBMARINE TOURS

PURPOSE

Section 171-53, Hawaii Revised Statutes, requires the prior approval of the Governor and prior authorization of the Legislature by concurrent resolution, before submerged public lands may be leased or easements therein granted. The Senate of the Twenty-fourth Legislature of the State of Hawaii, Regular Session of 2007, the House of Representatives concurring, pursuant to Senate Concurrent Resolution 24, Senate Draft 1, authorized the Board of Land and Natural Resources to grant a term, non-exclusive easement covering a portion of submerged lands at Lahaina, Maui, for a dive site for commercial submarine tours purposes pursuant to section 171-53, Hawaii Revised Statutes.

Atlantis Submarines Hawaii, LLC (Atlantis) currently operates a forty-eight-passenger submarine in the Twin Peaks area, consisting of four existing natural reefs (North, South, Keiki, and Lost Vegas). Atlantis proposed to sink the replica whaling ship Carthaginian to create an artificial reef approximately 3,100 feet offshore of Paumana Beach Park and approximately one and one-fourth mile south of Lahaina Harbor. The water depth is approximately one hundred feet deep (sixteen fathoms).

Atlantis believes sinking the Carthaginian to create an artificial reef would: (1) Alleviate pressure on existing natural reef systems from overuse; (2) Promote reef and fish biomass increase for commercial and recreational users, divers; and (3) Provide educational opportunities to study biomass increase over time. Monitoring surveys by the Department of Land and Natural Resources (Department) have shown that artificial reefs increase species diversity up to five times compared to a barren area, and increase fish biomass up to twenty times compared to a barren area. Furthermore, the Department believes artificial reefs have been successful in increasing the fishing and diving opportunities for residents and visitors of Hawaii. Atlantis will not limit public access to the area.

The Board of Land and Natural Resources (Board) on September 23, 2005, under agenda item K-2 approved a Conservation District Use Permit to Atlantis; and on December 9, 2005, under agenda item D-8, the Board authorized the direct issuance of a term, non-exclusive easement to Atlantis for the use of state submerged lands, subject to certain terms and conditions. The Board granted Atlantis a right-of-entry to sink, and Atlantis did sink, the Carthaginian on December 13, 2005, because the Board did not want Atlantis to sink the Carthaginian during whale season and there was concern that the Carthaginian would not make it through another winter in Lahaina Harbor.

COMPENSATION

The Department was requested to submit a written report to the Legislature on the appraised value of the portion of the state-owned submerged lands the term, non-exclusive easement will cover, and the compensation for the easement when both of these values are determined.

The Department commissioned an appraisal report which determined the compensation for these state-owned submerged lands for the term, non-exclusive easement. The appraisal was reviewed and accepted by the Department in July 2006. A comparative rent methodology was used to determine the compensation. Therefore, the actual value of the state-owned submerged lands was not determined, only the compensation (rent) for the easement to utilize the state-owned submerged lands. The compensations for similar submarine dive sites in Waikiki and Kailua-Kona were researched by the appraiser. The appraisal indicates compensation for the Kailua-Kona dive site is currently \$660 per year, while the Waikiki site, determined via an arbitration process and effective January 26, 2005, was \$3,675 per year. After adjustments were applied for location, quantity and quality of the reef, and potential customer base, a final compensation was concluded. As of December 13, 2005, the date of the sinking of the Carthaginian, the compensation was determined to be \$2,760 per annum for the initial 10-year term of non-exclusive easement.