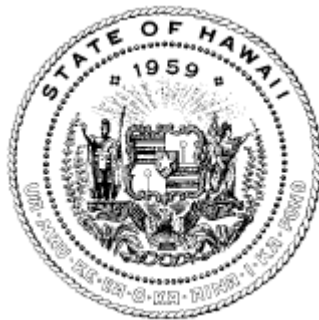


REPORT TO THE TWENTY- FOURTH LEGISLATURE
REGULAR SESSION OF 2008

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE SURFACE EASEMENT
AT KAHALUU, NORTH KONA, HAWAII



Prepared by

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

In response to Senate Concurrent Resolution 25, Senate Draft 1 (2007)

Honolulu, Hawaii

November 2007

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE SURFACE EASEMENT
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PURPOSE

Section 171-53, Hawaii Revised Statutes (HRS), requires the prior approval of the Governor and prior authorization of the Legislature by concurrent resolution, to lease submerged public lands. The Senate of the Twenty-fourth Legislature of the State of Hawaii, Regular Session of 2007, the House of Representatives concurring, pursuant to the adoption of Senate Concurrent Resolution 25, Senate Draft 1, authorized the Board of Land and Natural Resources (Land Board) to lease a term, non-exclusive surface easement at Kahaluu, North Kona, Hawaii, pursuant to section 171-53, HRS.

Due to certain Hawaii Supreme Court rulings regarding shoreline boundaries, it was held that foundation pilings installed in the construction of the original Keauhou Beach Hotel (Hotel) were encroaching onto state lands at Kahaluu, North Kona, Hawaii, identified as Tax Map Key: (3) 7-8-013:43.

The Land Board on February 7, 1969, and by way of public auction, granted a term, non-exclusive surface easement for the encroachment identified as General Lease (GL) S-4227 to Island Holidays, Ltd.

In connection with a sale of the Hotel in 1983, the easement was assigned to Ho'omahele, Ltd. and concurrently assigned to Kona Joint Venture I, Ltd. on August 31, 1983. As a result of a bankruptcy case, the easement was then assigned to Azabu USA (Kona) Co., Ltd. in 1987. In connection with another sale of the Hotel, the easement was again assigned, from Azabu USA (Kona) Co., Ltd. to SWVP Keauhou, LLC in 1998.

At its March 24, 2006, meeting, the Land Board approved the further assignment of the easement, from SWVP Keauhou, LLC to KBH, Inc. KBH, Inc., seeks to enter into a new sixty-five year ground lease with Kamehameha Schools, the owner of the fast land portion of the property that the Hotel sits on.

KBH, Inc., is simultaneously seeking cancellation of GL S-4227 and issuance of a new term, non-exclusive surface easement for sixty-five years from the Land Board to run concurrently with the sixty-five year ground lease it hopes to attain from the Kamehameha Schools.

On January 12, 2007, under agenda item D-2, the Land Board approved the simultaneous cancellation of GL S-4227 and the direct issuance of a term, non-exclusive surface easement to KBH, Inc. for the use of public lands, subject to certain terms and conditions.

COMPENSATION

The Department of Land and Natural Resources (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. As of the effective date of January 12, 2007, the appraisal indicates the value for the state-owned submerged lands was \$204,220 and the one-time compensation for the 65-year term easement was determined to be \$61,000.