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

January 12, 2007

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

PSF No.: 06HD-237

HAWAII

Termination of Term, Non-Exclusive Surface Grant of Easement No. 4227; Issuance of New Grant of Term, Non-Exclusive Surface Easement to KBH, Inc., Kahaluu, North Kona, Hawaii, Tax Map Key: 3rd/ 7-8-13: 042

APPLICANT:

KBH, Inc., a Hawaii corporation, whose business and mailing address is 78-6740 Makolea Street, Kailua-Kona, Hawaii 96740.

LEGAL REFERENCE:

Section 171-53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Government submerged land located at Kahaluu, North Kona, Hawaii, identified as TMK: 3rd/ 7-8-013: 42, as shown on the attached map labeled Exhibit A.

AREA:

0.128 acres or 5,557 square feet, more or less.

ZONING:

State Land Use District:	Conservation
County of Hawaii CZO:	Not Applicable

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 an existing termed, non-exclusive easement identified as General Lease No. S-4227, to KBH, Inc., expiring on February 6, 2034, for the purposes of:

"To construct, reconstruct, install, maintain, repair, replace and remove a building and appurtenances thereto over and upon the surface of said easement area."

CHARACTER OF USE:

Non-exclusive surface easement to construct, reconstruct, install, maintain, repair, replace and remove a building and appurtenances thereto over and upon the surface of said easement area.

COMMENCEMENT DATE:

Term of the new easement will be for sixty-five (65) years, commencing upon termination of the existing term, non-exclusive easement identified as General Lease No. S-4227, specific date will be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Sixty-five (65) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent site visit, Office of Conservation and Coastal Lands (OCCL) staff observed the subject improvements were built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1) Pay for an appraisal to determine one-time payment;

2) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Due to certain Supreme Court rulings regarding shoreline boundaries, it was determined that foundation pilings that were installed in connection with the construction of the original Keauhou Beach Hotel were encroaching on a tidal pool area owned by the State of Hawaii. As a result, with the required Board approvals and by way of public auction, a grant of non-exclusive surface easement for the encroachment identified as General Lease S-4227 was issued to Island Holidays, Ltd. dated February 7, 1969.

In connection with a sale of the hotel in 1983, the subject easement was assigned to a Ho'omahele, Ltd. and concurrently assigned to a Kona Joint Venture I, Ltd. A consent to both assignments dated August 31, 1983 was duly executed by the department. As a result of a bankruptcy case, the easement was then assigned to an Azabu U.S.A. (Kona) Co., Ltd. in 1987. In connection with another sale of the hotel, the easement was again assigned from Azabu U.S.A. (Kona) Co., Ltd. to a SWVP Keauhou L.L.C. in 1998. SWVP Keauhou L.L.C. later sold the hotel property to KBH, Inc.

At it's meeting of March 24, 2006, the Board approved the further assignment of the subject easement from SWVP Keauhou L.L.C. to KBH, Inc. The easement for the encroachment is a small portion of the hotel area. KBH, Inc. wants to enter into a new 65 year lease on the property in connection with a total re-development of the resort. Such a commitment requires that the term of the subject easement be extended in accordance with the requirements of financing for the hotel and its re-development.

KBH, Inc. is currently in compliance with all terms and conditions of the grant of easement.

KBH, Inc. 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.

The consideration for the existing easement was a one-time payment and as such there are no outstanding rental reopening issues.

No agency or community comments were solicited as this is an existing easement and is not a new disposition.

Office of Conservation and Coastal Lands (OCCL) staff has indicated that the subject improvements were built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

Discuss any other pertinent issues or concerns, including but not limited to, those for which a special condition was made in the Recommendation section.

RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the leasehold or fee ownership of the abutting parcel described as Tax Map Key: (3) 7-8-013: 043, provided the succeeding owner 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.

2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the termination of the existing term, non-exclusive easement identified as General Lease S-4227 and the issuance of a new term, non-exclusive easement to KBH, Inc. covering the subject area, "To construct, reconstruct, install, maintain, repair, replace and remove a building and appurtenances thereto over and upon the surface of said easement area", 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 shoreline encroachment 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: (3) 7-8-013: 043, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

   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.

Respectfully Submitted,

Charlene E. Unoki

for Wesley T. Matsunaga
Acting District Land Agent

APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson

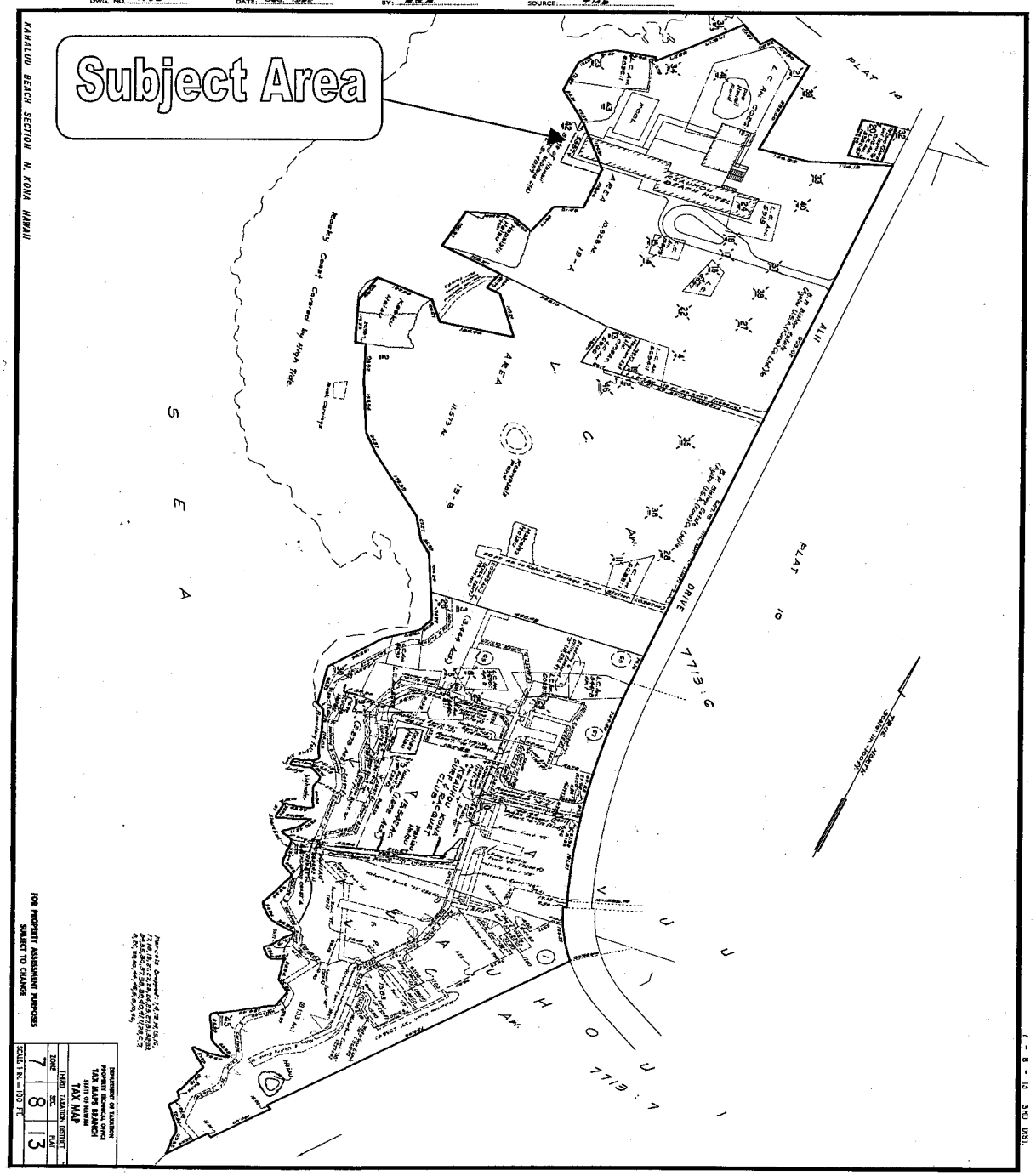
Subject Area
KAHALUU BEACH SECTION N. KONA HAWAII
PLAT 14
PLAT 10
ALII DRIVE
AREA
FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE
TAX MAP
7
8
13

EXHIBIT A