

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

February 22, 2019

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

Hawaii

Mutual Cancellation of Non-Exclusive Easement S-5963, BP Bishop Estate,
Grantee, for Building Foundation Footings, Kahaluu, North Kona, Hawaii, Tax
Map Key: (3) 7-8-013:042.

PURPOSE:

Mutual cancellation of Non-Exclusive Easement S-5963, BP Bishop Estate, Grantee.

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Submerged Government land situated at Kahaluu, North Kona, identified by Tax Map
Key: (3) 7-8-013:042, as shown on the attached map labeled Exhibit A.

AREA:

0.128 acre 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

CHARACTER OF USE:

Non-exclusive term easement purposes.

TERM OF EASEMENT:

65 years, commencing on January 12, 2007 and expiring on January 11, 2072.

ANNUAL RENTAL:

One-time payment of \$61,000.00

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 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 term surface easement for the encroachment identified as Non-Exclusive Easement S-4227 was issued to Island Holidays, Ltd. dated February 7, 1969 with an expiration date of February 6, 2034.

Through mesne assignments, the easement was assigned to KBH, Inc., which had plans for a total re-development of the resort. The financing required a term greater than the remaining on the easement and at its meeting of January 12, 2007, item D-2, the Board approved termination of the original easement and sale of a new 65-year easement to KBH, Inc. for the submerged land area. The new easement contains a provision for the easement to run with the land and inure to the benefit of TMK: (3) 7-8-013:043 (the hotel property), which is owned by BP Bishop Estate (KSBE).

In 2012, KBH, Inc. ceased operations of the Keauhou Beach Resort and its lease with KSBE for the hotel lands was cancelled. The Hawaii District Land Office (HDLO) was contacted by KSBE to determine what needed to be done to cancel the easement and remove the hotel footings from the easement area.

KSBE is in the process of developing the former hotel site as part of its Kahalu'u Ma Kai Educational and Cultural Complex (Project). The plan called for the hotel to be demolished and the footings leveled with the surrounding floor of the tidal pool area. KSBE was responsible for all permitting and environmental compliance. The process was lengthy, but finally completed in late 2018 (see photos attached as Exhibit B).


Since the purpose of the easement was to accommodate the encroaching footings of the

hotel structure, which have been removed, and KSBE does not plan to utilize the easement area for its project, staff is recommending cancellation of the easement.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of Non-Exclusive Easement No. S-5963 under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following;
 - A. The standard terms and conditions of the most current mutual cancellation of easement form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

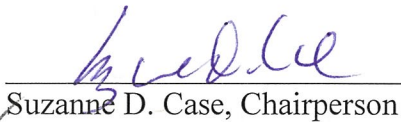

Suzanne D. Case, Chairperson

EXHIBIT A



EXHIBIT B

Overlooking easement area.

A total of 8 footings were removed from the easement area.



Footings removed from areas indicated.

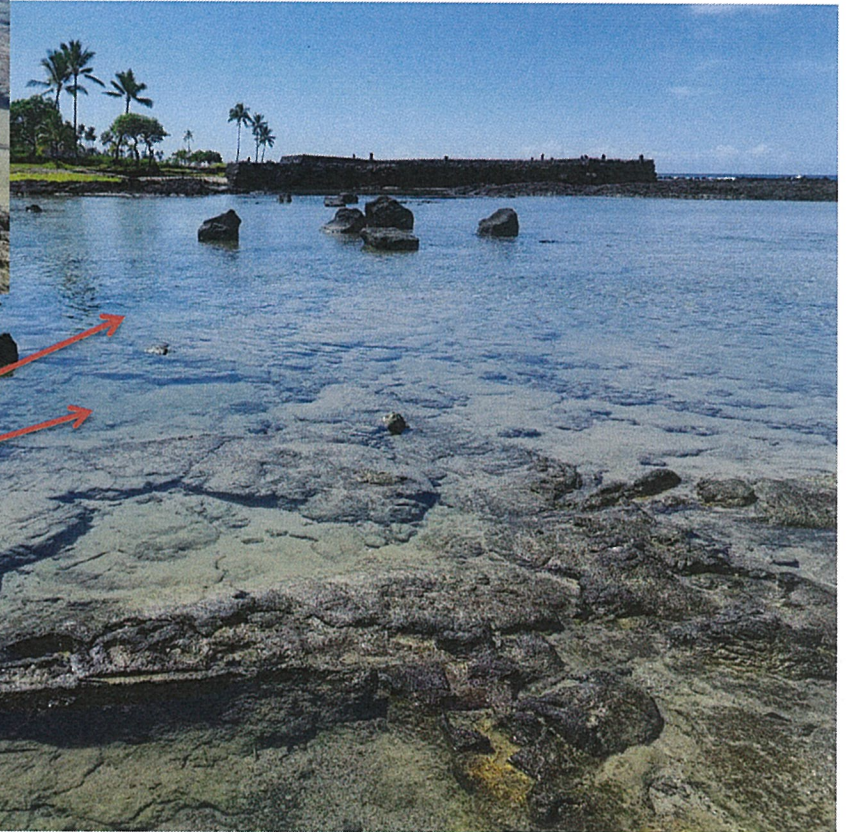


EXHIBIT B



Two representative
footing removal areas

