

JAN 24 2007

SENATE CONCURRENT RESOLUTION

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

1 WHEREAS, due to certain Supreme Court rulings regarding
2 shoreline boundaries, it was determined that foundation pilings
3 installed in the construction of the original Keauhou Beach
4 Hotel (Hotel) were encroaching onto state lands at Kahaluu,
5 North Kona, Hawaii, identified as Tax Map Key: (3) 7-8-013:43;
6 and
7

8 WHEREAS, the Board of Land and Natural Resources on
9 February 7, 1969, and by way of public auction, granted a term,
10 non-exclusive surface easement for the encroachment identified
11 as General Lease S-4227 to Island Holidays, Ltd.; and
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13 WHEREAS, in connection with a sale of the Hotel in 1983,
14 said easement was assigned to Ho'omahahele, Ltd. and concurrently
15 assigned to Kona Joint Venture I, Ltd. on August 31, 1983; and
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17 WHEREAS, as a result of a bankruptcy case, said easement
18 was then assigned to Azabu U.S.A. (Kona) Co., Ltd. in 1987; and
19

20 WHEREAS, in connection with another sale of the Hotel, said
21 easement was again assigned, from Azabu U.S.A. (Kona) Co., Ltd.
22 to SWVP Keauhou, L.L.C. in 1998; and
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24 WHEREAS, at its March 24, 2006, the Board of Land and
25 Natural Resources approved the further assignment of said
26 easement, from SWVP Keauhou, L.L.C. to KBH, Inc.; and
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28 WHEREAS, KBH, Inc., seeks to enter into a new sixty-five
29 year ground lease with the Kamehameha Schools, the owner of fast
30 land portion of the property that the Hotel sits on; and
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32 WHEREAS, KBH, Inc., is simultaneously seeking cancellation
33 of General Lease S-4227 and issuance of a new term, non-
34 exclusive surface easement for sixty-five years, from the Board

1 of Land and Natural Resources to run concurrently with the
2 sixty-five year ground lease it hopes to attain from the
3 Kamehameha Schools; and

4
5 WHEREAS, on January 12, 2007, under agenda item D-2, the
6 Board of Land and Natural Resources approved the simultaneous
7 cancellation of General Lease S-4227 and the direct issuance of
8 a term, non-exclusive surface easement to KBH, Inc. for the use
9 of public lands, subject to certain terms and conditions; and

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11 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
12 the prior approval of the Governor and prior authorization of
13 the Legislature by concurrent resolution to lease submerged
14 public lands; now, therefore,

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16 BE IT RESOLVED by the Senate of the Twenty-fourth
17 Legislature of the State of Hawaii, Regular Session of 2007, the
18 House of Representatives concurring, that the Board of Land and
19 Natural Resources is hereby authorized to lease a term, non-
20 exclusive surface easement at Kahaluu, North Kona, Hawaii,
21 pursuant to section 171-53, Hawaii Revised Statutes; and

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23 BE IT FURTHER RESOLVED that a certified copy of this
24 Concurrent Resolution be transmitted to the Chairperson of the
25 Board of Land and Natural Resources.

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29 OFFERED BY: _____

BY REQUEST

SAR

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: CONCURRENT RESOLUTION AUTHORIZING THE
ISSUANCE OF A TERM, NON-EXCLUSIVE SURFACE
EASEMENT AT KAHALUU, NORTH KONA, HAWAII.

PURPOSE: To seek the prior approval of the
Legislature by concurrent resolution to
permit the issuance of a term, non-exclusive
surface easement to KBH, Inc., at Kahaluu,
North Kona, Hawaii.

MEANS: Concurrent resolution pursuant to section
171-53, Hawaii Revised Statutes (HRS).

JUSTIFICATION: As a result of Supreme Court rulings
regarding shoreline boundaries, it was
determined that foundation pilings installed
in the construction of the original Keauhou
Beach Hotel were encroaching on a tidal pool
area owned by the State of Hawaii. To
remedy this situation, the Board of Land and
Natural Resources (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 S-
4227 to Island Holidays, Ltd.

Since that time, the Hotel has gone through
several ownerships. In the process, the
subject easement has been assigned to
various entities along the way.

At its March 24, 2006 meeting, the Board
approved the further assignment of the
subject easement to KBH, Inc., to expire on
February 6, 2034. KBH, Inc. in turn is
seeking to enter into a new 65-year lease
with Kamehameha Schools, the owner of fast
land portion of the property that the Hotel
sits on.

Subsequently on January 12, 2007, under
agenda item D-2, the Board approved the

simultaneous cancellation of General Lease 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.

From a practical standpoint and business perspective, the encroachment easement should be extended to match the term of the new ground lease on the fast lands. This concurrent resolution seeks the prior authorization from the Legislature to issue a new easement for sixty-five years, commencing upon cancellation of the existing term, surface non-exclusive easement identified as General Lease S-4227.

Impact on the public: None.

Impact on the department and other agencies:
Continued source of revenues to the State.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 101.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon adoption.