

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Thursday, March 11, 2021
9:00 AM
State Capitol, Via Videoconference, Room 430**

**In consideration of
HOUSE CONCURRENT RESOLUTION 23
AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT
COVERING A PORTION OF STATE SUBMERGED LANDS AT
WAIOHULI-KEOKEA HOMESTEADS, KIHEI, MAUI, FOR THE
EXISTING SEAWALL, ROCK REVETMENT, AND CONCRETE STEPS, AND FOR
USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS
CONSTRUCTED THEREON**

House Concurrent Resolution 23 requests the authorization to issue a term, non-exclusive easement covering 668 square feet, more or less, portion of state submerged lands identified as tax map key: (2) 3-9-012:seaward of 003, at Waiohuli-Keokea Homesteads, Kihei, Maui, for the use, repair, and maintenance of the existing seawall, rock revetment and portion of concrete steps constructed thereon, pursuant to Section 171-53, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) supports this Administration concurrent resolution.**

During a recent shoreline certification process it was determined that the revetment and a portion of the seawall and concrete stairs were located makai of the shoreline and are on State lands. Since the revetment and a portion of the seawall and concrete steps were found on State land located makai of the shoreline, such area should be considered as submerged lands subject to the approval of the Department's Office of Conservation and Coastal Lands (OCCL).

After reviewing submitted documentation, the OCCL determined that the seawall was legally constructed on government beach land in 1969. The OCCL supported a disposition through an easement. OCCL noted that there is little to no beach fronting the subject property and public access is limited due to extensive beach loss and shoreline armoring. Their conclusion was that the seawall easement would have no discernable effect on beach and recreational resources and would not act as a detriment to public access. Removal of the seawall may destabilize seawalls and revetments at adjacent properties, potentially threatening upland structures.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

At its meetings on June 9, 2017, under agenda item D-9, and April 26, 2019, under agenda item D-6, the Board of Land and Natural Resources (Board) unanimously approved the issuance of a term, non-exclusive easement for the purpose stated above and there was no public opposition.

The owners of the abutting property, Andrew J. Guzzo and Paisly Hannah Bender, are working with the Department to resolve the encroachment. As required by Section 171-53, HRS, the Board may lease submerged lands "with the prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution".

The previous owners paid the State the fair market value of the easement, in the amount of \$27,700, as consideration for the use of public lands as determined by an independent appraisal.

Thank you for the opportunity to comment on this measure.

The Honorable David A. Tarnas, Chair
The Honorable Patrick Pihana Branco, Vice Chair
Committee on Water and Land

Testimony of Paisly Hannah Bender
paisly.bender@gmail.com

Hearing: Thursday, March 11, 2021

Support for H.C.R. No. 23

Dear Chair Tarnas, Vice Chair Branco, and Members of the Committee:

My name is Paisly Bender. I am writing in support of H.C.R. 23, which concerns my home at the property identified at Tax Map Key (2) 3-9-012:003. H.C.R. 23 would authorize the Board of Land and Natural Resources (“BLNR”) to grant my husband and I a 55-year, Non-Exclusive Easement for the use, repair, and maintenance of an existing seawall, rock revetment, and portion of concrete steps that is encroaching on state submerged lands. The fair market value of the easement (\$27,700) has already been paid to the State. We have three points we submit to the Committee in support of H.C.R. 23.

I. The wall was initially built as part of a government program.

The property is located three lots north of Kalama Beach Park in Kihei. In the late 1960’s to early 1970’s the U.S. Army Corp of Engineers built a 2,600-foot boulder wall along the shoreline fronting Kalama Beach Park with State and County coordination and support.¹ **It is understood that the wall at Kalama Beach Park caused additional erosion to the north of the park.** This erosion led to the construction of seawalls to protect the residential properties along the 2,400 feet of coast north of Kalama Beach Park, including our property.

It is our understanding that the wall fronting our property was first built by the U.S. Army Corp of Engineers as a part of the same program as the Kalama Beach Park wall. Thus, the federal, state, and county governments initially decided to build the seawall protecting our property and paid for its construction.

In 1982, the seawall on our property was severely damaged in a storm. The owners at the time received an SBA Disaster Loan,² which was used to rebuild the wall with State and County permission. It is our understanding that the existing encroachments are a result of the initial building of the wall by the government in the 1970’s and the permitted repairs by the homeowners in the 1980s.

¹ Kihei Beach, US Army Corp of Engineers, <https://www.poh.usace.army.mil/Missions/Civil-Works/Civil-Works-Projects/Kihei-Beach-Shore-Protection-Project/>.

² The SBA is a federal government agency that provides low interest loans to assist businesses and homeowners recover from certain disasters. Disaster Assistance, U.S. Small Business Administration, <https://www.sba.gov/funding-programs/disaster-assistance>.

II. Approval of H.C.R. 23 will have no impact on beach access or coastal erosion.

As discussed in the previous section, if passed, H.C.R. 23 would resolve an existing encroachment that was built with State and County permission nearly 40 years ago. In reviewing county records for the four lots nearest ours, it appears that those property owners were granted similar easements in 2004, 2015, 2014, and 2013. Thus, the granting of the easement would be consistent with the treatment of properties in the immediate vicinity, as well as Kalama Park's 2,600-foot boulder wall.

Because of the character and nature of the neighborhood and surrounding properties all having seawalls and easements, removal of the encroachment fronting our property would have little to no effect on beach resources. In fact, the Office of Conservation and Coastal Lands reached this conclusion when it reviewed this request in July 2016. Additionally, the seawall and rock apron does not inhibit the public's access to the ocean at the beach access bordering our property.

III. We have concerns regarding maintenance and safety if H.C.R. 23 is not approved.

I live at the property with my husband, child, mother, and sister. In addition to our family and guests at our home, we also observe the public using the wall and area immediately surrounding the wall as a trail, a place to sit and enjoy the sunset, and a fishing spot on a daily basis. Our property also borders a beach access, which is used by the public night and day for fishing and accessing the ocean. **If H.C.R. No. 23 is not passed, we have serious concerns as to whether the wall and area surrounding the wall will be maintained in a manner that is safe for our family, the public, and the neighboring properties.** If the wall begins to fall into a state of disrepair, someone could get seriously injured as it is approximately 8-feet high.

Because the property runs along a chronically eroding shoreline, in part due to the wall at Kalama Beach Park, the seawall and rock apron fronting the wall provides significant protection from additional wave attack and the risk of erosion. I believe that removal or dilapidation of the wall would likely destabilize the surrounding area and threaten the safety of my home and my neighbor's home, while creating dangerous conditions to the public. Indeed, the Office of Conservation and Coastal Lands noted that removal of the of the rock apron alone "may destabilize seawalls and revetments on the adjacent properties, potentially affecting upland structures." This includes a neighboring house that is less than 20 feet from the seawall fronting my property.

In light of the foregoing, I respectfully request that the Committee pass H.C.R. 23. Thank you for the opportunity to submit testimony.