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GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Monday, March 15, 2021
1:00 PM**

State Capitol, Via Videoconference, Conference Room 229

**In consideration of
SENATE CONCURRENT RESOLUTION 87
AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT
COVERING A PORTION OF STATE SUBMERGED LANDS AT
KUAU, HAMAKUAPOKO, MAUI, FOR THE EXISTING SEAWALL AND CONCRETE
STEPS, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING
IMPROVEMENTS CONSTRUCTED THEREON.**

Senate Concurrent Resolution 87 requests the authorization to issue a term, non-exclusive easement covering 1,613 square feet, more or less, on a portion of state submerged lands identified as tax map key: (2) 2-6-010:seaward of 017, at Kuau, Hamakuapoko, Maui for the use, repair, and maintenance of the existing seawall and concrete steps constructed thereon, pursuant to Section 171-53, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) supports this concurrent resolution.**

In 2017 the seawall and concrete steps encroachment was brought to the landowner's attention during the due diligence process in preparation for selling the landward property. The landowner then contacted the Department's Office of Conservation and Coastal Land (OCCL) to seek resolution of the encroachment.

The curved seawall was built in the 1940s during World War II by the United States Army Corps of Engineers. The east and west corners of the seawall appear to have been built beyond the seaward metes and bounds on each end of the property. There are aerial images of the subject property dated January 28, 1964 which appear to show the existing seawall. The applicant provided affidavits from three separate individuals that claim the seawall existed prior to October 1964. Therefore, the seawall appears to be a nonconforming land use pursuant to Chapter 183C, HRS.

OCCL analyzed the encroachment and concluded that a Conservation District Use permit was not required because of the age of the seawall and stated that beach resources and public access

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

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FIRST DEPUTY

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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

were not negatively affected by the seawall. OCCL supported a disposition through an easement. Removal of the seawall may destabilize seawalls and revetments at adjacent properties, potentially threatening upland structures. The majority of the seawall is located on private property and there does not appear to be any benefit to removing the smaller encroaching seawall segments. Furthermore, the structure has been in place for over fifty years.

Subsequently, at its meetings on August 25, 2017, under agenda item D-10, July 13, 2018, under agenda item D-6, and September 11, 2020, under agenda item D-4, the Board of Land and Natural Resources (Board) at all three meetings unanimously approved a term, non-exclusive easement, for the purpose stated above, and there was no public opposition.

The applicant, Sea & Believe LLC, is working with the Department to resolve the encroachments through a disposition. 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 grantee shall pay the State the fair market value of the easement, as consideration for the use of public lands as determined by an independent appraisal.

Thank you for the opportunity to comment on this measure.