

JAN 25 2012

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# SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT  
COVERING A PORTION OF STATE SUBMERGED LANDS AT LAHAINA,  
MAUI, FOR MAINTENANCE AND REPAIR OF EXISTING DECK AND  
IMPROVEMENTS.

1           WHEREAS, concrete pilings were placed on submerged lands in  
2 Lahaina, Maui, and owned by the State of Hawaii sometime in the  
3 1920s; and

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5           WHEREAS, in 1968, Patrick J. Ballenger and Mariana Van Blom  
6 acquired private parcel 4, adjacent to land owned by the State  
7 of Hawaii; and

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9           WHEREAS, at that time, there was an old building with a  
10 deck extending out over the ocean on private parcel 4; and

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12           WHEREAS, in 1968, the County of Maui issued a building  
13 permit to the owners to rebuild the existing building and deck;  
14 and

15  
16           WHEREAS, many parts of the old building were left intact  
17 and additional improvements were made to enhance the property;  
18 and

19  
20           WHEREAS, in 1987, the Department of Land and Natural  
21 Resources informed the owners' tenant, Oceanhouse Restaurant,  
22 that the building was encroaching over 1,229 feet of state land;  
23 and

24  
25           WHEREAS, a proposal was made between the Department of Land  
26 and Natural Resources and the owners to resolve the encroachment  
27 by requiring the owners to submit a conservation district use  
28 application; and

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30           WHEREAS, upon the approval of the conservation district use  
31 application, the Department of Land and Natural Resources would



1 issue a grant of easement covering the use of state submerged  
2 lands; and

3  
4 WHEREAS, on April 28, 1989, under agenda item H-7, the  
5 Board of Land and Natural Resources approved the owners' after-  
6 the-fact conservation district use permit for commercial use of  
7 state submerged lands; and

8  
9 WHEREAS, on October 27, 1989, under agenda item F-12, the  
10 Board of Land and Natural Resources approved the direct issuance  
11 of a term, non-exclusive easement to Patrick J. Ballenger,  
12 Trustee of the Patrick J. Ballenger and Mariana Von Blom Trust;  
13 and

14  
15 WHEREAS, the lease of Non-Exclusive Easement S-5217  
16 commenced on August 1, 1991, for a term of twenty years; and

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18 WHEREAS, the encroachment area is approximately 1,312  
19 square feet; and

20  
21 WHEREAS, on November 22, 2010, under agenda item D-6, the  
22 Board of Land and Natural Resources approved and amended the  
23 direct issuance of a term, non-exclusive easement to Patrick J.  
24 Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust,  
25 dated October 10, 1988, and Matthew Ballenger, Trustee of the  
26 Revocable Trust Agreement of Mariana Von Blom, dated March 16,  
27 1983; and

28  
29 WHEREAS, the character of use of the term, non-exclusive  
30 easement is the right, privilege, and authority to maintain and  
31 repair the existing deck, and to use, repair, and maintain the  
32 existing improvements constructed thereon, located on state  
33 submerged lands, subject to certain terms and conditions; and

34  
35 WHEREAS, on July 8, 2011, under agenda item D-8, the Board  
36 of Land and Natural Resources approved to amend its prior action  
37 of November 22, 2010, by authorizing a one-year holdover for  
38 Lease of Non-Exclusive Easement S-5217 until the Department of  
39 Land and Natural Resources and the owners are able to obtain the  
40 legislative concurrent resolution from the Twenty-sixth  
41 Legislature of the State of Hawaii, Regular Session of 2012; and

42  
43 WHEREAS, section 171-53, Hawaii Revised Statutes, requires  
44 the prior approval of the Governor and prior authorization of



# S.C.R. NO. 12

1 the Legislature by concurrent resolution to lease state  
2 submerged lands; now, therefore,  
3

4 BE IT RESOLVED by the Senate of the Twenty-sixth  
5 Legislature of the State of Hawaii, Regular Session of 2012, the  
6 House of Representatives concurring, that the Board of Land and  
7 Natural Resources is hereby authorized to issue a term, non-  
8 exclusive easement covering a portion of state submerged lands  
9 fronting the property identified as tax map key: (2) 4-5-001:  
10 seaward of 4, at Lahaina, Maui, for maintenance and repair of  
11 the existing deck and for use, repair, and maintenance of the  
12 existing improvements constructed thereon, pursuant to section  
13 171-53, Hawaii Revised Statutes; and  
14

15 BE IT FURTHER RESOLVED that a certified copy of this  
16 Concurrent Resolution be transmitted to the Chairperson of the  
17 Board of Land and Natural Resources.  
18  
19  
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OFFERED BY:

Rosalee H. Bab  
S.S.I.L.

J. Kei Egosh

Daniel J. [Signature]

