
SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT
COVERING A PORTION OF STATE SUBMERGED LANDS SEAWARD OF TAX
MAP KEY: (2) 4-3-010:009 AT KAHANA, LAHAINA, MAUI, FOR
SEAWALL AND ROCK REVETMENT PURPOSES.

1 WHEREAS, the five condominium and hotel complexes along
2 Kahana Beach in West Maui stretching from the Pohailani
3 Condominiums to the Sands of Kahana have experienced serious
4 shoreline erosion problems for many years; and

5
6 WHEREAS, the long-term erosion rate of Kahana Beach is
7 approximately 0.8 feet per year, and there appears to have been
8 a net sand loss from the overall system over the decades so that
9 the sand beach has been lost with increasing frequency; and

10
11 WHEREAS, all five condominium and hotel complexes have
12 obtained permits and approvals to install permanent or emergency
13 protective measures to address the shoreline erosion; and

14
15 WHEREAS, the Hololani Resort Condominiums, represented by
16 the Association of Apartment Owners of Hololani (Hololani), is
17 one of the condominium complexes located on Kahana Beach and
18 received emergency authorization from the Department of Land and
19 Natural Resources and the County of Maui in 2007 to install sand
20 bags and erosion blankets; and

21
22 WHEREAS, since that time, Hololani has completed a lengthy
23 permit and approval process at the federal, state, and county
24 levels to construct a long-term solution consisting of a steel
25 sheet pile seawall and rock revetment (proposed project) that
26 will be placed partially on state submerged lands; and

27
28 WHEREAS, this permitting process included at least nine
29 separate opportunities for the public and other government



1 agencies to comment on the proposed project at various federal,
2 state, and county agencies; and

3
4 WHEREAS, on May 9, 2014, the Board of Land and Natural
5 Resources approved a Conservation District Use Permit for
6 Hololani's proposed project, after issuing a finding of no
7 significant impact on the Hololani's environmental assessment
8 and after conducting a public hearing on February 10, 2014; and
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10 WHEREAS, Hololani substantially modified the project to
11 conform to conditions of the Conservation District Use Permit to
12 minimize the use of submerged lands; and
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14 WHEREAS, on July 12, 2016, the County Planning Commission
15 approved a Special Management Area Permit for Hololani's
16 proposed project after conducting public hearings on April 26
17 and June 14, 2016; and
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19 WHEREAS, of particular note, in its approval of a Special
20 Management Area Permit, the County Planning Commission noted
21 that the approval included a condition that the seawall be
22 removed, at Hololani's expense, if a beach restoration project
23 goes forward; and
24

25 WHEREAS, furthermore, the Conservation District Use Permit
26 approved by the Board of Land and Natural Resources and the
27 Special Management Area Permit approved by the County Planning
28 Commission included conditions regarding public access,
29 including that Hololani maintain safe lateral beach access and
30 provide, maintain, and properly post signage for public access
31 through the property to the shoreline; and
32

33 WHEREAS, on January 12, 2018, the Board of Land and Natural
34 Resources approved the issuance of a term, non-exclusive
35 easement to Hololani for the use of state submerged lands for
36 the proposed project; and
37

38 WHEREAS, the easement area is approximately 6,128 square
39 feet and will be finalized and subject to review and approval by
40 the Department of Accounting and General Services' Survey
41 Division; and
42



1 WHEREAS, Hololani shall pay the State the fair market value
2 of the easement as consideration for the use of public lands and
3 as determined by independent appraisal; and
4

5 WHEREAS, Hololani has designed, permitted, and will
6 construct public infrastructure and amenities in the form of a
7 new, permanent public beach access stairway, and a new twenty-
8 four-inch storm drain outlet within the easement area; and
9

10 WHEREAS, this body notes that the term, non-exclusive
11 easement is unique and fact-specific, and is not intended to set
12 a precedent for the building of new seawalls and other shoreline
13 hardening structures on public lands; and
14

15 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
16 the prior approval of the Governor and prior authorization of
17 the Legislature by concurrent resolution to lease submerged
18 public lands; now, therefore,
19

20 BE IT RESOLVED by the Senate of the Twenty-ninth
21 Legislature of the State of Hawaii, Regular Session of 2018, the
22 House of Representatives concurring, that the Board of Land and
23 Natural Resources is hereby authorized to issue a term, non-
24 exclusive easement covering a portion of state submerged lands
25 fronting the property identified as Tax Map Key: (2) 4-3-010:
26 seaward of 009, Kahana, Lahaina, Maui, for the use, maintenance,
27 repair, replacement, and removal of a steel sheet pile seawall
28 and rock revetment; provided that the authorization shall be
29 subject to the following:
30

31 (1) If a beach restoration project goes forward, the
32 Association of Apartment Owners of Hololani shall
33 remove the seawall and any other structures built as
34 part of the proposed project at Hololani's expense;
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36 (2) The Association of Apartment Owners of Hololani shall
37 ensure unrestricted public access laterally and
38 vertically and post appropriate signage though the
39 property to the shoreline; and
40

41 (3) A full waiver of liability shall be executed that
42 includes the following terms:



- 1
- 2 (A) All improvements constructed in the easement area
- 3 shall remain under the ownership of the
- 4 Association of Apartment Owners of Hololani;
- 5
- 6 (B) The Association of Apartment Owners of Hololani
- 7 shall maintain, repair, and upkeep the easement
- 8 area and all improvements located thereon to
- 9 ensure public safety and shall release,
- 10 indemnify, defend, and hold the State harmless
- 11 from and against any claim or demand for loss,
- 12 liability, or damage, including claims for bodily
- 13 injury, wrongful death, or property damage,
- 14 arising with respect to the easement area, all
- 15 improvements located thereon, and the area
- 16 dedicated to provide vertical public access to
- 17 the shoreline; and
- 18
- 19 (C) The Association of Apartment Owners of Hololani
- 20 shall procure and maintain, at its own cost and
- 21 expense, in full force and effect throughout the
- 22 term of the easement, general liability insurance
- 23 to cover the entire easement area, including all
- 24 improvements made thereon; and
- 25

26 BE IT FURTHER RESOLVED that a certified copy of this
 27 Concurrent Resolution be transmitted to the Chairperson of the
 28 Board of Land and Natural Resources.

