

MAR 05 2019

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO  
ACQUIRE BY EMINENT DOMAIN THE SEAWALL AND THE REAL PROPERTY  
UNDERNEATH THE SEAWALL THAT IS LOCATED ON OR NEAR THE  
SEAWARD BOUNDARIES OF PROPERTY BETWEEN 2943 KALAKAUA AVENUE  
AND 3019 KALAKAUA AVENUE, OAHU, HAWAII.

1           WHEREAS, for the past sixty-five years, residents and  
2 visitors of Oahu have been free to walk along the cement path  
3 atop a seawall on or near the seaward boundaries of property  
4 between 2943 Kalakaua Avenue and 3019 Kalakaua Avenue to access  
5 the beach, shoreline, and ocean for swimming, surfing, fishing,  
6 and other activities of island living; and  
7

8           WHEREAS, over the course of these decades, the State has  
9 paid for and completed repairs and maintenance on the seawall,  
10 thereby enabling the public to continue to safely use the  
11 footpath; and  
12

13           WHEREAS, as recently as 2006, the Legislature appropriated  
14 funds to repair the seawall; however, the State shortly  
15 thereafter disclaimed any duty to maintain the seawall, which  
16 resulted in a lawsuit to require the State to maintain and keep  
17 the seawall in good and safe condition; and  
18

19           WHEREAS, in *Gold Coast Neighborhood Association v. State*,  
20 136 Hawaii 340, 361 P.3d 1243 (App. 2015), the Intermediate  
21 Court of Appeals affirmed the Circuit Court's holding that the  
22 State had acquired an easement over the seawall by common law  
23 implied dedication and the seawall and real property under the  
24 seawall by surrender; and  
25

26           WHEREAS, on certiorari, the Supreme Court in *Gold Coast*  
27 *Neighborhood Association v. State*, 140 Hawaii 437, 403 P.3d 214  
28 (2017) affirmed the Circuit Court and Intermediate Court of  
29 Appeals' decision that the State acquired an easement over and



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1 across the seawall by virtue of implied dedication, but held  
 2 that the State did not own the seawall or the real property  
 3 underneath it by surrender; and

4  
 5 WHEREAS, as a result, the State has interpreted the ruling  
 6 of the case to mean that the State is only responsible for  
 7 maintenance of the top surface of the seawall rather than repair  
 8 and maintenance of the full length and depth of the seawall; and


9  
 10 WHEREAS, the Gold Coast Neighborhood Association has  
 11 expressed support for the option of the State taking the seawall  
 12 and the real property underneath the seawall through eminent  
 13 domain in order to provide for the repair and maintenance of the  
 14 seawall and continued public access to the beach and shoreline;  
 15 now, therefore,

16  
 17 BE IT RESOLVED by the Senate of the Thirtieth Legislature  
 18 of the State of Hawaii, Regular Session of 2019, the House of  
 19 Representatives concurring, that the Department of Land and  
 20 Natural Resources is requested to acquire by eminent domain the  
 21 seawall and the real property underneath the seawall that is  
 22 located on or near the seaward boundaries of property between  
 23 2943 Kalakaua Avenue and 3019 Kalakaua Avenue, Oahu, Hawaii; and

24  
 25 BE IT FURTHER RESOLVED that certified copies of this  
 26 Concurrent Resolution be transmitted to the Chairperson of the  
 27 Board of Land and Natural Resources and Chairperson of the Gold  
 28 Coast Neighborhood Association.

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 30  
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OFFERED BY:

  
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 Kurt Ferrell  
 Clarence K. Rishikera  
 J. Allen J.

