

MAR 05 2019

SENATE 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
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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
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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
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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
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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
30 across the seawall by virtue of implied dedication, but held



1 that the State did not own the seawall or the real property
2 underneath it by surrender; and
3

4 WHEREAS, as a result, the State has interpreted the ruling
5 of the case to mean that the State is only responsible for
6 maintenance of the top surface of the seawall rather than repair
7 and maintenance of the full length and depth of the seawall; and
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9 WHEREAS, the Gold Coast Neighborhood Association has
10 expressed support for the option of the State taking the seawall
11 and the real property underneath the seawall through eminent
12 domain in order to provide for the repair and maintenance of the
13 seawall and continued public access to the beach and shoreline;
14 now, therefore,
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16 BE IT RESOLVED by the Senate of the Thirtieth Legislature
17 of the State of Hawaii, Regular Session of 2019, that the
18 Department of Land and Natural Resources is requested to acquire
19 by eminent domain the seawall and the real property underneath
20 the seawall that is located on or near the seaward boundaries of
21 property between 2943 Kalakaua Avenue and 3019 Kalakaua Avenue,
22 Oahu, Hawaii; and
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24 BE IT FURTHER RESOLVED that certified copies of this
25 Resolution be transmitted to the Chairperson of the Board of
26 Land and Natural Resources and Chairperson of the Gold Coast
27 Neighborhood Association.
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OFFERED BY: *[Signature]*
Clarence K. Nishikawa
[Signature]

