

JAN 24 2024

SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT MAALAEA BEACH LOTS, WAIKAPU, WAILUKU, MAUI, FOR THE EXISTING SEAWALL, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

1 WHEREAS, a portion of the existing seawall seaward of the
2 property identified as Tax Map Key: (2) 3-8-014:022, Maalaea
3 Beach Lots, Waikapu, Wailuku, Maui (subject property), was
4 placed on state submerged lands; and

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6 WHEREAS, the property identified as Tax Map Key: (2) 3-8-
7 014:022 contained a sandy beach and no seawall or other
8 shoreline protection structures when it was originally purchased
9 by Wendell and Myrtle Crockett in the 1940s; and

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11 WHEREAS, the Territory of Hawaii built the Maalaea Small
12 Boat Harbor abutting the western corner of the makai boundary of
13 the subject property in 1952 and added improvements, including
14 break walls, to the harbor facility in 1955 and 1959; and

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16 WHEREAS, in the early 1950s, around the same time that that
17 Territory of Hawaii was building the Maalaea Small Boat Harbor
18 and its associated improvements, a seawall was installed seaward
19 of the entire makai boundary of the subject property and
20 continuing across the makai boundaries of neighboring properties
21 to the east, and appears to be a non-conforming structure as it
22 was built before October 1, 1964; and

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24 WHEREAS, around August 2015, the Department of Land and
25 Natural Resources' Office of Conservation and Coastal Lands
26 worked with the current property owners, the Association of
27 Apartment Owners of Milowai-Maalaea, to resolve the existing
28 seawall encroachment; and

1 WHEREAS, the age and origin of the seawall was confirmed
2 through an environmental assessment conducted as part of the
3 2015 land disposition process; and
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5 WHEREAS, the Office of Conservation and Coastal Lands
6 indicated it had no objections to a long-term easement to
7 resolve the encroachment; and
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9 WHEREAS, at its meeting of October 9, 2015, under agenda
10 item D-6, the Board of Land and Natural Resources approved a
11 grant of a fifty-five year term, non-exclusive easement to
12 resolve the seawall encroachment, and authorized the non-
13 exclusive easement to run with the land and inure to the benefit
14 of the abutting real property; and
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16 WHEREAS, at its meeting of January 8, 2021, under agenda
17 item D-5, the Board of Land and Natural Resources approved an
18 amendment to the Board of Land and Natural Resources action of
19 October 9, 2015, item D-6, to shorten the term of the non-
20 exclusive easement from fifty-five to twenty-five years, or in
21 the event the applicant is not successful in acquiring the fee
22 or obtaining an extension of the ground lease of the abutting
23 apartment property, to end on December 31, 2038, concurrent with
24 the expiration of the ground lease for the abutting apartment
25 property; and
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27 WHEREAS, the total encroachment area was determined to be
28 1,737 square feet, as reviewed and approved by the Department of
29 Accounting and General Services' Survey Division; and
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31 WHEREAS, on January 25, 2021, the Association of Apartment
32 Owners of Milowai-Maalaea executed a removal bond agreement with
33 Great American Insurance Company in which the Association
34 guaranteed the State of Hawaii the sum of \$432,000 to insure
35 against the cost of removing the encroachment in the event that
36 the Legislature and the Governor do not approve the issuance of
37 the non-exclusive easement approved by the Board of Land and
38 Natural Resources; and
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40 WHEREAS, the Board of Land and Natural Resources executed
41 Revocable Permit No. S-7932 on February 16, 2021, granting the
42 Association of Apartment Owners of Milowai-Maalaea the right to
43 enter and occupy the subject parcel of state submerged land,

1 subject to terms including the payment of \$255 monthly rental
2 amount; and

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4 WHEREAS, the grantee has paid the State the fair market
5 value of the non-exclusive easement as consideration of the use
6 of state submerged lands, determined to be \$63,300 by an
7 independent appraisal; and

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9 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
10 the prior approval of the Governor and prior authorization of
11 the Legislature by Concurrent Resolution to lease state
12 submerged lands; now, therefore,

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14 BE IT RESOLVED by the Senate of the Thirty-second
15 Legislature of the State of Hawaii, Regular Session of 2024, the
16 House of Representatives concurring, that the Board of Land and
17 Natural Resources is hereby authorized to issue a term, non-
18 exclusive easement covering a portion of state submerged lands
19 seaward of the property identified as Tax Map Key: (2) 3-8-014:
20 022, Maalaea Beach Lots, Waikapu, Wailuku, Maui, for the
21 existing seawall, and for use, repair, and maintenance of the
22 existing improvements constructed thereon pursuant to section
23 171-53, Hawaii Revised Statutes; and

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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 the Governor.

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OFFERED BY: 

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: CONCURRENT RESOLUTION AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT MAALAEA BEACH LOTS, WAIKAPU, WAILUKU, MAUI, FOR THE EXISTING SEAWALL, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

PURPOSE: To seek the authorization of the Legislature by concurrent resolution for the issuance of a term, non-exclusive easement by the Board of Land and Natural Resources (Board) for the existing seawall, and for use, repair, and maintenance of the existing improvements constructed thereon.

MEANS: Concurrent resolution pursuant to section 171-53, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The existing seawall seaward of the property identified as Tax Map Key: Tax Map Key: (2) 3-8-014:022, Maalaea Beach Lots, Waikapu, Wailuku, Maui (subject property), was placed on state submerged lands.

The Department's Office of Conservation and Coastal Lands worked with the current property owners, the Association of Apartment Owners of Milowai-Maalaea, to resolve the encroachment. The Office of Conservation and Coastal Lands has no objection to granting a non-exclusive easement to resolve the seawall encroachment, which has an extensive history unrelated to the current property owners.

On October 9, 2015, under agenda item D-6, the Board approved a grant of a fifty-five year term, non-exclusive easement to resolve the seawall encroachment, and authorized the easement to run with the land and inure to the benefit of the abutting real property. This easement was never consummated, in

part, because the surveyor working on the behalf of the grantee passed away before the approval process could be completed.

On January 8, 2021, under agenda item D-5, the Board approved an amendment to the Board action of October 9, 2015, item D-6, to shorten the term of the easement from fifty-five to twenty-five years, or in the event the current lessee of the abutting apartment property is not successful in becoming the property's owner, the shortened easement term would end on December 31, 2038, concurrent with the expiration of the ground lease for the abutting apartment property. The Board and the Association of Apartment Owners of Milowai-Maalaea executed Revocable Permit S-7932 for the subject property on February 16, 2021.

Since that time, the grantee has paid a monthly rental amount of \$225 in exchange for the right to occupy and use the premises under a right-of-entry and revocable permit.

The property owners have paid an amount of \$63,300, as determined by independent appraisal, for a 25-year easement to resolve the encroachment from the existing seawall seaward of the subject property.

Section 171-53, HRS, requires the prior approval of the Governor and prior authorization of the Legislature by concurrent resolution to lease state submerged lands. As such, this concurrent resolution has been prepared in compliance with the requirements of section 171-53, HRS.

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon adoption.