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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR
Chairperson**

**Before the House Committee on
FINANCE**

**Friday, April 20, 2012
3:00 PM
State Capitol, Conference Room 308**

**In consideration of
SENATE CONCURRENT RESOLUTION 12
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 IMPROVMENTS**

Senate Concurrent Resolution 12 requests the authorization to issue a 65-year term, non-exclusive easement covering a 1,312 square feet, more or less, portion of state submerged lands fronting the property identified as tax map key: (2) 4-5-001: seaward of 004, at Front Street, Lahaina, Maui for maintenance and repair of existing improvements constructed thereon, pursuant to Section 171-53, Hawaii Revised Statutes (HRS). The Department of Land and Natural Resources (Department) support this concurrent resolution.

As required by Section 171-53, HRS, the Board of Land and Natural Resources (Board) may lease submerged lands "with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution". The Board originally approved a twenty year lease of non-exclusive easement at its meeting on October 27, 1989, under agenda item F-12. Pursuant to the Board's decision, Lease for Non-Exclusive Easement S-5217 was executed on August 1, 1991. At its meeting on November 22, 2010, under agenda item D-6, the Board approved the issuance of a new term, non-exclusive easement. In order to comply with Section 171-53, HRS, the Board amended their approval by authorizing a one-year holdover of easement S-5217 at its meeting on July 8, 2011, under agenda item D-8.

The Lessee shall pay the State the fair market value of the easement as consideration for the use of public lands. The amount of consideration shall be determined by independent appraisal.

Thank you for the opportunity to testify.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of Patrick J Ballenger, Trustee of the Patrick J Ballenger Revocable Trust Dated October 10, 1988 and Mathew Ballenger, Trustee of the Mariana Van Blom Revocable Trust Agreement Dated March 16, 1983 Submitted Electronically to the Senate of the State of Hawaii

In Consideration of Senate Concurrent Resolution 12 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

Ladies and Gentlemen,

On the property I purchased in 1968, there was a building with a deck over the ocean which had been constructed in the 1920's. I applied for and was granted a building permit by the County of Maui to rebuild the existing structure and deck later that same year. During the remodel, I was able to retain much of the original structure.

In 1987, the State Survey Office discovered that the deck had been built over approximately 1229 square feet of State submerged lands (this was found to be 1312 square feet during the recent appraisal). In April 1989 we were granted an after the fact Conservation District Use Permit for the commercial use of State submerged lands. In August 1991 a 20 year Lease for a Non Exclusive Easement for the Purpose of "Maintenance and Repair of the Existing Concrete Piers and for Use, Repair and Maintenance of the Existing Improvements Constructed Thereon" was issued. During this 20 year period, we have been in compliance with all terms and conditions of the agreement.

In August 2009 we began work with the staff of the Department of Land and Natural Resources on executing a new easement agreement to replace the original which was to expire in July 2011. Staff recommended issuance of a 65 year agreement with rent to be established every 10 years. We did not propose any expansion or change of use of the property. In November 2010 the Board of the Department of Land and Natural Resources approved the staff recommendation. Unfortunately, we were unable to bring the issue before you during the 2011 Legislative Session. Therefore, the Board of the Department of Land and Natural Resources approved a 1 year extension of the 1991 easement.

In testimony before the Committee on Water, Land and Housing, the Chairman of the Department of Land and Natural Resources Commission on Water Resource Management supported this Resolution which was passed by the Committee on February 28, 2012.

Thus, we come before you today (in abstentia) and ask that you approve this Concurrent Resolution.

Respectfully submitted,

Patrick J Ballenger

Mathew J Ballenger