

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 absentia) and ask that you approve this Concurrent Resolution.

Respectfully submitted,

Patrick J Ballenger

Mathew J Ballenger

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