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GOVERNOR OF HAWAII



SUZANNE D. CASE
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COMMISSION ON WATER RESOURCE MANAGEMENT

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STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS

Thursday, April 14, 2016
11:00 AM
State Capitol, Conference Room 325

In consideration of
SENATE CONCURRENT RESOLUTION 7
AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE
EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT
WAIOHULI-KEOKEA (KIHEI), WAILUKU, MAUI, FOR THE USE, MAINTENANCE
AND REPAIR OF THE EXISTING SEAWALL CONSTRUCTED THEREON

Senate Concurrent Resolution 7 requests the authorization to issue a term, non-exclusive easement for an estimated 450 square feet, more or less, located on state submerged lands identified as tax map key (2) 3-9-011:seaward of 008, at Waiohuli-Keokea (Kihei), Wailuku, Maui, for the maintenance and repair of the existing rock seawall constructed thereon, pursuant to Section 171-53, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) supports this concurrent resolution.**

The current owner of the abutting landward property, the Association of Owners of the 1688 Halama Street Condominium (Association), as well as the predecessor-in-interest of the Association, worked with the Department to resolve the encroachment. The encroachment was identified on state lands located makai of the shoreline and such area should be considered as submerged lands. 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". At its meetings on August 10, 1990 and May 8, 2015, under agenda items F-7 and D-8 respectively, the Board approved as amended the issuance of a term, non-exclusive easement for purposes stated above.

The State has been paid the fair market value of the easement, as determined by independent appraisal, as consideration for the use of public lands. The easement area is subject to review and confirmation by the State Surveyor.

Merchant ♦ Horovitz

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April 12, 2016

VIA Web Submission

The Honorable Ryan I. Yamane
Chair, House Committee on Water & Land
Hawaii State Capitol
415 South Beretania Street Room 420
Honolulu, Hawaii, 96813

The Honorable Ty J.K. Cullen
Vice Chair, House Committee on Water & Land
Hawaii State Capitol
415 South Beretania Street Room 316
Honolulu, Hawaii, 96813

The Honorable Kaniela Ing
Chair, House Committee on Ocean, Marine Resources, & Hawaiian Affairs
Hawaii State Capitol
415 South Beretania Street Room 311
Honolulu, Hawaii, 96813

The Honorable Nicole E. Lowen
Vice Chair, House Committee on Ocean, Marine Resources, & Hawaiian Affairs
Hawaii State Capitol
415 South Beretania Street Room 425
Honolulu, Hawaii, 96813

Re: SCR7

Dear Representatives Yamane, Cullen, Ing, and Lowen:

I am the attorney for the owner of the property which is the subject of SCR7 and write in support of the Measure.

By way of background, the Measure a seek to legislative concurrence on action taken by the Board of Land and Natural Resources (the "BLNR") at its May 8, 2015 meeting. The

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genesis of this action, however, goes back much further. As noted in the text of SCR7, the easement in question was initially granted by the BLNR as a perpetual easement in 1990. The value of the easement was assessed, and payment was made and received. For reasons that are unknown, the trail stopped there and the actual easement document was never prepared.

The staff of the Department of Land and Natural Resources (“DLNR”) diligently worked with the current land-owner to rectify the situation and the result was the 2015 BLNR action re-authorizing issuance of the easement to the current title holder with provisos to apply current practices and requirements that (1) legislative concurrence be obtained, (2) it be for a sixty-five (65) year term as opposed to perpetual, (3) that it run with the land as opposed to being an easement granted to a specific owner, and (4) that the easement be for the parcel of land bearing Tax Map Key No (2) 3-9-011-008. As to the final condition, the 1990 grant was in favor of parcel 008 and its neighboring parcel 007. The properties are no longer commonly owned and the owner of parcel 007 is pursuing his own resolution of the matter.

For the foregoing reasons, I would respectfully request that your Committees approve SCR7.

Respectfully submitted,

Peter A. Horovitz