



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

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HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Friday, March 24, 2017
2:50 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE CONCURRENT RESOLUTION 120
AUTHORIZING THE AMENDMENT OF A TERM, NON-EXCLUSIVE EASEMENT
COVERING A PORTION OF STATE SUBMERGED LANDS AT MAUNALUA,
HONOLULU, OAHU, FOR THE MAINTENANCE AND REPAIR OF PORTIONS OF
THE EXISTING CHANNEL, CONCRETE SURGE BREAK OR BREAKWATER,
SEAWALL, STEP, AND FILLED LAND, AND FOR USE, REPAIR, AND
MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON**

Senate Concurrent Resolution 120 requests the amendment of a term, non-exclusive easement covering an additional area of 3,501 square feet, more or less, on a portion of state submerged lands fronting the property identified as tax map key: (1) 3-9-026:seaward of 044, 045, and 048 at Maunalua, Honolulu, Oahu for the use, repair, and maintenance of portions of the existing channel, concrete surge break or breakwater, seawall, step, and filled land 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 property, Evershine II L.P., worked with the Department to resolve the encroachment. The original easement issued in 2003 was subsequently amended in 2008 by an additional 384 square feet. Subsequent to a recent shoreline certification process, other portions of improvements encroaching on state land were identified, and the additional area is about 3,503¹ square feet. The Department requests that the resolution be amended to reflect the correct 3,503 square feet easement area.

¹ The additional encroaching area should be 3,503 square feet as reviewed and approved in December 2015 by the Department of Accounting and General Services, Survey Division, subsequent to the Board of Land and Natural Resources' (Board) meeting held in May 2015. The Board approved an easement area of 3,501 square feet, more or less, subject to review and approval by the State Surveyor.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

The additional encroaching areas were found encroaching 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 may lease submerged lands "with the prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution".

The owner shall pay the State the fair market value of the additional encroaching area in the amount of \$130,000 as determined by an independent appraisal.

Thank you for the opportunity to comment on this measure.

Concerned Citizens of Hawaii Kai

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The Senate
Twenty-Ninth Legislature
Regular Session on 2017

Committee on Water & Land

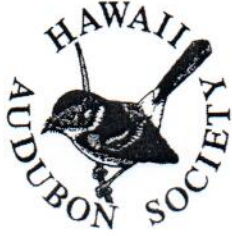
Friday, March 24, 2017
2:50 pm, Conference Room 224, State Capitol

S.C.R. 120

Aloha to the Committee House Representatives for allowing me to Testify on this Bill. I am Jim Dittmar representing the Concerned Citizens of Hawaii Kai, which is an umbrella organization of Environmental Organizations, who are concerned with the Hawaii Kai Marina. First, we support a Breakwater which will allow for safe passage for boats entering and exiting the Hawaii Kai Marina, However, we are concerned about the Hawaii Kai Marina Community Association record with compliance with State and Federal Operating and Environmental Permits. During the last Dredge Cycle the HKMCA had a approved EA and Dredging Permits from the State and federal Agencies. They stated that the Dredge Sludge would be deposited in four sites in the Marina and one at Sea. After the Dredging Contract was awarded the Contractor announced that they would not use the At Sea Site but would truck the Sludge to Waianae. This resulted in illegally dumping on Agriculture Lands without Permits. Also Dredge Sludge was dumped on a busy Saturday on the H-1 Freeway tying up traffic for hours on a busy Saturday. It has also been reported that Dredge Spoil was dumped without Permits of Kamehameha Agriculture Land above Kaiser High School. During this time the HKMCA extended the existing Breakwater into Conservation Land without Permits beyond their existing Easement. This extension has caused severe erosion at the toe of the Breakwater, hence part of the need for a new Breakwater. There is the need for an Easement. Now the HKMCA wants to fill RI-2 an Endangered Species Habitat with Dredge Sludge in the Upper Marina. In their 2011 EA the Marina said they would not fill RI-2 since it was an Endangered Species Habitat. Now they want to fill it and DLNR says the 2011 EA is adequate even though the EA is contradicted? In order to resolve these concerns and contradictions it recommends that a new revised Environmental Assessments be completed to include the remaining Dredging and Breakwater construction.

As we say before we support the Breakwater as a matter of safe boating.

Aloha Jim Dittmar



For the Protection of Hawaii's Native Wildlife
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THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WATER & LAND

Friday, March 24, 2017
2:50 p.m., Conference Room 224, State Capitol

S.C.R. 120

Authorizing the Amendment of a Term, Non-Exclusive Easement Covering a Portion of State Submerged Lands at Maunaloa, Honolulu, for the Maintenance & Repair of Portions of Existing Channel, Breakwater, Seawall & Filled Land

Chairperson Rhoads, Vice Chairperson Gabbard, and members of the committee, my name is Linda Paul and I am testifying against S.C.R. 120 as a volunteer, President of and in behalf of the approximately 2000 members of the Hawaii Audubon Society.

Unfortunately, what Senate Concurrent Resolution 120 does not address or even mention is that this Channel/Breakwater project will require a substantial amount of dredging and the dredge spoils will have to go somewhere. The Hawaii Kai Marina Community Association plans on dumping them in the middle of Rim Island 2 (RI-2). RI-2 is a small, isolated island in the middle of the Hawaii Kai marina with a large pond-like depression in the middle. RI-2 is a known feeding and nesting habitat for the endangered Black-necked Stilt (Hawaiian Stilt). The Marina Association claims that RI-2 is not a good stilt nesting site based on three nest surveys done in 2014 by their hired contractor whose resume lists no degrees in the biological sciences.

The Society believes that a long term data set is needed to determine whether or not RI-2 is still good Hawaiian Stilt nesting habitat before it is covered in dredge spoils. At the very least an EIS is needed. It is the position of the Society that filling in the depression in Rim Island 2 with dredge material would likely constitute a "take" under the federal Endangered Species Act.

Attached is a letter that Hawaii Audubon Society sent to the U.S. Army Corps of Engineers on March 1, 2016, describing the status of the Hawaiian Stilt nesting habitat in Rim Island 2. Please do not pass S.C.R. 120 and thank you for giving me the opportunity to testify.

Linda M. B. Paul
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For the Protection of Hawaii's Native Wildlife

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March 1, 2016

U.S. Army Corps of Engineers, Honolulu District
Regulatory Office [CEPOH-RO], Attn: J. Paahana
Building 230
Fort Shafter, Hawaii 96858-5440

RE: POH-2010-00280 (posted 2/19/2016; expiration date: 3/5/2016)

Dear Sir or Madam,

Rim Island 2 is a known feeding and nesting habitat for the endangered Black-necked Stilt (Hawaiian Stilt). RI-2 is a small, isolated island in the middle of the Hawaii Kai marina with a large pond-like depression in the middle that has a gently sloping beach. The pond is shallow and is half filled with brackish water. All around the edge of the pond are low bushes

Reportedly between February 19, 2014 and April 6, 2015, the Hawaii Kai Marina Community Association (dredge disposal Applicant) conducted surveys of the Hawaiian Stilt on RI-2. The Applicant counted a total of three stilt nests on RI-2 in 2014, one each on April 17, 2014, June 18, 2014 and July 29, 2014. The two early nests had four eggs, the last nest had three. The Applicant reports that all three nests failed and attributes these failures to a "limited supply of food on the island to sustain flightless chicks" and "competition with and predation by other bird species". However, we find the margin for error in single year data set too large to support such a conclusion. It is not unusual for nests to fail in any given year for any number of reasons. One of the primary causes of nest failure is rat predation. We understand that rats were seen on RI-2 in 2005 and that at one time the Applicant had a rat control program going, but stopped it. The Applicant needs to set traps to find out if the rats have moved back in and if so, the Applicant needs to eradicate them.

As a population survival strategy, stilt parents don't nest in areas where their chicks can't find food. A long term data set is needed to determine whether or not RI-2 is still good stilt habitat. Since there are reliable reports of the endangered Hawaiian Stilt successfully nesting and/or utilizing RI-2 for foraging in the recent past, using it to dump dredge material would constitute the definition of "take" under the Endangered Species Act and Hawaii Audubon Society is opposed to it.

Sincerely,

The Hawaii Audubon Society