

JAN 23 2020

SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT
COVERING A PORTION OF STATE SUBMERGED LANDS AT WAIMANALO,
KOOLAUPOKO, OAHU, FOR THE EXISTING PIER, SEAWALL, AND
STEPS, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING
IMPROVEMENTS CONSTRUCTED THEREON.

1 WHEREAS, the existing pier identified as Tax Map Key: (1)
2 4-1-001:seaward of 011, Waimanalo, Koolauoko, Oahu, was placed
3 upon state submerged lands; and
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5 WHEREAS, since 1977, the abutting property owner, C.
6 Michael Muller, possessed a month-to-month revocable permit
7 issued by the Board of Land and Natural Resources to resolve the
8 pier encroachment of 716 square feet; and
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10 WHEREAS, in 2016, Mr. Muller expressed an interest in
11 converting the revocable permit to a non-exclusive easement; and
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13 WHEREAS, the Department of Land and Natural Resources'
14 Office of Conservation and Coastal Lands did not indicate any
15 objections to the conversion into a non-exclusive easement
16 regarding the pier; and
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18 WHEREAS, at its meeting of January 13, 2017, under agenda
19 item D-14, the Board of Land and Natural Resources approved a
20 grant of a 55-year non-exclusive easement to resolve the
21 encroachment, to run with the land and to inure to the benefit
22 of the abutting real property; and
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24 WHEREAS, House Concurrent Resolution No. 27, Senate Draft
25 1, adopted in the Twenty-ninth Legislature of the State of
26 Hawaii, Regular Session of 2017, cited the purpose of the
27 requested non-exclusive easement only for pier purposes; and
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1 WHEREAS, an easement survey conducted subsequent to the
2 Twenty-ninth Legislature of the State of Hawaii, Regular Session
3 of 2017, showed additional areas of encroachment, including a
4 portion of the existing seawall and steps fronting the property
5 identified as Tax Map Key: (1) 4-1-001:seaward of 011,
6 Waimanalo, Koolaupoko, Oahu, whereby the total encroachment area
7 was determined to be 2,818 square feet; and
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9 WHEREAS, at its meeting of April 12, 2019, under agenda
10 item D-8, the Board of Land and Natural Resources approved to
11 amend the total encroachment area to 2,818 square feet, subject
12 to the review and approval by the Department of Accounting and
13 General Services' Survey Division, and to add seawall and steps
14 purposes to the non-exclusive easement; and
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16 WHEREAS, the grantee shall pay the State the fair market
17 value of the non-exclusive easement as consideration of the use
18 of public lands to be determined by an independent appraisal;
19 and
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21 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
22 the prior approval of the Governor and prior authorization of
23 the Legislature by concurrent resolution to lease state
24 submerged lands; now, therefore,
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26 BE IT RESOLVED by the Senate of the Thirtieth Legislature
27 of the State of Hawaii, Regular Session of 2020, the House of
28 Representatives concurring, that the Board of Land and Natural
29 Resources is hereby authorized to issue a term, non-exclusive
30 easement covering a portion of state submerged lands identified
31 as Tax Map Key: (1) 4-1-001:seaward of 011, Waimanalo,
32 Koolaupoko, Oahu, for the existing pier, seawall, and steps, and
33 for use, repair, and maintenance of the existing improvements
34 constructed thereon pursuant to section 171-53, Hawaii Revised
35 Statutes; and
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37 BE IT FURTHER RESOLVED that a certified copy of this
38 concurrent resolution be transmitted to the Chairperson of the
39 Board of Land and Natural Resources.
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S.C.R. NO. 28

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OFFERED BY: *Wm D. M.*
BY REQUEST

SCR No. 28

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 WAIMANALO, KOOLAUPOKO, OAHU, FOR THE EXISTING PIER, SEAWALL, AND STEPS, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

PURPOSE: To seek the authorization of the Legislature by concurrent resolution of the issuance of a term, non-exclusive easement by the Board of Land and Natural Resources (Board) for the existing pier, seawall, and steps, 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 pier fronting the property identified as Tax Map Key: (1) 4-1-001:seaward of 011, Waimanalo, Koolaupoko, Oahu, was placed upon state submerged lands. The property owner, C. Michael Muller, possessed a month-to-month revocable permit issued by the Board to cover the pier encroachment area of 716 square feet.

In 2016, Mr. Muller expressed an interest in converting the revocable permit to a non-exclusive easement. The Department's Office of Conservation and Coastal Lands did not indicate any objections to the conversion into a non-exclusive easement regarding the pier.

At its meeting of January 13, 2017, under agenda item D-14, the Board approved a grant of a 55-year non-exclusive easement to run with the land and to inure to the benefit of the abutting real property, to resolve the encroachment.

House Concurrent Resolution No. 27, Senate Draft 1, adopted in the Twenty-ninth Legislature, Regular Session of 2017, cited the purpose of the requested non-exclusive easement only for pier purposes

An easement survey conducted subsequent to the Twenty-ninth Legislature, Regular Session of 2017, showed additional areas of encroachment, including a portion of the existing seawall and steps fronting the property identified as Tax Map Key: (1) 4-1-001: seaward of 011, Kaneohe, Koolaupoko, Oahu, whereby the total encroachment area was determined to be 2,818 square feet.

At its meeting of April 12, 2019, under item D-8, the Board approved to amend the total encroachment area to 2,818 square feet, subject to the review and approval by the Department of Accounting and General Services' Survey Division, and to add seawall and steps purposes to the non-exclusive easement.

The grantee shall pay the State the fair market value of the easement as consideration of the use of public lands to be determined by an independent appraisal.

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.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon adoption.