
HOUSE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT MAALAEA BEACH LOTS, WAIKAPU, WAILUKU, MAUI, FOR THE EXISTING SEAWALL, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

1 WHEREAS, a portion of the existing seawall seaward of the
2 property identified as Tax Map Key: (2) 3-8-014:022, Maalaea
3 Beach Lots, Waikapu, Wailuku, Maui (subject property), was
4 placed on state submerged lands; and
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6 WHEREAS, the property identified as Tax Map Key: (2) 3-8-
7 014:022 contained a sandy beach and no seawall or other
8 shoreline protection structures when it was originally purchased
9 by Wendell and Myrtle Crockett in the 1940s; and
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11 WHEREAS, the Territory of Hawaii built the Maalaea Small
12 Boat Harbor abutting the western corner of the makai boundary of
13 the subject property in 1952 and added improvements, including
14 break walls, to the harbor facility in 1955 and 1959; and
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16 WHEREAS, in the early 1950s, around the same time that the
17 Territory of Hawaii was building the Maalaea Small Boat Harbor
18 and its associated improvements, a seawall was installed seaward
19 of the entire makai boundary of the subject property and
20 continuing across the makai boundaries of neighboring properties
21 to the east, and appears to be a non-conforming structure as it
22 was built before October 1, 1964; and
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24 WHEREAS, around August 2015, the Department of Land and
25 Natural Resources' Office of Conservation and Coastal Lands
26 worked with the current property owners, the Association of
27 Apartment Owners of Milowai-Maalaea, to resolve the existing
28 seawall encroachment; and



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2 WHEREAS, the age and origin of the seawall were confirmed
3 through an environmental assessment conducted as part of the
4 2015 land disposition process; and

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6 WHEREAS, the Office of Conservation and Coastal Lands
7 indicated it had no objections to a long-term easement to
8 resolve the encroachment; and

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10 WHEREAS, at its meeting of October 9, 2015, under agenda
11 item D-6, the Board of Land and Natural Resources approved a
12 grant of a fifty-five year term, non-exclusive easement to
13 resolve the seawall encroachment, and authorized the non-
14 exclusive easement to run with the land and inure to the benefit
15 of the abutting real property; and

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17 WHEREAS, at its meeting of January 8, 2021, under agenda
18 item D-5, the Board of Land and Natural Resources approved an
19 amendment to the Board of Land and Natural Resources' action of
20 October 9, 2015, item D-6, to shorten the term of the non-
21 exclusive easement from fifty-five to twenty-five years, or in
22 the event the applicant is unsuccessful in acquiring the fee or
23 obtaining an extension of the ground lease of the abutting
24 apartment property, to end on December 31, 2038, concurrent with
25 the expiration of the ground lease for the abutting apartment
26 property; and

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28 WHEREAS, the total encroachment area was determined to be
29 1,737 square feet, as reviewed and approved by the Department of
30 Accounting and General Services' Survey Division; and

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32 WHEREAS, on January 25, 2021, the Association of Apartment
33 Owners of Milowai-Maalaea executed a removal bond agreement with
34 Great American Insurance Company in which the Association
35 guaranteed the State of Hawaii the sum of \$432,000 to insure
36 against the cost of removing the encroachment in the event that
37 the Legislature and the Governor do not approve the issuance of
38 the non-exclusive easement approved by the Board of Land and
39 Natural Resources; and

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41 WHEREAS, the Board of Land and Natural Resources executed
42 Revocable Permit No. S-7932 on February 16, 2021, granting the
43 Association of Apartment Owners of Milowai-Maalaea the right to
44 enter and occupy the subject parcel of state submerged land,



1 subject to terms including the payment of \$255 monthly rental
2 amount; and

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4 WHEREAS, the grantee has paid the State the fair market
5 value of the non-exclusive easement as consideration of the use
6 of state submerged lands, determined to be \$63,300 by an
7 independent appraisal; and

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9 WHEREAS, in 2022, the National Oceanic and Atmospheric
10 Administration issued a technical report that found that sea
11 level rise will create a profound shift in coastal flooding over
12 the next thirty years by causing tide and storm surge heights to
13 increase and reach further inland; and

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15 WHEREAS, by 2050, moderate and typically damaging coastal
16 flooding is expected to occur on average more than ten times as
17 often as it does today and can be intensified by local factors;
18 and

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20 WHEREAS, in Hawaii, sea-level rise and coastal erosion are
21 occurring at an accelerated rate, with moderate estimates
22 projecting the sea level to increase by six to eight inches by
23 mid-century; and

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25 WHEREAS, the practice of issuing easements to private
26 landowners for state submerged lands on a case-by-case basis is
27 not prudent as a long-term strategy when considered in relation
28 to the public trust doctrine and in the context of planning for
29 landscape-scale adaptation and retreat; and

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31 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
32 the prior approval of the Governor and prior authorization of
33 the Legislature by concurrent resolution to lease state
34 submerged lands; now, therefore,

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36 BE IT RESOLVED by the House of Representatives of the
37 Thirty-second Legislature of the State of Hawaii, Regular
38 Session of 2024, the Senate concurring, that the Board of Land
39 and Natural Resources is hereby authorized to issue a non-
40 exclusive easement, with a term not to exceed twenty-five years,
41 covering a portion of state submerged lands seaward of the
42 property identified as Tax Map Key: (2) 3-8-014: 022, Maalaea
43 Beach Lots, Waikapu, Wailuku, Maui, for the existing seawall,
44 and for use, repair, and maintenance of the existing



1 improvements constructed thereon pursuant to section 171-53,
2 Hawaii Revised Statutes; and

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4 BE IT FURTHER RESOLVED that the Board of Land and Natural
5 Resources is requested to require the easement to provide for
6 either public access to the shoreline from the grass next to the
7 seawall or the installation of a railing along the top of the
8 seawall to allow the public lateral access to the shoreline; and

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10 BE IT FURTHER RESOLVED that certified copies of this
11 Concurrent Resolution be transmitted to the Chairperson of the
12 Board of Land and Natural Resources and Governor.

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