

STAND. COM. REP. NO.

3338

Honolulu, Hawaii

MAR 28 2018

RE: S.C.R. No. 63
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Water and Land, to which was referred
S.C.R. No. 63 entitled:

"SENATE CONCURRENT RESOLUTION AUTHORIZING THE ISSUANCE OF A
TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE
SUBMERGED LANDS SEAWARD OF TAX MAP KEY: (2) 4-3-010:009 AT
KAHANA, LAHAINA, MAUI, FOR SEAWALL AND ROCK REVETMENT
PURPOSES,"

begs leave to report as follows:

The purpose and intent of this measure is to provide
legislative authorization for the issuance of a term, non-
exclusive easement covering a portion of state submerged lands at
Kahana, Lahaina, Maui, by the Board of Land and Natural Resources
for seawall and rock revetment purposes.

Your Committee received testimony in support of this measure
from the Department of Land and Natural Resources, Department of
Public Works of the County of Maui, Association of Apartment
Owners of Hololani, and three individuals. Your Committee
received testimony in opposition to this measure from the Sierra
Club of Hawai'i and approximately one hundred thirty individuals.

Your Committee finds that the long-term erosion rate of
Kahana Beach in West Maui is approximately 0.8 feet per year, and
there appears to have been a net sand loss from the overall system
over the decades so that the sand beach has been lost with



increasing frequency. As a result, all five condominium and hotel complexes along Kahana Beach have obtained permits and approvals to install permanent or emergency protective measures to address the shoreline erosion. Specifically, the Hololani Resort Condominiums, represented by the Association of Apartment Owners of Hololani, one of the condominium complexes located on Kahana Beach, received emergency authorization from the Department of Land and Natural Resources and the County of Maui in 2007 to install sand bags and erosion blankets. Subsequently, the Association of Apartment Owners of Hololani obtained the approvals and permits, including a Conservation District Use Permit from the Board of Land and Natural Resources and a Special Management Area Permit from the County of Maui Planning Commission, to construct a long-term solution consisting of a steel sheet pile seawall and rock revetment.

Your Committee further finds that the proposed seawall and rock revetment construction project fronting the property identified as Tax Map Key: (2) 4-3-010: seaward of 009, Kahana, Lahaina, Maui, will be placed on portions of state submerged lands. The Board of Land and Natural Resources approved the issuance of a term, non-exclusive easement to the Association of Apartment Owners of Hololani for the use of state submerged lands for the proposed project on January 12, 2018. The easement area is approximately 6,128 square feet and is subject to review and approval by the Department of Accounting and General Services' Survey Division. The grantee will be required to pay the State the fair market value of the easement as the consideration for the use of public lands to be determined by an independent appraiser. Since the Board of Land and Natural Resources has met all relevant statutory prerequisites, this measure authorizes the issuance of a term, non-exclusive easement in accordance with section 171-53, Hawaii Revised Statutes.

Your Committee notes the concerns raised in written testimony that seawalls eliminate the ability of beaches to naturally fluctuate with changing waves and tide. Without proper transport of sand, beaches are eventually lost, public shoreline access is hindered, and coastal habitats are impacted. Your Committee further notes that the Special Management Area Permit approved by the Maui County Planning Commission noted that the approval included a condition that the seawall be removed, at Hololani's expense, if a beach restoration project goes forward. Your



Committee believes that other alternatives should be developed to address sea level rise, including a managed retreat plan. Your Committee also has concerns whether there will be sufficient public access to the beach if the proposed seawall is constructed and notes that public access was set as a condition for the approval of the Conservation District Use Permit and Special Management Area Permit.

Accordingly, your Committee has amended this measure by:

- (1) Inserting language noting that:
 - (A) The Maui County Planning Commission conditioned its approval of a Special Management Area Permit upon removal of the seawall, at Hololani's expense, if a beach restoration project goes forward;
 - (B) The Conservation District Use Permit approved by the Board of Land and Natural Resources and the Special Management Area Permit approved by the County Planning Commission placed conditions on public access, including that Hololani maintain safe lateral beach access and provide, maintain, and properly post signage for public access through the property to the shoreline; and
 - (C) The term, non-exclusive easement is unique and fact-specific, and is not intended to set a precedent for the building of new seawalls and other shoreline hardening structures on public lands;
- (2) Establishing certain conditions for the legislative authorization of the term, non-exclusive easement, including:
 - (A) The seawall shall be removed at Hololani's expense if a beach restoration project moves forward;
 - (B) Hololani shall ensure unrestricted lateral and vertical public access, including the posting of appropriate signage; and



- (C) A full waiver of liability shall be executed and include specified terms; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee anticipates that the parties will be required to amend the term, non-exclusive easement in order to incorporate the conditions established for legislative authorization of the easement. In light of this measure and the issue of sea level rise, your Committee urges the Board of Land and Natural Resources to develop a long-term policy to address structures that are located along the shoreline and subject to erosion.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee concurs with the intent and purpose of S.C.R. No. 63, as amended herein, and recommends that it be referred to your Committee on Ways and Means, in the form attached hereto as S.C.R. No. 63, S.D. 1.

Respectfully submitted on
behalf of the members of the
Committee on Water and Land,



KARL RHOADS, Chair



Record of Votes
Committee on Water and Land
WTL

*Only one measure per Record of Votes