

JAN 24 2024

SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT KANEOHE, KOOLAUPOKO, OAHU, FOR THE EXISTING CONCRETE BOAT RAMP, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

1 WHEREAS, the existing concrete boat ramp seaward of the
2 land identified as Tax Map Key: (1) 4-5-047:013, Kaneohe,
3 Koolaupoko, Oahu, is situated upon state submerged lands; and
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5 WHEREAS, in 2021, the property owners, Kim Lu and Beiting
6 Gao, husband and wife, tenants by the entirety, purchased the
7 residential real property located at Tax Map Key: (1) 4-5-
8 047:013, which abuts the portion of state submerged land that
9 contains the encroaching concrete boat ramp; and
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11 WHEREAS, the boat ramp was originally built within the
12 private property boundary, but a portion of the boat ramp is now
13 located seaward of the shoreline on state submerged lands; and
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15 WHEREAS, around October 2022, the boat ramp encroachment
16 was discovered in an enforcement action related to County
17 Shoreline Management Area permits and the associated shoreline
18 certification process; and
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20 WHEREAS, the City and County of Honolulu's Department of
21 Planning and Permitting stated in a letter dated October 4,
22 2022, that the concrete boat ramp is a non-conforming structure,
23 based on historical shoreline photographs and Department of
24 Planning and Permitting records; and
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26 WHEREAS, in a letter dated February 27, 2023, the
27 Department of Land and Natural Resources' Office of Conservation
28 and Coastal Lands concurred with the City and County's
29 determination that the concrete boat ramp is a non-conforming

1 structure and supported resolution of the encroachment through
2 issuance of a non-exclusive easement; and
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4 WHEREAS, the Office of Conservation and Coastal Lands found
5 that removing the concrete boat ramp would not improve beach
6 resources or public shoreline access and may have a negative
7 effect on neighboring properties; and
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9 WHEREAS, the Office of Conservation and Coastal Lands
10 indicated that it supported a non-exclusive easement to resolve
11 the encroachments; and
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13 WHEREAS, on May 12, 2023, under agenda item D-8 of a
14 meeting of the Board of Land and Natural Resources, the Board of
15 Land and Natural Resources approved a grant of a 25-year non-
16 exclusive easement to resolve the concrete boat ramp
17 encroachment, to run with the land and to inure to the benefit
18 of the abutting real property; and
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20 WHEREAS, the total encroachment area was determined to be
21 156 square feet, as reviewed and approved by the Department of
22 Accounting and General Services' Survey Division; and
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24 WHEREAS, the property owners and the Board of Land and
25 Natural Resources executed Right-of Entry Permit No. 4549 on May
26 18, 2023, granting the property owners the right to enter and
27 occupy the subject parcel of state submerged land, subject to
28 terms including payment of a \$500 fine for past encroachment of
29 the concrete boat ramp onto state submerged land, payment of a
30 \$40 monthly rental amount, provision of liability insurance, and
31 posting of a removal bond in the amount of \$15,700; and
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33 WHEREAS, on May 18, 2023, the property owners submitted
34 payment for the \$500 fine, \$145.80 for rental payments for the
35 period from May 12, 2023, through August 31, 2023, and a
36 certificate of liability insurance for the encroachment area;
37 and
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39 WHEREAS, on May 18, 2023, the property owners executed a
40 removal bond agreement in which the property owners assigned to
41 and deposited with the State of Hawaii the amount of \$15,700 to
42 insure the State of Hawaii against the cost of removing the
43 encroachment in the event that the Legislature and the Governor

1 do not approve the issuance of the easement approved by the
2 Board of Land and Natural Resources; and

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4 WHEREAS, the property owners shall pay the State the fair
5 market value of the non-exclusive easement as consideration of
6 the use of state submerged lands to be determined by an
7 independent appraisal, which appraisal process is currently on-
8 going through the Department of Land and Natural Resources' Land
9 Division; and

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11 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
12 the prior approval of the Governor and prior authorization of
13 the Legislature by concurrent resolution to lease state
14 submerged lands; now, therefore,

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16 BE IT RESOLVED by the Senate of the Thirty-second
17 Legislature of the State of Hawaii, Regular Session of 2024, the
18 House of Representatives concurring, that the Board of Land and
19 Natural Resources is hereby authorized to issue a term, non-
20 exclusive easement covering a portion of state submerged lands
21 seaward of the property identified as Tax Map Key: (1) 4-5-047:
22 013, Kaneohe, Koolaupoko, Oahu, for the existing concrete boat
23 ramp, and for use, repair, and maintenance of the existing
24 improvements constructed thereon pursuant to section 171-53,
25 Hawaii Revised Statutes; and

26
27 BE IT FURTHER RESOLVED that certified copies of this
28 Concurrent Resolution be transmitted to the Chairperson of the
29 Board of Land and Natural Resources and the Governor.

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33 OFFERED BY: _____



34
35 BY REQUEST

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 KANEOHE, KOOLAUPOKO, OAHU, FOR THE EXISTING CONCRETE BOAT RAMP, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

PURPOSE: To seek the authorization of the Legislature by concurrent resolution for the issuance of a term, non-exclusive easement by the Board of Land and Natural Resources (Board) for the existing concrete boat ramp 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: Portions of the existing concrete boat ramp seaward of the property identified as Tax Map Key: (1) 4-5-047:013, Kaneohe, Koolaupoko, Oahu, were placed on state submerged lands.

The Department's Office of Conservation and Coastal Lands had no objection to a non-exclusive easement to resolve the concrete boat ramp encroachment.

In May 2023, the Board approved the grant of 25-year non-exclusive easement to the property owners, Kim Lu and Beiting Gao, for an area of 156 square feet including the encroaching concrete boat ramp with right, privilege, and authority to construct, use, maintain, and repair the existing concrete boat ramp. Since that time, the property owners have paid a monthly rental amount of \$40 in exchange for the right to occupy and use the premises under the right-of-entry and revocable permit.

The property owners have agreed to pay for an appraisal of the encroachment area by an appraiser selected and contracted by the State of Hawaii to determine the value of the encroachment area and to pay a lump sum in the amount of the appraised value in exchange for a 25-year non-exclusive easement to resolve the encroachment.

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.

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| GENERAL FUND: | None. |
| OTHER FUNDS: | None. |
| PPBS PROGRAM DESIGNATION: | LNR 101. |
| OTHER AFFECTED AGENCIES: | None. |
| EFFECTIVE DATE: | Upon adoption. |