

JAN 23 2025

SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TWENTY-FIVE-YEAR TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT KIKIAOLA, KEKAHA, KAUAI, FOR A SHORELINE PROTECTION STRUCTURE, AND FOR USE, REPAIR, AND MAINTENANCE OF THE IMPROVEMENTS CONSTRUCTED THEREON.

1 WHEREAS, the existing shoreline protection structure
2 seaward of the property identified as Tax Map Key: (4) 1-2-
3 013:031, Kikiaola, Kekaha, Kauai, was constructed on state
4 submerged lands; and

5
6 WHEREAS, Graham and Marisa Chelius, owners of the private
7 residential property identified as Tax Map Key: (4) 1-2-013:031,
8 were granted an emergency authorization pursuant to section 13-
9 5-35, Hawaii Administrative Rules, for temporary shoreline
10 stabilization to place geotextile bags on state submerged lands
11 along the erosion scarp abutting the makai boundary of their
12 private property by the Department of Land and Natural
13 Resources' Office of Conservation and Coastal Lands under
14 Emergency Conservation District Use Permit KA-14-03, for a five-
15 year term commencing July 16, 2013; and

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17 WHEREAS, at its meeting on December 13, 2013, under agenda
18 item D-2, the Board of Land and Natural Resources approved a
19 corresponding right of entry permit for the temporary structure,
20 which constitutes an encroachment on state shoreline lands and
21 delegated authority to the chairperson to issue one-year
22 extensions of the right of entry permit; and

23
24 WHEREAS, on April 9, 2018, the Office of Conservation and
25 Coastal Lands approved a five-year extension of the Emergency
26 Conservation District Use Permit, identified as Extension KA-18-
27 12, and the Chairperson of the Board of Land and Natural
28 Resources approved an extension of the right of entry permit for
29 the temporary structure; and

1 WHEREAS, on May 6, 2023, Graham and Marisa Chelius applied
2 to the Office of Conservation and Coastal Lands for a second
3 extension of their Emergency Conservation District Use Permit
4 and requested permission to repair the structure, which the
5 Office of Conservation and Coastal Lands granted; and

6
7 WHEREAS, the Office of Conservation and Coastal Lands
8 referred the request to renew the right of entry permit to the
9 Department of Land and Natural Resources' Land Division, which
10 triggered Land Division's review of the temporary permits and
11 the statutory authority that authorize them; and

12
13 WHEREAS, Land Division's review and analysis revealed that
14 the Department's past practice of continual reauthorization of
15 temporary permits without compensation was not proper under
16 chapter 171, Hawaii Revised Statutes, and recommended conversion
17 of temporary right of entry permits to long-term easement
18 dispositions in compliance with chapter 171; and

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20 WHEREAS, the Office of Conservation and Coastal Lands has
21 no objection to a non-exclusive easement to resolve the
22 encroachment; and

23
24 WHEREAS, at its meeting on September 22, 2023, under agenda
25 item D-3, the Board of Land and Natural Resources approved the
26 grant of a twenty-five-year term, non-exclusive easement for the
27 existing shoreline protection structure to bring the permits for
28 the structure at issue into compliance with relevant state law,
29 to run with the land, and to inure to the benefit of the
30 abutting real property; and

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32 WHEREAS, at the same meeting, the Board approved an
33 immediate right of entry permit to allow the property owners to
34 maintain the structure during the pendency of the easement
35 process, subject to payment of monthly rent, posting of a
36 removal bond, and provision of liability insurance for the
37 structure; and

38
39 WHEREAS, a professional survey of the structure, as
40 reviewed and approved by the Department of Accounting and
41 General Services' Survey Division, determined that its total
42 size is 2,366.18 square feet; and

1 WHEREAS, on June 12, 2024, Graham and Marisa Chelius
2 executed a removal bond agreement in which Graham and Marisa
3 Chelius tendered and endorsed over to the Department of Land and
4 Natural Resources securities in the amount of \$44,855, to insure
5 the State of Hawaii against the cost of removing the
6 encroachments in the event that the Legislature and the Governor
7 do not approve the issuance of the non-exclusive easement
8 approved by the Board of Land and Natural Resources; and
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10 WHEREAS, the Board of Land and Natural Resources executed
11 Right of Entry Permit No. 4610 on June 12, 2024, granting Graham
12 and Marisa Chelius the right to enter and occupy the subject
13 portion of state submerged lands, subject to terms including the
14 payment of \$101 monthly rent and provision of liability
15 insurance; and
16

17 WHEREAS, Graham and Marisa Chelius shall pay the State the
18 fair market value of the non-exclusive easement area as
19 consideration for the use of state submerged lands, to be
20 determined by an independent appraisal; and
21

22 WHEREAS, section 171-53(c), Hawaii Revised Statutes,
23 requires the prior approval of the Governor and the prior
24 authorization of the Legislature by concurrent resolution to
25 lease state submerged lands; now, therefore,
26

27 BE IT RESOLVED by the House of Representatives of the
28 Thirty-third Legislature of the State of Hawaii, Regular Session
29 of 2025, the Senate concurring, that the Board of Land and
30 Natural Resources is hereby authorized to issue a twenty-five-
31 year term, non-exclusive easement covering a portion of state
32 submerged lands seaward of the property identified as Tax Map
33 Key: (4) 1-2-013:031, Kikiaola, Kekaha, Kauai, to Graham and
34 Marisa Chelius, for the existing shoreline protection structure,
35 and for use, repair, and maintenance of the improvements
36 constructed thereon pursuant to section 171-53, Hawaii Revised
37 Statutes; and

1 BE IT FURTHER RESOLVED that a certified copy of this
2 Concurrent Resolution be transmitted to the Chairperson of the
3 Board of Land and Natural Resources.

4 OFFERED BY: 

5
6 BY REQUEST
7

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: CONCURRENT RESOLUTION AUTHORIZING THE ISSUANCE OF A TWENTY-FIVE-YEAR TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT KIKIAOLA, KEKAHA, KAUAI, FOR A SHORELINE PROTECTION STRUCTURE, AND FOR USE, REPAIR, AND MAINTENANCE OF THE 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 shoreline protection structure 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 shoreline protection structure seaward of the property identified as Tax Map Key: (4) 1-2-013:031, Kikiaola, Kekaha, Kauai, was constructed on state submerged lands pursuant to Emergency Conservation District Use Permit KA-14-03.

In September 2023, the Board approved the grant of a twenty-five-year term, non-exclusive easement to the property owners, Graham and Marisa Chelius, as grantees, for an area of 2,366.18 square feet including the shoreline protection structure with right, privilege, and authority to construct, use, maintain, and repair the existing shoreline protection structure. Since that time, the property owners have paid a monthly rental amount of \$101 in exchange for the right to occupy and use the premises under a right of entry 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 twenty-five-year term, non-exclusive easement to bring the permits for the structure into compliance with chapter 171, HRS.

The Department's Office of Conservation and Coastal Lands had no objection to the non-exclusive easement approved by the Board 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(c), 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.