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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
CONSUMER PROTECTION & COMMERCE**

**Thursday, April 15, 2021
2:00 PM
State Capitol, Via Videoconference, Room 329**

**In consideration of
SENATE CONCURRENT RESOLUTION 15, SENATE DRAFT 1
AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT
COVERING A PORTION OF STATE SUBMERGED LANDS AT NAPILI 2 AND 3,
LAHAINA, MAUI, FOR THE EXISTING WALKWAY, AND FOR USE, REPAIR, AND
MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON**

Senate Concurrent Resolution 15, Senate Draft 1 requests the authorization to issue a term, non-exclusive easement covering a 142-square-foot, more or less, portion of state submerged lands identified as tax map key: (2) 4-3-002: seaward of 026, 027 & 028 at Napili 2 and 3, Lahaina, Maui, for the use, repair, and maintenance of the existing walkway constructed thereon, pursuant to Section 171-53, Hawaii Revised Statutes (HRS). Senate Draft 1 of the resolution makes technical, non-substantive amendments for the purposes of clarity and consistency. **The Department of Land and Natural Resources (Department) supports this Administration concurrent resolution.**

In 2006, the Department's Office of Conservation and Coastal Lands (OCCL) researched the history on a walkway, stairway, wall, and concrete pier block remnants located on state land abutting the tax map keys referenced above and determined the walkway was built sometime between 1949 and 1975 based on historical aerial photography. OCCL found evidence the walkway was built sometime around 1972 (and after the establishment of the Conservation District in 1964), but OCCL was unable to determine whether the walkway was placed within the conservation district at the time of construction. A February 4, 1985 shoreline determination for the private lands abutting the encroachment located the shoreline seaward of the walkway, meaning the walkway was not situated on submerged lands in 1985.

Additionally, OCCL determined that the walkway and stairs provide safe public access along the shoreline, which would be diminished if the walkway were removed. OCCL also found that removal of the walkway would have minimal beneficial impact on beach resources due to its limited size and the fact that a major structure is situated directly landward of the encroachment.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Finally, OCCL stated that the removal of the walkway would have an unknown effect on the surrounding parcels.

At its meeting of September 26, 2008, Item D-7, as amended at its meeting of July 22, 2009, Item D-7, the Board of Land and Natural Resources (Board) approved the grant of a 65-year term, non-exclusive easement to the owner of the abutting private property, Napili Kai, Ltd. (NKL), covering the walkway and other encroachments. Based on the approval, the Board issued Grant of Non-Exclusive Easement No. S-5998 (Easement 5998) to NKL effective October 25, 2010.

In September 2016, NKL submitted an application to obtain a new certified shoreline for a consolidation/re-subdivision of its lots. A site inspection was conducted on November 2, 2016 by the State Surveyor and Department staff. As a result of the inspection, it was discovered that a portion of the walkway was now makai of the shoreline but outside the area described in Easement 5998, totaling approximately 140 square feet (later determined to be 142 square feet, more or less). NKL stated that the walkway had not been altered since its construction, and the reason for the discrepancy in the easement description was unclear. Accordingly, it became necessary to document the omitted area in an easement and charge NKL additional consideration for its use.

Staff initially obtained Board approval at its meeting of May 26, 2017, Item D-3, for an amendment of Easement 5998 to increase the easement area, but later learned amendment was not possible because Easement 5998 was not issued as a submerged lands easement. Accordingly, at its meeting of June 28, 2019, Item D-7, the Board rescinded its action of May 26, 2017, Item D-3, and instead approved the grant of a separate term easement covering 142 square feet, more or less, to be coterminous with Easement 5998 for a portion of the walkway now determined to be located on submerged lands.

As required by Section 171-53, HRS, the Board may lease submerged lands "with the prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution". As noted above, at its meeting on June 28, 2019, Item D-7, the Board approved the issuance of a term, non-exclusive easement of approximately 142 square feet for a portion of the walkway to be coterminous with Easement 5998, which covers other portions of the encroachment.

NKL has paid the State the fair market value of the easement, in the amount of \$4,200, as determined by an independent appraisal for the use of public lands.

Thank you for the opportunity to comment on this measure.