SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS AT NAPILI 2 AND 3, LAHAINA, MAUI, FOR AN EXISTING WALKWAY, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

WHEREAS, the Board of Land and Natural Resources approved the issuance of a 65-year term, non-exclusive easement to Napili Kai, Ltd. under Grant of Non-Exclusive Easement No. S-5998 (GL5998) dated October 25, 2010 for existing walkway stairs, shower station, concrete pier block remnants, and landscaping purposes on state lands fronting the property identified as Tax Map Keys: (2) 4-3-002:seaward of 026, 027 & 028, Napili 2 and 3, Lahaina, Maui; and

WHEREAS, at the time GL5998 was issued, the state lands affected by the non-exclusive easement had not been identified as state submerged lands; and

WHEREAS, around September 2016, Napili Kai, Ltd. submitted an application for a shoreline certification in relation to the consolidation/re-subdivision of its lots; and

WHEREAS, a site inspection conducted on November 2, 2016 by the State Surveyor of the Department of Accounting and General Services and staff of the Department of Land and Natural Resources revealed that a portion of the walkway was on state submerged lands outside of the encroachment area covered by GL5998, with the walkway encroachment then estimated to total approximately 140 square feet, more or less; and

WHEREAS, Napili Kai, Ltd. stated that the walkway had not been altered since its construction, and the reason for the discrepancy in the non-exclusive easement description under GL5998 was unclear; and

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WHEREAS, it therefore became necessary to increase theencroachment area under the non-exclusive easement by 140 square
feet, more or less; and

WHEREAS, at its meeting of May 26, 2017 under agenda item
D-3, the Board of Land and Natural approved staff's
recommendation to amend GL5998 by increasing the non-exclusive
easement encroachment area by 140 square feet, more or less, subject to confirmation by the State Surveyor, and additionally
required Napili Kai, Ltd. to pay for a new appraisal to
determine the fair market value of the additional encroachment
area, and to pay the value so determined; and

WHEREAS, the Department of Land and Natural Resources' Office of Conservation and Coastal Lands had no objections to
the proposed amendment of GL5998 to increase the non-exclusive
easement encroachment area; and

WHEREAS, the State Surveyor confirmed the total encroachment area to be 142 square feet and an appraisal
determined the fair market value of an non-exclusive easement
for the additional encroachment area to be $4,200, which Napili Kai, Ltd. paid in full to the Department of Land and Natural
Resources in February 2019; and

WHEREAS, amending GL5998 to include the additional
encroachment area was subsequently determined to be problematic because GL5998 was not issued as a submerged lands easement; and

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

WHEREAS, at its meeting of June 28, 2019, under agenda item
D-7, the Board rescinded its prior action of May 26, 2017, item
D-3, and instead approved the issuance of a separate term, non-
exclusive easement to run with the land and inure to the benefit of the abutting real property and to be coterminous with GL5998, to which the Office of Conservation and Coastal Lands had no objection; now, therefore,
BE IT RESOLVED by the Senate of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020, the House of Representatives concurring, that the Board of Land and Natural Resources is hereby authorized to issue a term, non-exclusive easement covering a portion of state submerged lands fronting the property identified as Tax Map Keys: (2) 4-3-002: seaward of 026, 027 & 028, Napili 2 and 3, Lahaina, Maui, for portions of the existing walkway, and for use, repair, and maintenance of the existing improvements constructed thereon pursuant to section 171-53, Hawaii Revised Statutes; and

BE IT FURTHER RESOLVED that a certified copy of this concurrent resolution be transmitted to the Chairperson of the Board of Land and Natural Resources.

OFFERED BY:

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 NAPILI 2 AND 3, LAHAINA, MAUI, FOR AN EXISTING WALKWAY, AND FOR USE, REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

PURPOSE: To seek the authorization of the Legislature by concurrent resolution of the issuance of a term, non-exclusive easement by the Board of Land and Natural Resources (Board) for an existing walkway, 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 Board approved the issuance of a 65-year term, non-exclusive easement to Napili Kai, Ltd. under Grant of Non-Exclusive Easement No. S-5998 (GL5998) dated October 25, 2010 for existing walkway stairs, shower station, concrete pier block remnants, and landscaping purposes on state lands fronting the property identified as Tax Map Keys: (2) 4-3-002:seaward of 026, 027 & 028, Napili 2 and 3, Lahaina, Maui. At the time GL5998 was issued, the state lands affected by the non-exclusive easement had not been identified as submerged lands.

Around September 2016, Napili Kai, Ltd. submitted an application for a certified shoreline in relation to the consolidation/re-subdivision of its lots. A site inspection conducted on November 2, 2016 by the State Surveyor of the Department of Accounting and General Services and staff of the Department revealed that a portion of the walkway was on state submerged lands outside of the encroachment area covered by
GL5998, with the walkway encroachment then estimated to total approximately 140 square feet, more or less. Napili Kai, Ltd. stated that the walkway had not been altered since its construction, and the reason for the discrepancy in the non-exclusive easement description under GL5998 was unclear. It therefore became necessary to increase the encroachment area under the non-exclusive easement by 140 square feet, more or less.

At its meeting of May 26, 2017 under agenda item D-3, the Board approved staff's recommendation to amend GL5998 by increasing the non-exclusive easement encroachment area by 140 square feet, more or less, subject to confirmation by the State Surveyor, and additionally required Napili Kai, Ltd. to pay for a new appraisal to determine the fair market value of the additional encroachment area, and to pay the value so determined. The Department's Office of Conservation and Coastal Lands had no objections to the proposed amendment of GL5998 to increase the non-exclusive easement encroachment area.

The State Surveyor confirmed the total encroachment area to be 142 square feet and an appraisal determined the fair market value of an easement for the additional encroachment area to be $4,200, which Napili Kai, Ltd. paid in full to the Department in February 2019.

Amending GL5998 to include the additional encroachment area was subsequently determined to be problematic because GL5998 was not issued as a submerged lands easement.

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.
At its meeting of June 28, 2019, under agenda item D-7, the Board rescinded its prior action of May 26, 2017, item D-3, and instead approved the issuance of a separate term, non-exclusive easement to run with the land and inure to the benefit of the abutting real property and to be coterminous with GL5998, to which the Office of Conservation and Coastal Lands had no objection.

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.

**GENERAL FUND:** None.

**OTHER FUNDS:** None.

**PPBS PROGRAM DESIGNATION:** LNR 101.

**OTHER AFFECTED AGENCIES:** None.

**EFFECTIVE DATE:** Upon adoption.