

JAN 27 2021

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 THE EXISTING WALKWAY, AND FOR USE,
REPAIR, AND MAINTENANCE OF THE EXISTING IMPROVEMENTS
CONSTRUCTED THEREON.

1 WHEREAS, the Board of Land and Natural Resources approved
2 the issuance of a 65-year term, non-exclusive easement to Napili
3 Kai, Ltd. under Grant of Non-Exclusive Easement No. S-5998
4 (GL5998) dated October 25, 2010 for the existing walkway stairs,
5 shower station, concrete pier block remnants, and landscaping
6 purposes on state lands fronting the property identified as Tax
7 Map Keys: (2) 4-3-002:026, 027, & 028, Napili 2 and 3, Lahaina,
8 Maui; and
9

10 WHEREAS, at the time GL5998 was issued, the state lands
11 affected by the non-exclusive easement had not been identified
12 as state submerged lands; and
13

14 WHEREAS, around September 2016, Napili Kai, Ltd. submitted
15 an application for a shoreline certification in relation to the
16 consolidation/re-subdivision of its lots; and
17

18 WHEREAS, a site inspection conducted on November 2, 2016 by
19 the Department of Accounting and General Services' Survey
20 Division and staff of the Department of Land and Natural
21 Resources revealed that a portion of the existing walkway was on
22 state submerged lands outside of the encroachment area covered
23 by GL5998, with the walkway encroachment then estimated to total
24 approximately 140 square feet, more or less; and
25

26 WHEREAS, Napili Kai, Ltd. stated that the existing walkway
27 had not been altered since its construction, and the reason for
28 the discrepancy in the non-exclusive easement description under
29 GL5998 was unclear; and
30

1 WHEREAS, it therefore became necessary to increase the
2 encroachment area under the non-exclusive easement by 140 square
3 feet, more or less; and
4

5 WHEREAS, at its meeting of May 26, 2017 under agenda item
6 D-3, the Board of Land and Natural Resources approved staff's
7 recommendation to amend GL5998 by increasing the non-exclusive
8 easement encroachment area by 140 square feet, more or less,
9 subject to confirmation by the Department of Accounting and
10 General Services' Survey Division, and additionally required
11 Napili Kai, Ltd. to pay for a new appraisal to determine the
12 fair market value of the additional encroachment area, and to
13 pay the value so determined; and
14

15 WHEREAS, the Department of Land and Natural Resources'
16 Office of Conservation and Coastal Lands had no objections to
17 the proposed amendment of GL5998 to increase the non-exclusive
18 easement encroachment area; and
19

20 WHEREAS, the Department of Accounting and General Services'
21 Survey Division confirmed the total encroachment area to be 142
22 square feet and an appraisal determined the fair market value of
23 an non-exclusive easement for the additional encroachment area
24 to be \$4,200, which Napili Kai, Ltd. paid in full to the
25 Department of Land and Natural Resources in February 2019; and
26

27 WHEREAS, amending GL5998 to include the additional
28 encroachment area was subsequently determined to be problematic
29 because GL5998 was not issued as a submerged lands easement; and
30

31 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
32 the prior approval of the Governor and prior authorization of
33 the Legislature by concurrent resolution to lease state
34 submerged lands; and
35

36 WHEREAS, at its meeting of June 28, 2019, under agenda item
37 D-7, the Board of Land and Natural Resources rescinded its prior
38 action of May 26, 2017, item D-3, and instead approved the
39 issuance of a separate term, non-exclusive easement to run with
40 the land and inure to the benefit of the abutting real property
41 and to be coterminous with GL5998, to which the Office of
42 Conservation and Coastal Lands had no objection; now, therefore,
43
44

1 BE IT RESOLVED by the Senate of the Thirty-first
2 Legislature of the State of Hawaii, Regular Session of 2021, the
3 House of Representatives concurring, that the Board of Land and
4 Natural Resources is hereby authorized to issue a term,
5 non-exclusive easement covering a portion of state submerged
6 lands fronting the property identified as Tax Map Keys: (2)
7 4-3-002:026, 027, & 028, Napili 2 and 3, Lahaina, Maui, for
8 portions of the existing walkway, and for use, repair, and
9 maintenance of the existing improvements constructed thereon
10 pursuant to section 171-53, Hawaii Revised Statutes; and
11

12 BE IT FURTHER RESOLVED that a certified copy of this
13 concurrent resolution be transmitted to the Chairperson of the
14 Board of Land and Natural Resources.
15
16
17
18

19 OFFERED BY: 
20 BY REQUEST
21
22
23

S.C.R. NO. 15

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, THE 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 the 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 the existing walkway stairs, shower station, concrete pier block remnants, and landscaping purposes on state lands fronting the property identified as Tax Map Keys: (2) 4-3-002:026, 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 Department of Accounting and General Services' Survey Division and staff of the Department revealed that a portion of the existing 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 existing 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 Department of Accounting and General Services' Survey Division, 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 Department of Accounting and General Services' Survey Division 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

S.C.R. NO. 15

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.