

JAN 23 2020

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.

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 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:seaward of 026, 027 & 028, Napili 2 and 3,
8 Lahaina, Maui; and
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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
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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
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18 WHEREAS, a site inspection conducted on November 2, 2016 by
19 the State Surveyor of the Department of Accounting and General
20 Services and staff of the Department of Land and Natural
21 Resources revealed that a portion of the walkway was on state
22 submerged lands outside of the encroachment area covered by
23 GL5998, with the walkway encroachment then estimated to total
24 approximately 140 square feet, more or less; and
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26 WHEREAS, Napili Kai, Ltd. stated that the walkway had not
27 been altered since its construction, and the reason for the
28 discrepancy in the non-exclusive easement description under
29 GL5998 was unclear; and
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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
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5 WHEREAS, at its meeting of May 26, 2017 under agenda item
6 D-3, the Board of Land and Natural 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 State Surveyor, and additionally
10 required Napili Kai, Ltd. to pay for a new appraisal to
11 determine the fair market value of the additional encroachment
12 area, and to pay the value so determined; and
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14 WHEREAS, the Department of Land and Natural Resources'
15 Office of Conservation and Coastal Lands had no objections to
16 the proposed amendment of GL5998 to increase the non-exclusive
17 easement encroachment area; and
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19 WHEREAS, the State Surveyor confirmed the total
20 encroachment area to be 142 square feet and an appraisal
21 determined the fair market value of an non-exclusive easement
22 for the additional encroachment area to be \$4,200, which Napili
23 Kai, Ltd. paid in full to the Department of Land and Natural
24 Resources in February 2019; and
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26 WHEREAS, amending GL5998 to include the additional
27 encroachment area was subsequently determined to be problematic
28 because GL5998 was not issued as a submerged lands easement; and
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30 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
31 the prior approval of the Governor and prior authorization of
32 the Legislature by concurrent resolution to lease state
33 submerged lands; and
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35 WHEREAS, at its meeting of June 28, 2019, under agenda item
36 D-7, the Board rescinded its prior action of May 26, 2017, item
37 D-3, and instead approved the issuance of a separate term, non-
38 exclusive easement to run with the land and inure to the benefit
39 of the abutting real property and to be coterminous with GL5998,
40 to which the Office of Conservation and Coastal Lands had no
41 objection; now, therefore,
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S.C.R. NO. 32

1 BE IT RESOLVED by the Senate of the Thirtieth Legislature
2 of the State of Hawaii, Regular Session of 2020, the House of
3 Representatives concurring, that the Board of Land and Natural
4 Resources is hereby authorized to issue a term, non-exclusive
5 easement covering a portion of state submerged lands fronting
6 the property identified as Tax Map Keys: (2)
7 4-3-002:seaward of 026, 027 & 028, Napili 2 and 3, Lahaina,
8 Maui, for portions of the existing walkway, and for use, repair,
9 and maintenance of the existing improvements constructed thereon
10 pursuant to section 171-53, Hawaii Revised Statutes; and

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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.

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OFFERED BY: 
BY REQUEST

SCR No. 32

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.