

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Wednesday, March 10, 2021
1:00 PM
State Capitol, Via Videoconference, Room 229**

**In consideration of
SENATE CONCURRENT RESOLUTION 15
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 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). **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. Finally, OCCL stated that the removal of the walkway would have an unknown effect on the surrounding parcels.

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

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.

SCR-15

Submitted on: 3/7/2021 9:49:06 PM

Testimony for WTL on 3/10/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Russell Tsuji	Testifying for DLNR	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.

SCR-15

Submitted on: 3/3/2021 3:13:04 PM

Testimony for WTL on 3/10/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gregg Nelson	Testifying for Napili Kai Beach Resort	Support	No

Comments:

Dear Chair Inoye and Committee Members,

My name is Gregg Nelson and I am general manager of Napili Kai Beach Resort on Maui. I am sending this written testimony in support of SCR 15. The Concurrent Resolution and testimony provided by the Department of Land and Natural Resources accurately describes our efforts to obtain the necessary easement for the use of our over 50 year old walkway which a portion of encroaches upon State property.

This walkway provides access for both guests and non-guests to the beach and shoreline areas and has been part of our resort since the property was first developed in the early 1960's. As you can see by the material provided by DLNR, our efforts to obtain the easement commenced well over ten years ago, with the grant of the easement (GL5998) by the Board of Land and Natural Resources in 2010.

Napili Kai's application for an updated shoreline certification in 2016 revealed approximately 140 square feet of the walkway was on State submerged lands and outside of the original 2010 grant of easement.

The 2010 easement was amended in 2017 by BLNR to increase the easement area. However it was later determined that the 2010 easement was not issued as a submerged land easement. Consequently in 2019, the 2017 action was rescinded by BLNR and they then approved the issuance of a separate term, non-exclusive easement to be coterminus with the original 2010 easement (GL 5998).

I appreciate the efforts of the DLNR staff and the BLNR to help us through this journey and I ask for your consideration for authorization to issue the term, non-exclusive easement as identified in Senate Concurrent Resolution No. 15. I will be watching the proceedings on video but stand by this testimony. If I can answer any questions please contact me at 808-283-5039.

Mahalo

Gregg Nelson

General Manager

Napili Kai Beach Resort