

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 28, 2019

PSF No.: 19MD-037

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

MAUI

*Rescind Prior Board Action of May 26, 2017, Item D-3, Amend Grant of Non-Exclusive Easement, GL No. S-5998, for Walkway, Stairs, Shower Station, Concrete Pier Block Remnants and Landscaping Purposes, to Napili Kai, Ltd., Napili 2 and 3, Lahaina, Maui, Tax Map Key: (2) 4-3-002: seaward of 026, 027 & 028. The purpose of the amendment is to increase the easement area by approximately 140 square feet, more or less.*

Grant of Term, Non-Exclusive Easement to Napili Kai, Ltd. for Walkway Purposes, Napili 2 and 3, Lahaina, Maui, Tax Map Keys: (2) 4-3-002: seaward of 026, 027 & 028.

APPLICANT:

Napili Kai, Ltd., a Hawaii corporation, as tenant in severalty.

LEGAL REFERENCE:

Sections 171-13 and -53(c), Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located seaward of Napili 2 and 3, Lahaina, Maui, identified by Tax Map Key: (2) 4-3-002: seaward of 026, 027 & 028, as shown on the attached map labeled Exhibit 1.

AREA:

Easement A-1:	140 square feet, more or less
Easement A-2:	2 square feet, more or less
Total:	142 square feet, more or less

ZONING:

State Land Use District:	Conservation
County of Maui CZO:	Not zoned (submerged lands)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered with encroachments. Adjoining area is encumbered by Grant of Non-Exclusive Easement No. S-5998 (GL5998), Napili Kai, Ltd., Lessee, for existing walkway, stairs, shower station, concrete pier block remnants, and landscaping purposes. The subject easement will be coterminous with GL5998, which is set to expire on October 24, 2075.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove portions of existing walkway over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment in the amount of \$4,200 as determined by independent appraisal dated September 28, 2018. Applicant paid the consideration due in February 2019.

EASEMENT TERM:

Approximately fifty-six (56) years commencing on a date to be determined by the Chairperson and expiring on October 24, 2075.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Office of Conservation and Coastal Lands (OCCL) previously determined the subject walkway appeared to be built before 1974, prior to the enactment of the environmental assessment law.

The subject request is for an easement to cover improvements that have existed since approximately 1972. In accordance with Hawaii Administrative Rule (HAR) Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources

concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, which states the "Creation or termination of easement, covenants, or other rights in structures or land." See Exhibit 2 attached.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 2) Obtain concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS.

REMARKS:

The Board of Land and Natural Resources (Board) originally approved the issuance of the Grant of Non-Exclusive Easement, GL No. S-5998 (GL5998) for walkway, stairs, shower station, concrete pier block remnants and landscaping purposes to Napili Kai, Ltd. (Applicant), at its meetings on September 26, 2008 under agenda Item D-7 and July 22, 2009 under agenda Item D-7. The easement was issued on October 25, 2010 for a term of 65 years, expiring on October 24, 2075. The grant of easement covers Non-Exclusive Walkway Easement A containing an area of 1,776 square feet, and Non-Exclusive Landscaping Easement B containing an area of 549 square feet.

In September 2016, Applicant 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 sidewalk was outside Easement A, with an area then estimated to total approximately 140 square feet, more or less. Applicant stated that the sidewalk had not been altered since its construction, and the reason for the discrepancy in the easement description was unclear. Accordingly, it was necessary to increase the easement area 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 replacing the original Easement A area of 1,776 square feet with the new area of 1,916 square feet, subject to confirmation by the Department of Accounting and General Services (DAGS), Survey Division. The Board approval required Applicant to pay for a new appraisal to determine the fair market value of the additional area, and to pay the value so determined. The Board submittal explained that Applicant agreed to seek legislative approval if it is deemed necessary for the

amendment, and that OCCL had no objections to the proposed amendment of GL5998 to increase the easement area. A copy of the Board's action of May 26, 2017, Item D-3, is attached as Exhibit 3.

DAGS Survey Division subsequently determined the additional area of encroachment is 142 square feet, more or less. An independent appraisal was procured for this area and the fair market value was determined to be \$4,200, which Applicant paid in February 2019. When staff submitted a document request to the Department of the Attorney General (AG) to prepare the easement amendment to include the additional area, however, the AG rejected the request because the easement had not received the approval of the Governor and prior authorization of the Legislature as required by Section 171-53(c), HRS.

The AG's rejection of the lease amendment request created an interesting situation for the Applicant. GL5998 was issued as a fast land easement under Section 171-13, HRS, possibly because the location of the shoreline had not been determined when the request for the easement was first presented to the Board in 2008. As a result, GL5998 did not receive the prior approval of the Governor or the prior authorization of the Legislature. Under the circumstances, it may not be possible to present an amendment of GL5998 to the Governor and Legislature for approval under the statute when the original grant did not receive such approval. After discussing this situation with the AG and Applicant, it was decided a practical approach is to treat the easement for the expanded area of 142 square feet, more or less, as a separate grant to be coterminous with GL5998.

A draft of this submittal was circulated to the agencies below and any comments received will be addressed in the final submittal:

Agency	Comment
Office of Conservation and Coastal Lands	No objections.
State Historic Preservation Division	No response by suspense date.
Engineering Division	Applicant is responsible to research the Flood Hazard Zone designation for the project.
Office of Hawaiian Affairs	No response by suspense date.
County of Maui Planning Department	No objections.

A survey map and description covering the additional 142 square feet, more or less, is attached as Exhibit 4. Staff has no objection to the issuance of the requested separate easement covering this area.

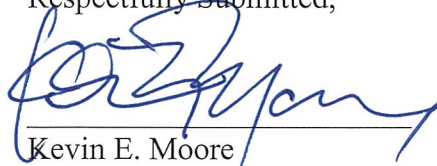
**RECOMMENDATION:** That the Board:

1. Rescind its prior action of May 26, 2017, under agenda Item D-3.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is

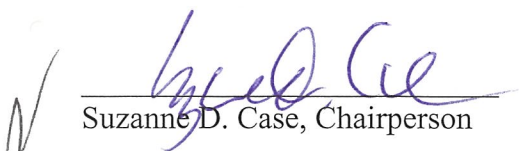
therefore exempt from the preparation of an environmental assessment.

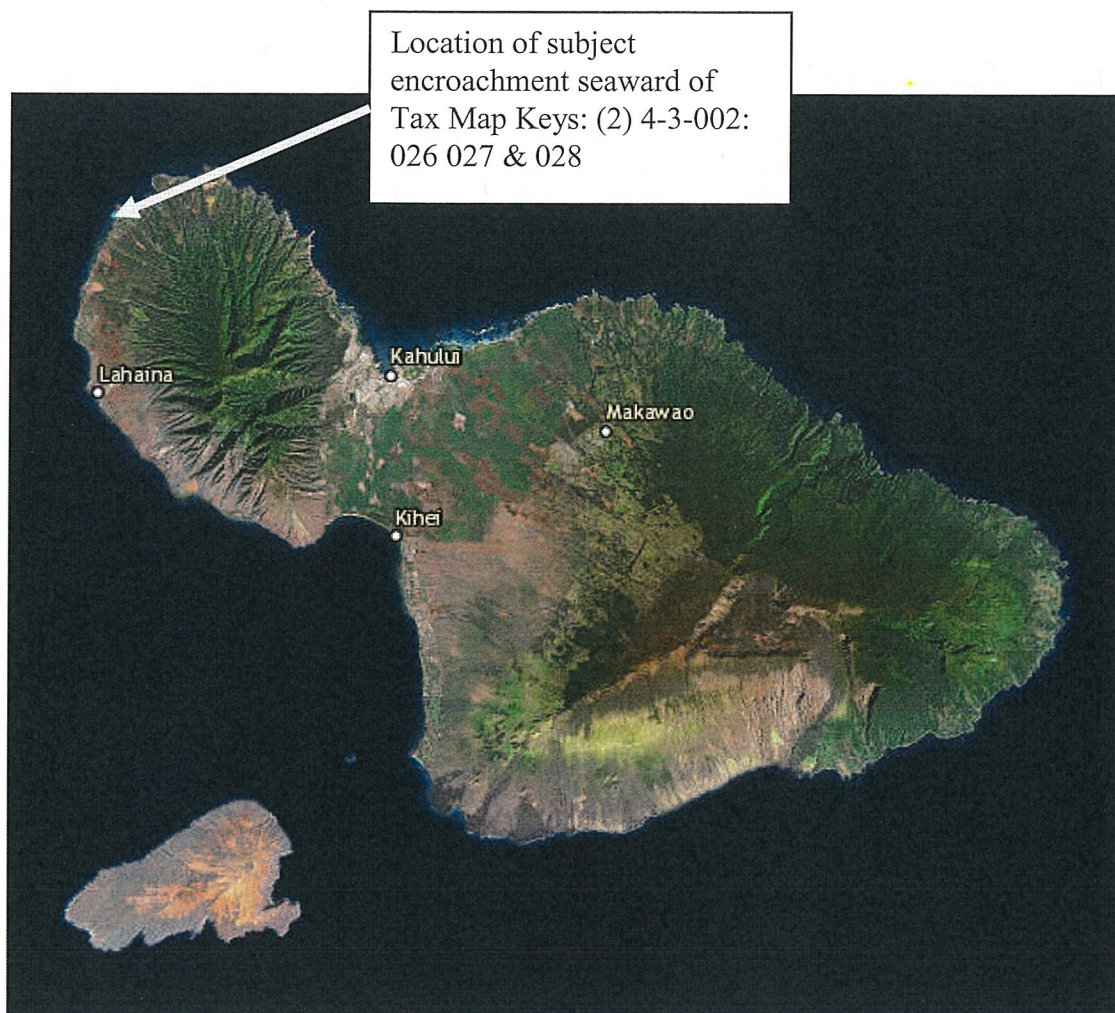
3. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Keys: (2) 4-3-002:026, 027 & 028, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Napili Kai, Ltd. covering the subject area for walkway purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Keys: (2) 4-3-002:026, 027 & 028, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

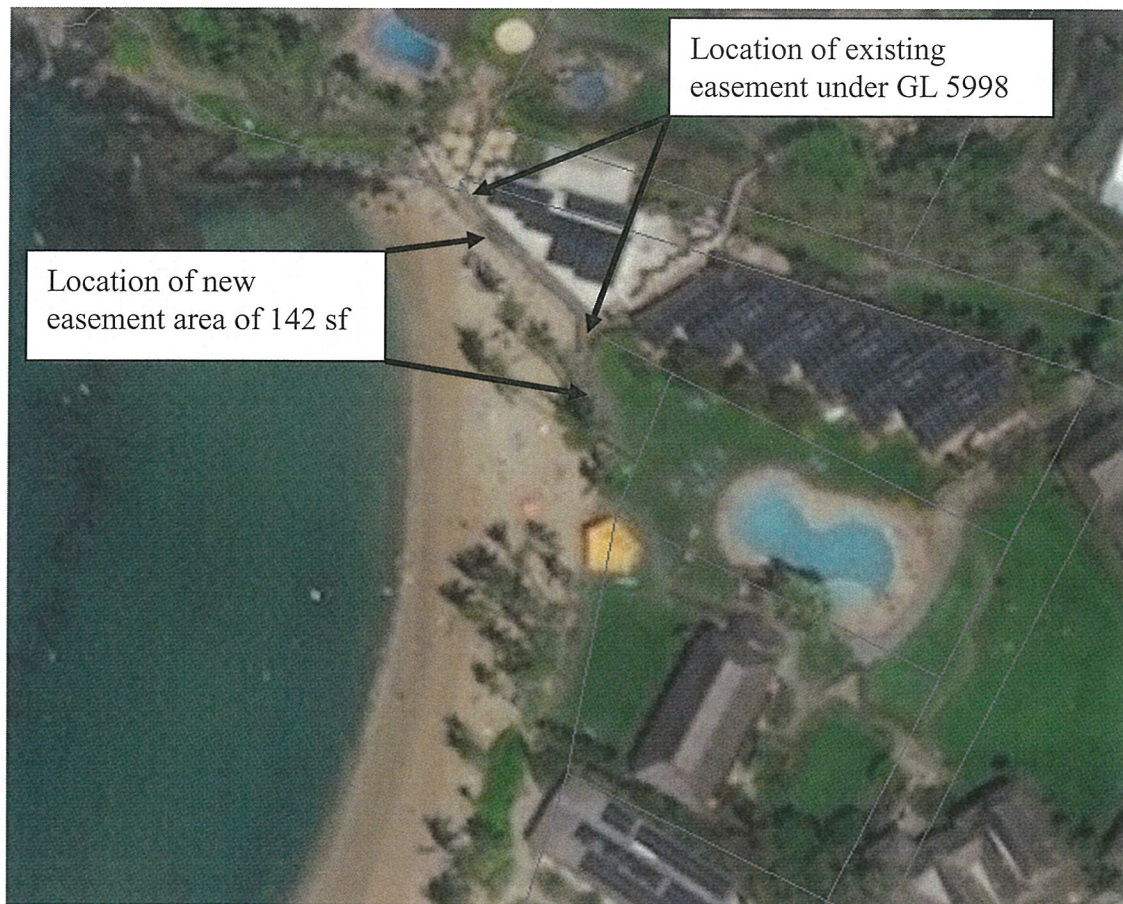
Respectfully Submitted,

  
Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson





## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Grant of Term, Non-Exclusive Easement to Napili Kai, Ltd. for Walkway Purposes
Project / Reference No.:	19MD-037
Project Location:	Napili 2 and 3, Lahaina, Maui, TMK (2) 4-3-002:seaward of 026, 027 & 028
Project Description:	Issuance of easement for additional encroachment area on State Lands
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, which states the "Creation or termination of easement, covenants, or other rights in structures or land".</p> <p>In the past, easements were issued for similar situations where additional areas of encroachments have been identified during the process of obtaining a new shoreline survey. Since no new structures have been constructed in the added encroachment areas, staff anticipates that this should result in no significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.</p>
Consulted Parties:	Office of Conservation and Coastal Lands; State Historic Preservation Division; Engineering Division; Office of Hawaiian Affairs; and County of Maui Planning Department.
Cumulative Impact of Planned Successive Actions in Same Place Significant?	The proposed grant of easement is intended to address an encroachment that has existed for many decades. There are no planned successive actions for the same location.
Action May Have Significant Impact on	The proposed grant of easement is intended to address an encroachment that has existed for many decades. The granting

Particularly Sensitive  
Environment?

of the easement will not have an impact on a particularly  
sensitive environment.

Recommendation:

It is recommended that the Board find that the granting of the  
easement will probably have minimal or no significant effect on  
the environment and is presumed to be exempt from the  
preparation of an environmental assessment.

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 26, 2017

Ref No.: GL S-5998

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

MAUI

Amend Grant of Non-Exclusive Easement, GL No. S-5998, for Walkway, Stairs, Shower Station, Concrete Pier Block Remnants and Landscaping Purposes, to Napili Kai, Ltd., Napili 2 and 3, Lahaina, Maui, Tax Map Key: (2) 4-3-002:seaward of 026, 027 & 028. The purpose of the amendment is to increase the easement area by approximately 140 square feet, more or less.

BACKGROUND:

The Board originally approved the issuance of the Grant of Non-Exclusive Easement, GL No. S-5998 for walkway, stairs, shower station, concrete pier block remnants and landscaping purposes to Napili Kai, Ltd. (Applicant), at its meetings on September 26, 2008, under agenda item D-7 and July 22, 2009 under agenda item D-7. GL S-5998 consisted of a Non-Exclusive Walkway Easement A containing an area of 1776 square feet, and a Non-Exclusive Landscaping Easement B containing an area of 549 square feet. The 55 year term, non-exclusive easement was executed on October 25, 2010.

In September 2016, the Applicant 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 sidewalk was outside the area of easement A, total approximately 140 square feet, more or less. See draft survey map attached as Exhibit A. The applicant stated that the sidewalk has not been altered since its construction, and the reason for the discrepancy in the easement description is unclear. Accordingly, it is necessary to revise the easement area from the original 1776 square feet to the new area of 1916 square feet, more or less. As a result of the expanded area, additional consideration is also required.

REMARKS:

Staff recommends the Board authorize the amendment of GL No. S-5998 by replacing the original easement A area of 1776 square feet with the new area of 1916 square feet, subject to confirmation by the Department of Accounting and General Services, Survey

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

May 26, 2017 *LD*

**EXHIBIT 3**

Division. Given that the easement was originally appraised in 2009, the Department will contract for a new appraisal to determine the fair market value of the additional area. The applicant has agreed to pay for the appraisal and the consideration for the additional area. Furthermore, the applicant has agreed to seek legislative approval if it is deemed necessary for the amendment. The Office of Conservation and Coastal Lands (OCCL) has no objections to the proposed amendment of GL No. S-5998 to increase the easement area by approximately 140 square feet, more or less.

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the Board is requested to declare the subject request exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46. Exemption Notification is attached as Exhibit B.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the amendment of Grant of Non-Exclusive Easement GL No. S-5998 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following, by:
  1. The standard terms and conditions of the amendment of easement form, as may be amended from time to time;
  2. Replacing the original easement area of 1776 square feet with the new area of 1916 square feet, more or less;
  3. Payment for the additional area, with the fair market value to be determined by independent appraisal;
  4. Review and approval by the Department of the Attorney General; and
  5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

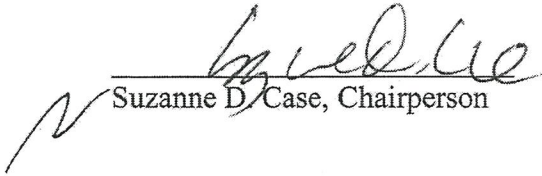
May 26, 2017

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ian M.", written over a horizontal line.

Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read "Suzanne D. Case", written over a horizontal line. To the left of the signature is a large, stylized handwritten "N".

Suzanne D. Case, Chairperson

LOT 1  
T.M.K.: (2) 4-2-02:01  
Harriet Kaiama Legacy, LLC  
(Owners)

T.M.K.: (2) 4-2-02:04  
Napili Lani  
(Owners)

TRUE NORTH  
SCALE: 1 IN. = 20 FT.

ROAD

PORTION OF ALLOTMENT 2  
TMK (2) 4-3-02: 28  
AREA PER METES AND BOUNDS  
DESCRIPTION = 19,913 SQ. FT.

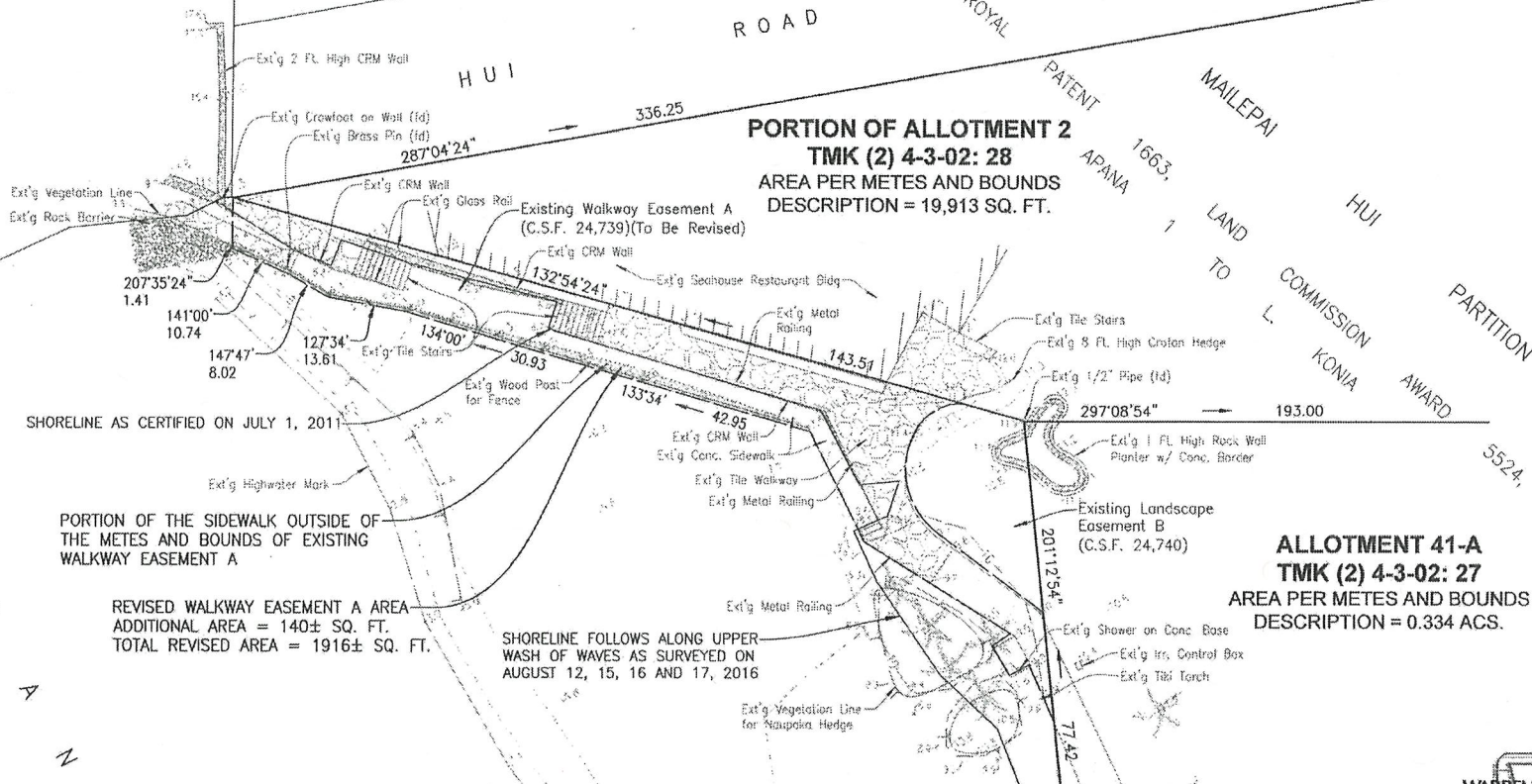


EXHIBIT SHOWING REVISED WALKWAY EASEMENT A

0 20 40 60 80  
SCALE: 1 IN. = 20 FT.



April 20, 2017  
Revised: April 27, 2017

### EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Amendment of Grant of Non-Exclusive Easement S-5998

Project / Reference No.: GL No. S-5998

Project Location: Napili 2 and 3, Lahaina, Maui, TMK (2) 4-3-002:seaward of 026, 027 & 028

Project Description: Amendment of Easement for Additional Area of Encroachment on State Lands


Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, which states the "Creation or termination of easement, covenants, or other rights in structures or land".

In the past, amended easements were issued for similar situations where additional areas of encroachments have been identified during the process of obtaining a new shoreline survey. Since no new structures have been constructed in the added encroachment areas, staff anticipates that this should result in no significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Office of Conservation and Coastal Lands.

Recommendation: It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

✓   
Suzanne D. Case, Chairperson

Date: 5/5/17

**EXHIBIT "B"**

LOT 1  
T.M.K.: (2) 4-2-02:01  
Harriet Koiama Legacy, LLC  
(Owners)

T.M.K.: (2) 4-2-02:04  
Napili Lani  
(Owners)

**PORTION OF ALLOTMENT 2  
TMK (2) 4-3-02: 28**

**ALLOTMENT 41-A  
TMK (2) 4-3-02: 27**

**EASEMENT A-1  
AREA=140 SQ.FT.**

**EASEMENT A-2  
AREA=2 SQ.FT.**

SHORELINE FOLLOWS ALONG UPPER  
WASH OF WAVES AS SURVEYED ON  
AUGUST 12, 15, 16 AND 17, 2016  
AND CERTIFIED ON JUNE 29, 2017

**EASEMENT MAP**  
DESIGNATION OF EASEMENTS A-1 AND A-2  
FRONTING MAILEPAI HUI PARTITION

BEING A PORTION OF THE RECLAIMED  
(FILLED) LAND OF NAPILI BAY

NAPILI 2 AND 3, LAHAINA, MAUI, HAWAII



SCALE: 1 INCH = 20 FEET

OWNER: STATE OF HAWAII  
ADDRESS: HONOLULU, HAWAII



*Reed M. Ariyoshi*

This map was prepared by  
me or under my supervision.

4/30/20  
Expiration Date  
of License

3/21/19  
Date



**WARREN S. UNEMORI - ENGINEERING, INC.**  
Wells Street Professional Center - Suite 403  
2145 Wells Street - Wailuku, Maui, Hawaii 96793  
(808)242-4403 FAX: (808)244-4856

August 3, 2017  
Revised: April 27, 2018  
Revised: March 21, 2019

**EXHIBIT 4**

**NOTES:**

- ALL AZIMUTHS AND RECORD COORDINATES, REFERS TO GOVERNMENT SURVEY TRIANGULATION STATION "MALO".
- OWNERS OF ADJOINING LANDS, AS SHOWN ON PLAN, TAKEN FROM RECORDS IN THE REAL PROPERTY MAPPING BRANCH.
- EASEMENTS A-1 AND A-2 ARE FOR WALKWAY PURPOSES IN FAVOR OF NAPILI KAI, LTD.

**Description of Easement A-2**  
**Fronting Mailepai Hui Partition**

A Walkway Easement 2 in favor of Napili Kai, Limited over and across a portion of the Reclaimed (Filled) Land of Napili Bay at Napili 2 and 3, Lahaina, Maui, Hawaii

Beginning at a point at the northeasterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MALO" being: 9,411.15 feet South and 9,355.65 feet West and running by azimuths measured clockwise from True South:

- |    |          |   |
|----|----------|---|
| 1. | 3° 09'   | 0.66 feet along the remainder of the Reclaimed (Filled) Land of Napili Bay;                           |
| 2. | 88° 09'  | 3.72 feet along same;   |
| 3. | 176° 09' | 0.66 feet along same;   |
| 4. | 268° 09' | 3.80 feet along same to the point of beginning and containing an area of 2 Square feet, more or less. |



WARREN S. UNEMORI ENGINEERING, INC.

Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
March 21, 2019

By: Reed M. Ariyoshi 04/30/20 Exp.  
Licensed Professional Land Surveyor  
Certificate No. 6597

**Description of Easement A-1**  
**Fronting Mailepai Hui Partition**

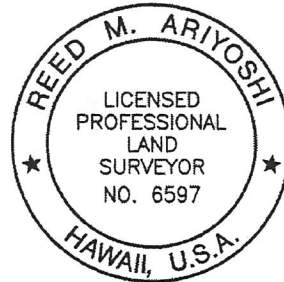
A Walkway Easement A-1 in favor of Napili Kai, Limited over and across a portion of the Reclaimed (Filled) Land of Napili Bay at Napili 2 and 3, Lahaina, Maui, Hawaii

Beginning at a point at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MALO" being: 9,281.80 feet South and 9,445.70 feet West and running by azimuths measured clockwise from True South:

- |     |              |  |
|-----|--------------|--|
| 1.  | 322° 55'     | 11.56 feet along the remainder of the Reclaimed (Filled) Land of Napili Bay; |
| 2.  | 327° 55'     | 7.40 feet along same;  |
| 3.  | 308° 55'     | 7.50 feet along same;  |
| 4.  | 306° 55'     | 7.00 feet along same;  |
| 5.  | 313° 55'     | 8.00 feet along same;  |
| 6.  | 311° 55'     | 32.50 feet along same;   |
| 7.  | 315° 55'     | 32.00 feet along same;   |
| 8.  | 1° 09' 30"   | 1.12 feet along same;  |
| 9.  | 133° 34' 36" | 42.95 feet along same;   |
| 10. | 134° 00' 36" | 30.93 feet along same;   |
| 11. | 127° 34' 36" | 13.61 feet along same;   |
| 12. | 147° 47' 36" | 8.01 feet along same;  |
| 13. | 141° 00' 36" | 10.74 feet along same;   |

14. 207° 36'

1.41 feet along same to the point of  
beginning and containing an  
Area of 140 Square feet, more  
or less.



WARREN S. UNEMORI ENGINEERING, INC.

Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
March 21, 2019

By: Reed M. Ariyoshi 04/30/20 Exp.  
Licensed Professional Land Surveyor  
Certificate No. 6597