

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

October 22, 2021

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

PSF: 21MD-067

Maui

Issuance of Immediate Construction Right-of-Entry Permit to Napili Bay and Beach Foundation Inc. (NBBF) to Construct Elevated Beach Access Stairs and Dune Walkover; Issuance of Revocable Permit to NBBF for Public Access Purposes and to Maintain Existing Beach Access Paths and the New Elevated Beach Access Stairs and Dune Walkover until an Easement is Granted; Grant of 25-year Term Non-Exclusive Easement to NBBF for Public Access Purposes, Napili, Kaanapali, Maui, Tax Map Key: (2) 4-3-002: 023 por. and 099 por.

APPLICANT:

Napili Bay and Beach Foundation Inc., a Hawaii non-profit corporation and a federally recognized 501(c)3 nonprofit corporation.

LEGAL REFERENCE:

Sections 171-13, 43.1, 53(c), and 55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located at Napili Bay, Kaanapali, Maui, identified by Tax Map Key: (2) 4-3-002: 023 por. and 099 por. as shown on the attached map labeled Exhibit A.

AREA:

1,300 sq. ft. (more or less)	5 ft. wide, pre-existing, on-grade, foot path
450 sq. ft. (more or less)	5 ft. wide, elevated, beach dune walkover
200 sq. ft. (more or less)	5ft. wide, elevated, beach access stairs
500 sq. ft. (more or less)	5 ft wide, pre-existing, on-grade, "old fisherman's path"
<hr/>	
2,450 sq. ft. (more or less)	

ZONING:

State Land Use District: Urban and Conservation
County of Maui CZO: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by Revocable Permit S-7505 to Napili Surf Association of Apartment Owners, Permittee, for landscaping and maintenance purposes.

Additional Condition No. 18 of RP S-7505 states: The Public shall have the full and unrestricted use of Premises at all times and the Permittee will install such signs as are deemed necessary by the State of Hawaii”

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for public access purposes.

TERM:

Immediate Right-of-Entry: 1 (one) year;
Revocable Permit: As needed until easement issued;
Non-Exclusive Access Easement: Twenty-five (25) years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR), Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing” and Part 1, Item No. 23, that states: “Maintenance of existing

boardwalks, trails and unpaved roads.” See Exemption Notification attached as Exhibit E.

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) Post a removal bond in an amount to be approved by the Chairperson after consultation with Land Division and Engineering Division (presently estimated at \$55,000), to cover the cost of removing the elevated beach dune walkover structure in the event NBBF does not secure Governor’s and legislative concurrence for an easement covering the portion of the structure located on State submerged land as required by law;
- 2) Indemnify the State for any liability or claims arising from the construction of the elevated beach dune walkover structure prior to receiving Governor’s and legislative concurrence;
- 3) Obtain written concurrence from Napili Surf Association of Apartment Owners, Permittee under Revocable Permit S-7505, prior to entering premises for construction;
- 4) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 5) Obtain concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS.

REMARKS:

Since 1976, The Napili Surf Association of Apartment Owners (Napili Surf AOAO) held a permit to landscape and maintain government lands fronting Tax Map Key (2) 4-3-002:048. Lands seaward of Napili Surf AOAO are public lands situate primarily in the Urban State land use district and County of Maui Conservation zoning district. Portion of lands fronting the condominium continue to be encumbered by Revocable Permit No. S-7505 issued to Napili Surf AOAO.

In 2015, Napili Surf AOAO began a process to renovate its private property. A shoreline certification was needed to comply with County of Maui Special Management Area (SMA) permitting requirements. The certification process resulted in identification of

unauthorized improvements and encroachments into the shoreline area which included a concrete stairwell, paved footpaths, overgrown vegetation, planters, wooden benches, plastic borders and wooden perimeter fencing.

On May 8, 2015 under agenda item D-9, the Board issued a Right-of-Entry to Napili Surf AOA in order to remove unauthorized improvements that impede access over and across public lands.

In 2019, the Napili Bay and Beach Foundation Inc. (NBBF) was awarded a \$75,000 grant-in-aid from the Hawaii State Legislature and began the process to design a new public access walkway and stairs to the south end of Napili Beach. Concurrently, ongoing beach erosion undermined an existing concrete stairway rendering it unusable. As a result, the proposed walking path and stairs went through several redesigns to accommodate changes in the topography.

Throughout 2020, given the extreme changes to the shoreline along the south end of Napili Beach, the DLNR Maui District Land Office encouraged NBBF to work with Napili Surf AOA to coordinate removal of the failed concrete stairway that was identified for removal back in 2015. However, NBBF wanted to coordinate the demolition with proposed improvements to shoreline access.

On January 12, 2021, the NBBF received and signed the Site Plan Approval from the State DLNR Office of Conservation and Coastal Lands for replacement of the concrete stairs with an above grade five foot wide, wood composite stairs and walkway structure covering about 300 square feet (more or less). Note: only a small portion of the seaward end of the stairs sits within the Resource Subzone of the State Land Use Conservation District.

On February 11, 2021, NBBF was granted SMA exemption, shoreline setback approval and environmental assessment exemption from the County of Maui Department of Planning to allow for the demolition and removal of the failed concrete stairs and replacement with a redesigned walkway and stairs to restore safe beach access while minimizing impact to the severely eroding shoreline.

On April 15, 2021, Jeremy Stoddart, designer for the applicant, advised his client that he was in the final stages of submitting the necessary County of Maui grading permit for implementation of the proposed walkway and stairs. He advised that landowner approval was needed to proceed with the grading permit. At this time, the Maui District Land Office (MDLO) advised the applicant that staff did not agree with the placement of the proposed elevated walkway and relocation of the shower stall to the south end of parcel 099 because of how both improvements would restrict access and use of public lands and further create a perception that public lands were private property.

On August 25, 2021, Maui District Land Office staff had its first opportunity to do a site visit with the designer of the stairs and walkway. Stoddart, the designer, agreed to reengineer the elevated walkway to run parallel to the seaward property boundary of the

Napili Surf AOA condominium which established a clear separation between private and public property while still maintaining reasonable public access toward the shoreline. Furthermore, the proposed relocation of a shower stall was eliminated from the design due to drainage issues and the fact that the County of Maui Department of Water Supply prohibits the transmission of potable water from one parcel to another.

Staff is recommending an immediate construction right-of-entry permit to begin work on demolition of the failed stairway and installation of the improved beach access prior to issuance of the revocable permit and the easement, citing the length of time required for these documents to be issued; to avoid delays in procuring construction services relative to existing permit requirements. Additionally, NBBF reports that it must complete demolition of the existing stairway in 2021 or risk losing its grant funding.

By letter dated September 27, 2021, NBBF estimates that demolition of the failed stairway and related improvements will take 3 to 6 weeks and then 2 to 3 months for construction of the new stairs and dune walkover. Exhibit E illustrates the demolition and construction area that NBBF intends to fence off and close to public access for health and safety reasons. Furthermore, NBBF intends to install signage to redirect people wanting to access the shoreline to a “mid-beach public access a few hundred feet north” and that “onsite judgement” will be used to access across the “old fisherman’s path” toward the shoreline south of the demolition and construction area.

Staff has included applicant requirements above that NBBF post a removal bond for the elevated beach dune walkover structure in the event NBBF does not secure the required Governor’s and legislative approval required for the portion of the structure to be located on State submerged lands.

In addition to the 5-foot-wide elevated beach access stairs and dune walkover, staff is recommending that NBBF be issued a term access easement for the remaining portion of two on-grade paved footpaths that will connect the shoreline and improved walkway area to the end of Napili Place, County of Maui public road right-of-way that serves as the primary access to Napili Bay.

Because Napili Surf AOA holds Revocable Permit S-7505 (RP7505) covering the area over which the elevated beach access stairs and dune walkover will be constructed, staff has included an Applicant Requirement above that NBBF obtain Napili Surf AOA’s written concurrence prior to NBBF entering the area to start construction. In the event Napili Surf AOA desires to have the public access easement corridor excluded from the premises of RP7505, Napili Surf AOA may request the termination of RP7505 and the issuance of a new revocable permit over the remaining portions of the land. Staff understands that Napili Surf AOA has been supportive of the project.

Demolition of similar failed shoreline structures along with construction and use of similar beach walkways and stairs across the State have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources

of an area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

NBBF has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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 issuance of an immediate construction right-of-entry permit to Napili Bay and Beach Foundation Inc. covering the subject area 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 right-of-entry permit form, as may be amended from time to time;
 - B. Before commencement of construction of the elevated beach dune walkover structure, NBBF shall indemnify the State for any liability or claims arising from the construction of the structure prior to receiving Governor's and legislative concurrence therefor, and shall post a removal bond in an amount to be approved by the Chairperson after consultation with the Department's Land Division and Engineering Division to cover the cost of the demolition and removal of the structure in the event it does not receive Governor's or legislative concurrence; and
 - C. The term of the right-of-entry shall be one (1) year, however, the Chairperson is authorized to extend the right-of-entry for good cause.
3. Authorize the closure of approximately 3,000 sq. ft. (more or less) of the subject premises illustrated under Exhibit E to allow for unfettered demolition and construction activity as described above in the interest of health and safety and prudent project management.
4. Authorize the issuance of a revocable permit to Napili Bay and Beach Foundation Inc. covering the subject area for public access and maintenance 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 revocable permit form, as may be amended from time to time;

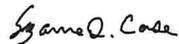
- B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Subject to the Applicant fulfilling the Applicant requirements listed above, authorize the issuance of a twenty-five (25) year term non-exclusive easement to Napili Bay and Beach Foundation Inc. covering the subject area for public access and 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 easement document form, as may be amended from time to time;
 - B. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - C. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



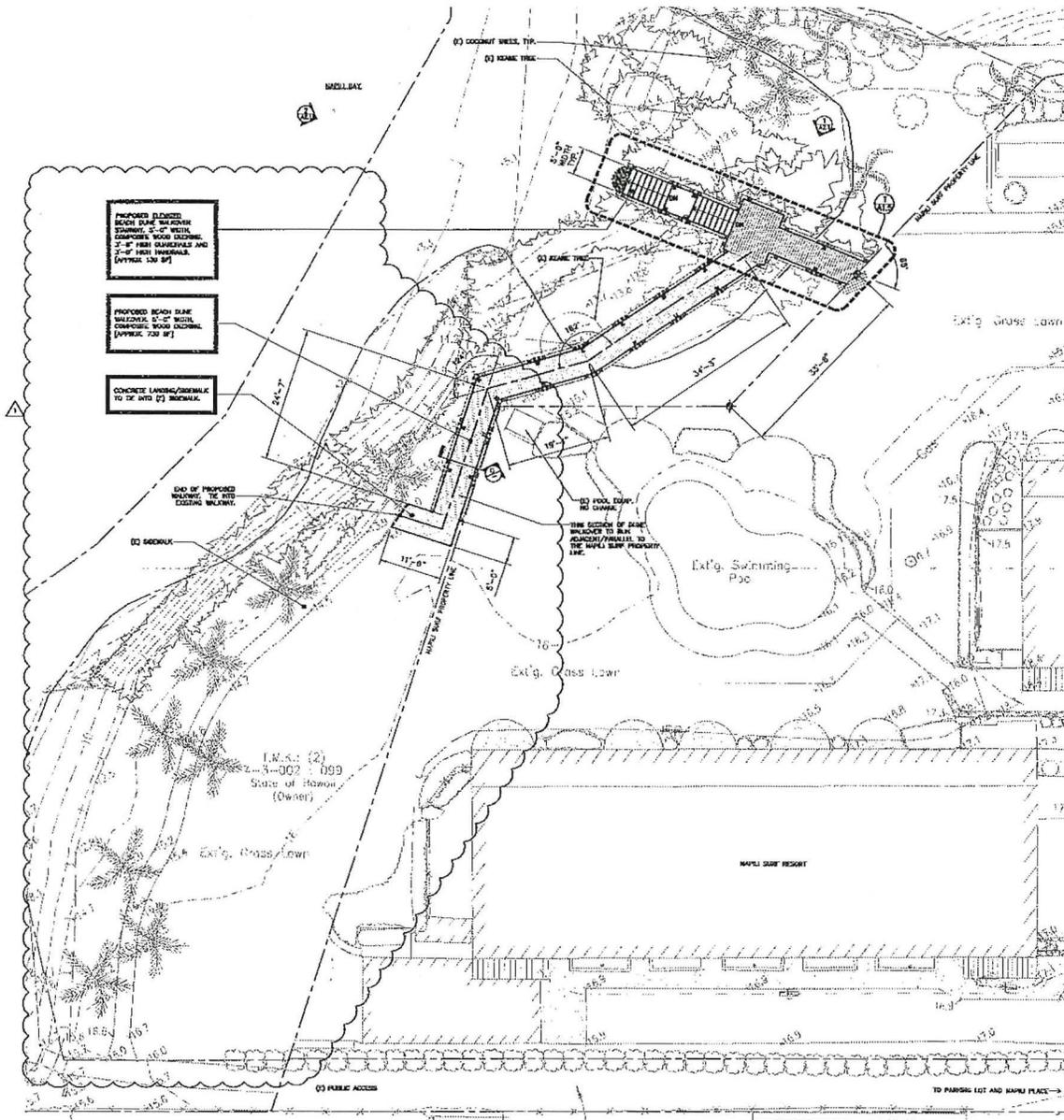
Suzanne D. Case, Chairperson

FOM RT



Exhibit B

EXHIBIT "C1"



1 PROPOSED BEACH WALK PLAN SCALE: 1/8"=1'-0"



THIS WORKING DRAWING WAS PREPARED BY ME OR UNDER MY SUPERVISION AND I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF HAWAII.

DATE: 10/20/2011

NAPILI SURF BEACH ACCESS

NAPILI SURF BEACH ACCESS
 TMC (2) 4-3-002-009
 TMC (2) 4-3-002-023

PREPARED BY: PILI DESIGN + BUILD
 CHECKED BY: PILI DESIGN + BUILD
 DATE: 10/20/2011

ISSUED FOR: BUILDING PERMIT
 NO. DATE: 10/20/2011
 BY: PILI DESIGN + BUILD
 CHECKED BY: PILI DESIGN + BUILD
 DATE: 10/20/2011

NO.	DATE	REVISIONS	BY
1	10/20/2011	ISSUED FOR BUILDING PERMIT	PILI DESIGN + BUILD

DESIGNER: PILI DESIGN + BUILD
 CHECKER: PILI DESIGN + BUILD
 DATE: 10/20/2011

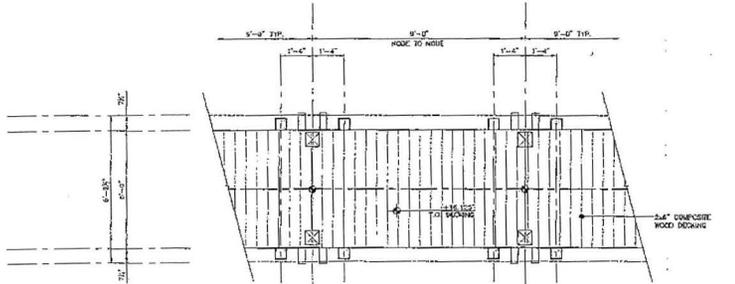
PROPOSED BEACH WALK PLAN

SHEET NUMBER: A1.2

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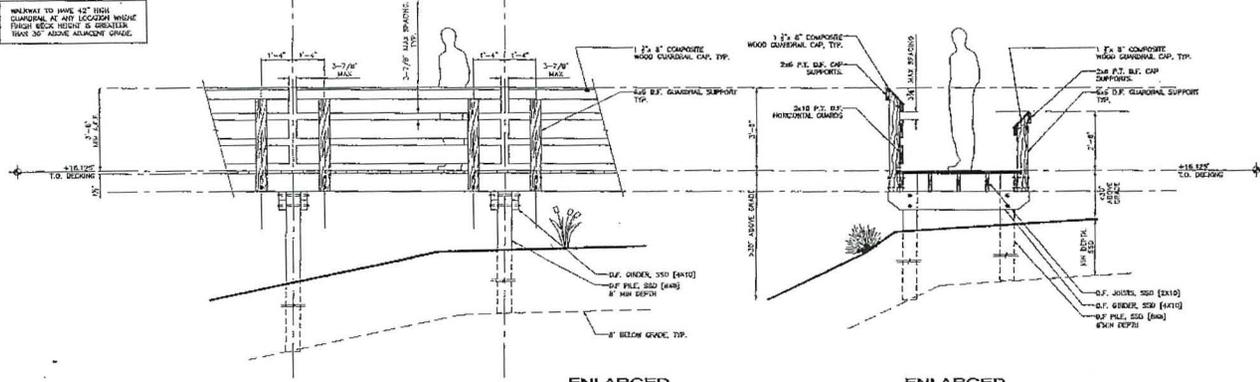


THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF HAWAII. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE CONSTRUCTION OF THIS PROJECT. I WILL NOT BE RESPONSIBLE FOR ANY CONSTRUCTION.

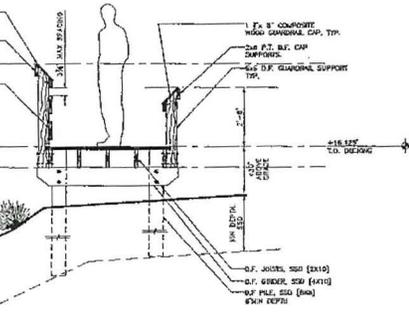


1 ENLARGED WALKWAY PLAN
SCALE: 1/2" = 1'-0"

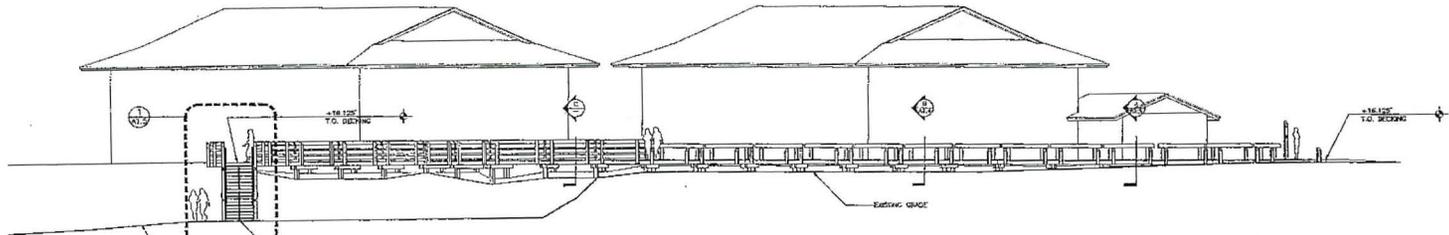
NOTE:
 WALKWAY TO HAVE 42" HIGH GUARDRAIL AT ANY LOCATION WHERE FURROW WIDTH IS GREATER THAN 36" ASIDE AVERAGE GRADE.



2 ENLARGED MAKAI ELEVATION
SCALE: 1/2" = 1'-0"



C ENLARGED WALKWAY SECTION
SCALE: 1/2" = 1'-0"



4 OVERALL ACCESS ELEVATION
SCALE: 1/8" = 1'-0"

EXHIBIT "C3"

NAPII SURF BEACH ACCESS

NAPII LARANA, #8 96781
 DATE: (2) 2-3-002-006
 DATE: (2) 4-3-002-003

PREPARED BY: PILI DESIGN + BUILD
 CHECKED BY: [Name]
 OWNER: [Name]
 SCALE: [Scale]
 DATE: [Date]

ISSUED FOR: SHM ASSESSMENT

NO.	DATE	REVISIONS	BY
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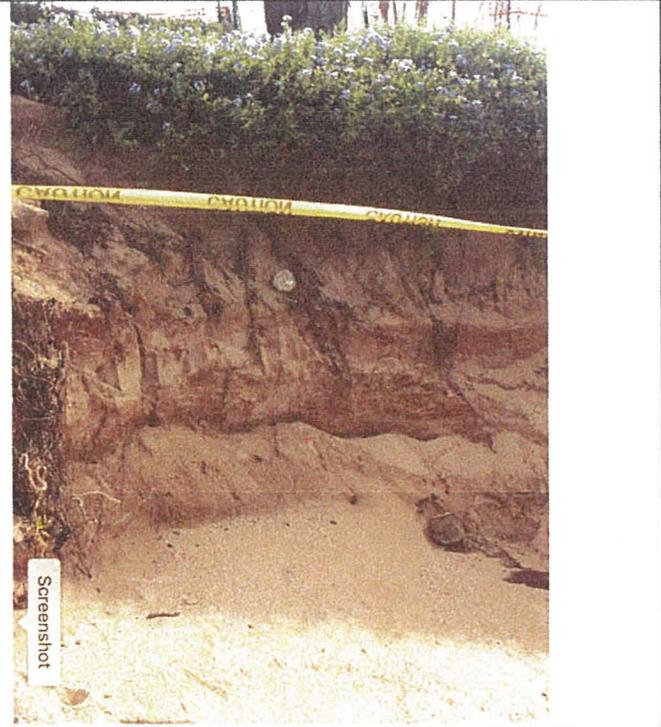
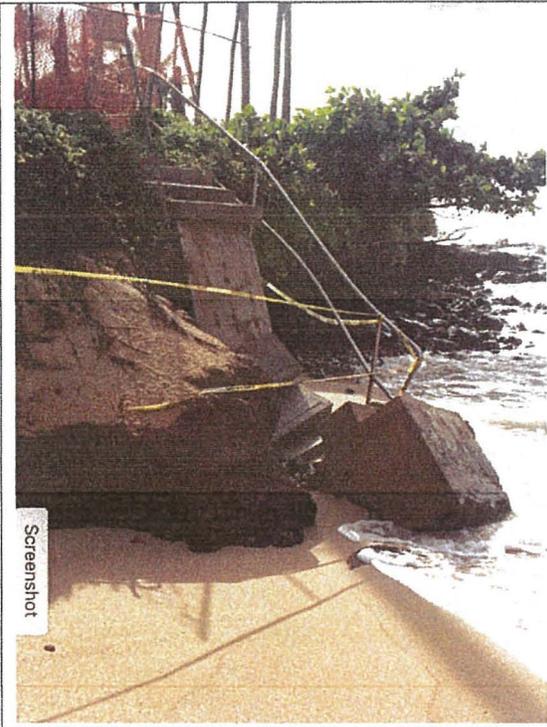
DESIGN APPROVED: [Signature]

CONTRACT NAME: [Name] SCALE: [Scale] SHEET NUMBER: [Number]

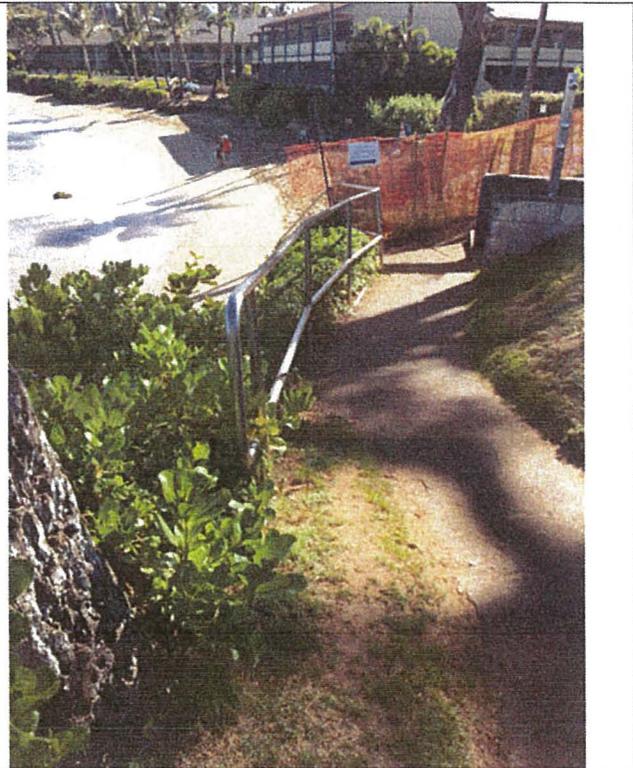
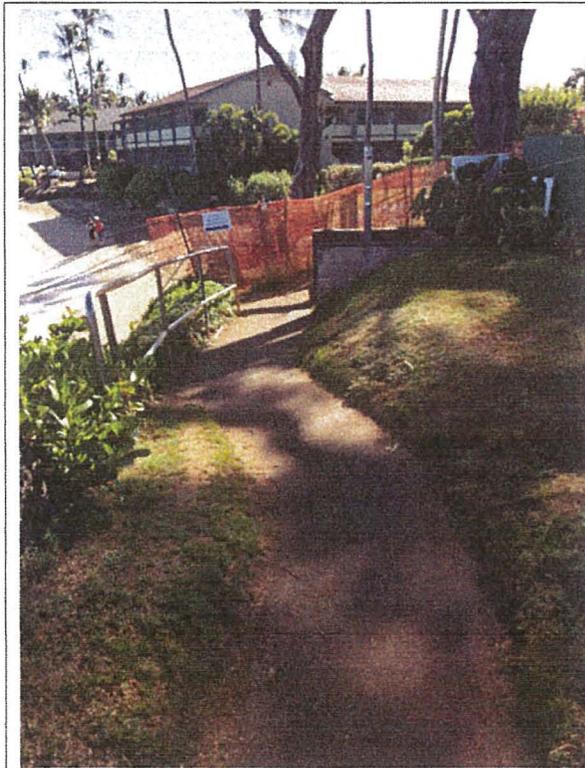
SHEET NUMBER: **A1.5**

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Photos :
Demolished stairs (left) and eroded cliff (right)



Old shower and concrete path in that area (top);



New Construction Design (8 pages)



IMAGE: 4' ORANGE DIAMOND NET SAFETY FENCE WITH WIRE AND METAL STAKE SUPPORTS

	ITEMS TO BE REMOVED
	CONSTRUCTION FENCE

1 CONSTRUCTION BARRIER PLAN
N.T.S.



EXHIBIT "E"

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 22, 2021

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

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title: Issuance of Immediate Construction Right-of-Entry Permit to Napili Bay and Beach Foundation, Inc. (NBBF) to Construct an Elevated Beach Access Stairs and Dune Walkover; Issuance of Revocable Permit to NBBF for Public Access Purposes and to Maintain Existing Beach Access Paths and the New Elevated Beach Access Structures Stairs and Dune Walkover until an Easement is Granted; Grant of 25-year Term Non-Exclusive Easement to NBBF for Public Access Purposes, Napili, Kaanapali, Maui, Tax Map Key: (2) 4-3-002: 023 por. and 099 por.

Project / Reference No.: PSF 21MD-067

Project Location; Napili, Kaanapali, Maui, Tax Map Key: (2) 4-3-002: 023 por. and 099 por.

Project Description: Demolition of failed concrete stairs and related unauthorized improvements and replacement with elevated beach access stairs and dune walkover.

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rules (HAR), Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing" and Part 1, Item No. 23, that states: "Maintenance of existing boardwalks, trails and unpaved roads."

Exhibit F

Cumulative Impact of Planned Successive Actions in Same Place Significant:

No, the demolition and construction project is anticipated to be completed in less than a month. Timing of the project shall be subject to weather, tide and surf conditions along the shoreline.

Action May Have Significant Impact on Particularly Sensitive Environment:

The proposed improvements to public lands will improve beach access. Demolition of the failed stairway along with construction and use of similar beach walkways and stairs have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources of an area.

The applicant will implement industry standard best management practices at all times during the use of government lands for staging, demolition and construction purposes. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Agencies Consulted:

DLNR Office of Conservation and Coastal Lands, County of Maui Department of Planning and Department of Water Supply. Staff have no objections to the proposed use.

Analysis:

The Board has permitted similar uses in the past. The proposed activity is of a similar type and scope of activity that periodically occurs at other government lands across the State. Such activities have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation:

That the Board find 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.