

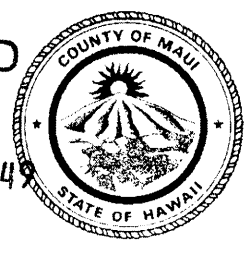
MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

EDWARD S. KUSHI, JR.
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

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COUNTY COUNCIL




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DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

June 25, 2019

MEMO TO: Michael J. Molina, Chair
Governance, Ethics and Transparency Committee

FROM: Caleb P. Rowe, Deputy Corporation Counsel 

SUBJECT: Litigation Matters
Settlement of Claim: Krist Baybayan
Claim No.: 30181417769-0001

Pursuant to Section 3.16.020B of the Maui County Code, our department hereby requests authorization to discuss settlement of the aforementioned claim. It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. There is no immediate deadline to this matter.

Copies of the claim and proposed resolution are enclosed. We request that a representative from the Department of Parks and Recreation be in attendance during discussion of this matter. If you have any questions, or concerns, please do not hesitate to contact me.

CPR:cs
Enclosures

cc: Karla Peters, Director
Department of Parks and Recreation

Resolution

No. _____

AUTHORIZING SETTLEMENT OF CLAIM NO. 30181417769-0001
OF KRIST BAYBAYAN

WHEREAS, Krist Baybayan filed Claim No. 30181417769-0001 on November 16, 2018, against the County of Maui for injuries she allegedly sustained at Napili Park at 50 Maiha Street, Lahaina, Maui, Hawaii, on July 5, 2018 from falling into a hole next to a picnic table; and

WHEREAS, the County of Maui and Krist Baybayan, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a proposed resolution of this claim by way of negotiated settlement, and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this matter and being advised of attempts to reach resolution of this claim by way of a negotiated settlement by the Department of the Corporation Counsel, the Council wishes to authorize settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

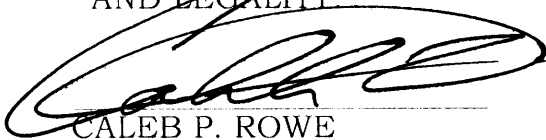
Resolution No. _____

1. That it hereby approves settlement of Claim No. 30181417769-0001 under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee; and

2. That payment is authorized to satisfy settlement of this claim following the execution of the "Release and Indemnity Agreement" by Krist Baybayan; and

3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks & Recreation, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



CALEB P. ROWE
Deputy Corporation Counsel
County of Maui
RISK 2018-0600

COUNTY OF MAUI

CLAIM FOR DAMAGE OR INJURY

RECEIVED

2018 NOV 16 PM 1:51

PLEASE PRINT CLEARLY

1. Claimant: Mr. Mrs. Ms. Krist "Lei" Maitavai OFFICE OF THE CLERK
2. Address: 38 W. Aipuni Place Lahaina, HI 96761
3. Telephone No.: Business 809.9533 Cell 808.6259
4. Date of Accident: July 5th, 2018 (Thursday)
5. Location of Accident: Napiti Park
6. Amount of Claim: Property Damage \$ _____ Personal Injury \$ _____

7. Describe the accident in detail. Indicate all the facts, causes, persons involved, witnesses, extent of damage, etc., and why you think the County is responsible. You may write on the back if needed.

It is a county "public" park. It is your duty and responsibility to maintain and is safe for everyone to enjoy. See attached documents and photos. If need more detail information please let me know so I may email the medical records as an attachment to your email addy. Still in going medical treatments, physical therapies (and possibility surgery pending MRI results).

8. If you carry insurance applicable to this claim, please provide the name and address of the insurance company and your policy number.

Kaiser Permanente (Lahaina Clinic)
910 Wainee St Hi 96761 Policy No. 575232

A. Did you file a claim with your insurance company? Yes

If yes, amount claimed \$ _____ Deductible amount \$ _____

B. If a claim was filed with your insurance company, what action do they intend to take?

medical bills, lost wages, pain and suffering.
I have my medical records on file. If need too, please provide the email addy to send as an attachment.

I HEREBY DECLARE THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

Krist Maitavai

 (Signature of Claimant)

11.16.18

 (Date)

Claim For: Krist "Lei" Baybayan

Injury Date: Thursday, July 5th, 2018

Approximately Time occur: 11 am – 12 pm

Place: Napili Park 50 Maiha Street Lahaina, Hawaii 96761

Presence: Daughter Jessica Baybayan, Son in law Sione "Puni" Pani

Grand children: age (11) Kawika Kaili, (10) Kamalani Kaili, (5) Maitland Pani, (4) Kana'i Kaili and (3) Feti'a Hitivai Pani (See attached witness report statements)

Incident took place: entering to Napili Park, turn 1st right into parking lot, turn right you'll see or facing the restroom/bathroom. On the left side of bathroom, there's a big tree, in the back of the tree sits cement picnic table/sitting bench side closer parking lot is where the incident occur.

Incident description: Went to prepare lunch, stepped onto the unlevelled cement platform have twisted my right ankle. Unable to walk and/or stand, son in law "Puni" volunteer to carry me to my car followed by daughter Jessica Baybayan drove me to the nearest Lahaina Kaiser Clinic to seek medical attention (See attached photos and documents) .

(Krist "Lei" Baybayan)

(Date)

****Found on Google address information:**

50 Maiha St, Lahaina, HI 96761

Napili Park, Address

Napili Park

[Website](#)

[Directions](#)

[Save](#)

4.336 Google reviews

Park in Napili-Honokowai, Hawaii

Address: 50 Maiha St, Lahaina, HI 96761

Hours:

[Open now](#)

[Add full hours](#)

Phone: (808) 661-4685

[Suggest an edit](#) · [Own this business?](#)

[Add missing information](#)

[Add business hours](#)

Questions & answers

[Ask a question](#) [Be the first to ask a question](#)

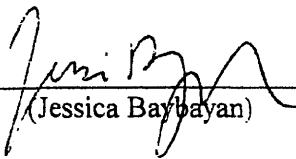


Reviews from the web

5/5 [Map of Play - KaBOOM!](#) · 1 vote

(WITNESS LETTER)

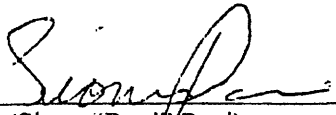
I, Jessica Baybayan witnessed the fall at the Napili Park. While walking to the picnic table, my mother fell and couldn't stand nor put pressure on legs. Therefore, Sione "Puni" Pani volunteer to carry her to the car and I drove her to the Lahiana Kaiser Permante Clinic to seek for medical attention.



(Jessica Baybayan)

Date: _____

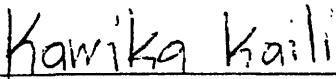
I, Sione "Puni" Pani witnessed the fall of Krist "Lei" Baybayan at the Napili Park. I, volunteered to carry "Lei" to the car so that her daughter Jessica Baybayan can drive her as well as I followed her to Lahaina Kaiser Permanente Clinic.



(Sione "Puni" Pani)

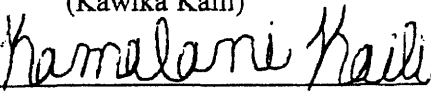
Date: _____

One day, we went to the Napili Park and my grandma fell down. She couldn't get up. So, my uncle Puni had to carry her to the car. And, my aunty Jessica took her to the doctor's.



(Kawika Kaili)

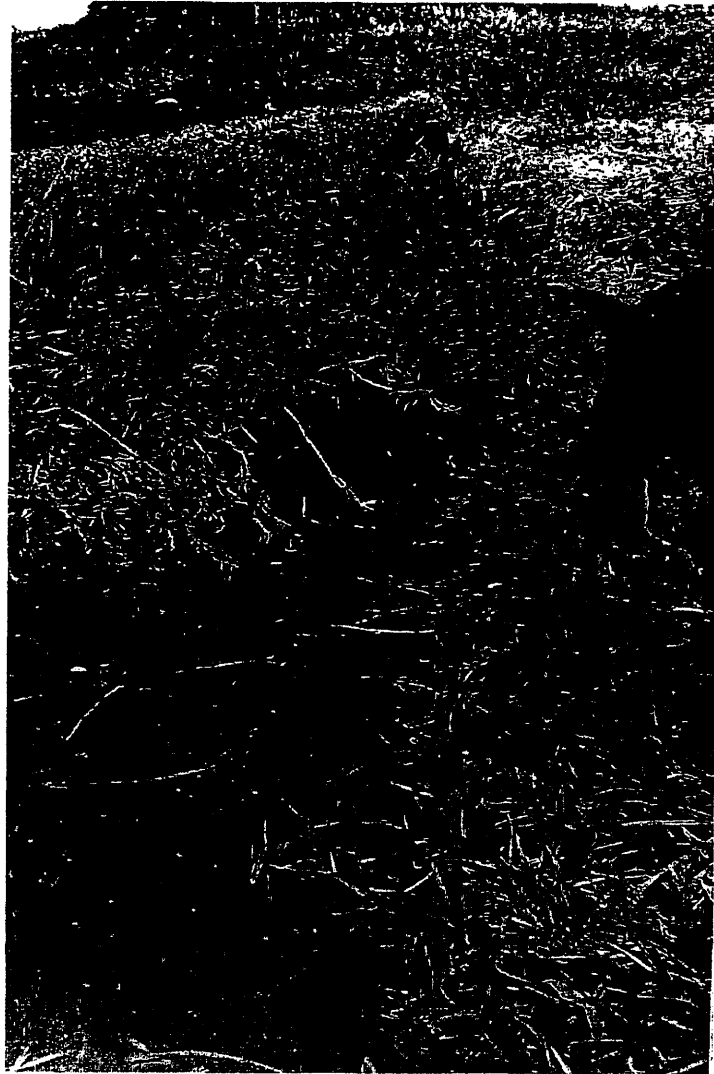
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(Kamalani Kaili)

Date: _____

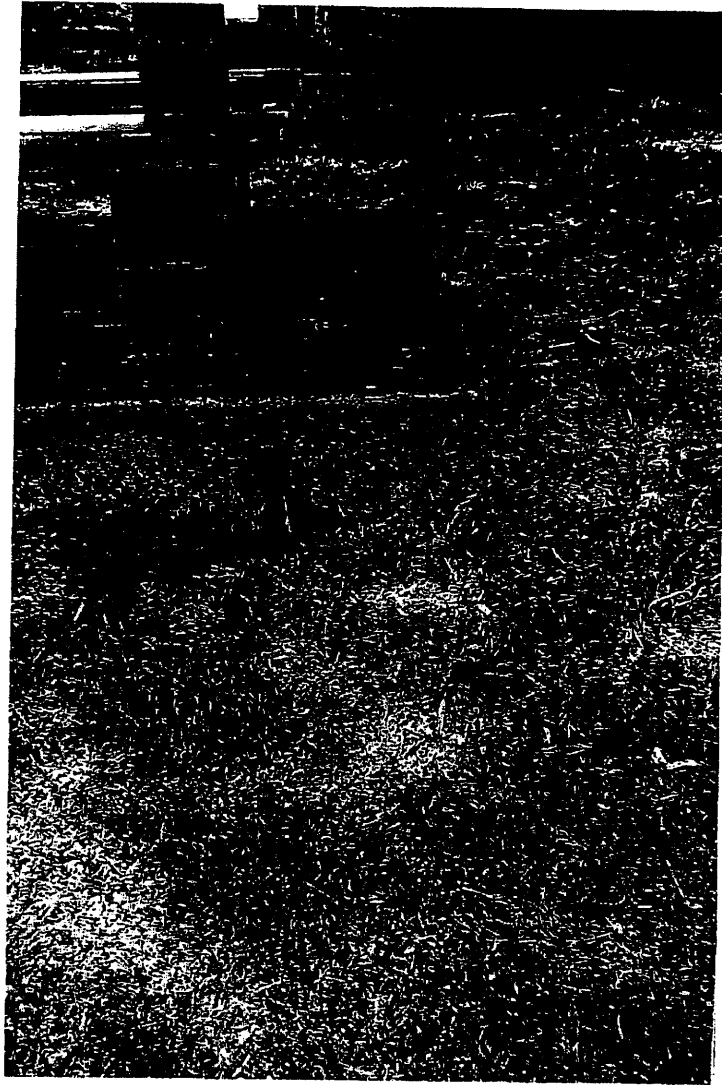


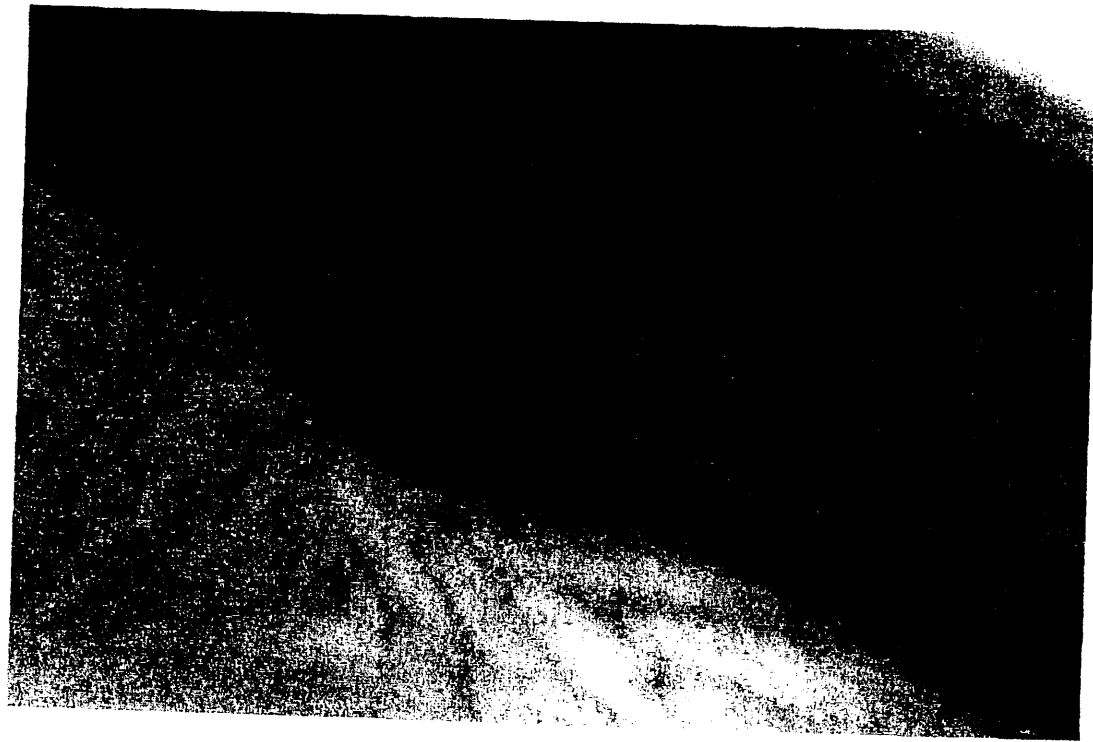






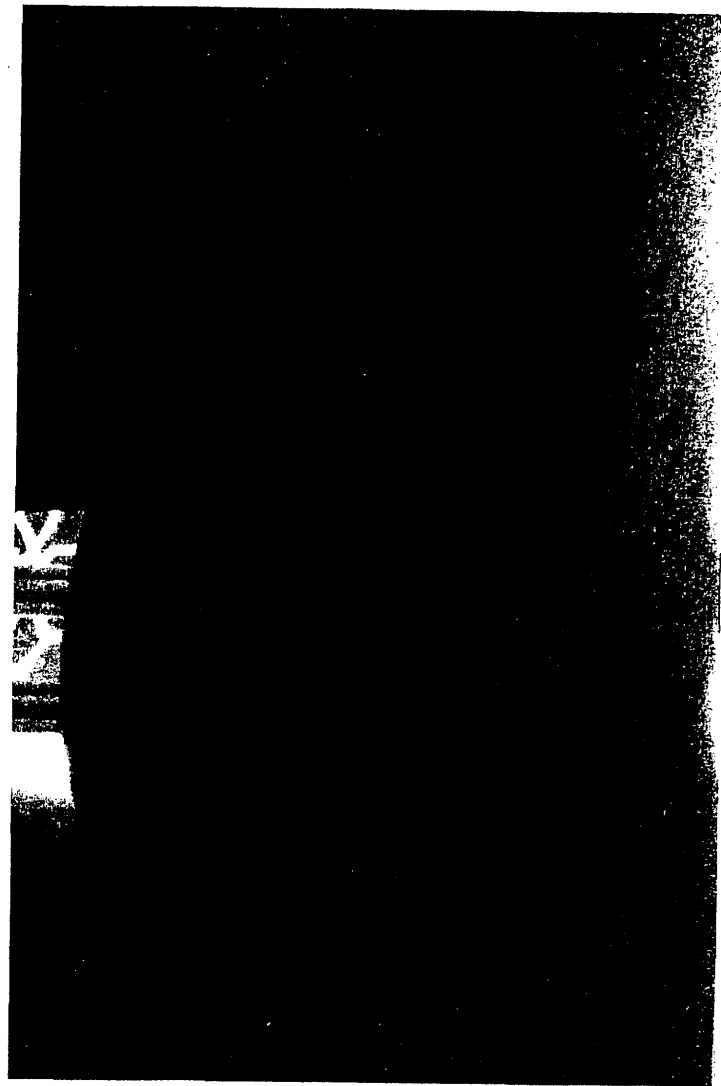






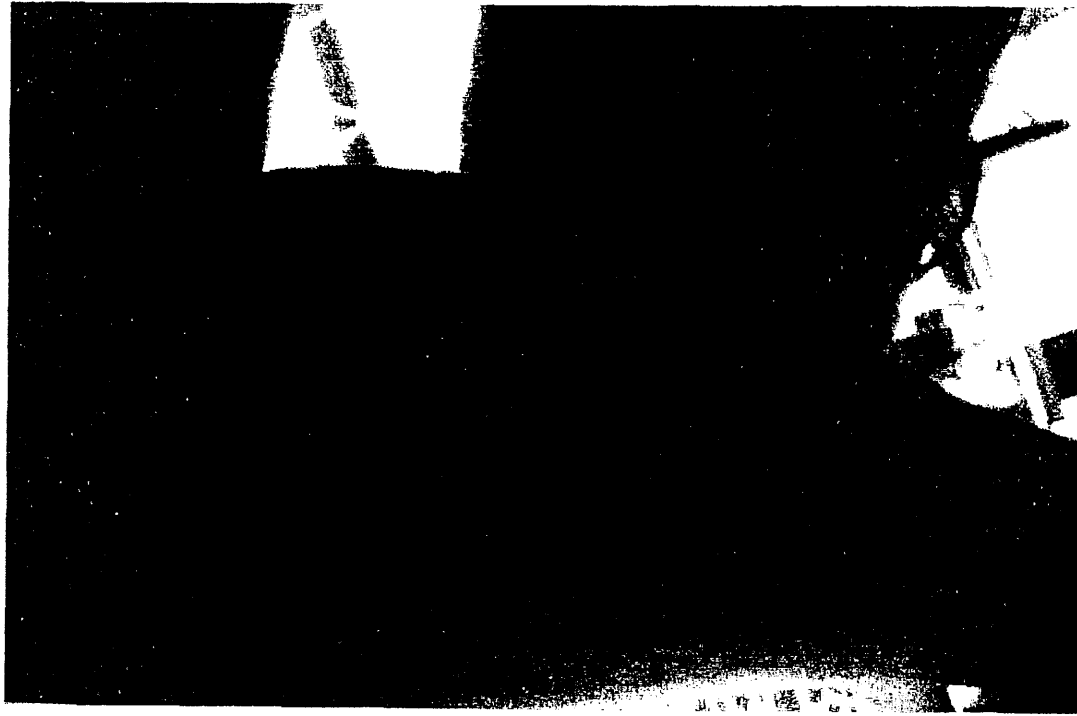


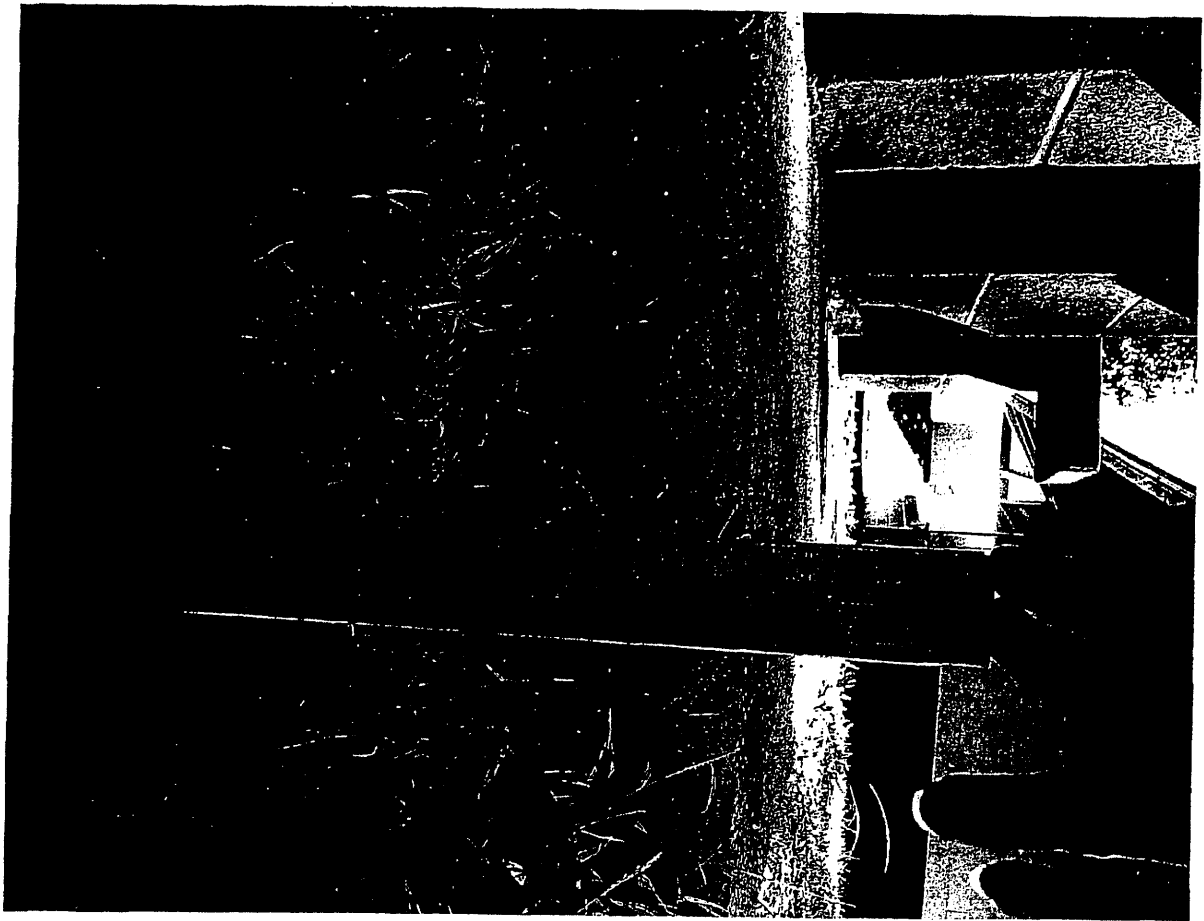


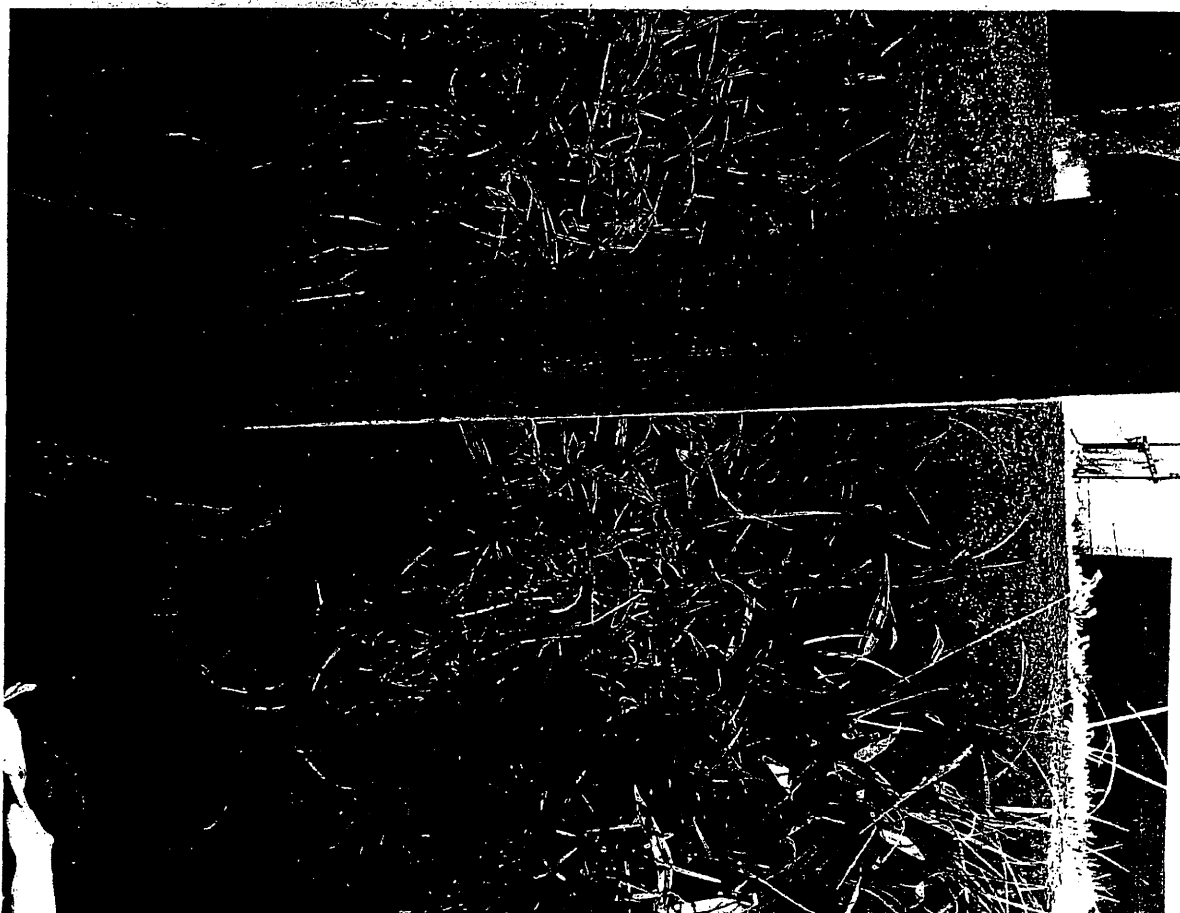


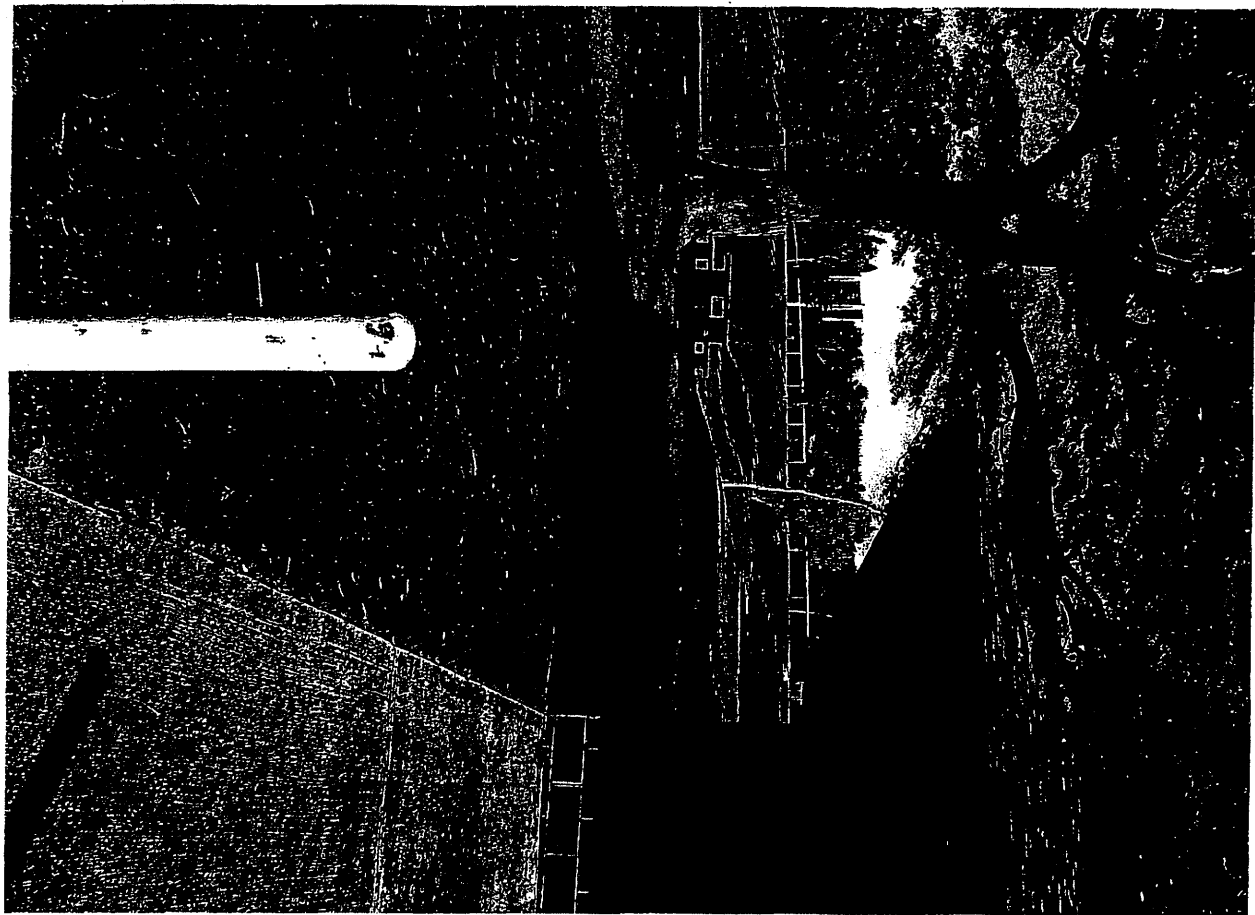
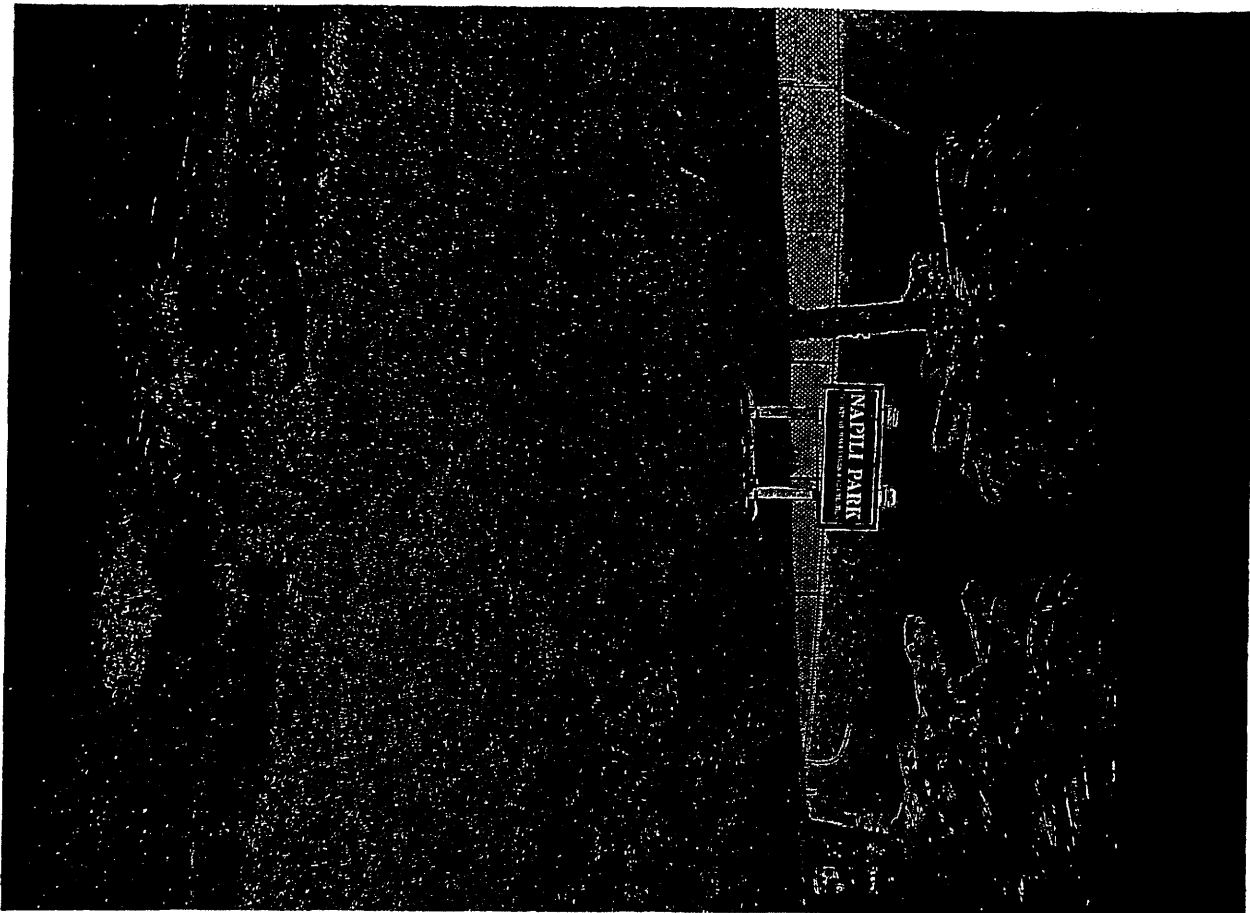


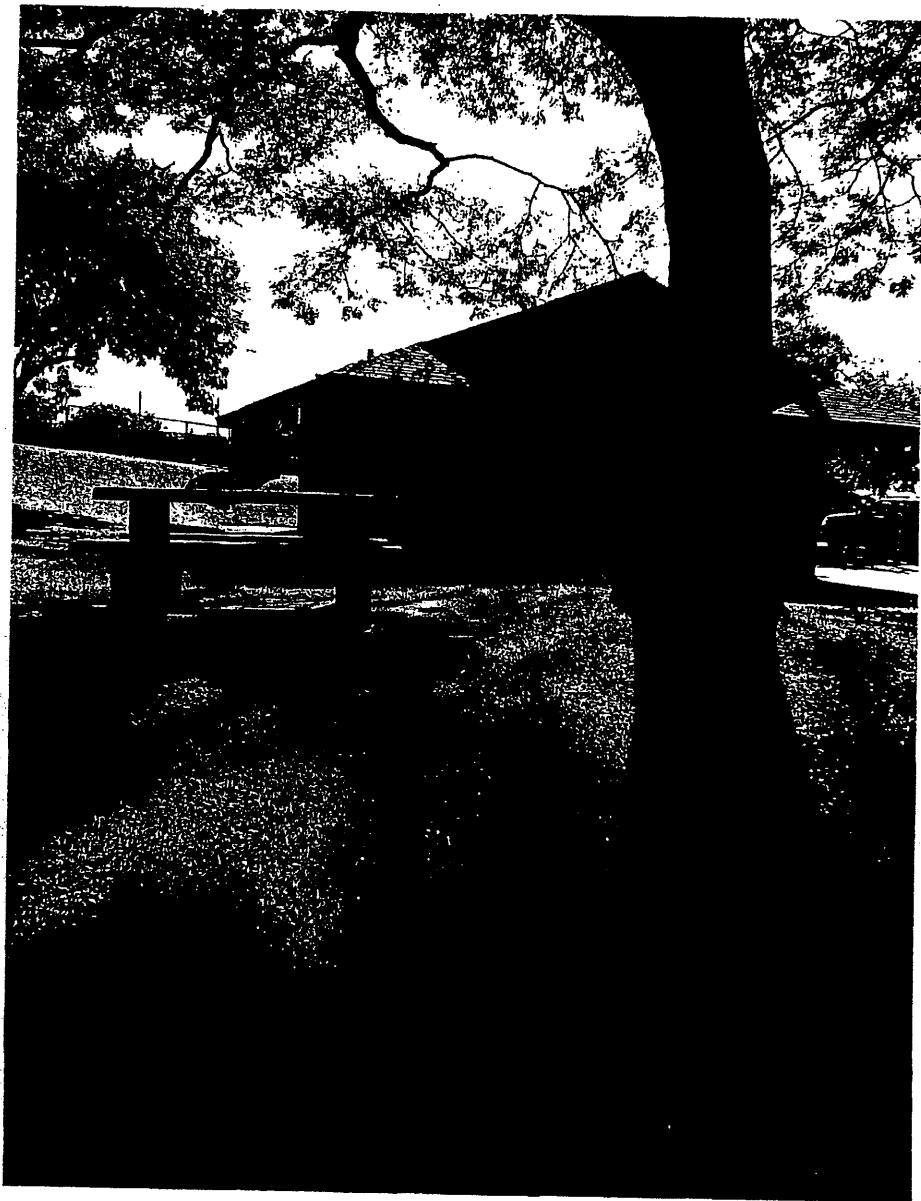
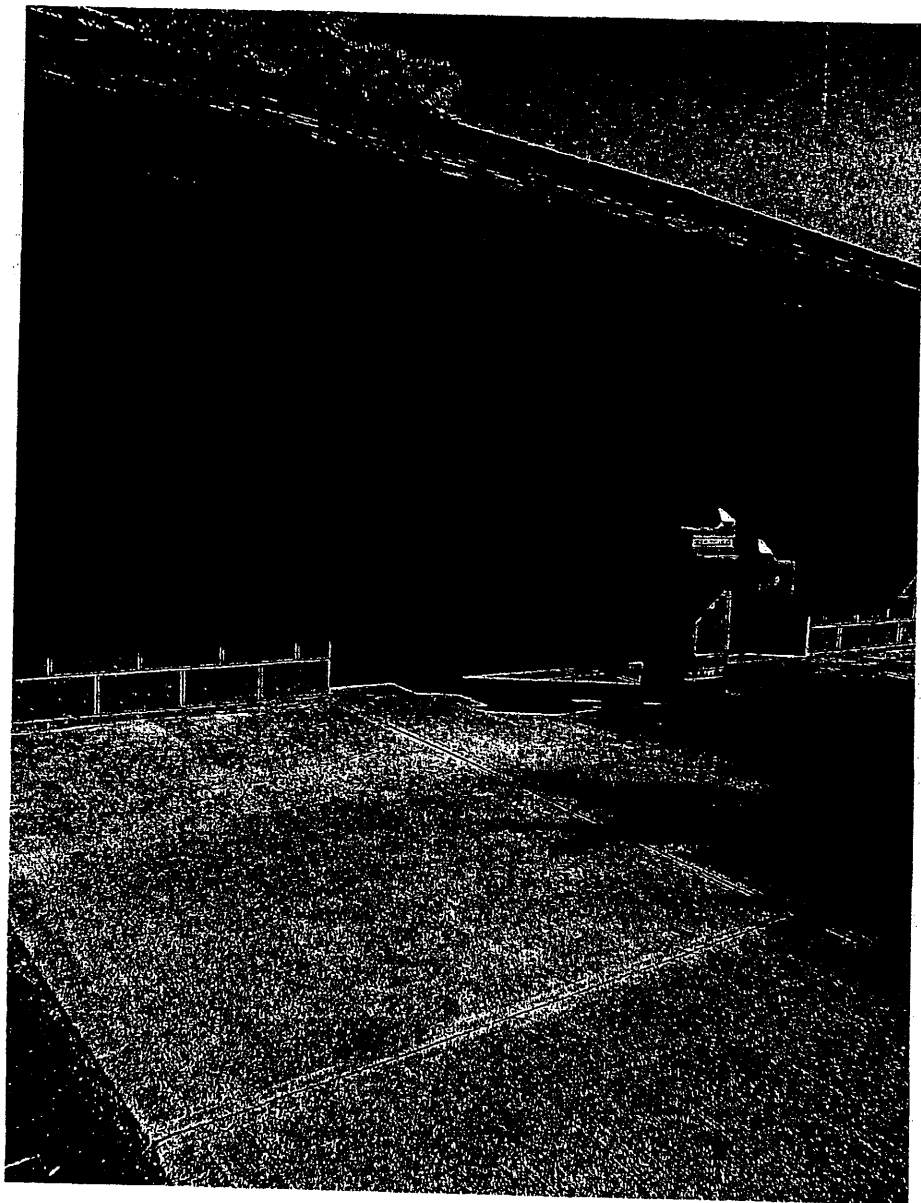


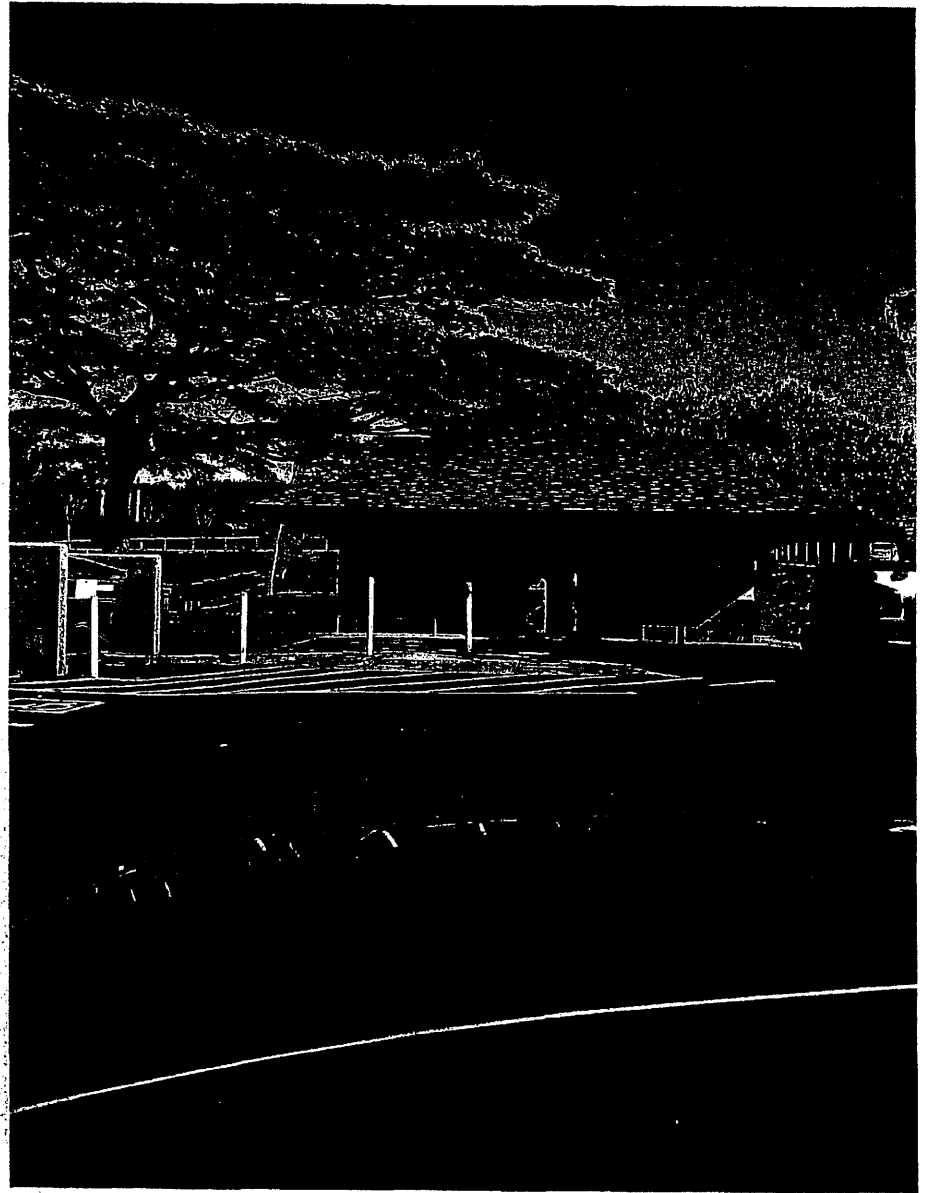


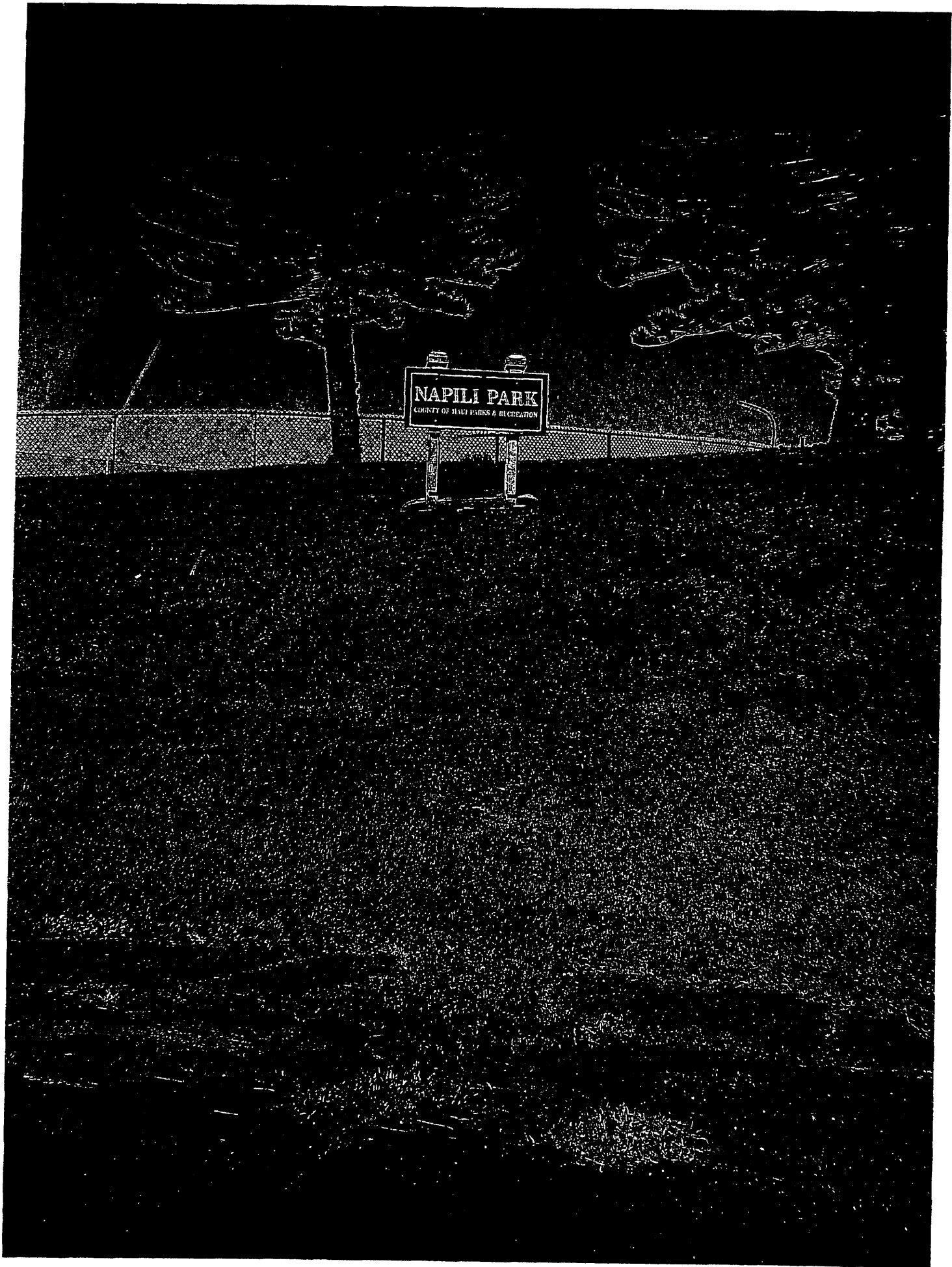












NAPILI PARK
COUNTY OF MAUI PARKS & RECREATION

RELEASE AND INDEMNITY AGREEMENT

1. DEFINITIONS:

- 1.1 **Releasers:** The term "Releasers" as used in this document includes Krist Baybayan, and her/his respective heirs, attorneys, agents, representatives, executors, administrators, subrogees, and assigns.
- 1.2 **Releasees:** The term "Releasees" as used in this document includes the County of Maui, Sedgwick, and their respective heirs, trustees, personal representatives, subsidiaries, parent companies, affiliates, executors, officers, directors, employees, agents, attorneys, successors, subrogees, and assigns.
- 1.3 **The Incident:** The term "incident" as used in this document refers to the accident that occurred on July 5, 2018, at Napili Park, which is located at 50 Maiha Street in Lahaina, Maui, in the State of Hawaii and which is not the subject of a lawsuit.
- 1.4 **Claims:** The term "claims" as used in this document refers to any and all claims, demands, damages, expenses, attorney's fees, costs, actions or causes of action whatsoever which Releasers now have or may have in the future, whether known or whether anticipated or not, resulting from, arising out of or to arise out of, or connected with, directly or indirectly, from the "incident".

2. CONSIDERATION FOR THIS RELEASE AND INDEMNITY AGREEMENT

Agreement: The consideration for this Joint Tortfeasor Release and Indemnity Agreement ("Release") is the total sum of \$15,000 (fifteen thousand and 00/100 dollars). This release is non-binding pending County of Maui approval. Each party to this agreement agrees to bear their own costs and attorney's fees.

KB
Initial

3. RELEASE COVENANTS:

For the "consideration" described in paragraph 2 above, Releasors hereby release and forever discharge the Releasees and all other persons in the world from any and all "claims".

4. COVENANT REGARDING JOINT TORTFEASOR EFFECT OR RELEASE

5. It is covenanted and agreed that this Release shall be construed as a joint tortfeasor release and that this Release shall, within the meaning of Section 663-11 through 663-17, Hawaii Revised Statutes, reduce Releasors' recovery against all other joint tortfeasors for the "claims" released herein by the pro-rate share of liability of the Release or the amount of \$15,000.00, whichever is greater, all as provided in said Section 663-11 through 663-17, Hawaii Revised Statutes.

5. INDEMNITY AGREEMENTS:

Releasors represent that they have paid or satisfied and/or will pay or will satisfy the claims of all persons or organizations who have or may have in the future money due and owing to them as a result of the "incident" including but not limited to providers of medical PIP, wage loss and/or property damage benefits, such as Medicare, HMSA, No-Fault or PIP insurance, TDI insurance, Department of Human Services, Workmen's Compensation insurance, medical payments insurance, and attorneys fees and costs. Releasors agree to defend, hold harmless and indemnify Releasees from any and all such claims. Releasors also agree to defend, hold harmless and indemnify Releasees from any and all claims by any person or organization whose rights have not extinguished by paragraph 4.

6. EFFECT OF BREACH OF CONDITIONS:

Each of the paragraphs of this Release contains material covenants and conditions to this Release, and the breach of any single covenant or condition shall have the effect of voiding the entire Release.

KB
Initial

7. NO ADMISSION OR LIABILITY:

It is understood and agreed that the payment described in this Release is not an admission of any negligence, liability or fault of any kind whatsoever but compromises and settles all disputes between the parties for the purpose of avoiding further controversy, litigation and expense, and that said payment is the final consideration of this Release and not other payment or consideration has been promised or will be paid.

8. GENERAL DAMAGES ONLY:

It is specifically understood and agreed by and between Releasors and Releasees that the consideration provided by Releasees is not intended to compensate Releasors for any medical or rehabilitative expenses, loss of income, or any element of special damages, but is intended to compensate the said Releasors for pain and suffering, mental and emotional distress, and other elements of future general damages that are uncertain in amount. Provided, however, that the undersigned Releasors specifically agree that in consideration of the payment above recited, they intend to release and does hereby release Releasees of any and all "claims" that they may have against them, which includes all items or damages related to claims for loss of income and medical expenses.

9. NO REPRESENTATION:

Releasors admit and agree that they have not relied on any statement of fact or opinion made by Releasees or any other persons or organization acting on behalf of Releasees which include Releasors to execute this Release other than what is contained in this Release, and that this Release is executed freely. Releasors acknowledge that Releasors have voluntarily entered into this Release.

10. FRAUD

Releasors agree that under Section 431:10C-307.7, H.R.S., Releasees have advised Releasors that Hawaii law requires Releasors to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.

KB

Initial

Dated: May 22, 2019, Hawaii, _____

[Handwritten Signature]

Krist Baybayan

Releasor

STATE OF HAWAII } ss.
COUNTY OF MAUI }

On this 22nd day of May, 2019, before me personally appeared Krist Baybayan, to me known to be the signer of the above release, and acknowledge that he/she voluntarily executed this release for uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Handwritten Signature: Kathleen M. Corcoran]

NOTARY PUBLIC, State of HAWAII

Print Name: Kathleen M. Corcoran

My commission expires: August 23, 2019

Claim no.: 30181417769-0001

Doc. Date:	<u>5/22/19</u>	# Pages:	<u>4</u>
Notary Name:	<u>Kathleen M.</u>		<u>2nd</u> Circuit
Doc. Description:	<u>Corcoran Release for settlement.</u>		
	<u>[Handwritten Signature]</u>		
Notary Signature	<u>Corcoran</u>	Date	<u>May 22, 2019</u>

Kry
Initial