

**COUNCIL OF THE COUNTY OF MAUI**  
**INFRASTRUCTURE MANAGEMENT**  
**COMMITTEE**

July 24, 2012

**Committee**  
**Report No.** \_\_\_\_\_

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Infrastructure Management Committee, having met on July 2, 2012, makes reference to County Communication 12-129, from the Director of Environmental Management, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF RECLAIMED WATERLINE EASEMENTS FOR HALEAKALA GREENS SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept the dedication from Maui R&T Partners, LLC, of two perpetual, non-exclusive, reclaimed waterline easements over portions of Lot 8 and Lot 4 of the Haleakala Greens Subdivision, Kihei, Maui, Hawaii, identified as TMK: (2) 2-2-24:009 (portion) and (2) 2-2-24:018 (portion), respectively. The easements are to accommodate a new reclaimed waterline for landscape irrigation purposes, which has already been installed and services the Hokulani Golf Villas, Nu`u Aina (formerly known as Maui Highlands Estates), and the Maui Research and Technology Park.

Your Committee notes that, pursuant to Section 3.44.015(C), Maui County Code, the Council may accept donations of real property or any interest in real property by the passage of a resolution, approved by a majority of its members.

The Director of Environmental Management stated that existing easements terminate near the top of Lipoa Parkway. He further stated that the two easements will allow the County to access and maintain the extended portion of the reclaimed waterline.

Your Committee discussed the impact that these users may have on the availability of reclaimed water, given the County's intent to also use reclaimed water to irrigate the South Maui Community Park and other County properties. The Director stated that all users of the reclaimed water can be served at this time.

Your Committee authorized nonsubstantive changes to the proposed resolution.

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Your Committee voted 6-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Cochran, Vice-Chair Victorino, and members Carroll, Couch, Hokama, and Mateo voted "aye". Committee member Pontanilla was excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Infrastructure Management Committee RECOMMENDS the following:

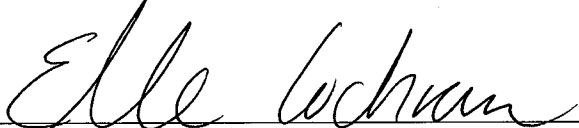
1. That Resolution \_\_\_\_\_, as revised herein and attached hereto, entitled "ACCEPTING DEDICATION OF RECLAIMED WATERLINE EASEMENTS FOR HALEAKALA GREENS SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 12-129 be FILED.

COUNCIL OF THE COUNTY OF MAUI  
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This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
ELLE COCHRAN, Chair

im:cr:12052aa:scj

# Resolution

No. \_\_\_\_\_

ACCEPTING DEDICATION OF RECLAIMED WATERLINE EASEMENTS  
FOR HALEAKALA GREENS SUBDIVISION, PURSUANT TO  
SECTION 3.44.015, MAUI COUNTY CODE

WHEREAS, MAUI R&T PARTNERS, LLC, a Delaware limited liability company, owner of real property described as Tax Map Key Numbers (2) 2-2-024:009 (por.) and (2) 2-2-024:018 (por.), desires to dedicate those certain perpetual, non-exclusive Reclaimed Waterline Easements, as more fully described in Exhibit "1", attached hereto and made a part hereof, to the County of Maui; and

WHEREAS, the Director of Environmental Management has reviewed said dedication and recommends approval of the same; and

WHEREAS, pursuant to Section 3.44.015(C), Maui County Code, the County Council may accept donations of real property or any interest in real property by the passage of a resolution approved by a majority of its members; now, therefore,

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

1. That it hereby accepts the Reclaimed Waterline Easements, as described in Exhibit "1", attached hereto, to be dedicated by Maui R&T Partners, LLC, to the County of Maui in

Resolution No. \_\_\_\_\_

accordance with the terms and conditions set forth in said easement; and

2. That it does hereby authorize the Mayor of the County of Maui to execute all necessary documents in connection with the acceptance of said dedication; and

3. That certified copies of this Resolution be transmitted to the Mayor of the County of Maui, the Director of Environmental Management, and Maui R&T Partners, LLC.

APPROVED AS TO FORM  
AND LEGALITY:



RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui

S:\ALL\RMT\Resos\Sewerline Easement22024009 and 22024018 MauiR&T.doc

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return by Mail ( X ) Pickup ( ) To:

Department of Environmental Management  
County of Maui  
2200 Main Street, Suite 100  
Wailuku, Hawaii 96793

TOTAL NO. OF PAGES: -13-

Maui R&T Partners LLC-County of Maui-Reclaimed Waterline-101811.doc

Affects Lot 8 of the Haleakala Greens Subdivision, T.M.K.: (2) 2-2-24:09 (por.) and  
Lot 4 of the Haleakala Greens Subdivision, T.M.K. (2) 2-2-24:18 (por.)

**RECLAIMED WATERLINE EASEMENTS**

KNOW ALL MEN BY THESE PRESENTS:

That MAUI R&T PARTNERS, LLC, a Delaware limited liability company, whose mailing address is 1999 Avenue of the Stars, Suite 2850, Los Angeles, California 90067, hereafter the "Grantor", in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable considerations paid by the COUNTY OF MAUI, a political subdivision of the State of Hawaii, through its Department of Environmental Management with its principal office and mailing address at 200 South High Street, Wailuku, Hawaii 96793, referred to as the "Grantee", the receipt whereof is hereby acknowledged, the Grantor warrants that Grantor is the property owner and has the full authority to grant this easement, does hereby grant and convey unto the Grantee, and its successors and assigns, a perpetual nonexclusive easement over, under, across and through a

Maui R&T Partners LLC-County of Maui-Reclaimed Waterline-070912.doc

1

**EXHIBIT " 1 "**

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portion of Lot 8 of the Haleakala Greens Subdivision, which lot is a portion of the land identified as Tax Map Key Number (2) 2-2-24-9, and Lot 4 of the Haleakala Greens Subdivision, Tax Map Key Number (2) 2-2-24:18, as more particularly described on Exhibit "A", and as shown on Exhibit "B", attached hereto and made a part hereof, as Easement R-2 and Easement R-3, hereinafter called the "Easement Areas". The general location of the Easements are depicted on Exhibit "C" attached hereto. The easement granted hereunder shall be for reclaimed-water purposes, including the right to construct, install, reconstruct, maintain, operate, repair, and remove reclaimed water pipelines and related appurtenances, referred to as the "Reclaimed Waterline Improvements" as the Grantee shall deem reasonably necessary or expedient for the proper maintenance, operation, or repair of said Reclaimed Waterline Improvements.

TOGETHER with reasonable rights of ingress to and egress from the Easement Areas across existing roadways or such other portions of the Grantor's Property provided or specified by the Grantor for such purposes, as reasonably required in connection with the rights granted herein.

That the foregoing grant is made upon the following restrictions and conditions, which shall be binding upon the Grantor, Grantee, and their respective successors and assigns:

1. Waste and unlawful, improper or offensive use of premises. That the Grantee shall not commit or permit to be committed any wasteful, unlawful, improper, or offensive use of the easement and adjoining areas.

2. Use and restoration of premises. That the Grantee shall, upon performing any maintenance or repair work, restore the surface of the ground, damaged in the performance of said maintenance or repair work, to their original condition to the extent that such restoration is reasonably possible.

3. Use by Grantor. That the Grantor shall not erect or construct any building foundations, buildings, or structures above or below the present ground level, raise or lower the present ground level, or plant any trees or hedges within the Easement Areas unless the Grantor receives prior written approval from the Grantee; provided, however, that this provision shall not prevent the Grantor from constructing and maintaining roadways within said Easement Areas or from laying, constructing, operating, maintaining, repairing or removing its own reclaimed water pipelines, conduits or drains below the surface of the said Easement Areas provided that such reclaimed water pipelines, conduits or drains do not interfere with the exercise by the Grantee of the rights herein granted; provided, further, however, that notwithstanding and irrespective of any

prior written approval of the Grantee, the Grantor shall defend, indemnify and hold harmless the Grantee from and against any and all damage, including loss to person or property, and damage to the Grantee's reclaimed water pipeline or pipelines, meters, or other appurtenances in said Easement Areas, resulting or arising from the Grantor's erection of said building foundation, building or structure, from the Grantor's planting of said hedge or tree, from the Grantor's raising or lowering of the ground level, or from the Grantor's construction and maintenance, repair or removal of its own water pipelines and conduits in said Easement Areas.

4. Maintenance of Easement Areas. That the grant of right does not obligate nor charge the Grantee with any duties or responsibilities with regard to the ownership, condition, repair, and/or maintenance of the Easement Areas except as required in paragraph 2.

5. Indemnity. (a) The Grantee shall indemnify and hold harmless the Grantor, its successors and assigns, from and against all claims for property damage, personal injury, or wrongful death arising out of or in connection with the intentional, reckless or negligent act of the Grantee, its agents, employees, contractors, and servants, or from or in connection with the exercise by the Grantee of the rights and privileges granted herein, but only to the extent that the Grantee's liability for such damage, loss, or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the Grantee, and further, to the extent the payment for such damage, loss or injury is permitted by law and approved by the Maui County Council, pursuant to Chapter 3.16 Maui County Code, as amended.


(b) That the Grantor shall defend, indemnify and hold harmless the Grantee from and against all claims for property damage, personal injury, or wrongful death when and to the extent such damage, injury, or death proximately results from or arises out of the negligence of the Grantor, and will reimburse the Grantee for any judgments, costs, and expenses, including reasonable attorney's fees, incurred in connection with the defense of any such claim, or incurred by the Grantee in enforcing this agreement, but only to the extent that the Grantor's liability for such damage, loss, or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the Grantor, and only to the extent the payment for such damage, loss, or injury is permitted by law.

6. Damage to Reclaimed Waterline Improvements. The Grantor shall be responsible for all costs and expenses incurred by the Grantee in connection with the repair of damages to the Reclaimed Waterline Improvements when and to the extent such damages result from or arise out



of the negligence of the Grantor, and shall reimburse the Grantee for costs and expenses, including reasonable attorney's fees, incurred by the Grantee in enforcing this provision.

7. As-Is. The Grantor has not made and does not make, any representation or warranty, implied or otherwise, with respect to the condition of the Easement Areas, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the Easement Areas, whether or not such conditions are known to Grantor or reasonably discoverable by Grantee. Grantee accepts the Easement Areas in completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the 21 day March, ~~2011~~ <sup>2012</sup> 

GRANTOR:

MAUI R&T PARTNERS, LLC, a Delaware limited liability company

By Maui Tech Associates, LLC, a Delaware limited liability company  
Its Administrative Member

By \_\_\_\_\_  
Name: Michael Rosenfeld  
Its Manager

GRANTEE:

COUNTY OF MAUI

\_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

APPROVAL RECOMMENDED:



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KYLE GINOZA  
Director of Department of  
Environmental Management

APPROVED AS TO FORM  
AND LEGALITY:



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Print: Richelle Thomson  
Deputy Corporation Counsel  
County of Maui



STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Name:  
  
Notary Public, State of Hawaii  
  
My commission expires: \_\_\_\_\_

<b>HAWAII NOTARY CERTIFICATION</b>	
Date: _____	# Pages: _____ ( )
Name: _____	Second Circuit
Document Description: _____	
_____ Notary Signature	

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that said person is the \_\_\_\_\_ of COUNTY OF MAUI, that said instrument was duly approved and signed on behalf of said company, and that said officer(s) acknowledged said instrument to be the free act and deed of said company.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

<b>HAWAII NOTARY CERTIFICATION</b>	
Date: _____	# Pages: _____ ( )
Name: _____	Second Circuit
Document Description: _____	
_____ Notary Signature	

LAND DESCRIPTION

Reclaimed waterline (R-2) Easement  
(15.00 feet wide, right angle measurements)

As easement for reclaimed waterline (R-2) in favor of the County of Maui, Department of Environmental Management, affecting Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision, being a portion of Land Patent Grant 9325, Apana 1 to Haleakala Ranch Company.

Situate at  
Waiohuli-Keokea, Makawao (Kihei), Maui, Hawaii  
Tax Map Key: (2) 2-2-24: Portion of 09

Beginning at the Southwesterly corner of this easement being a point on the Westerly right-of-way line of Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision and the Easterly right-of-way line of Lot 4 (Lipoa Parkway) of the "Haleakala Greens" Subdivision [TMK (2) 2-2-24: 18] the coordinates of said point of beginning are based on record information, and referred to Government Survey Triangulation Station "Puu O Kali", being 6,932.27 feet North and 18,373.40 feet West, and running by azimuths measured clockwise from True South; thence,

1. 198° 30' 00" 15.00 feet along the Easterly right-of-way line of Lot 4 (Lipoa Parkway) of the "Haleakala Greens" Subdivision [TMK (2) 2-2-24: 18] to a point; thence,
2. 288° 30' 00" 47.16 feet along the remainder of Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision, to a point; thence,
3. Following along the same, along the arc of a curve concave to the left, having a radius of 9,939.50 feet, the chord azimuth and distance being 285° 15' 00" for 1,127.00 feet to a point; thence.
4. 282° 00' 00" 378.87 feet along the remainder of Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision to a point; thence,
5. 270° 53' 00" 51.84 feet along the same, to a point; thence,
6. 282° 00' 00" 0.71 feet along the same to a point on the Westerly property boundary line of Lot 3-A-1-B of the "Haleakala Greens" Subdivision [TMK (2) 2-2-02: 54]; thence,
7. 9° 07' 30" 15.02 feet along the Westerly property boundary line of Lot 3-A-1-B of the "Haleakala Greens" Subdivision [TMK (2) 2-2-02: 54] to a point thence,

Exhibit A

8. 90° 53' 00" 51.84 feet along the remainder of Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision to a point; thence,
9. 102° 00' 00" 380.33 feet along the same to a point; thence,
10. Following along the same, along the arc of a curve concave to the right, having a radius of 9,954.50 feet, the chord azimuth and distance being 105° 15' 00" for 1,128.70 feet to a point; thence,
11. 108° 30' 00" 47.16 feet along the remainder of Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision to the point of beginning and containing an area of 24,111 square feet or 0.554 acre.

LAND DESCRIPTION

Reclaimed waterline (R-3) Easement  
(15.00 feet wide, right angle measurements)

As easement for reclaimed waterline (R-3) in favor of the County of Maui, Department of Environmental Management, affecting Lot 4 (Lipoa Parkway) of the "Haleakala Greens" Subdivision, being a portion of Land Patent Grant 9325, Apana 1 to Haleakala Ranch Company.

Situate at

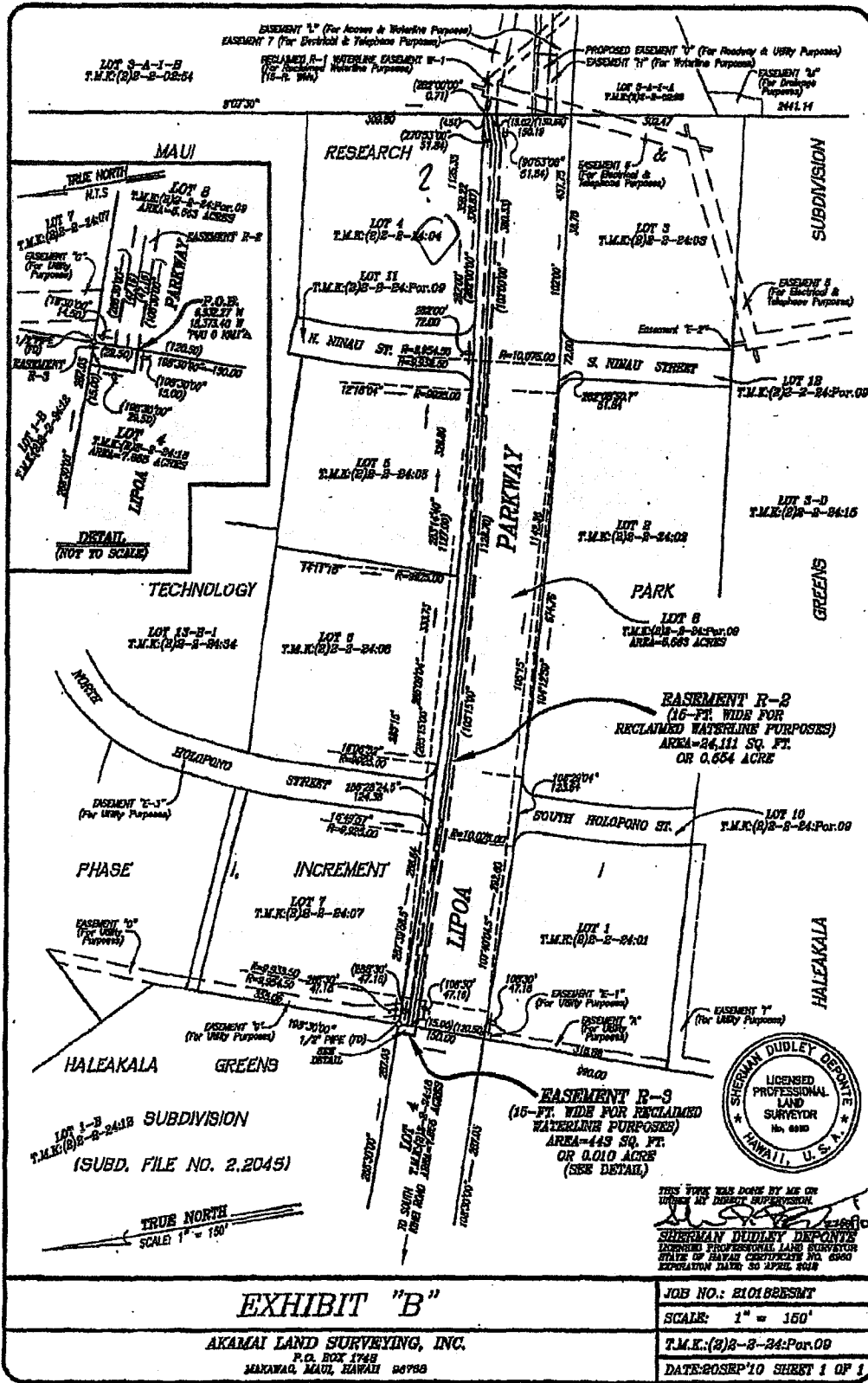
Waiohuli-Keokea, Makawao (Kihei), Maui, Hawaii

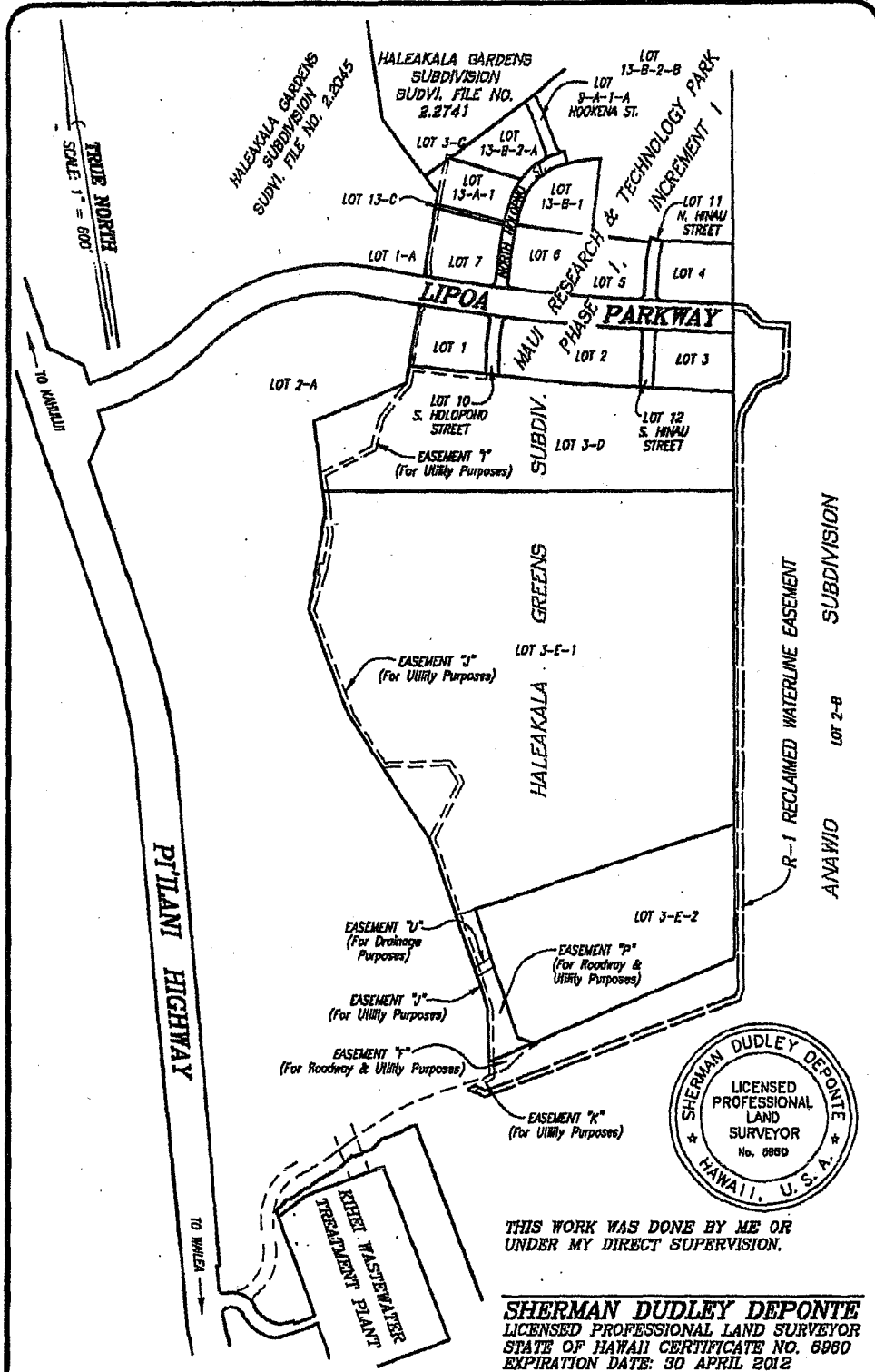
Tax Map Key: (2) 2-2-24: Portion of 18

Beginning at the Southeasterly corner of this easement, being a point on the Easterly right-of-way line of Lot 4 (Lipoa Parkway) of the "Haleakala Greens" Subdivision and the Westerly right-of-way line of Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision [TMK (2) 2-2-24: Portion of 09], the coordinates of said point of beginning are based on record information, and referred to Government Survey Triangulation Station "Pu'u O Kali" being 6,932.27 feet North and 18,373.40 feet West, and running by azimuths measured clockwise from True South; thence,

1. 108° 30' 00" 15.00 feet along the remainder of Lot 4 (Lipoa Parkway) of the "Haleakala Greens" Subdivision to a point; thence,
2. 198° 30' 00" 29.50 feet along the same, to a point; thence,
3. 288° 30' 00" 15.00 feet along the southerly property boundary line of Lot 1-B of the Haleakala Greens" Subdivision (Subdivision File No. 2.2045) [TMK (2) 2-4-24: 12] to a ½ inch pipe (found: thence,
4. 18° 30' 00" 29.50 feet along the Westerly right-of-way line of Lot 8 (Lipoa Parkway) of the "Maui Research and Technology Park, Phase 1, Increment 1" Subdivision [TMK (2) 2-2-24: Portion of 09] to the point of beginning and containing an area of 443 square feet or 0.010 acre.







THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.

**SHERMAN DUDLEY DEPONTE**  
 LICENSED PROFESSIONAL LAND SURVEYOR  
 STATE OF HAWAII CERTIFICATE NO. 6860  
 EXPIRATION DATE: 30 APRIL 2012

<b>EXHIBIT "C"</b>	JOB NO.: 208112EXH-C
	SCALE: 1" = 600'
<b>AKAMAI LAND SURVEYING, INC.</b> P.O. BOX 1748 MAKAWAO, MAUI, HAWAII 96768	T.M.K.: (2)2-2-24:(VARIES)
	DATE: 24 AUG '11 SHEET 1 OF 1