

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 12-130, from the Director of Environmental Management, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENTS FOR THE EPA CONSENT DECREE SEWER REHABILITATION PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept the dedication from A&B Properties, Inc., of perpetual, non-exclusive, sewerline easements over portions of property situated at Kahului, Maui, Hawaii, identified as TMK: (2) 3-7-09:004, (2) 3-7-09:030, and (2) 3-7-12:032.

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 the Department replaced an existing pipeline as part of a recent capital improvement project known as the Environmental Protection Agency ("EPA") Consent Decree Sewer Rehabilitation Project. He further stated that the Department has been replacing certain force mains in an effort to improve reliability of the sewer system. When the pipeline was replaced, it needed to be realigned. The project involved a single pipeline, with the realignment affecting three parcels. The Department is proposing that an easement across the three parcels be accepted. Acceptance of the easement will allow the Department to operate and maintain the sewerline within the easement area.

Your Committee recommended that the resolution be revised to incorporate nonsubstantive revisions.

COUNCIL OF THE COUNTY OF MAUI

INFRASTRUCTURE MANAGEMENT COMMITTEE

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Committee
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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 entitled “ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE EPA CONSENT DECREE SEWER REHABILITATION PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE”, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions. In its transmittal, the Department of the Corporation Counsel explained that it is appropriate to refer to the dedication of a single easement, rather than multiple easements, under the circumstances.

Your Infrastructure Management Committee RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled “ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE EPA CONSENT DECREE SEWER REHABILITATION PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE”, be ADOPTED; and
2. That County Communication 12-130 be FILED.

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

July 24, 2012
Page 3

Committee
Report No. _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ELLE COCHRAN, Chair

im:cr:12053aa:scj

Resolution

No. _____

ACCEPTING DEDICATION OF SEWERLINE EASEMENT
FOR THE EPA CONSENT DECREE SEWER REHABILITATION PROJECT,
PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE

WHEREAS, A&B PROPERTIES, INC., a Hawaii corporation, owner of real property described as Tax Map Key Numbers (2) 3-7-009:004, (2) 3-7-009:030, (2) 3-7-012:032, desires to dedicate that certain perpetual, non-exclusive Sewerline Easement, 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 Grant of Easement for Sewerline Purposes, as described in Exhibit "1", attached hereto, to be dedicated by A&B Properties, Inc. to the County

Resolution No. _____

of Maui in 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 A&B Properties, Inc.

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

LAND COURT

REGULAR SYSTEM

Return by Mail Pick-Up To:

COUNTY OF MAUI
Department of Environmental Management
2200 Main Street, Suite 100
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

GRANT OF EASEMENT FOR SEWERLINE PURPOSES

PARTIES TO DOCUMENT:

GRANTOR: A&B PROPERTIES, INC.
822 Bishop Street
Honolulu, Hawaii 96813

GRANTEE: County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

TAX MAP KEYS: (2) 3-7-009:004;
(2) 3-7-009:030;
(2) 3-7-012:032.

EXHIBIT " 1 "

GRANT OF EASEMENT FOR SEWERLINE PURPOSES

THIS GRANT is made this _____ day of _____, 20____, by and between A&B PROPERTIES, INC., a Hawaii corporation, the address of which is 822 Bishop Street, Honolulu, Hawaii 96813 (hereinafter referred to as the "Grantor"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, the principal office and mailing address of which is 200 South High Street, Wailuku, Hawaii 96793 (hereinafter referred to as the "Grantee").

WITNESSETH:

That the Grantor, in consideration of the sum of ONE DOLLAR (\$1.00) paid to the Grantor by the Grantee, and other valuable consideration, the receipt whereof is hereby acknowledged, and subject to the terms, conditions and covenants contained herein, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, a perpetual, nonexclusive easement over, under, across and through those portions that certain real property situate at Kahului, Maui, State of Hawaii and designated as Tax Map Key Nos. (2) 3-7-009:004, (2) 3-7-009:030, and (2) 3-7-012:032 (collectively, the "Property"), as more particularly described in Exhibits A, B, and C attached hereto and made a part hereof (collectively the "Easement Area"). The easement granted hereunder shall be for underground sewerline purposes, including the right to construct, reconstruct, install, maintain, operate, repair, replace, and remove underground sewer pipelines and related facilities (collectively, the "Sewer System Improvements"), including manholes and other equipment and appurtenances necessary or expedient for the proper maintenance, operation or repair of such underground sewer pipelines.

TOGETHER with reasonable rights of ingress to and egress from the Easement Area 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.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the Grantor and the Grantee hereby covenant and agree that the foregoing grant is made upon the following restrictions and conditions, which shall be binding upon, as applicable, the Grantor, the Grantee, and their respective successors and assigns:

1. Waste and Unlawful, Improper or Offensive Use of Premises. The Grantee shall not commit or permit to be committed any waste or nuisance or any unlawful, improper, or offensive use of the Easement Area and adjoining areas.
2. Use and Restoration of Premises. The Grantee shall diligently maintain the Sewer System Improvements in good and safe condition and repair. Without limiting the foregoing, the Grantee shall promptly repair any leaks, spills and overflow from the Sewer System Improvements and all damages to the Easement Area and the surrounding area, and the improvements thereon, resulting therefrom. Upon and in connection with performing any maintenance or repair work, the Grantee shall restore the surface of the Easement Area and the surrounding area, and the improvements thereon, damaged in the performance of said

maintenance or repair work or otherwise from any leaks, spills or overflow from the Sewer System Improvements, to its original condition to the extent such restoration is reasonably possible. The Grantee's construction, reconstruction, installation, maintenance, operation, repair, replacement, and removal of the Sewer System Improvements shall not unreasonably interfere with the use of the Easement Area by the Grantor.

3. Use by the Grantor. The Grantor shall not erect or construct any building foundations, buildings, or structures above or below the present ground level of the Easement Area, raise or lower the present ground level of the Easement Area, or plant any hedges or trees within the Easement Area, unless the Grantor receives prior written approval from the Grantee, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that this provision shall not prevent the Grantor from laying, constructing, operating, maintaining, repairing, or removing its own sewer or water pipelines, conduits or drains, other utilities or facilities on or below the surface of the Easement Area, provided that such sewer or water pipelines, conduits, drains or other utilities or facilities do not unreasonably 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 promptly repair any damage to the Sewer System Improvements or other appurtenances in the Easement Area, resulting or arising from Grantor's erection or construction of said building foundation, building or structure, from the Grantor's raising or lowering of the ground level, from the Grantor's planting of hedges or trees, or from the Grantor's construction, operation, maintenance, repair or removal of its own sewer or water pipelines, conduits or drains in the Easement Area.

4. Maintenance of Easement Area. This grant of easement does not obligate or charge the Grantee with any duties or responsibilities with regard to the ownership, condition, repair, and/or maintenance of the Easement Area except as provided in section 2 above.

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) The Grantor shall indemnify and hold harmless the Grantee from and against all claims for property damage, personal injury, or wrongful death when such damage, injury or death proximately results from or arises out of the intentional, reckless or negligent act 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 Grant, 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 Sewer System Improvements. The Grantor, regardless of any prior approval granted by the County of Maui to make improvements within the Easement Area, shall be responsible for all costs and expenses incurred by the Grantee in connection with the repair of damages to the Sewer System 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. Non-Exclusive Easement. The right and easement granted herein are nonexclusive, and the Grantor shall have the right to make one or more revocable or irrevocable, non-exclusive grants or assignments of all or portions of the Easement Area from time to time to governmental authorities, public or private utilities, corporations, owners associations or other parties, and the Grantee hereby consents thereto; provided, however, that any such grant or assignment shall not unreasonably interfere with the Grantee's use and enjoyment of the Easement Area for the purposes stated herein.


8. No Warranties. The Grantor does not warrant the condition of the Easement Area. The Grantee accepts the Easement Area in the condition it is in at the commencement of this easement, and the Grantee hereby acknowledges that the Grantor has made no representations concerning the conditions of the Easement Area or its suitability for the use intended to be made thereof. The Grantee accepts and assumes all risks with respect to entry upon the Easement Area and the conditions thereof.

9. Definitions. When more than one person is involved in the grant of this indenture and the covenants herein contained, the term "Grantor" and "Grantee" and related verbs and pronouns in the singular shall include the plural. Where appropriate, the masculine gender shall be deemed to include the feminine or neuter genders. The term "Grantor" wherever used herein shall be held to mean and include the Grantor, its successors and assigns, and the term "Grantee", wherever used herein shall be held to mean and include the Grantee, its successors and permitted assigns. This instrument shall be binding upon and shall inure to the benefit of the Grantor and its successors and assigns, and the Grantee and its successors and permitted assigns.

[Signature page follows]


IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the day and year first written above.

APPROVAL RECOMMENDED:



KYLE K. GINOZA
Director of Environmental Management

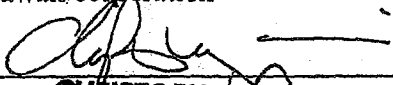
APPROVED AS TO FORM
AND LEGALITY:




RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

GRANTOR:

A&B PROPERTIES, INC.
a Hawaii corporation

By 

CHRISTOPHER BENJAMIN
Its PRESIDENT

By 

CHARLES W. LOOMIS
Its ASST. SECRETARY

GRANTEE:

COUNTY OF MAUI

By _____
ALAN M. ARAKAWA
Its Mayor

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 6th day of February, 2012, before me personally appeared CHRISTOPHER J. BENJAMIN and CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Further, I certify, as of this date, as follows:

Date of Document: Undated at time of notarization
Number of Pages: 14
Document Description: Grant of Easement for Sewerline Purposes
Jurisdiction/Judicial Circuit Where Signed: FIRST



Cheryl A. Onishi
Type or print name: CHERYL A. ONISHI
Date: 2/6/12
Notary Public, State of Hawaii
My commission expires: APR 17 2013

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On _____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui by authority of its Charter, and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

Further, I certify, as of this date, as follows:

Date of Document: _____

Number of Pages: _____

Document Description: _____

Jurisdiction/Judicial Circuit Where Signed: _____

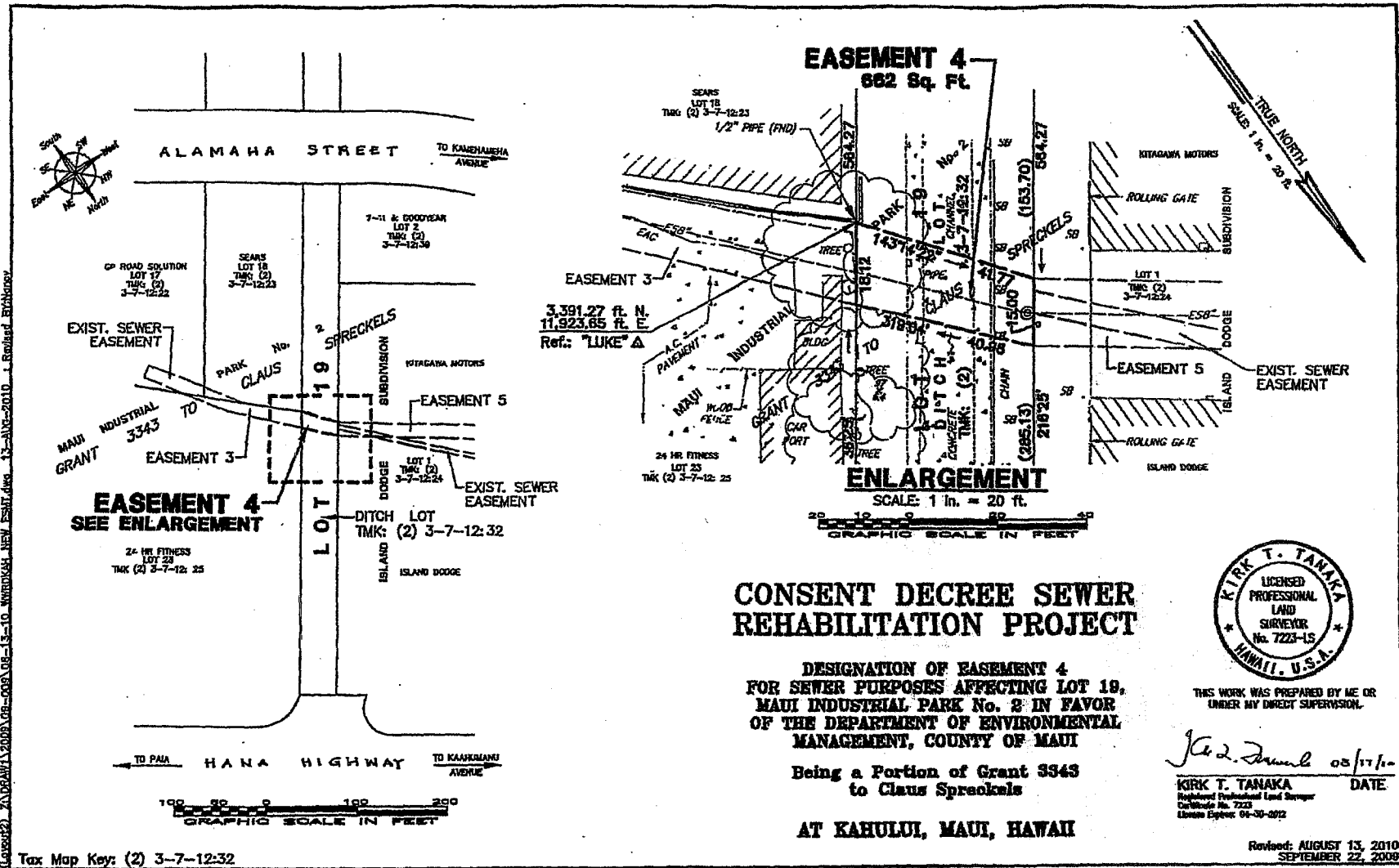
Type or print name: _____

Date: _____

Notary Public, State of Hawaii

My commission expires: _____

EXHIBIT "A"



CONSENT DECREE SEWER REHABILITATION PROJECT

DESIGNATION OF EASEMENT 4 FOR SEWER PURPOSES AFFECTING LOT 19, MAUI INDUSTRIAL PARK No. 2 IN FAVOR OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI

Being a Portion of Grant 3343 to Claus Spreckels

AT KAHULUI, MAUI, HAWAII



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

J. T. Tanaka 05/17/10
KIRK T. TANAKA DATE
Registered Professional Land Surveyor
Certificate No. 7223
License Expires: 04-30-2012

Revised: AUGUST 13, 2010
SEPTEMBER 22, 2009

JOB NO. 08-003

R. T. TANAKA ENGINEERS, INC.
LAND SURVEYORS - CIVIL & STRUCTURAL ENGINEERS

CONSENT DECREE SEWER REHABILITATION PROJECT

EASEMENT 4

AT KAHULUI, MAUI, HAWAII

BEING A PORTION OF GRANT 3343 TO CLAUS SPRECKELS

An Easement for sewer purposes affecting Lot 19 (Ditch Lot), Maui Industrial Park No. 2, in favor of the Department of Environmental Management, County of Maui and described as follows:

Beginning at the Southeasterly corner of this Easement, on the Southwest corner of Lot 23, Maui Industrial Park No. 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,391.27 feet North and 11,923.65 feet East, thence running by azimuths measured clockwise from True South:

1. 143° 14' 22" 41.77 feet along the remainder of Lot 19;
2. 216° 25' 15.00 feet along Lot 1, Island Dodge Subdivision;
3. 319° 04' 40.98 feet along the remainder of Lot 19;
4. 36° 25' 18.12 feet along Lot 23, Maui Industrial Park No. 2 to the point of beginning and containing an area of 662 Square Feet.



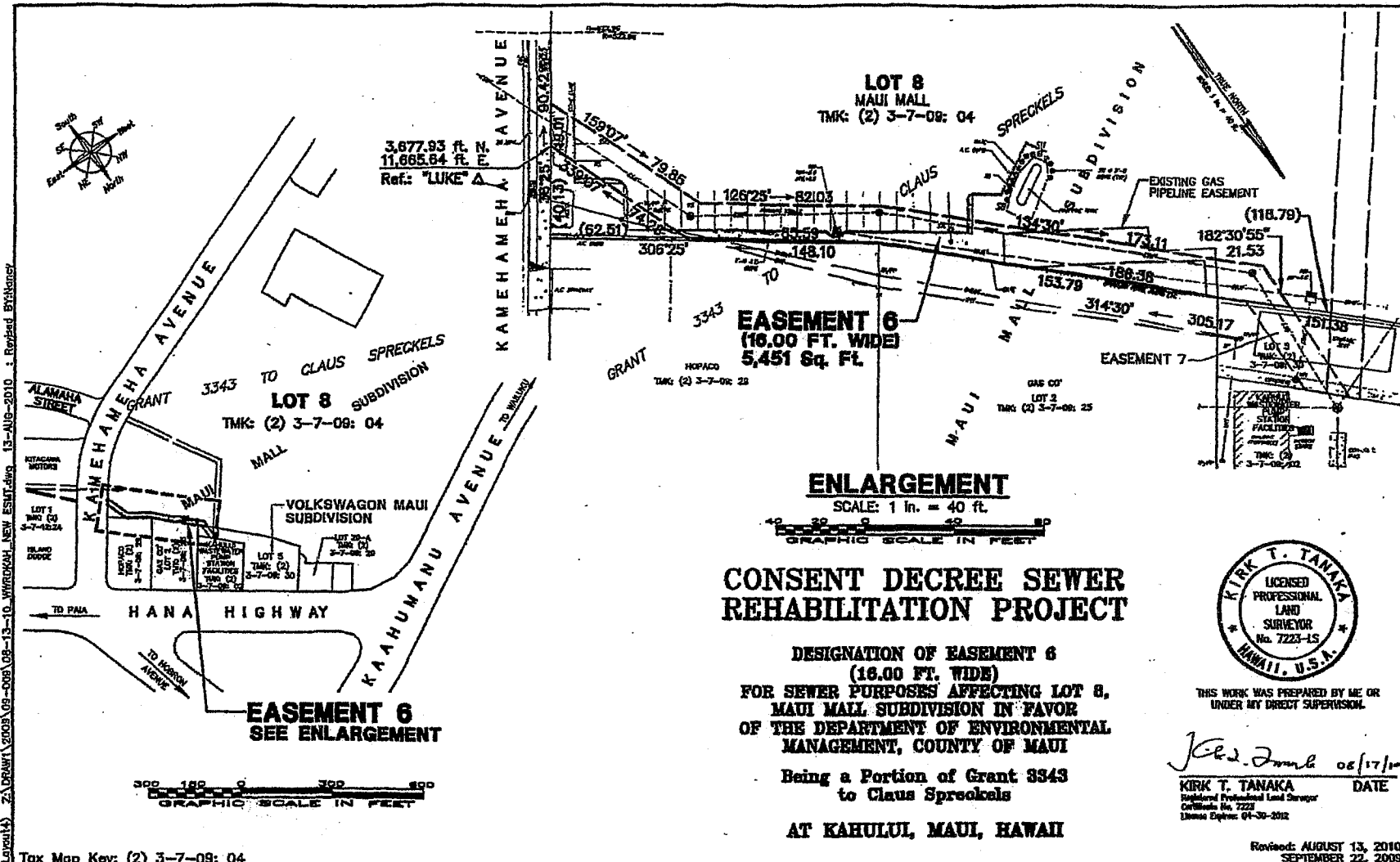
R. T. TANAKA ENGINEERS, INC.

Kirk T. Tanaka

Kirk T. Tanaka
Licensed Professional Surveyor
Certificate No. 7223-LS
License Expires: April 30, 2012

871 Kolu Street, Suite 201
Wailuku, Hawaii 96793

October 21, 2009
Revised: August 13, 2010



ENLARGEMENT
 SCALE: 1 in. = 40 ft.
 GRAPHIC SCALE IN FEET

CONSENT DECREE SEWER REHABILITATION PROJECT

DESIGNATION OF EASEMENT 6
 (16.00 FT. WIDE)
 FOR SEWER PURPOSES AFFECTING LOT 8,
 MAUI MALL SUBDIVISION IN FAVOR
 OF THE DEPARTMENT OF ENVIRONMENTAL
 MANAGEMENT, COUNTY OF MAUI
 Being a Portion of Grant 3343
 to Claus Spreckels
 AT KAHULULU, MAUI, HAWAII



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

Kirk T. Tanaka 08/17/10
 KIRK T. TANAKA
 Registered Professional Land Surveyor
 Certificate No. 7223
 License Expires: 01-30-2012

Revised: AUGUST 13, 2010
 SEPTEMBER 22, 2009
 JOB NO. 09-009

R. T. TANAKA ENGINEERS, INC.
 LAND SURVEYORS - CIVIL & STRUCTURAL ENGINEERS

Tax Map Key: (2) 3-7-09: 04
 871 KOLE STREET, SUITE 201
 WAILUKU, MAUI, HAWAII 96793

EXHIBIT "B"

CONSENT DECREE SEWER REHABILITATION PROJECT

EASEMENT 6

SITUATED ON THE NORTHERLY SIDE OF KAMEHAMEHA AVENUE

AT KAHULUI, MAUI, HAWAII

BEING A PORTION OF GRANT 3343 TO CLAUS SPRECKELS

An Easement (16.00 feet wide) for sewer purposes affecting Lot 8, Maui Mall Subdivision, in favor of the Department of Environmental Management, County of Maui and described as follows:

Beginning at the Southeast corner of this Easement, on the Northerly side of Kamehameha Avenue, the azimuth and distance from the Northeast corner of Lot 8 being $36^{\circ} 25'$ 40.13 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,677.93 feet North and 11,665.64 feet East, thence running by azimuths measured clockwise from True South:

1. $36^{\circ} 25'$ 19.01 feet along Kamehameha Avenue;
2. $159^{\circ} 07'$ 79.85 feet along the remainder of Lot 8;
3. $126^{\circ} 25'$ 82.03 feet along the remainder of Lot 8;
4. $134^{\circ} 30'$ 173.11 feet along the remainder of Lot 8;
5. $182^{\circ} 30' 55''$ 21.53 feet along the remainder of Lot 8;
6. $314^{\circ} 30'$ 186.38 feet along Lot 5, Volkswagon Maui Subdivision and Lot 2, Maui Mall Subdivision;
7. $306^{\circ} 25'$ 85.59 feet along Parcel 29 of Tax Map Key: (2) 3-7-09;

8. 339° 07' 74.28 feet along the remainder of Lot 8 to the point of beginning and containing an area of 5,451 Square Feet.



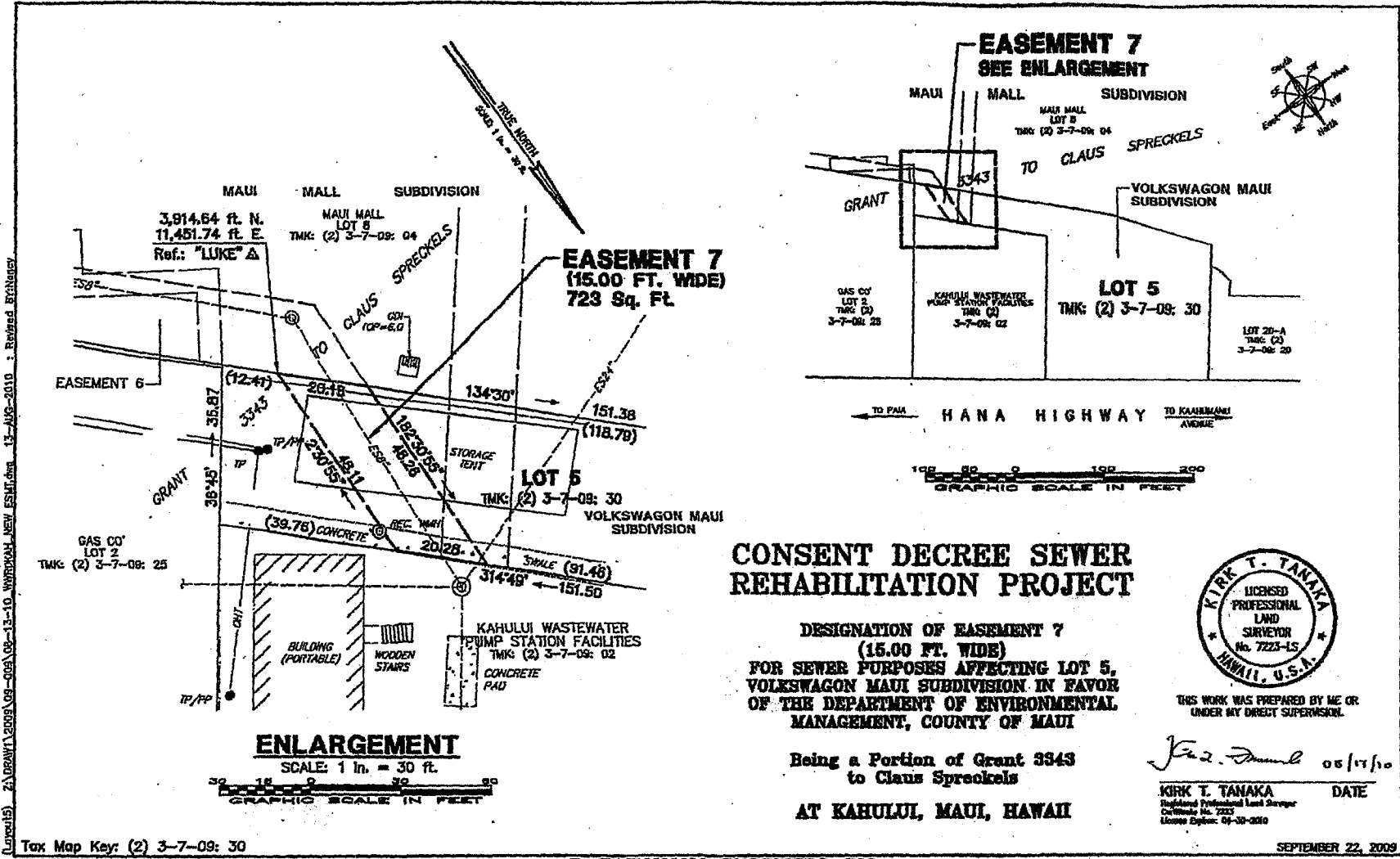
R. T. TANAKA ENGINEERS, INC.

Kirk T. Tanaka

Kirk T. Tanaka
Licensed Professional Surveyor
Certificate No. 7223-LS
License Expires: April 30, 2012

871 Kolu Street, Suite 201
Wailuku, Hawaii 96793

October 21, 2009
Revised: August 13, 2010



CONSENT DECREE SEWER REHABILITATION PROJECT

DESIGNATION OF EASEMENT 7
(15.00 FT. WIDE)
FOR SEWER PURPOSES AFFECTING LOT 5,
VOLKSWAGON MAUI SUBDIVISION IN FAVOR
OF THE DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT, COUNTY OF MAUI

Being a Portion of Grant 3343
to Claus Spreckels
AT KAHULUI, MAUI, HAWAII



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

J. J. 2. Daniel 05/11/10

KIRK T. TANAKA DATE
Registered Professional Land Surveyor
Certificate No. 7223
License Expires: 04-30-2010

Tax Map Key: (2) 3-7-09: 30

R. T. TANAKA ENGINEERS, INC.
LAND SURVEYORS - CIVIL & STRUCTURAL ENGINEERS

SEPTEMBER 22, 2009
JOB NO. 09-009

EXHIBIT "C"

CONSENT DECREE SEWER REHABILITATION PROJECT

EASEMENT 7

AT KAHULUI, MAUI, HAWAII

BEING A PORTION OF GRANT 3343 TO CLAUS SPRECKELS

An Easement (15.00 feet wide) for sewer purposes affecting Lot 5, Volkswagon Maui Subdivision, in favor of the Department of Environmental Management, County of Maui and described as follows:

Beginning at the Southeast corner of this Easement, the azimuth and distance from the Southwest corner of Lot 5 being 134° 30' 12.41 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,914.64 feet North and 11,451.74 feet East, thence, running by azimuths measured clockwise from True South:

1. 134° 30' 20.18 feet along Lot 8, Maui Mall Subdivision;
2. 182° 30' 55" 48.26 feet along the remainder of Lot 5;
3. 314° 49' 20.28 feet along Parcel 2 (Kahului Wastewater Pump Station Facility) of Tax Map Key (2) 3-7-09;
4. 2° 30' 55" 48.11 feet along the remainder of Lot 5 to the point of beginning and containing an area of 723 Square Feet.



R. T. TANAKA ENGINEERS, INC.

Kirk T. Tanaka

Kirk T. Tanaka
Licensed Professional Surveyor
Certificate No. 7223-LS
License Expires: April 30, 2012

871 Kolu Street, Suite 201
Wailuku, Hawaii 96793

September 22, 2009