

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

September 21, 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 September 10, 2012, makes reference to County Communication 12-177, from the Director of Environmental Management, transmitting a 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".

The purpose of the proposed resolution is to accept the dedication of a perpetual, non-exclusive, sewerline easement from Alexander & Baldwin, Inc., within property situated in Wailuku, Maui, Hawaii, and identified as TMK: (2) 3-4-003:020.

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 Deputy Director of Environmental Management stated that the parcel affected by the easement is the site of the Spreckels Ditch, just mauka of Waiale Road.

A Consent Decree entered into between the County and the Environmental Protection Agency ("EPA") requires the Department to examine the County's sewerlines once every five years. During the examination process, the Department discovered that the County does not have perpetual easements for certain lines that were in need of repair. The Department has transmitted the proposed resolution to formally accept an easement for those lines from the property owner. The easement will provide the County certain rights within the easement area, including the ability to repair and replace sewerlines located there.

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

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

September 21, 2012  
Page 2

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

Your Infrastructure Management Committee RECOMMENDS the following:

1. That Resolution \_\_\_\_\_, 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 12-177 be FILED.

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

September 21, 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:12057aa:cmn

# 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, ALEXANDER & BALDWIN, INC., a Hawaii corporation, owner of real property described as Tax Map Key Number (2) 3-4-003:020, 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 Alexander & Baldwin, Inc. to the

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

County 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 Alexander & Baldwin, Inc.

APPROVED AS TO FORM  
AND LEGALITY:



RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui

S:\ALL\RMT\Resos\Sewerline Easement34003020 A&B.doc

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: ALEXANDER & BALDWIN, INC.  
822 Bishop Street  
Honolulu, Hawaii 96813

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

TAX MAP KEY: (2) 3-4-003:020

EXHIBIT " 1 "

## GRANT OF EASEMENT FOR SEWERLINE PURPOSES

THIS GRANT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between ALEXANDER & BALDWIN, 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 Wailuku, Maui, State of Hawaii and designated as Tax Map Key No. (2) 3-4-003:020, (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.

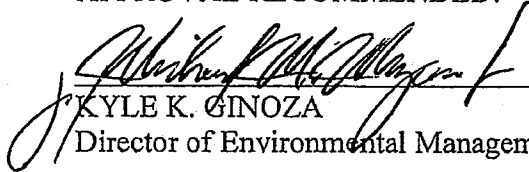
8. No Warranties. The Grantor does not warrant the condition of the Easement Area. The Grantee accepts the Easement Area in the condition it is in at the commencement of this easement, and the Grantee hereby acknowledges that the Grantor has made no representations concerning the conditions of the Easement 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

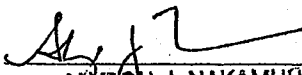
APPROVED AS TO FORM  
AND LEGALITY:

  
RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui

GRANTOR:

ALEXANDER & BALDWIN, INC.  
a Hawaii corporation

By   
MEREDITH J. CHING  
Its SENIOR VICE PRESIDENT

By   
AEYSON J. NAKAMURA  
Its SECRETARY

GRANTEE:

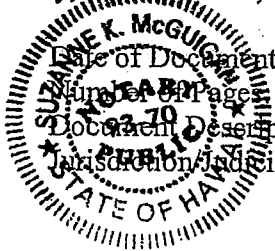
COUNTY OF MAUI

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

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

On this 6<sup>th</sup> day of June, 2012, before me personally appeared MEREDITH J. CHING and ALYSON J. NAKAMURA, 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: updated at notarization  
Page: 13  
Document Description: Grant of Easement for Sewerline Purposes  
Jurisdiction/Judicial Circuit Where Signed: First

Suzanne K. McGuigan  
Type or print name: SUZANNE K. MCGUIGAN  
Date: 6/6/2012  
Notary Public, State of Hawaii  
My commission expires: 8/2013



CONSENT DECREE SEWER REHABILITATION PROJECT

EASEMENT S-16

SITUATED ON THE NORTHERLY SIDE OF KOA DRIVE

AT WAILUKU, MAUI, HAWAII

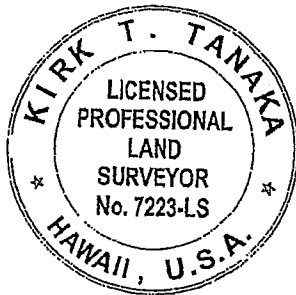
BEING A PORTION OF ROYAL PATENT 4124, LAND COMMISSION

AWARD 8076 TO HIOLO

An Easement (10.00 feet wide) for sewer purposes affecting Lot 1, Spreckels Ditch Right-of-Way, in favor of the Department of Environmental Management, County of Maui and described as follows:

Beginning at the Northwest corner of this Easement, also the Northeast corner of Lot 1, Spreckels Ditch Right-of-Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 18.69 feet South and 1,221.45 feet West, thence running by azimuths measured clockwise from True South:

1. 316° 20' 1.50 feet along Parcel 9, Tax Map Key (2) 3-4-03;
2. 305° 58' 13.14 feet along Parcel 9, Tax Map Key (2) 3-4-03;
3. 350° 09' 34.43 feet along the remainder of Lot 1;
4. 125° 58' 14.34 feet along Koa Drive;
5. 170° 09' 34.82 feet along the remainder of Lot 1 to the point of beginning and containing an area of 344 Square Feet.



R. T. TANAKA ENGINEERS, INC.

*Kirk T. Tanaka*

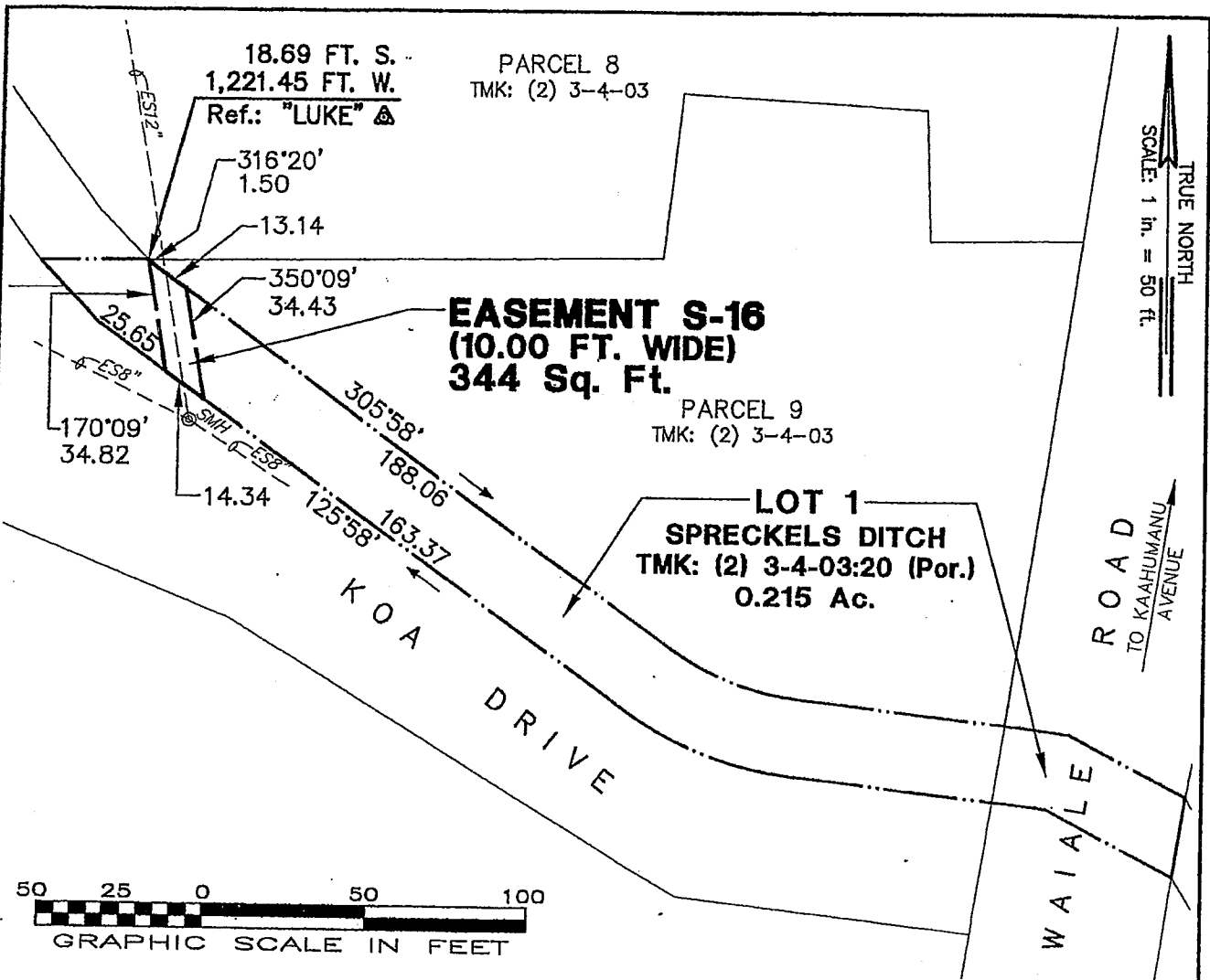
Kirk T. Tanaka  
Licensed Professional Surveyor  
Certificate No. 7223-LS  
License Expires: April 30, 2012

871 Kolu Street, Suite 201  
Wailuku, Hawaii 96793

March 6, 2012

EXHIBIT "A"

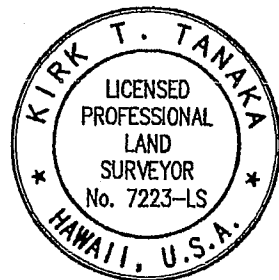
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# CONSENT DECREE SEWER REHABILITATION PROJECT

DESIGNATION OF EASEMENT S-16  
(10.00 FT. WIDE)  
FOR SEWER PURPOSES AFFECTING  
LOT 1, SPRECKELS DITCH RIGHT-OF-WAY  
IN FAVOR OF THE DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,  
COUNTY OF MAUI

Being a Portion of  
R. P. 4124, L. C. Aw. 8076, to Hiolo  
AT KALUA, WAILUKU, MAUI, HAWAII



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

*K.T. Tanaka* 03/06/12

KIRK T. TANAKA DATE  
Licensed Professional Land Surveyor  
Certificate No. 7223  
License Expires: 04-30-2012

Tax Map Key: (2) 3-4-03: 20

FEBRUARY 29, 2012

871 KOLU STREET, SUITE 201  
WAILUKU, MAUI, HAWAII 96793

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

JOB NO. 09-009

CONSENT DECREE SEWER REHABILITATION PROJECT

EASEMENT S-17

SITUATED AT WAILUKU, MAUI, HAWAII

BEING A PORTION OF GRANT 6251, LAND COMMISSION

AWARD 3339, APANA 2 TO NAPUE

An Easement (10.00 feet wide) for sewer purposes affecting Lot 1A, Spreckels Ditch Right-of-Way, in favor of the Department of Environmental Management, County of Maui and described as follows:

Beginning at the West corner of this Easement, on the Northerly side of Parcel 16, Tax Map Key (2) 3-4-04, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 269.80 feet North and 1,408.04 feet West, thence, running by azimuths measured clockwise from True South:

1. 250° 23' 26.06 feet along the remainder of Lot 1A;
2. 317° 23' 10.86 feet along Parcel 13, Tax Map Key (2) 3-4-03;
3. 70° 23' 26.06 feet along the remainder of Lot 1A;
4. 137° 23' 10.86 feet along Parcel 16, Tax Map Key (2) 3-4-04 to the point of beginning and containing an area of 260 Square Feet.



R. T. TANAKA ENGINEERS, INC.

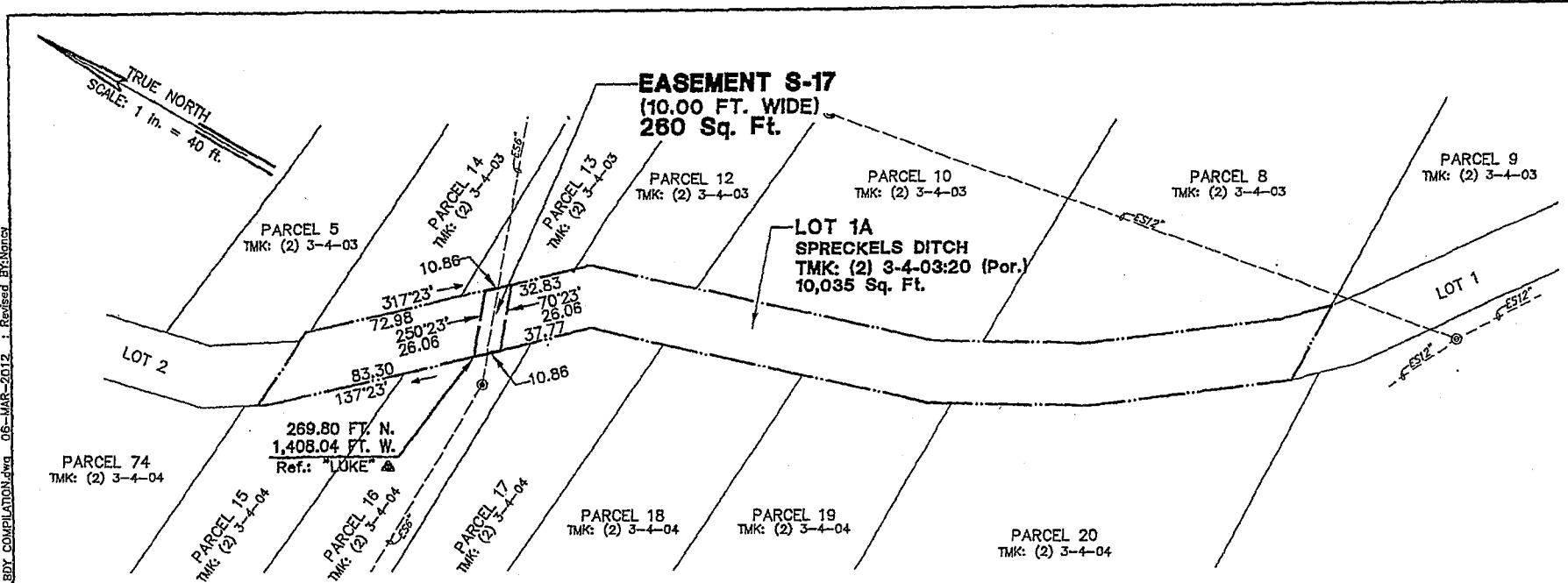
*Kirk T. Tanaka*

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

871 Kolu Street, Suite 201  
Wailuku, Hawaii 96793

March 6, 2012

EXHIBIT " B "



**CONSENT DECREE SEWER REHABILITATION PROJECT**

DESIGNATION OF EASEMENT S-17  
(10.00 FT. WIDE)  
FOR SEWER PURPOSES AFFECTING  
LOT 1A, SPRECKELS DITCH RIGHT-OF-WAY  
IN FAVOR OF THE DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI

Being a Portion of  
R. P. 6251, L. C. Aw. 3339, Apana 2 to Napue  
AT KALUA, WAILUKU, MAUI, HAWAII



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

*J. C. 2. J. Tanaka 03/01/12*

KIRK T. TANAKA DATE  
Licensed Professional Land Surveyor  
Certificate No. 7223  
License Expires: 04-30-2012



Tax Map Key: (2) 3-4-03: 20 (Portion)

871 KOLU STREET, SUITE 201  
WAILUKU, MAUI, HAWAII 96793

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

FEBRUARY 28, 2012  
JOB NO. 09-009

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CONSENT DECREE SEWER REHABILITATION PROJECT

EASEMENT S-18

SITUATED AT KALUA, WAILUKU, MAUI, HAWAII

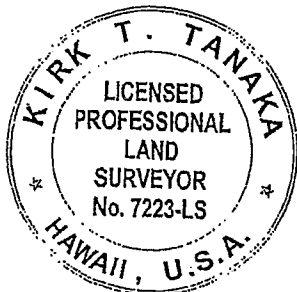
BEING A PORTION OF LAND COMMISSION AWARD 3234,

APANA 2 TO HINAKAHA

An Easement (10.00 feet wide) for sewer purposes affecting Lot 2, Spreckels Ditch Right-of-Way, in favor of the Department of Environmental Management, County of Maui and described as follows:

Beginning at the Northwest corner of this Easement, 347° 20' 11.61 feet from the Northwest corner of Lot 2, Spreckels Ditch Right-of-Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 549.93 feet North and 1,523.79 feet West, thence, running by azimuths measured clockwise from True South:

1. 279° 36' 25.94 feet along the remainder of Lot 2, Spreckels Ditch Right-of-Way;
- 2.
3. 347° 20' 10.80 feet along Makahala Place;
4. 99° 36' 25.94 feet along the remainder of Lot 2, Spreckels Ditch Right-of-Way;
5. 167° 20' 10.80 feet along Makahala Place to the point of beginning and containing an area of 259 Square Feet.



R. T. TANAKA ENGINEERS, INC.

A handwritten signature in black ink, appearing to read "Kirk T. Tanaka".

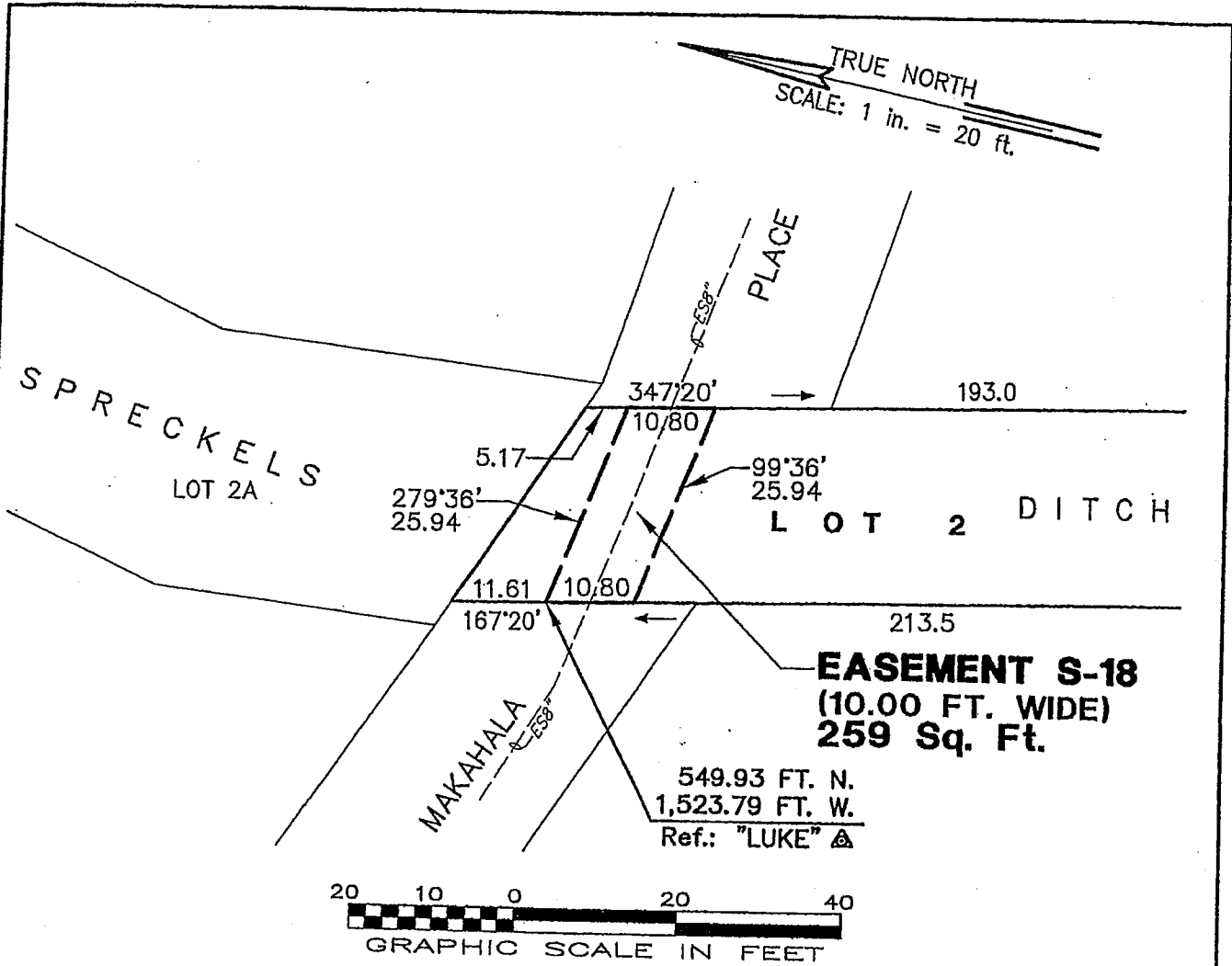
Kirk T. Tanaka  
Licensed Professional Surveyor  
Certificate No. 7223-LS  
License Expires: April 30, 2012

871 Kolu Street, Suite 201  
Wailuku, Hawaii 96793

March 19, 2012

EXHIBIT "C"

Z:\DRAW1\2009\09-009\02-2012\_BRIANH\_BDY\_COMPILATION.dwg 20-MAR-2012 : Revised BY:Nancy (SL ESMT S-17)

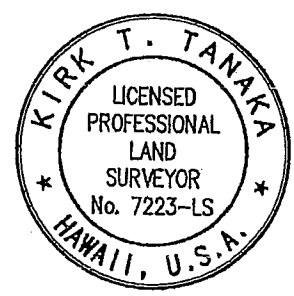


# CONSENT DECREE SEWER REHABILITATION PROJECT

DESIGNATION OF EASEMENT S-18  
(10.00 FT. WIDE)  
FOR SEWER PURPOSES AFFECTING  
LOT 2, SPRECKELS DITCH RIGHT-OF-WAY  
IN FAVOR OF THE DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,  
COUNTY OF MAUI

Being a Portion of  
L. C. Aw. 3234, Apana 2  
to Hinakaha

AT KALUA, WAILUKU, MAUI, HAWAII



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

*Kirk T. Tanaka* 03/20/12

KIRK T. TANAKA DATE  
Licensed Professional Land Surveyor  
Certificate No. 7223  
License Expires: 04-30-2012

Tax Map Key: (2) 3-4-03: 20 (Portion)

871 KOLU STREET, SUITE 201  
WAILUKU, MAUI, HAWAII 96793

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

MARCH 19, 2012

JOB NO. 09-009