

COUNCIL OF THE COUNTY OF MAUI

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

September 19, 2014

**Committee
Report No.** _____

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

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on August 11, 2014, makes reference to County Communication 14-174, from the Director of Environmental Management, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE LAHAINA NO. 4 FORCE MAIN REPLACEMENT PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept from the Harry and Jeanette Weinberg Foundation Incorporated the dedication of a sewerline easement situated along Front Street and Kenui Street in Lahaina, Maui, Hawaii, on property identified as TMK: (2) 4-5-008:001 ("subject property"). Adoption of the proposed resolution will enable the Lahaina No. 4 Force Main sewerline to be relocated.

Your Committee notes 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 adoption of a resolution.

The Director of Environmental Management stated the current alignment of the existing sewerline is adjacent to the Kahoma Stream Flood Control Project, along the northern boundary of the subject property. The U.S. Army Corps of Engineers and the property owner denied the Lahaina No. 4 Force Main Replacement project from reusing the existing alignment, thus requiring the replacement sewerline to be relocated.

The Director noted the design of the Lahaina No. 4 Force Main Replacement project is complete and construction will commence once the easement is accepted.

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

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

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**Committee
Report No.** _____

Your Infrastructure and Environmental Management Committee
RECOMMENDS the following:

1. That Resolution _____, attached hereto, entitled "ACCEPTING DEDICATION OF SEWERLINE EASEMENT FOR THE LAHAINA NO. 4 FORCE MAIN REPLACEMENT PROJECT, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 14-174 be FILED.

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

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Committee
Report No. _____

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



ELLE COCHRAN, Chair

iem:cr:14057aa;jkm

Resolution

No. _____

ACCEPTING DEDICATION OF SEWERLINE EASEMENT
FOR THE LAHAINA NO. 4 FORCE MAIN REPLACEMENT PROJECT,
PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE

WHEREAS, THE HARRY AND JEANETTE WEINBERG FOUNDATION INCORPORATED, a Maryland corporation, desires to dedicate that certain perpetual, non-exclusive Sewerline Easement affecting Tax Map Key Number (2) 4-5-008:001, 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 Sewerline Easement, as described in Exhibit "1", attached hereto, to be dedicated by The Harry and Jeanette Weinberg Foundation Incorporated to the County of Maui in accordance with the terms and conditions set forth in said easement; and

Resolution No. _____

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 The Harry and Jeanette Weinberg Foundation Incorporated.

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

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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:

SEWERLINE EASEMENT

PARTIES TO DOCUMENT:

GRANTOR: THE HARRY AND JEANETTE WEINBERG FOUNDATION
INCORPORATED
3660 Waiālae Avenue, Suite 400
Honolulu, Hawaii 96816

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

TAX MAP KEY(S): (2) 4-5-008:001

Total No. of Pages _____

EXHIBIT " 1 "

SEWERLINE EASEMENT

THIS GRANT is made this _____ day of _____, 20____, by and between THE HARRY AND JEANETTE WEINBERG FOUNDATION INCORPORATED, a Maryland corporation, the address of which is 3660 Waiialae Avenue, Suite 400, Honolulu, Hawaii 96816 (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").

W I T N E S S E T H:

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 (the "Easement Area"), as more particularly described in Exhibit "A", attached hereto and made a part hereof, over, under, across and through those portions of that certain real property situate at Lahaina, Maui, State of Hawaii and designated as Tax Map Key No. (2) 4-5-008:001, (the "Property"), which, along with the Easement Area, are shown on Exhibit "B", attached hereto and made a part hereof.

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. Use. 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, including manholes and other equipment and appurtenances necessary or expedient for the proper maintenance, operation or repair of such underground sewer pipelines (collectively, the "Sewer System Improvements"). Use of the Property shall also include 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. Grantee shall maintain the Sewer System Improvements in good and safe condition.

2. Restoration of Premises. Upon and in connection with performing any maintenance or repair work on the Sewer System Improvements, the Grantee, at its sole cost and expense, 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, to their original condition to the extent such restoration is reasonably possible.

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 1 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.

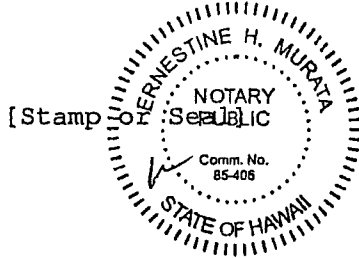
9. Definitions. When more than one person is involved in the grant of this indenture and the covenants herein contained, the term "Grantor" and "Grantee" and related verbs and pronouns in the singular shall include the plural. Where appropriate, the masculine gender shall be deemed to include the feminine 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.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument.

[Signature page follows]

On this _____ day of MAR 11 2014, 20____, before me personally appeared ALVIN AWAYA, to me personally known, 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.

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



Ernestine H. Murata
Notary Public, State of Hawaii

Print Name: ERNESTINE H. MURATA

My Commission Expires: OCT 14 2017

NOTARY PUBLIC CERTIFICATION

Doc. Date: Not Dated # Pages: 14

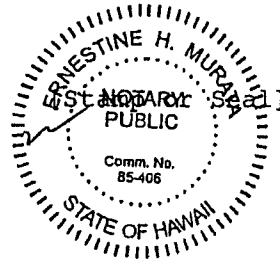
Notary Name: ERNESTINE H. MURATA Judicial Circuit: First

Document Description: Sewerline Easement

TMK: (2) 4-5-008:001. _____

Notary Signature: Ernestine H. Murata

Date: MAR 11 2014



STATE OF _____)
) SS.
)
_____)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, 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.

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

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____

STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, 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, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

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

[Stamp or Seal]

 Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	
Notary Signature: _____	[Stamp or Seal]
Date: _____	

**Kahoma Stream Flood Control Project
Description of Easement S-1**

A Sewerline Easement in favor of the County of Maui, over and across a portion of Lot 1 of Kahoma Stream Flood Control Project, also affecting portions of Royal Patent 1888, Land Commission Award 9795-G, Apana 1 to Ua; Royal Patent 3581, Land Commission Award 11086, Apana 4 to J.H. Kaiheekai; Royal Patent 2567, Land Commission Award 7715, Apana 1 to Lota Kamehameha; Land Patent 8246, Land Commission Award 3425-B, Apana 3 to Alu; Grant 962 to Puhalahua; Land Patent 8392, Land Commission Award 8515 to G. Lahilahi; Royal Patent 1860, Land Commission Award 6061, Apana 1 to Hanemo; Royal Patent 1206, Land Commission Award 6052, Apana 1 to Waihokaea & Kenui and Royal Patent 5691, Land Commission Award 3702, Apana 3 to D. Malo at Lahaina, Maui, Hawaii and more particularly described as follows:

Beginning at a point at the southeasterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being 4,964.40 feet South and 4,618.58 feet West and running by azimuths measured clockwise from True South:

1. 62° 40' 798.65 feet along the remainders of Royal Patent 1888, Land Commission Award 9795-G, Apana 1 to Ua; Royal Patent 3581, Land Commission Award 11086, Apana 4 to J.H. Kaiheekai; Royal Patent 2567, Land Commission Award 7715, Apana 1 to Lota Kamehameha and Land Patent 8246, Land Commission Award 3425-B, Apana 3 to Alu and along the northerly side of Kenui Street;

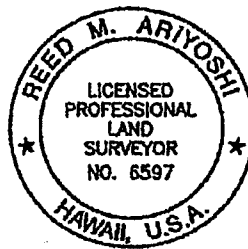
2. 73° 45' 131.15 feet along the remainder of Lot 1 of Kahoma Stream Flood Control Project, being also along the remainder of Grant 962 to Puhalahua;

3. 62° 40' 88.94 feet along same;

4. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being: 332° 40', and the point of tangency azimuth from the radial point being: 35° 02' 41", having a radius of 45.00 feet, the chord azimuth and distance being: 93° 51' 20.5" 46.61 feet;
5. 150° 53' 99.39 feet along the easterly side of Front Street;
6. 154° 34' 30" 61.98 feet along same;
7. 157° 10' 44.24 feet along same;
8. 159° 25' 33.98 feet along same;
9. 160° 00' 181.00 feet along same;
10. 164° 20' 214.00 feet along same;
11. 169° 50' 102.00 feet along same;
12. 186° 45' 49.13 feet along same;
13. 351° 24' 82.91 feet along the remainder of Lot 1 of Kahoma Stream Flood Control Project, being also along the remainders of Royal Patent 5691, Land Commission Award 3702, Apana 3 to D. Malo; Land Patent 8392, Land Commission Award 8515 to G. Lahilahi and Royal Patent 1206, Land Commission Award 6052, Apana 1 to Waihokaea & Kenui;

14. Thence along the remainder of Lot 1 of Kahoma Stream Flood Control Project, being also along the remainders of Royal Patent 1206, Land Commission Award 6052, Apana 1 to Waihokaea & Kenui and Royal Patent 1860, Land Commission Award 6061, Apana 1 to Hanemo on a curve to the left, having a radius of 1,360.00 feet, the chord azimuth and distance being:
346° 17' 242.58 feet;
15. 341° 10' 215.97 feet along the remainder of Lot 1 of Kahoma Stream Flood Control Project, being also along the remainders of Royal Patent 1860, Land Commission Award 6061, Apana 1 to Hanemo and Land Patent 8392, Land Commission Award 8515 to G. Lahilahi;
16. 335° 21' 144.50 feet along the remainder of Lot 1 of Kahoma Stream Flood Control Project, being also along the remainders of Land Patent 8392, Land Commission Award 8515 to G. Lahilahi and Grant 962 to Puhalahua;
17. 331° 14' 74.07 feet along the remainder of Lot 1 of Kahoma Stream Flood Control Project, being also along the remainder of Grant 962 to Puhalahua;
18. Thence along same on a curve to the left, having a radius of 30.00 feet, the chord azimuth and distance being:
286° 57' 41.89 feet;
19. 242° 40' 90.39 feet along same;
20. 253° 45' 131.15 feet along same;

21. 242° 40' 798.07 feet along the remainder of Lot 1 of Kahoma Stream Flood Control Project, being also along the remainders of Grant 962 to Puhalahua; Royal Patent 3581, Land Commission Award 11086, Apana 4 to J.H. Kaiheekai; Royal Patent 2567, Land Commission Award 7715, Apana 1 to Lota Kamehameha and Royal Patent 1888, Land Commission Award 9795-G, Apana 1 to Ua;
22. Thence along the westerly side of Honoapiilani Highway (F.A.P. F-030-1(1)) on a curve to the left, with the point of curvature azimuth from the radial point being: 66° 11' 06", and the point of tangency azimuth from the radial point being: 65° 44' 36", having a radius of 1,949.86 feet, the chord azimuth and distance being: 335° 57' 51" 15.03 feet to the point of beginning and containing an Area of 23,872 Square Feet, more or less.



WARREN S. UNEMORI ENGINEERING, INC.

Wells Sreet Professional Center
 2145 Wells Street, Suite 403
 Wailuku, Maui, Hawaii 96793
 September 19, 2013

By: Reed M. Ariyoshi 04/30/14 Exp.
 Licensed Professional Land Surveyor
 Certificate No. 6597

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