

**COUNCIL OF THE COUNTY OF MAUI**  
**ECONOMIC DEVELOPMENT, ENERGY,  
AGRICULTURE, AND RECREATION  
COMMITTEE**

April 7, 2015

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

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

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on February 3, 2015 and March 17, 2015, makes reference to County Communication 14-276, from the Interim Director of Parks and Recreation, transmitting a proposed resolution entitled "AUTHORIZING THE GRANT OF A UTILITY EASEMENT TO MAUI ELECTRIC COMPANY, LIMITED, AND HAWAIIAN TELCOM, INC., PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE".

The purpose of the proposed resolution is to authorize the grant of a utility easement for power and communication lines to Maui Electric Company, Limited, and Hawaiian Telcom, Inc. ("utility companies"), on portions of County real property located in Waiehu, Maui, Hawaii, identified as TMK: (2) 3-3-001:001, consisting collectively of approximately 574 square feet.

Your Committee notes Section 3.36.090, Maui County Code, requires Council approval of any grant of County real property at less than fair market value.

The Chair of your Committee requested the Department of Parks and Recreation provide a detailed description of the kind and extent of the power and communication lines to be placed in the easement, the parties responsible for maintenance of the easement, and the costs and benefits of the easement to the County.

The Director of Parks and Recreation informed your Committee there are three easements in different areas of the property for electricity, communications, and cable.

**COUNCIL OF THE COUNTY OF MAUI**  
**ECONOMIC DEVELOPMENT, ENERGY,**  
**AGRICULTURE, AND RECREATION**  
**COMMITTEE**

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

The Director explained the utility lines have been in place for over 20 years as a result of easements conveyed to the utility companies by the prior landowner. However, it was not until the property was surveyed during subdivision recently that the utility lines were found to be on County property.

The Department provided a copy of the original deed to the County containing the easement, aerial photographs, and a detailed map of the location of the easement.

Upon inquiry by your Committee, a Deputy Corporation Counsel advised the proposed easement would authorize the utility companies to place, maintain, and access their equipment on the property using due care, but would require the County to maintain the property itself.

At the request of your Committee, a Deputy Corporation Counsel confirmed all of the utility infrastructure embraced by the proposed easement is underground except for one pole with lines; and Maui Electric Company, Limited, confirmed it will be responsible for any tree and shrub trimming that may impact the integrity of those lines.

The Director stated the residents of the subdivision served by the utilities would benefit from the County's grant and, because the utilities are currently located on County property, there would be no cost to the County as a result of the grant.

Your Committee voted 4-0 to recommend adoption of the resolution and filing of the communication. Committee Chair Guzman, Vice-Chair Cochran, and members Crivello and Victorino voted "aye". Committee members Couch, Hokama, and White were excused.

Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS the following:

COUNCIL OF THE COUNTY OF MAUI  
**ECONOMIC DEVELOPMENT, ENERGY,  
AGRICULTURE, AND RECREATION  
COMMITTEE**

Page 3

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

1. That Resolution \_\_\_\_\_, attached hereto, entitled "AUTHORIZING THE GRANT OF A UTILITY EASEMENT TO MAUI ELECTRIC COMPANY, LIMITED, AND HAWAIIAN TELCOM, INC., PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication 14-276 be FILED.

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

  
\_\_\_\_\_  
DON S. GUZMAN, Chair

ear:cr:15024aa:scb

# Resolution

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

AUTHORIZING THE GRANT OF A UTILITY EASEMENT  
TO MAUI ELECTRIC COMPANY, LIMITED, AND  
HAWAIIAN TELCOM, INC.,  
PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE

WHEREAS, the County of Maui desires to grant a utility easement to Maui Electric Company, Limited, and Hawaiian Telcom, Inc., over a portion of Tax Map Key No. (2)3-3-001:001; and

WHEREAS, said easement is attached hereto as Exhibit "1"; and

WHEREAS, pursuant to Section 3.44.020, Maui County Code, the Council of the County of Maui may, by resolution, approved by a majority of its members, dispose of real property in by easement; and

WHEREAS, pursuant to Sections 3.44.030 and 3.44.070, Maui County Code, the Council of the County of Maui may, finding that is in the public interest to do so, waive the requirements of public auction, public hearing and appraisal, by resolution approved by two-thirds of its members; now, therefore,

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

1. That it hereby authorizes the grant of utility easement to Maui Electric Company, Limited, and Hawaiian Telcom, Inc., pursuant to Section 3.44.020, Maui County Code; and

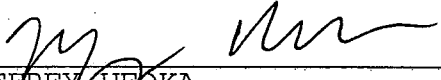
**Resolution No. \_\_\_\_\_**

2. That it hereby finds that it is in the public interest to grant the utility easement and waives the public auction, public hearing, and appraisal, pursuant to Sections 3.44.030 and 3.44.070, Maui County Code; and

3. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute all necessary documents, in connection with the issuance of said easement; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of the Department of Finance, the Director of the Department of Parks and Recreation, Maui Electric Company, Limited, and Hawaiian Telcom, Inc.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEKOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\RESOS\MECO\_HAWNTEL\_Paukukalo Easement.wpd

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After recording return by mail to:

Maui Electric Company, Limited  
P.O. Box 398  
Kahului, Hawaii 96733-6898  
Attn: Wanda A. Otake

This document contains 13 pages.

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Property description:

Waiehu and Paukukalo, District of Wailuku  
Maui, Hawaii

TMK: (2) 3-3-001:001

MECO Document M13-41

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## Utility Easement

This indenture, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **County of Maui**, a political subdivision of the State of Hawaii, whose mailing address is 200 S. High Street, Wailuku, Maui, Hawaii 96793, hereinafter called the "Grantor", and **Maui Electric Company, Limited**, a Hawaii corporation, whose principal place of business is at 210 Kamehameha Avenue, Kahului, Hawaii, and whose post office address is P. O. Box 398, Kahului, Hawaii 96733-6898, and **Hawaiian Telcom, Inc.**, a Hawaii corporation, whose principal place of business is at 1177 Bishop Street, Honolulu, Hawaii, and whose post office address is P. O. Box 2200, Honolulu, Hawaii 96741, hereinafter called the "Grantees".

### W I T N E S S E T H

That the Grantor, for good and sufficient consideration to it paid, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantees, their successors and assigns, a non-exclusive perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and underground power lines,

and communication facilities, and to use such poles, wires, guys, conduits and other appliances and equipment as may be necessary for the transmission of electricity and/or communications to be used for light and power and communication and control circuits, together with the right (but not the obligation) to trim and keep trimmed any trees near said lines and equipment to a reasonable distance therefrom, and together also with a right of entry upon the Grantor's property, for the construction, maintenance, repair and operation of said pole and wire lines and underground power lines, in efficient use and condition. The easement hereby granted is over, across, through and under portions of that certain parcel of land situate at Waiehu and Paukukalo, District of Wailuku, Island and County of Maui, State of Hawaii identified as TMK: (2) 3-3-001:001, said portions being described in Exhibit "A" annexed hereto.

TO HAVE AND TO HOLD the same unto the Grantees, their successors and assigns.

AND EACH GRANTEE does hereby covenant and agree with the Grantor for itself and not for the other that:

1. It will use due care and diligence in the installation, maintenance, repair and operation of said lines and appurtenances and it will keep said lines and appurtenances installed in good and safe condition and repair, and that it will exercise its rights hereunder in such manner as to occasion as little interference as reasonably necessary with the use of the said property by the owners and occupants thereof.
2. It will indemnify the Grantor for any and all damage to the said property caused by any failure of the Grantee to properly install, maintain, repair or operate any of the said lines and appurtenances as provided in §1 above, and it will indemnify, hold harmless and defend the Grantor against all loss, liability, claims, suits and actions by whomsoever suffered or brought on account of any injury to person or property caused by Grantee's negligence or by any failure on the part of the Grantee to observe the covenants in §1 above.
3. If the Grantee shall at any time completely remove its facilities from the easement area and for a period of two years thereafter fail to reinstall said facilities, the Grantee shall at the Grantor's request forthwith execute and deliver to Grantor an instrument suitable for recording in the appropriate registry office of the State of Hawaii to evidence the termination and surrender of the easement, or portions thereof, as herein provided.
4. Each party has been given the opportunity to review this document, and to request modification of its terms. Accordingly, neither the Grantee nor the Grantor shall be deemed the drafter of this document for the purpose of applying any rule of construction of contracts.

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED by and between the Grantor and the Grantees and on behalf of their respective successors and assigns that, if at any time the property across which rights and easements are hereby granted, or any part thereof, be condemned or taken by any authority exercising the power of eminent domain, Grantee shall have the right to claim and recover from such condemnor, but not from the Grantor, such compensation as may be payable for its easement, poles, wires, guys, conduits and other appliances and equipment installed upon the said property, or any part thereof.

If and when the land described herein, or a portion or portions thereof shall be conveyed to or acquired by any governmental authority as a public highway, then and in such event, all private easement rights in said land, or a portion or portions thereof, so conveyed or acquired, shall automatically terminate.

*In witness whereof*, the parties have executed these presents as of the day and year first above written.


GRANTOR:

COUNTY OF MAUI

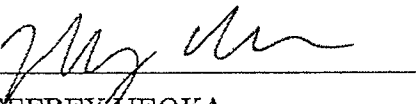
By: \_\_\_\_\_

ALAN M. ARAKAWA  
Its Mayor

APPROVAL RECOMMENDED:

By:   
BRIANNE SAVAGE  
Deputy Director of Parks & Recreation

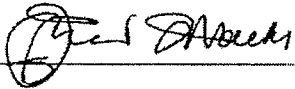
APPROVED AS TO FORM  
AND LEGALITY:

By:   
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui



GRANTEES:

Maui Electric Company, Limited, a  
Hawaii corporation

By 

Eileen Wachi

(Typed or printed name)

Assistant Secretary

(Title)

Hawaiian Telcom, Inc., a Hawaii  
corporation

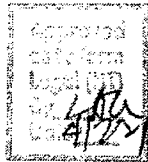
By 

Kevin Paul

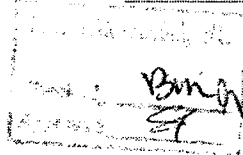
(Typed or printed name)

Sr VP-Technology

(Title)



14-120



STATE OF HAWAII     )  
                                  ) SS.  
COUNTY OF MAUI     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me 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.

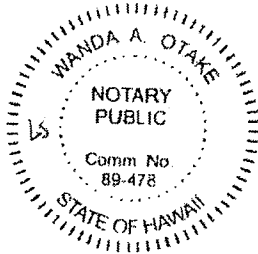
\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name: \_\_\_\_\_

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

Document Date: _____	No. of Pages (including this page): ____
Notary Name: _____	Second Judicial Circuit
Document Description: <b>Utility Easement M13-41</b>	
_____ Signature	_____ Date
NOTARY CERTIFICATION	

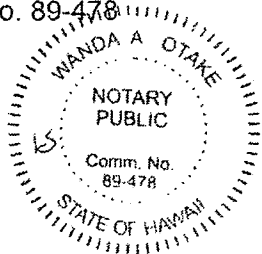
STATE OF HAWAII     )  
                                  ) SS.  
COUNTY OF MAUI    )

On this 20<sup>th</sup> day of January, 2014 before me appeared **Eileen Wachi**, to me personally known, who being by me duly sworn, did say that she is the Assistant Secretary of **Maui Electric Company, Limited**, a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.



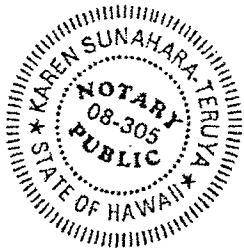
Wanda A. Otake  
Wanda A. Otake  
Notary Public, State of Hawaii

My commission expires: August 15, 2017

<i>included at time</i>	
Document Date: <u>of notarization</u>	No. of Pages (including this page): <u>13</u>
Notary Name: <u>Wanda A. Otake</u>	Second Judicial Circuit Commission No. <u>89-478</u>
Document Description: <b>Utility Easement M13-41</b>	
<u>Wanda A. Otake</u> Signature	<u>January 20, 2014</u> Date
	
NOTARY CERTIFICATION	

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

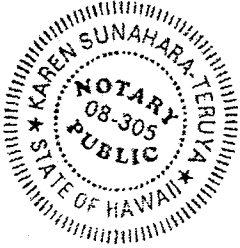
On this 25<sup>th</sup> day of April, 2014, before me appeared Kevin Paul to me personally known who being by me duly sworn, did say that he is the SEVP-Technology of Hawaiian Telcom, Inc., a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its board of directors, and the said Kevin Paul acknowledged said instrument to be the free act and deed of said corporation.



Karen Sunahara-Teruya  
Notary Public, State of Hawaii  
Print Name: Karen Sunahara-Teruya

My commission expires: August 10, 2016

Document Date: <u>undated at time of notarization</u>	No. of Pages (including this page): <u>13</u>
Notary Name: <u>Karen Sunahara-Teruya</u>	First Judicial Circuit
Document Description: <u>Utility Easement M13-41</u>	
Signature: <u>Karen Sunahara-Teruya</u>	Date: <u>April 25, 2014</u>
NOTARY CERTIFICATION	



# EXHIBIT "A"

## EASEMENT UT-1

An easement five feet wide for electric, telephone and cable television purposes

Being a Portion of Tax Map Key (2) 3-3-001:001

Being also a Portion of Land Commission Award 8559-B Apana 20 to William C. Lunalilo

Situate at Papahawale, Waiehu, Paukukalo, Wailuku, Maui, Hawaii

Beginning at the northeast corner of this easement on the northwest side of Pakele Place, the record coordinates of said point of beginning referred to Government Survey Triangulation Station "Luke" being 13,039.25 feet North and 1,077.64 feet East and running by azimuths measured clockwise from true South:

1. 297° 24' 00"            5.44    feet along the northwest side of Pakele Place;
2. 04° 17' 00"            10.75    feet along the remainder of Tax Map Key (2) 3-3-001:001 being a portion of Land Commission Award 8559-B Apana 20 to William C. Lunalilo;
3. 94° 17' 00"            5.00    feet along the same;
4. 184° 17' 00"           12.89    feet along the same to the point of beginning and containing an area of 59 square feet.

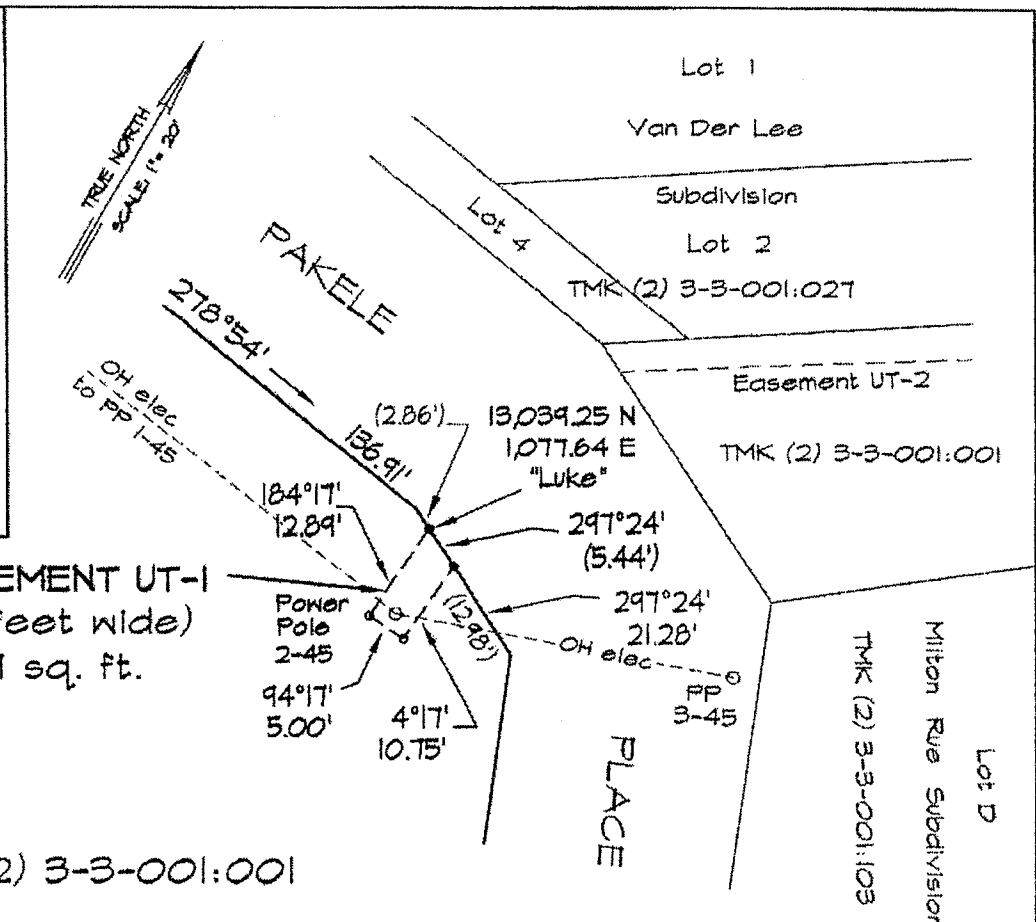
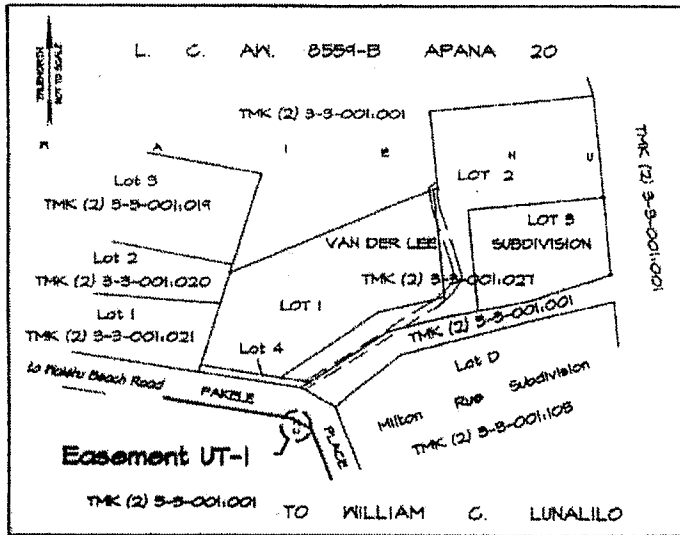


Description Prepared By:

ANA AINA LAND SURVEYORS

*Martina W. Jale* LICENSE EXPIRES 04/2014  
MARTINA W. JALE

Registered Land Surveyor  
Certificate No. 9311



PREPARED BY:  
 ANA AINA LAND SURVEYORS  
 P.O. BOX 1374  
 HAIKU, MAUI, HI 96708

This work was prepared by me  
 or under my direct supervision

*Martina W. Jale*  
 Martina W. Jale  
 Licensed Professional Land Surveyor  
 Certificate Number 9311

VANDERLEESMTRR2013

**EASEMENT UT-1**  
 (5 feet wide)  
 59 sq. ft.

TMK (2) 3-3-001:001

**EASEMENT UT-1**  
 (5 feet wide)

An Easement for Electric, Telephone  
 and Cable Television Purposes  
 Affecting Tax Map Key (2) 3-3-001:001

Being a portion of Land Commission Award 8559-B Apana 20  
 to William C. Lunaillo

At Papahawale, Walehu, Paukukalo, Walluku, Maui, Hawaii

**Notes:**

1. Azimuths and record coordinates referred to Government Survey Triangulation Station "LUKE".
2. Easement UT-1 is for electric, telephone and cable television purposes in favor of Maui Electric Co. Ltd., Hawaiian Telecom Inc. and cable television providers.

AUGUST 12, 2013

EASEMENT UT-2

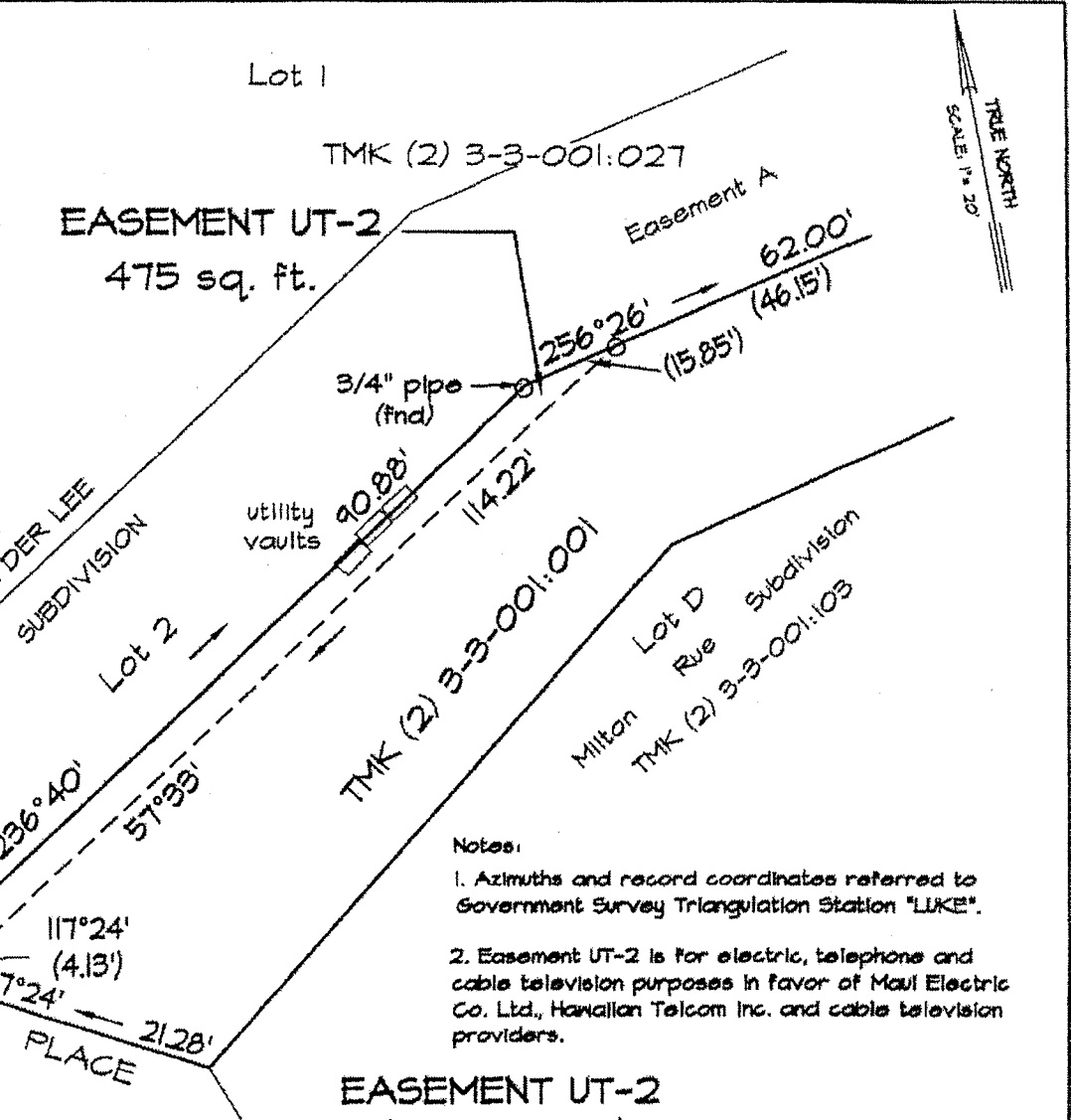
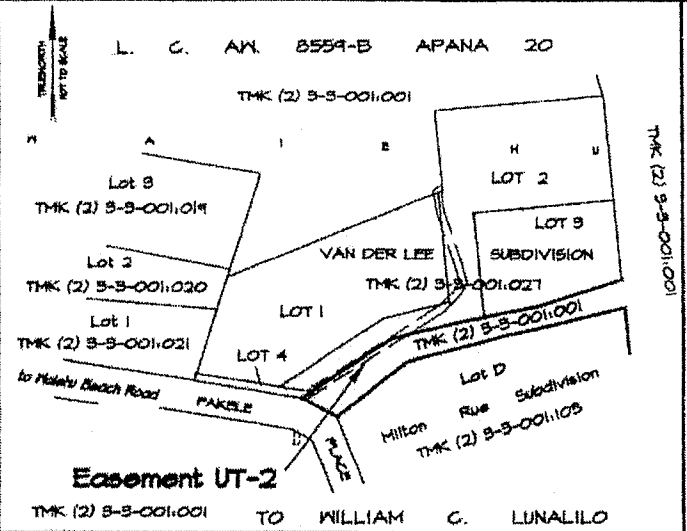
An easement (3.72 feet wide) for electric, telephone and cable television purposes  
Being a Portion of Tax Map Key (2) 3-3-001:001  
Being also a Portion of Land Commission Award 8559-B Apana 20 to William C. Lunalilo  
Situate at Papahawale, Waiehu, Paukukalo, Wailuku, Maui, Hawaii

Beginning at a 3/4 inch pipe (found) at the southwest corner of this easement, being also the southernmost corner of Lot 4 Van Der Lee Subdivision, a 7 foot wide road widening lot of Van Der Lee Subdivision, on the north side of the existing Pakele Place right of way, the record coordinates of said point of beginning referred to Government Survey Triangulation Station "Luke" being 13,069.46 feet North and 1,083.27 feet East and running by azimuths measured clockwise from true South:

- 1. 236° 40' 00" 10.42 feet along Lot 4 Van Der Lee Subdivision, along the remainder of Land Commission Award 8559-B Apana 20 to William C. Lunalilo;
- 2. 236° 40' 00" 90.88 feet along Lot 2 Van Der Lee Subdivision, along the remainder of Land Commission Award 8559-B Apana 20 to William C. Lunalilo to a 3/4 inch pipe (found);
- 2. 256° 26' 00" 15.85 feet along the same;
- 3. 57° 33' 00" 114.22 feet along the remainder of Tax Map Key (2) 3-3-001:001 being a portion of Land Commission Award 8559-B Apana 20 to William C. Lunalilo;
- 8. 117° 24' 00" 4.13 feet along the north side of the existing Pakele Place right of way to the point of beginning and containing an area of 475 square feet.



Description Prepared By:  
ANA AINA LAND SURVEYORS  
*Martina W. Jale LICENSE EXPIRES 04/2014*  
MARTINA W. JALE  
Registered Land Surveyor  
Certificate No. 9311



PREPARED BY:  
 ANA AINA LAND SURVEYORS  
 114 KAHIAPO PLACE  
 HAIKU, MAUI, HI 96708

This work was prepared by me  
 or under my direct supervision

*Martina W. Jale*

Martina W. Jale  
 Licensed Professional Land Surveyor  
 Certificate Number 9311

VANDERLEESHTUT2r2

Notes:

1. Azimuths and record coordinates referred to Government Survey Triangulation Station "LUKE".
2. Easement UT-2 is for electric, telephone and cable television purposes in favor of Maui Electric Co. Ltd., Hawaiian Telcom Inc. and cable television providers.

**EASEMENT UT-2**  
 (3.72 feet wide)

An Easement for Electric, Telephone and Cable Television Purposes  
 Affecting Tax Map Key (2) 3-3-001:001

Being a portion of Land Commission Award 8559-B Apana 20  
 to William C. Lunaillo

At Papahawale, Walehu, Paukukalo, Wailuku, Maui, Hawaii AUGUST 12, 2013



EASEMENT UT-3

An easement of varying width for electric, telephone and cable television purposes

Being a Portion of Tax Map Key (2) 3-3-001:001

Being also a Portion of Land Commission Award 8559-B Apana 20 to William C. Lunalilo

Situate at Papahawale, Waiehu, Paukukalo, Wailuku, Maui, Hawaii

Beginning at a 3/4 inch pipe (found) at the southeast corner of this easement, the record coordinates of said point of beginning referred to Government Survey Triangulation Station "Luke" being 13,264.22 feet North and 1,216.31 feet East and running by azimuths measured clockwise from true South:

1. 67° 45' 00" 4.18 feet along Lot 2 Van Der Lee Subdivision, along the remainder of Land Commission Award 8559-B Apana 20 to William C. Lunalilo;
2. 67° 45' 00" 4.61 feet along Lot 1 Van Der Lee Subdivision, along the remainder of Land Commission Award 8559-B Apana 20 to William C. Lunalilo;
3. 171° 04' 00" 3.39 feet along the remainder of Tax Map Key (2) 3-3-001:001 being a portion of Land Commission Award 8559-B Apana 20 to William C. Lunalilo;
4. 234° 04' 00" 10.01 feet along the same;
5. 354° 36' 00" 5.92 feet along Lot 2 Van Der Lee Subdivision, along the remainder of Land Commission Award 8559-B Apana 20 to William C. Lunalilo to the point of beginning and containing an area of 40 square feet.

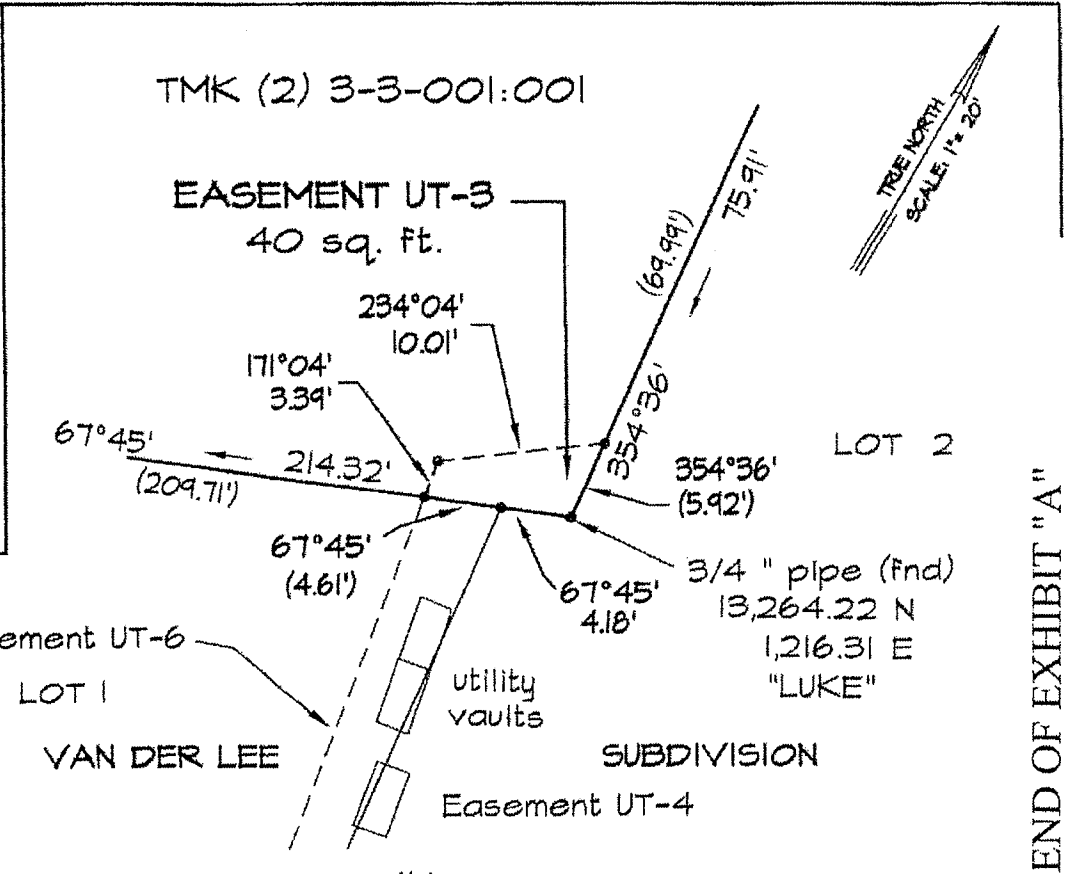
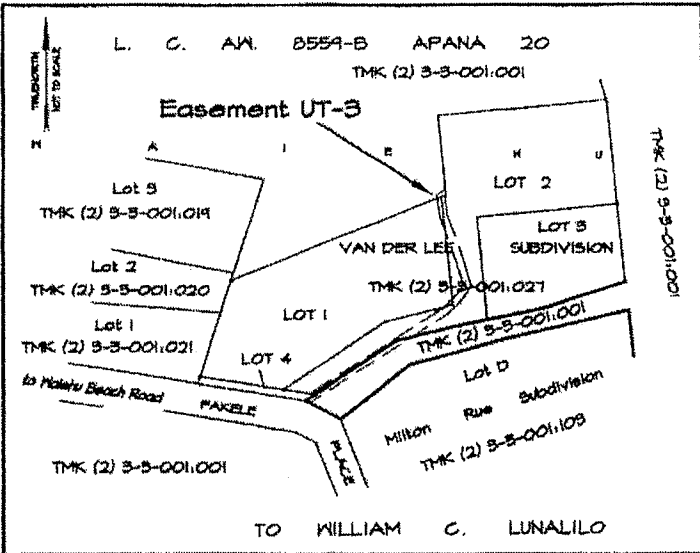


Description Prepared By:

ANA AINA LAND SURVEYORS

*Martina W. Jale* LICENSE EXPIRES 04/2014  
MARTINA W. JALE

Registered Land Surveyor  
Certificate No. 9311



PREPARED BY:  
ANA AINA LAND SURVEYORS  
114 KAHIAPO PLACE  
HAIKU, MAUI, HI 96708

This work was prepared by me  
or under my direct supervision

*Martina W. Jale*  
Martina W. Jale  
Licensed Professional Land Surveyor  
Certificate Number 9311

VANDERLEESMUT3-2

TMK (2) 3-3-001:027

Notes:

1. Azimuths and record coordinates referred to Government Survey Triangulation Station "LUKE".
2. Easement UT-3 is for electric, telephone and cable television purposes in favor of Maui Electric Co. Ltd., Hawaiian Telcom Inc. and cable television providers.

**EASEMENT UT-3**  
An Easement of Varying Width  
for Electric, Telephone and Cable Television Purposes  
Affecting Tax Map Key (2) 3-3-001:001  
Being a portion of Land Commission Award 8554-B Apana 20  
to William C. Lunailo  
At Papahawale, Walehu, Paukukalo, Waliuku, Maui, Hawaii

AUGUST 12, 2015

END OF EXHIBIT "A"