

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
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 Infrastructure and Environmental Management Committee, having met on March 16, 2015, makes reference to County Communication 15-46, from the Director of Public Works, transmitting a proposed resolution entitled "AUTHORIZING THE GRANTING OF AN EASEMENT TO WARMENHOVEN SPIRIT TRUST".

The purpose of the proposed resolution is to grant Curtis A. Burr, Trustee of the Warmenhoven Spirit Trust ("Grantee"), a non-exclusive perpetual easement through a portion of Keoneoio-Makena Road, comprising 3,289 square feet, for a private sewerline and appurtenant equipment to serve 4538 Makena Road, Kihei, Maui, Hawaii.

Your Committee notes pursuant to Section 3.44.020, Maui County Code, the Council may grant easements by the adoption of a resolution.

The Director of Public Works stated the proposed easement will allow the Grantee to install a private sewerline under, along, and through a portion of Keoneoio-Makena Road for connection to a privately operated wastewater system. The Grantee shall restore the roadway to its original, or better, condition, to the satisfaction of the County, following installation of the sewerline.

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

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

Page 2

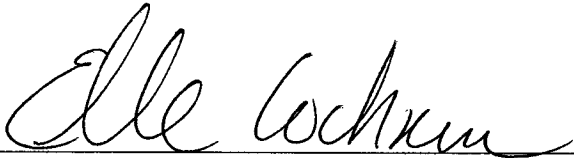
**Committee
Report No.** _____

Your Committee is in receipt of a revised proposed resolution, entitled "AUTHORIZING THE GRANTING OF AN EASEMENT TO CURTIS A. BURR, TRUSTEE OF THE WARMENHOVEN SPIRIT TRUST", approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Infrastructure and Environmental Management Committee RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled "AUTHORIZING THE GRANTING OF AN EASEMENT TO CURTIS A. BURR, TRUSTEE OF THE WARMENHOVEN SPIRIT TRUST", be ADOPTED; and
2. That County Communication 15-46 be FILED.

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



ELLE COCHRAN, Chair

Resolution

No. _____

AUTHORIZING THE GRANTING OF AN EASEMENT TO CURTIS A. BURR,
TRUSTEE OF THE WARMENHOVEN SPIRIT TRUST

WHEREAS, Curtis A. Burr, Trustee of the Warmenhoven Spirit Trust (“Grantee”), wishes to be granted a non-exclusive perpetual easement for the limited purpose of building, constructing, reconstructing, rebuilding, repairing, operating, relocating, removing, and maintaining a private underground sewerline and appurtenant equipment under, along, and through a portion of Keoneoio-Makena Road in Makena, Kihei, Maui, Hawaii, owned by the County of Maui (“County Parcel”); and

WHEREAS, the easement area is Easement “S-1”, as described in Exhibit “A” of the Grant of Non-Exclusive Easement for Private Sewerline, attached hereto as Exhibit “1”, and would benefit Tax Map Key No. (2) 2-1-011:021; and

WHEREAS, pursuant to Section 3.44.020, Maui County Code, the Council may grant easements by the adoption of a resolution; and

WHEREAS, the County desires to grant an easement under, across, over and through the County Parcel in favor of the Grantee; now, therefore,

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

1. That it does hereby grant an easement to the Grantee, in accordance with the terms and conditions of that certain Grant of Non-

Resolution No. _____


Exclusive Easement for Private Sewerline, which is attached hereto as Exhibit "1"; and

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

3. That certified copies of this Resolution be transmitted to the Grantee, the Mayor, and the Director of Public Works.

APPROVED AS TO FORM AND LEGALITY:



 MICHAEL J. HOPPER
Deputy Corporation
County of Maui
2014-3081

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Tax Key: (2) 2-1-011-021 (Benefitted Property)
Keoneoio-Makena Road (Burdened Property)

Total No. of Pages: _____

GRANT OF NON-EXCLUSIVE EASEMENT
FOR PRIVATE SEWERLINE

GRANTOR: COUNTY OF MAUI, a political subdivision and body corporate of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Hawaii 96793.

GRANTEE: CURTIS A. BURR, Trustee of the Warmenhoven Spirit Trust established September 27, 1999, having all powers under said trust, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and

dispose of all property of the trust estate, whose mailing address is 18500 Twin Creeks Road, Los Gatos, California 95030.

THIS INDENTURE made this ____ day of _____, 20__, by and between the COUNTY OF MAUI, a political subdivision and body corporate of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter called "Grantor", and CURTIS A. BURR, Trustee of the Warmenhoven Spirit Trust established September 27, 1999, having all powers under said trust, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all property of the trust estate, whose mailing address is 18500 Twin Creeks Road, Los Gatos, California 95030, hereinafter called "Grantee".

WITNESSETH:

That the Grantor, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to it paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee, its successors and assigns, subject to the terms and conditions set forth in this agreement, a non-exclusive, perpetual easement as an appurtenance to and in favor of that certain parcel of real property at Palauea, Honuaula, Makawao, Island and County of Maui, State of Hawaii, designated as Maui Tax Map Key No.

(2) 2-1-011-021, and any subdivision of that parcel (hereinafter called the "Benefitted Property"), to build, construct, reconstruct, rebuild, repair and maintain a private underground sewerline and appurtenant equipment for Grantee's exclusive use over, under, along and through Keoneio-Makena Road, described as Easement S-1 on Exhibit "A" attached hereto and made a part hereof (hereinafter the "Easement Area"), and as shown on the map attached hereto as Exhibit "B".

1. The Grantee's private sewerline shall be located within the Easement Area. The Grantee shall be solely responsible for making repairs to said sewerline, whether said sewerline be damaged by the public or by equipment belonging to the Grantee or the Grantor, but the Grantee shall not be precluded from seeking damages or obtaining recourses from parties, other than the County of Maui, or its employees, agents or assigns, whose negligence causes such damages. The relocation of said sewerline, due to future County improvements, shall be undertaken by the Grantee, and at no cost to the Grantor. It shall be the responsibility of the Grantee to obtain permission from the State of Hawaii wherever said sewerline crosses State property.

2. The Grantee shall pay, at its sole expenses, for all costs of constructing, relocating, maintaining, operating, repairing, replacing or removing the Grantee's private sewerline

under, along and through the Easement Area, and the Grantee shall defend, indemnify and hold harmless the Grantor from any and all such costs, including but not limited to attorney's fees, other than for damages caused by Grantor's own negligence or willful misconduct.

3. After the installation of the Grantee's private sewerline, or after any subsequent relocation, removal, maintenance, replacing or repair/work thereon has been completed, the Easement Area and the roadway, to the extent the roadway shall be disturbed, shall be restored by the Grantee to its original or better condition to the satisfaction of the Grantor.

4. The Grantee shall defend, indemnify and hold harmless the Grantor and the Grantor's officers, employees, agents, successors and assigns, against any and all claims for property damage, personal injury, or wrongful death by whomsoever suffered or brought, arising in any manner whatsoever, directly or indirectly, from the Grantee's private sewerline or its placement, construction, reconstruction, maintenance, operation, repair, replacement, removal or relocation, except as may have been caused by Grantor's own negligence or willful misconduct.

5. The Grantee shall defend, indemnify and hold harmless the Grantor and the Grantor's officers, employees,

agents, successors and assigns, from and against any and all damage to Grantee's private sewerline resulting from the public's use of the Easement Area, as a public roadway or from the Grantee's use, construction and maintenance of the Easement Area, or from the Grantor's construction, reconstruction, maintenance, operation, repair or removal of any waterline, sewerline or any other improvements in the Easement Area.

6. Within ninety (90) days after written notice from the Grantor to the Grantee requesting Grantee to relocate its private sewerline to a different location, the Grantee shall relocate its private sewerline to another area, as designated by the Grantor. PROVIDED, HOWEVER, the Grantor covenants with the Grantee that any new location shall be within the Keoneoio-Makena Road or its right-of-way, or any widening thereof, in which the Grantor shall grant to the Grantee an easement to build, construct, reconstruct, rebuild, repair and maintain private sewerline for Grantee's exclusive use as an appurtenance to and in favor of the Benefitted Property. PROVIDED FURTHER, HOWEVER, at the sole option of the Grantee, upon the Grantee's receipt of the relocation notice from the Grantor, the Grantee may choose to completely remove its private sewerline and terminate its rights under this agreement as provided in paragraph 16.

7. The Grantee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the Easement Area, or any part thereof.

8. The Grantee shall comply with all of the requirements of all county, municipal, state and federal authorities and observe all county, municipal, state and federal laws now in force or which may hereinafter be in force pertaining to the Easement Area and Grantee's private sewerline.

9. The Grantee shall not commit or suffer any act or neglect whereby the Easement Area or any improvement thereon shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall defend, indemnify and hold harmless the Grantor from and against all attachments, liens, charges and encumbrances caused by any act or omission of the Grantee, its officers, employees or agent, and all expenses resulting therefrom, including but not limited to Grantor's attorney's fees and costs.

10. The Grantee shall defend, indemnify and hold harmless the Grantor from and against any claim or demand for loss, liability or damage, including but not limited to claims for property damage, personal injury or death resulting from the granting of this easement or the Grantee's private sewerline or its placement, construction, maintenance, operation, repair, replacement, removal or relocation, or arising out of any

accident in the Easement Area occasioned by any act or nuisance made or suffered by the Grantee within the Easement Area, or growing out of or caused by any failure on the part of the Grantee to maintain the Easement Area in a safe condition, or by any act or omission of the Grantee, and from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments applicable to the Easement Area or Grantee's private sewerline.

11. If the Grantor shall be made a party to any litigation commenced by or against the Grantee (other than condemnation proceedings or actions against the Grantor challenging its title to the Easement Area or its authority to grant this easement), having to do with the construction, maintenance, operation, repair, replacement, removal or relocation of the sewerline, the Grantee shall pay all costs and expenses incurred by or imposed on the Grantor, including but not limited to Grantor's attorney's fees; furthermore, the Grantee shall pay all costs and expenses, including but not limited to attorney's fees, which may be incurred by or paid by

the Grantor in enforcing the covenants and agreements of this easement.

12. In consideration for the granting of this easement, the Grantee shall procure, at its own cost and expense, and shall maintain during the entire period of this easement a policy or policies of comprehensive public liability insurance, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), insuring and defending the Grantor against all claims for personal injury and/or death against which the Grantee is responsible to defend, indemnify or hold harmless the Grantor under the terms of this agreement, and in an amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for all claims of property damage against which the Grantee is responsible to defend, indemnify or hold harmless the Grantor under the terms of this agreement. The Grantee shall furnish the Grantor with a certificate showing said policy or policies to be initially in force and shall furnish a like certificate upon each renewal of the policy or policies, each certificate to contain or be accompanied by an assurance of the insurer to notify the Grantor of any intention to cancel said policy or policies at least sixty (60) days prior to actual cancellation. The procuring of this policy or policies shall not release or relieve the Grantee of its responsibility under

this agreement or limit the amount of the Grantee's liability under this agreement. The notice to cancel shall be sent to the Grantor at least sixty (60) days prior to the date of cancellation.

13. The Grantee shall, at its own expense, from time to time and at all times during the term hereof, substantially repair, maintain and keep in good and safe repair, order and condition, reasonable wear and tear excepted, the Grantee's private sewerline within the Easement Area.

14. In the event condemnation proceedings shall be initiated by the Grantor against the Easement Area, the Grantee hereby acknowledges that the Grantee shall not be entitled to nor will the Grantee assert any claim for compensation arising from the rights granted by this agreement or Grantee's private sewerline.

15. The Grantor does not warrant the conditions 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 including, without limitation, any dangerous conditions (latent or patent).

16. In the event the Grantee shall at any time completely remove the sewerline from the Easement Area and for a period of twelve (12) months thereafter fail to reinstall the sewerline, the Grantee shall, at the Grantor's request, forthwith execute and deliver to the Grantor an instrument suitable for recordation in the appropriate registry office of the State of Hawaii as shall be sufficient to evidence the termination and surrender of the easement granted under this agreement.

17. This agreement shall be construed and governed by the laws of the State of Hawaii.

18. The term "Grantee" wherever used herein shall be held to mean and include the undersigned Grantee, and its personal representatives, devisees, heirs, successors and assigns; the term "Grantor" wherever used herein shall be held to mean the County of Maui, its officers, employees, agents, successors and assigns; and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, devisees, heirs, successors and assigns.

19. This written agreement represents the entire agreement of the parties hereto. This agreement may be amended only by written amendment executed by all of the undersigned parties.

20. This agreement shall be recorded at the Bureau of Conveyances of the State of Hawaii at the Grantee's expense and upon such recording, the Grantee's rights, benefits and burdens herein shall constitute rights, benefits and obligations which shall run with the Grantee's land described above and shall accrue to the benefit of and be the responsibility of the Grantee and all future owners of the Benefitted Property, and the burden on the Easement Area shall be a covenant running with the Grantor's land in favor of the Benefitted Property.

21. If the Grantee fails to observe or perform any of the terms and conditions provided herein to be observed or performed by the Grantee, including but not limited to failing to maintain the insurance for the Grantor described above, then an essential condition of this agreement shall be conclusively presumed to have been breached and the Grantee shall be deemed to be in default and Grantor can cancel this agreement as follows:

At any time after a breach shall have occurred, the Grantor shall notify the Grantee in writing of its intention to

cancel this agreement. If, within sixty (60) days of the notice of intention to cancel being mailed by the Grantor to the Grantee, the Grantee shall undertake to cure the default and shall with due diligence thereafter promptly cure the default, then the Grantor shall not have grounds to cancel this agreement on account of such default. If, within sixty (60) days of the notice of intention to cancel being mailed by the Grantor to the Grantee, the Grantee shall not undertake to cure the default or, having undertaken to cure the default, shall not cure the default promptly thereafter, then the Grantor shall have the right to apply to the Second Circuit Court of the State of Hawaii or other court of competent jurisdiction for an order declaring this agreement cancelled and of no further force and effect, and upon receiving such an order from the Court, the Grantor shall be entitled to remove the Grantee's private sewerline from the Easement Area.

Nothing in this paragraph 21 shall be construed to limit or preclude the Grantor from exercising any other available remedy at law or in equity with respect to the Grantee's breach of the terms of this agreement.

22. This agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

TO HAVE AND TO HOLD the same unto the Grantee and its personal representatives, devisees, heirs, successors and assigns, subject to the terms and conditions hereinabove set forth.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed this 30th day of October, 2014.

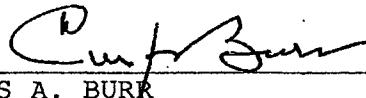
GRANTOR:

COUNTY OF MAUI

By _____

ALAN M. ARAKAWA
Its Mayor

GRANTEE:



CURTIS A. BURR
Trustee of the Warmenhoven Spirit
Trust established September 27,
1999

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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 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.

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

Notary Public, State of Hawaii
Print Name: _____

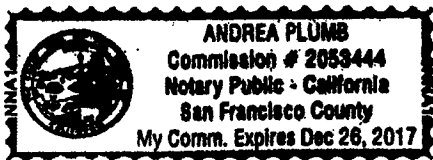
My commission expires: _____

Date of Doc: _____	# Pages: _____
Name: _____	Second Circuit
Doc. Description: _____	

Notary Signature _____	
NOTARY CERTIFICATION	(Seal)

STATE OF California)
) SS.
COUNTY OF San Francisco)

On this 30th day of October, 2014, before me personally appeared CURTIS A. BURR, 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.



Andrea Plumb
Print Name: Andrea Plumb
Notary Public, in and for said
State and County.

My commission expires: Dec. 26, 2017

EASEMENT S-1
(FOR SEWER PURPOSES)

Affecting a portion of Keoneoio - Makena Road

Situate at Honuauia, Maui, Hawaii

Beginning at the North corner of this easement, being also an azimuth and distance of $3^{\circ}56'$ and 132.93 feet from the North corner of Lot 683 as shown on Map 97 of Land Court Application 1804, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU IO" being 937.80 feet South and 20,161.43 feet West thence running by azimuths measured clockwise from true South:

- | | | |
|-----|-------------------|--|
| 1. | $3^{\circ} 56'$ | 21.19 feet along Lot 683 as shown on Map 97
of Land Court Application 1804; |
| 2. | $49^{\circ} 00'$ | 31.88 feet along the remainder of Keoneoio
- Makena Road; |
| 3. | $4^{\circ} 00'$ | 56.57 feet along same; |
| 4. | $359^{\circ} 00'$ | 87.86 feet along same; |
| 5. | $94^{\circ} 00'$ | 44.92 feet along same; |
| 6. | $183^{\circ} 56'$ | 15.00 feet along Lot 47 of the Makena Beach
Lots also along Land Commission
Award 11,216 Apana 21 to M.
Kekauonohi; |
| 7. | $274^{\circ} 00'$ | 28.57 feet along the remainder of Keoneoio
- Makena Road; |
| 8. | $179^{\circ} 00'$ | 72.15 feet along same; |
| 9. | $184^{\circ} 00'$ | 63.43 feet along same; |
| 10. | $229^{\circ} 00'$ | 53.06 feet along same to the point of
beginning and containing an area
of 3,289 square feet. |



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

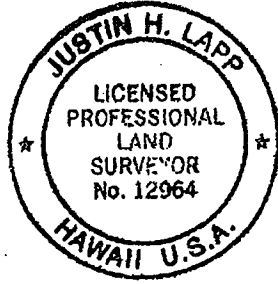
501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

CIVIL ENGINEERS • SURVEYORS

1871 WILI PA LOO, SUITE A
WAILUKU, MAUI, HAWAII 96793

EXHIBIT "1" PAGE 16

100 PALAHI STREET, SUITE 213
HILO, HAWAII 96720



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

Description Prepared By:

[Handwritten Signature] *exp 04/16*
JUSTIN H. LAPP
Licensed Professional Land Surveyor
Certificate No. 12964

Wailuku, Maui, Hawaii
April 25, 2014
TMK: (2) 2-1-023: ROAD



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

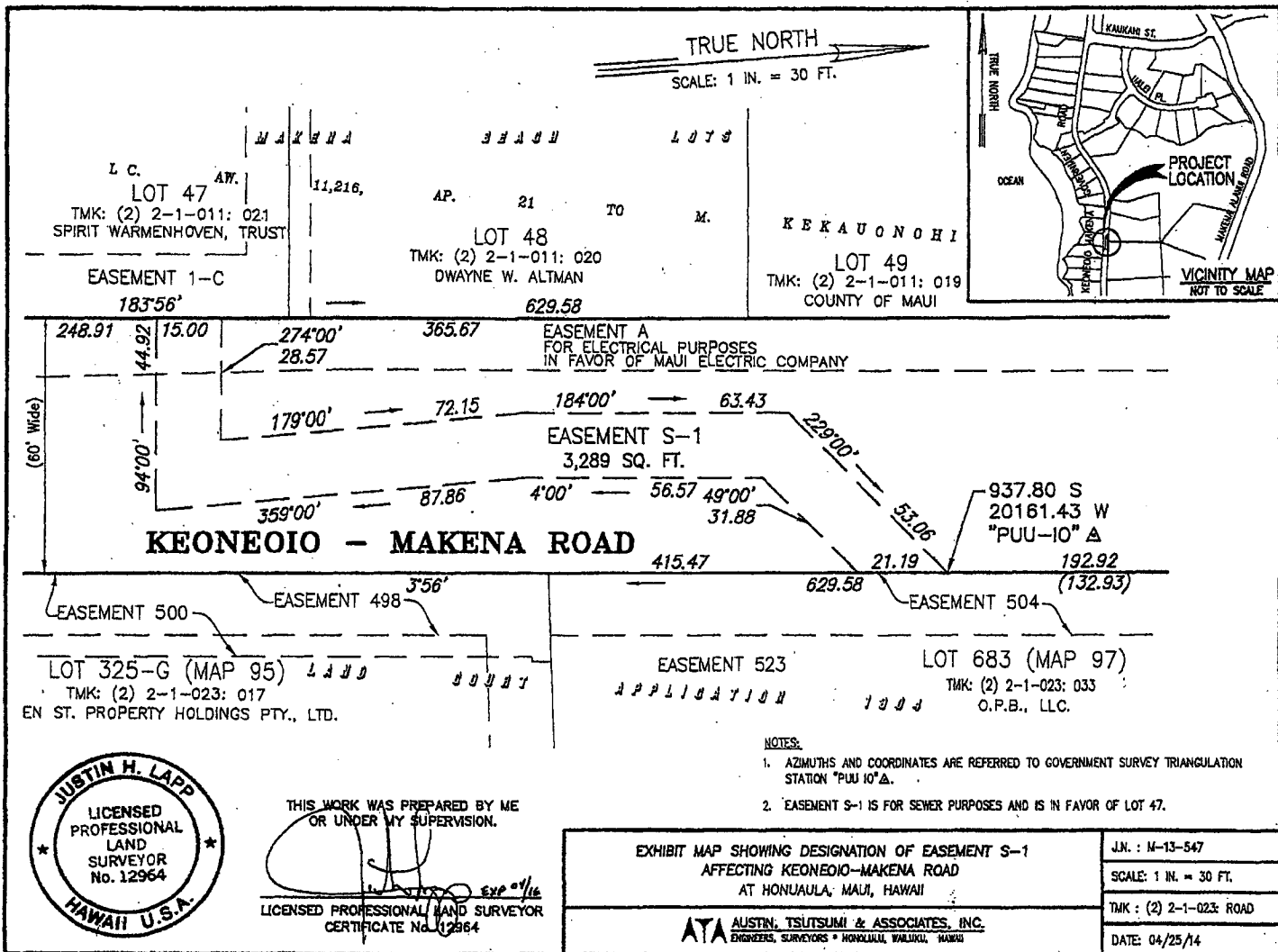
CIVIL ENGINEERS • SURVEYORS

501 SUMNER STREET, SUITE 521
HONOLULU, HAWAII 96817-5031

1871 WILI PA LOOP, SUITE A
WAILUKU, MAUI, HAWAII 96793

EXHIBIT "1" PAGE 17

100 PALAHI STREET, SUITE 213
HILO, HAWAII 96720



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