

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

July 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 June 15, 2015, makes reference to County Communication 15-16, from the Director of Public Works, transmitting a proposed resolution entitled "AUTHORIZING THE GRANTING OF A NON-EXCLUSIVE EASEMENT FOR UNDERGROUND PRIVATE WATERLINE PURPOSES TO MAUI LAND & PINEAPPLE COMPANY, INC.".

The purpose of the proposed resolution is to grant Maui Land & Pineapple Company, Inc. ("Grantee"), two non-exclusive easements affecting portions of Makawao Avenue between Haleakala Highway and Apana Road and Makani Road between Haleakala Highway and Ahuwale Place, Makawao, Maui, Hawaii.

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

The Deputy Director of Public Works stated the Grantee owns a private waterline that crosses through two County roadways. Granting the easements will provide the appropriate authorization for the Grantee's private waterline to continue crossing the County's roadways.

Your Committee voted 7-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Cochran, Vice-Chair Hokama, and members Baisa, Carroll, Crivello, Guzman, and White voted "aye".

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, 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 A NON-EXCLUSIVE EASEMENT FOR UNDERGROUND PRIVATE WATERLINE PURPOSES TO MAUI LAND & PINEAPPLE COMPANY, INC.", be ADOPTED; and
2. That County Communication 15-16 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 A NON-EXCLUSIVE
EASEMENT FOR UNDERGROUND PRIVATE WATERLINE PURPOSES
TO MAUI LAND & PINEAPPLE COMPANY, INC.

WHEREAS, the County of Maui is the owner of certain rights-of-way and roadways, situate at Makawao Avenue and Makani Road, Makawao, Maui, Hawaii; and

WHEREAS, Maui Land & Pineapple Company, Inc. ("Grantee"), wishes to be granted a non-exclusive easement for the limited purpose of constructing, installing, reconstructing, replacing, repairing, operating, maintaining, relocating or removing underground private waterlines within each of the portions of certain rights-of-way and roadways; and

WHEREAS, a Grant of Non-exclusive Easement for Underground Private Waterline Purposes is attached hereto as Exhibit "1"; and

WHEREAS, the portions of the rights-of-way and roadways are described as TMK: (2) 2-3-7: Por. Road and (2) 2-3-9: Por. Road in Exhibit "A" and TMK: (2) 2-3-9 in Exhibit "B", attached to Exhibit "1", hereinafter referred to collectively as the "Easement Area"; and

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

Resolution No. _____

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

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

1. That it does hereby grant easements to the Grantee, in accordance with the terms and conditions of the Grant of Non-exclusive Easement Agreement for Underground Private Waterline Purposes attached hereto as Exhibit "1"; and

2. That it does hereby authorize the Mayor of the County of Maui, or the Mayor's duly authorized representative, to execute all necessary documents in connection with the granting of the easements; 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 HOPPER
Deputy Corporation Counsel
County of Maui

2014-3081

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

TITLE OF DOCUMENT:

GRANT OF NON-EXCLUSIVE EASEMENT
FOR UNDERGROUND PRIVATE WATERLINE PURPOSES

PARTIES TO DOCUMENT:

GRANTOR: COUNTY OF MAUI

GRANTEE: MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation
200 Village Road
Lahaina, Hawaii 96761

TAX MAP KEY(S): (2) 2-3-7: Por. Road; (2) 2-3-9: Por. Road

(This document consists of ___ pages.)

**GRANT OF NON-EXCLUSIVE EASEMENT
FOR UNDERGROUND PRIVATE WATERLINE PURPOSES**

THIS INDENTURE made this _____ day of _____, 20____,

by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "Grantor", and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761, hereinafter referred to collectively as the "Grantee",

WITNESSETH:

That the Grantor, in consideration of the sum of TEN AND 00/100 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, subject to the terms and conditions set forth in this Easement, non-exclusive easements for the limited purpose of constructing, installing, reconstructing, replacing, repairing, operating, maintaining, relocating or removing underground private waterlines within each of the portions of certain rights-of-way and roadways, which portions are described in Exhibit "A" and Exhibit "B" attached hereto and made a part hereof, and which are hereinafter referred to collectively as the "Easement Area".

TO HAVE AND TO HOLD the same unto the Grantee and Grantee's successors and permitted assigns, as easements in gross.

The foregoing grant is made and accepted upon the following terms and conditions which shall be binding upon the Grantor, Grantee and their respective successors and assigns:

1. The Grantee's private waterlines shall be located entirely within the Easement Area shown and described in the attached Exhibit "A" and Exhibit "B".

2. The Grantee shall pay, at their sole expense, for all costs of constructing, reconstructing, installing, relocating, maintaining, operating, repairing, replacing, or removing the Grantee's private waterlines with each portion of 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 the Grantor's attorney's fees and costs. Grantee shall provide identification on or warning tape over any of Grantee's current, relocated, repaired or replaced private waterlines. Waterlines shall have a minimum of three feet cover.

3. Prior to installation, relocation, removal, maintenance, replacement or repair of private underground waterlines, Grantee shall submit complete plans for such work for Grantor's approval, which shall not be unreasonably withheld or delayed. All such work shall be performed in strict accordance with the approved plans. After the installation of Grantee's private waterlines, or after any subsequent relocation, removal, maintenance, replacing or repair work thereon has been completed, the Easement Area and all surrounding grounds, to the extent such surrounding grounds shall have been disturbed, shall be restored by the Grantee as near as reasonably possible to their original condition to the satisfaction of the Grantor. Grantor shall at all times have the right to inspect Grantee's work and notify Grantee of any damage within the Easement Area resulting from Grantee's work, which shall be promptly repaired.

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 waterlines or their

installation, construction, reconstruction, maintenance, operation, repair, replacement, removal, or relocation.

5. The Grantor shall not be liable or responsible for any and all damages to Grantee's private waterlines resulting from the public's use of the Easement Area, or the roads and rights-of-way in which they are located, or the Grantor's construction, reconstruction, maintenance, operation, repair or removal of any waterline, sewerline or any other improvements in the Easement Area, and Grantee shall defend, indemnify and hold harmless the Grantor and Grantor's officer, employees, agents, successors and assigns for any claims for such damages.

6. Within ninety (90) days after written notice from the Grantor to the Grantee requesting the Grantee to relocate any private waterline to a different location, the Grantee at Grantee's own expense shall relocate its private waterline from the Easement Area to another area designated by the Grantor; PROVIDED, HOWEVER, that the Grantor covenants with Grantee that any new Easement Area shall be within the same right-of-way. If Grantee decides not to relocate its private waterline to the new Easement Area, the Grantee may choose to remove the private waterline from the Easement Area and terminate this Easement as to that waterline.

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, nor, without the prior written consent of the Grantor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing within the Easement Area.

8. The Grantee shall comply with all of the requirements of all County, State and Federal authorities and observe all County, State and Federal laws now in force or which may hereinafter be in force pertaining to the Easement Area and Grantee's private waterlines.

9. The Grantee will 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 and all expenses resulting therefrom, including but not limited to Grantor's attorney's fees and costs.

10. The Grantee shall indemnify, defend 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 waterline or its placement, construction, reconstruction, maintenance, operation, repair, replacement, removal or relocation, or arising out of any accident within the Easement Area and any County road or right-of-way occasioned by any act or nuisance made or suffered by Grantee within the Easement Area and any County road or right-of-way, 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 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 waterline.

So long as this agreement remains in effect, the Grantee, its successors and assigns, shall procure at its own cost and expense and maintain a policy or policies of comprehensive liability insurance in a minimum amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the Grantee and the County of Maui against any and all claims and

demands 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. A certificate of insurance naming the County of Maui as an additional insured shall be submitted within five (5) days of the execution of this agreement.

11. If the Grantor shall be made a party to any litigation commenced by or against the Grantee (other than condemnation proceedings), arising out of or related to this easement, 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 and costs; furthermore, the Grantee shall pay all costs and expenses, including but not limited to reasonable attorney's fees, which may be incurred by or paid by the Grantor in enforcing the covenants and agreements of this easement.

12. In the event condemnation proceedings shall be initiated against the Easement Area by the Grantor or any other authority with the power of eminent domain, the Grantee shall be entitled to claim from the condemning authority such damages or other compensation as Grantee is entitled to under applicable law.

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 waterlines within the Easement Area.

14. The Grantee accepts the Easement Area in "AS IS, WHERE IS" condition, and acknowledges that the Grantor has made no warranties or 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).

15. In the event the Grantee shall at any time completely remove the waterlines from the Easement Area and for a period of two (2) years thereafter fail to reinstall the waterlines, the Grantee shall, at the Grantor's request, forthwith execute and deliver to Grantor an instrument suitable for recordation in the Bureau of Conveyances of the State of Hawaii ("Bureau") as shall be sufficient to evidence the termination and surrender of the waterline easement granted under this Easement.

16. This Easement shall be construed and governed by the laws of the State of Hawaii.

17. Grantee may assign its rights under this grant by instrument recorded in the Bureau. The term "Grantee" wherever used herein, shall be held to mean and include the undersigned Grantee and Grantee's successors and permitted assigns. The term "Grantor" wherever used herein shall be held to mean the County of Maui, its officials, employees, agents, successors and assigns. This Easement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

18. This Easement represents the entire agreement of the parties hereto and may be amended only by written amendment executed by all of the parties hereto.

19. This Easement shall be recorded in the Bureau of Conveyances of the State of Hawaii at Grantee's expense.

20. If the Grantee fails to observe or perform any of the terms or conditions provided herein to be observed or performed by the Grantee, then an essential condition of this

Easement shall be conclusively presumed to have been breached and the Grantee shall be deemed to be in default and Grantor can terminate this Easement as follows:

At any time after a breach shall have occurred, the Grantor shall notify Grantee in writing of its intention to terminate this Easement. If Grantee, within ninety (90) days from receipt of the notice of intention to terminate, shall undertake to cure the breach and shall with due diligence thereafter promptly cure the default, then Grantor shall not have grounds to terminate this Easement on account of such breach. If the Grantee, within ninety (90) days from receipt of the notice of intention to terminate, shall not undertake to cure the breach or having undertaken to cure the breach, shall not cure the breach promptly thereafter, then 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 Easement terminated and of no further force and effect, and upon receiving such an order from the Court, the Grantor shall be entitled to remove Grantee's waterlines from the Easement Area.


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

21. This Easement 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 successors and assigns, subject to the terms and conditions hereinabove set forth.

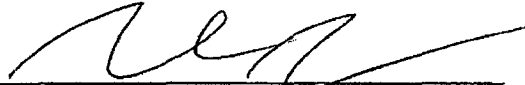
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the day and year first above written.

APPROVAL RECOMMENDED:



DAVID C. GOODE
Director of Department of Public Works

APPROVED AS TO FORM
AND LEGALITY:

By 

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui


GRANTOR:

COUNTY OF MAUI

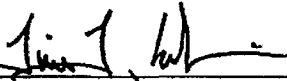
By _____
ALAN ARAKAWA
Its Mayor

GRANTEE:

MAUI LAND & PINEAPPLE COMPANY,
INC.

By 

Name: Ryan Churchill
Its: President

By 

Name: Tim T. Esaki
Its: Chief Financial Officer

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me appeared ALAN ARAKAWA, to me personally know, who, being by me duly sworn, did say that she is the Mayor of the County of Maui, a body politic and corporate, and a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of said County of Maui and that said instrument was signed and sealed on behalf of said County of Maui by authority of its Council, and said ALAN ARAKAWA acknowledged 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.

Name:

Notary Public, State of Hawaii

(Notary Stamp or Seal)

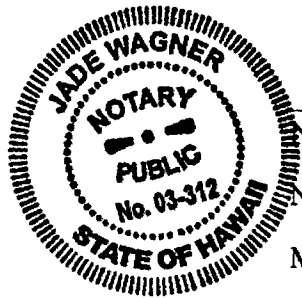
My commission expires: _____

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>GRANT OF NON-EXCLUSIVE EASEMENT FOR UNDERGROUND PRIVATE WATERLINE PURPOSES</u>
Document Date:	_____
No. of Pages:	_____
Jurisdiction (in which notarial act is performed):	<u>Second</u> Circuit
(Notary Stamp or Seal)	
Printed Name of Notary	

Signature of Notary	Certification Date

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

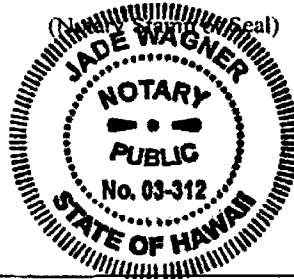
On this 29th day of May, 2014, before me personally appeared RYAN CHURCHILL and TIM T. ESAKI, proved to me, who, being by me duly sworn or affirmed, did say that they are the PRESIDENT and CFO, respectively, of MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, and that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

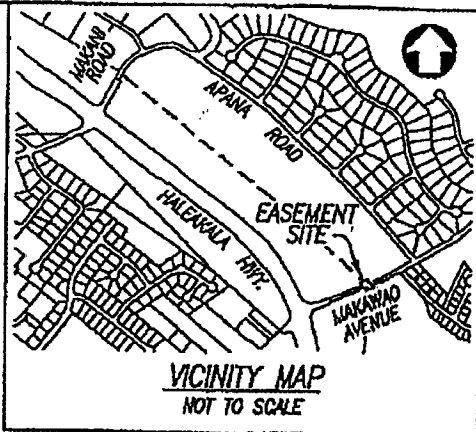
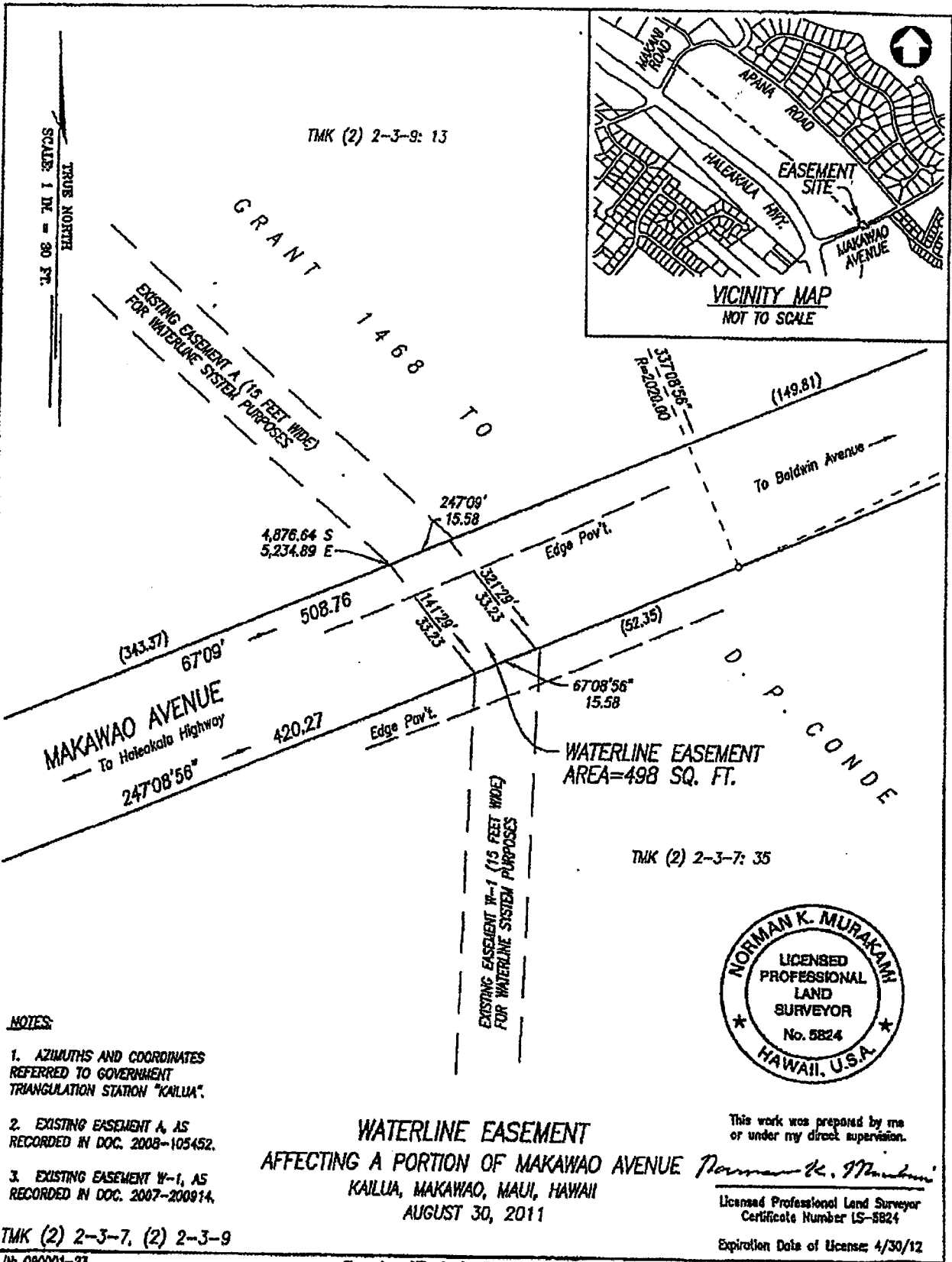


(Notary Stamp or Seal)

Jade Wagner
Name: JADE WAGNER
Notary Public, State of Hawaii
My commission expires: June 1, 2015

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	<u>GRANT OF NON-EXCLUSIVE EASEMENT FOR UNDERGROUND PRIVATE WATERLINE PURPOSES</u>
Document Date:	<u>Undated at time of notarization</u>
No. of Pages:	<u>-15-</u>
Jurisdiction (in which notarial act is performed):	<u>Second</u> Circuit
Printed Name of Notary	<u>JADE WAGNER</u>
Signature of Notary	<u>Jade Wagner</u> <u>May 29, 2014</u> Certification Date





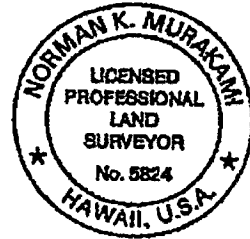
NOTES:

1. AZIMUTHS AND COORDINATES REFERRED TO GOVERNMENT TRIANGULATION STATION "KAILUA".
2. EXISTING EASEMENT A, AS RECORDED IN DOC. 2008-105452.
3. EXISTING EASEMENT W-1, AS RECORDED IN DOC. 2007-200914.

TMK (2) 2-3-7, (2) 2-3-9

JN: 090001-23
FN: EAS4.DWG

WATERLINE EASEMENT
AFFECTING A PORTION OF MAKAWAO AVENUE
KAILUA, MAKAWAO, MAUI, HAWAII
AUGUST 30, 2011



This work was prepared by me or under my direct supervision.

Licensed Professional Land Surveyor
Certificate Number LS-5824

Expiration Date of License: 4/30/12



ControlPoint Surveying, Inc.
1123 Lower Main Street, Suite 102
Kailua, Maui, Hawaii 96793

EXHIBIT A

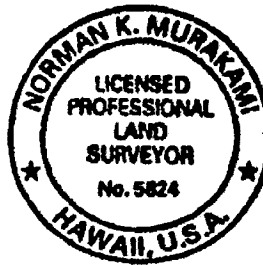
Makawao Avenue

Waterline Easement

An easement (15 feet wide) for waterline pipeline purposes affecting a portion of Makawao Avenue at Kailua, Makawao, Maui, Hawaii.

Beginning at the westerly corner of this easement, on the north side of Makawao Avenue and on the south side of a portion of Grant 1468 to D. P. Conde (TMK 2-3-9: 13), being 247° 09" 343.37 feet from a northwesterly corner of Makawao Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" being 4,876.64 feet South and 5,234.89 feet East and running by azimuths measured clockwise from True South:

1. 247 ° 09 ' 15.58 feet along a portion of Grant 1468 to D. P. Conde (TMK 2-3-9: 13), being also along Easement A;
2. 321 ° 29 ' 33.23 feet along the remainder of Makawao Avenue;
3. 67 ° 08 ' 56" 15.58 feet along a portion of Grant 1468 to D. P. Conde (TMK 2-3-7: 35), being also along Easement W-1;
4. 141 ° 29 ' 33.23 feet along the remainder of Makawao Avenue to the point of beginning and containing an area of 498 Square Feet.



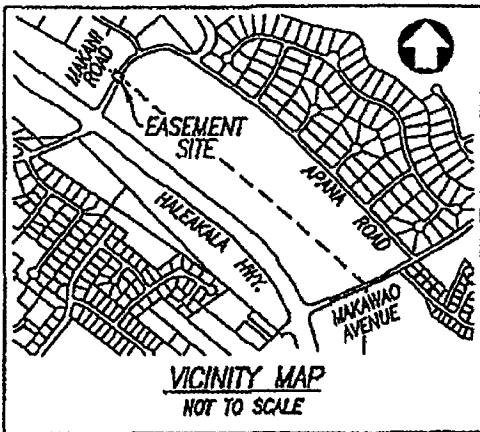
Norman K. Murakami

Norman K. Murakami
Licensed Professional Land Surveyor
Certificate No. LS-5824, expires 04/30/14

October 22, 2013

TMK: (2) 2-3-7 and (2) 2-3-9: road

ControlPoint Surveying, Inc.
1129 Lower Main Street, Suite 102
Wailuku, Hawaii 96793



PAU HANA ESTATES SUBD.
(FILE PLAN 1502)

LOT 1

GRANT 1443 TO WAHINENUI

TMK (2) 2-4-32: 1

TRUE NORTH
SCALE 1 IN. = 30 FT.

2,966.36 S
2,991.22 E

208°12'45"
15.20

Edge Port

Edge Port

WATERLINE EASEMENT
AREA=608 SQ. FT.

GRANT 1088 TO KALawe

TMK (2) 2-3-9: 8

G.W.

1/2" PIPE (FND.)

U.P.

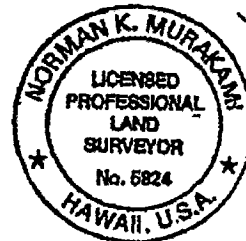
28°12'45"
15.20

GRANT 1468
TO D. P. CONDE

TMK (2) 2-3-9: 13

EXISTING EASEMENT A (15 FEET WIDE)
FOR WATERLINE SYSTEM PURPOSES

To Polohahi
HALEKALA
HIGHWAY



NOTES:

1. AZIMUTHS AND COORDINATES REFERRED TO GOVERNMENT TRIANGULATION STATION "KAILUA".
2. EXISTING EASEMENT A, AS RECORDED IN DOC. 2008-105452.

**WATERLINE EASEMENT
AFFECTING A PORTION OF MAKANI ROAD
KAILUA, MAKAWAO, MAUI, HAWAII
AUGUST 31, 2011**

This work was prepared by me
or under my supervision.

Norman K. Murakami

Licensed Professional Land Surveyor
Certificate Number LS-5824 Exp. 4/30/12

TMK (2) 2-3-9

JN: 090001-23
FN: EASL.DWG



ControlPoint Surveying, Inc.
1129 Lower Main Street, Suite 102
Wailuku, Maui, Hawaii 96793

EXHIBIT B

EXHIBIT "1" PAGE 14

Makani Road

Waterline Easement

An easement (15 feet wide) for waterline pipeline purposes affecting a portion of Makani Road at Kailua, Makawao, Maui, Hawaii.

Beginning at the northerly corner of this easement, being also the southerly corner of Lot 1 of Pau Hana Estates Subdivision (File Plan 1502), on the west side of Makani Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA" being 2,966.36 feet South and 2,991.22 feet East and running by azimuths measured clockwise from True South:

- | | | |
|----|-----------------|--|
| 1. | 307 ° 34 ' | 40.54 feet along the remainder of Makani Road; |
| 2. | 28 ° 12 ' 45 " | 15.20 feet along a portion of Grant 1468 to D.P. Conde (TMK 2-3-9:13); |
| 3. | 127 ° 34 ' | 40.54 feet along the remainder of Makani Road; |
| 4. | 208 ° 12 ' 45 " | 15.20 feet along a portion of Grant 1088 to Kalawe (TMK 2-3-9: 8) to the point of beginning and containing an area of 608 Square Feet. |



Norman K. Murakami

Norman K. Murakami
Licensed Professional Land Surveyor
Certificate No. LS-5824, expires 04/30/14

October 22, 2013

TMK: (2) 2-3-9 and (2) 2-4-32: road

ControlPoint Surveying, Inc.
1129 Lower Main Street, Suite 102
Wailuku, Hawaii 96793