

COUNCIL OF THE COUNTY OF MAUI
PUBLIC WORKS AND
FACILITIES COMMITTEE

November 21, 2008

Committee
Report No.

08-146

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

Chair and Members:

Your Public Works and Facilities Committee, having met on October 29, 2008, makes reference to County Communication No. 08-236, from the Director of Environmental Management, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF A UTILITY EASEMENT OVER, UNDER, ACROSS AND THROUGH PROPERTY IDENTIFIED AS TAX MAP KEY NO. (2) 3-9-002:091 (PORTION), PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept the dedication of an easement from Kai Ani Village, LLC for sewerline connection purposes, consisting of approximately 525 square feet along South Kihei Road, between Lipoa Street and Welakahao Road, Kihei, Maui, TMK: (2) 3-9-02:portion of 091.

Your Committee notes that, pursuant to Section 3.44.015(C), Maui County Code (MCC), the Council may accept gifts or donations of real property or any interest in real property by the passage of a resolution, approved by a majority of its members.

By correspondence dated October 22, 2008, the Co-Chairs of your Committee requested that the Department of the Corporation Counsel revise the title of the proposed resolution to provide further geographic detail.

By correspondence dated October 22, 2008, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "ACCEPTING DEDICATION OF A UTILITY EASEMENT OVER, UNDER, ACROSS AND THROUGH PROPERTY IDENTIFIED AS TAX MAP KEY NO. (2) 3-9-002:091 (PORTION), ALONG SOUTH KIHEI ROAD, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE". The title of the revised proposed resolution clarifies the location of the easement.

At its meeting, your Committee met with the Director of Environmental Management; a Civil Engineer, Wastewater Reclamation Division, Department of Environmental Management; and a Deputy Corporation Counsel.

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There was no public testimony.

The Director stated that the easement proposed for dedication includes a manhole and a portion of a sewerline, which was not included in a recorded easement dedicated to the County in 2002.

The Civil Engineer explained that the Department of Public Works and Environmental Management sought an easement in 2002 in order to relocate the County's main sewerline from underneath South Kihei Road to an adjacent property. He stated that a discrepancy was discovered during a recent review of the plans by the Department of Environmental Management, and that the proposed easement is a small extension of the previously-recorded easement dedicated to the County in 2002.

The Deputy Corporation Counsel stated that although a nominal consideration between one and ten dollars is often noted in the easement document, a dedication of an easement such as this is often considered a gift.

Your Committee voted to recommend adoption of the revised proposed resolution and filing of the communication.

Your Public Works and Facilities Committee RECOMMENDS the following:

1. That Resolution No. _____, as revised herein and attached hereto, entitled "ACCEPTING DEDICATION OF A UTILITY EASEMENT OVER, UNDER, ACROSS AND THROUGH PROPERTY IDENTIFIED AS TAX MAP KEY NO. (2) 3-9-002:091 (PORTION), ALONG SOUTH KIHEI ROAD, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication No. 08-236 be FILED.

Adoption of this report is respectfully requested.

COUNCIL OF THE COUNTY OF MAUI
**PUBLIC WORKS AND
FACILITIES COMMITTEE**

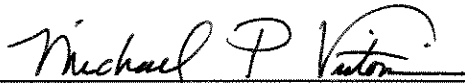
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BILL KAUAKEA MEDEIROS Co-Chair

DANNY A. MATEO Member



MICHAEL P. VICTORINO Co-Chair

JOSEPH PONTANILLA Member

G. RIKI HOKAMA Member

Resolution

No. _____

ACCEPTING DEDICATION OF A UTILITY EASEMENT
OVER, UNDER, ACROSS AND THROUGH PROPERTY IDENTIFIED
AS TAX MAP KEY NO. (2) 3-9-002:091 (PORTION), ALONG SOUTH
KIHEI ROAD, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE

WHEREAS, KAI ANI VILLAGE, LLC, a Hawaii limited liability company, desires to dedicate that certain utility easement 8-A to the County of Maui. Said easement is more fully described in the Easement attached hereto as Exhibit "1" and made a part hereof; and

WHEREAS, the Director of Environmental Management has reviewed and approved said dedication; 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 easement, as described in said Easement attached hereto as Exhibit "1", to be dedicated by Kai Ani Village, LLC to the County of Maui for public purposes in accordance with 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 Kai Ani Village, LLC.

APPROVED AS TO FORM
AND LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui

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LAND COURT

REGULAR SYSTEM

AFTER RECORDATION RETURN BY:

COUNTY OF MAUI

Department of Finance

200 South High Street

Wailuku, Maui, Hawaii 96793

Affecting Tax Key Number (2) 3-9-002:091

No. of Pages: 8

EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That KAI ANI VILLAGE, LLC, a Hawaii limited liability company, whose mailing address is 25 North Santa Anita Avenue, Suite A, Arcadia, California 91007 (hereinafter called the "Grantor"), in consideration of the sum of ten dollars (\$10.00) and other valuable consideration to it paid by the COUNTY OF MAUI, a political subdivision of the State of Hawaii, with its principal place of business and post office address at 200 South High Street, Wailuku, Hawaii 96793 (hereinafter called the "Grantee"), the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee and its legal successors and assigns a non-exclusive, perpetual easement to be exercised and enjoyed by the Grantee, its successors and assigns, for water, sewer, and drainage purposes and to construct, reconstruct, maintain, operate, repair and replace water, sewer,

EXHIBIT " 1 "

and drainage structures over, under, across, and through Utility Easement No. 8-A, affecting Lot 2 of the Smith Family Trust Consolidation, being a portion of Grant 9664 to A. Akina (portion of Lot 14 of the Waiohuli-Keokea Beach Homesteads), as more particularly described in Exhibit "A", attached hereto and made a part hereof .

THE PARTIES HERETO DO FURTHER MUTUALLY COVENANT AND AGREE:

That the Grantor shall not at any time during the term of this indenture erect any building foundation or any other physical improvements in the easement area, and that this provision shall prohibit the Grantor from planting or maintaining grass or shrubs, including trees, within said easement area. Any other use of the said easement area by the Grantor shall be subject to the approval of the Grantee.

That the Grantee shall exercise the rights herein granted in such manner as will not unreasonably interfere, except during the period of construction, reconstruction, maintenance, operation, repair or removal of any water, sewer, or drainage structure, with the use of said easement area by said Grantor as herein provided, and that after the completion of any work by the Grantee, the Grantee shall restore the surface of the ground above said easement area to an appropriate condition to the extent that such restoration is reasonably possible.

That the Grantor shall defend, indemnify and save harmless the Grantee, its legal successors and assigns, against loss or damage to the property of Grantee or to the property of others and from liability for injury to or death of persons in the manner provided by law when and to the extent such loss, damage, injury or death proximately results from the negligence of Grantor, its successors and assigns.

That Grantee shall be responsible for damages or injury caused by the Grantee's agents, officers and employees in the course of their employment to the extent that the Grantee's liability for such damage or injury has been determined by a court or otherwise agreed to by the Grantee, and the Grantee shall pay for such damages and

injury to the extent permitted by law and approved by the Maui County Council pursuant to Maui County Code Chapter 3.16, as amended.

That any water, sewer, or drainage lines or other equipment constructed, reconstructed or installed within the easement area, and maintained, operated or repaired by the Grantee shall be and remain the property of the Grantee.

That the parcel of land herein referred to as the "easement area" is more particularly described in Exhibit "A" and shown on Exhibit "B", Utility Easement Map No. 22-A, attached hereto and made a part hereof.

This Agreement shall be binding upon and inure to the parties, their heirs, personal representatives and assigns.

It is understood and agreed that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine and/or feminine, the singular or plural number, individuals, firms or corporations, that the rights and obligations of the Grantor and Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors in trust and assigns and that where there is more than one Grantor or Grantee, any covenants of the respective party shall be and for all purposes deemed to be joint and several.

This Easement may be executed in one or more counterparts, and all of the counterparts shall constitute but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 5th day of August, 2008.

GRANTOR:

KAI ANI VILLAGE, LLC

By Todd Leibel
(Signature)

TODD LEIBEL
(Print Name)

Its PRESIDENT
(Position)

GRANTEE:

COUNTY OF MAUI

By _____
Charmaine Tavares
Mayor

APPROVED AS TO FORM
AND LEGALITY:

David A. Galazin
DAVID A. GALAZIN

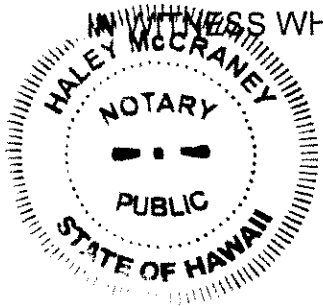
Deputy Corporation Counsel
County of Maui

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STATE OF Hawaii }
COUNTY OF Maui } SS.

On this 5th day of August, 2008, before me personally appeared Todd Leibel, 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.

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



Haley McCraney
Notary Public, State of Hawaii
Printed Name: _____
My Commission Expires: _____

Haley McCraney
Expiration Date: September 3, 2010

Doc. Date: 8/5/08 # Pages: 8
Name: Haley McCraney, 2nd Class
Doc. Description: Assignment
Signature: Haley McCraney 8/5/08
NOTARY CERTIFICATION

STATE OF _____ }
COUNTY 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(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.

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

Notary Public, State of _____
Printed Name: _____
My Commission Expires: _____

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this _____ day of _____, 20____, before me personally appeared **CHARMAINE TAVARES**, to me personally known, who being by me duly sworn did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, in the capacity shown, having been duly authorized to execute such instrument in such capacity, 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 in behalf of said County of Maui by authority of its Charter, and the said **CHARMAINE TAVARES** 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 _____
Printed Name: _____
My Commission Expires: _____

Utility Easement No. 8-A
Affecting Lot 2 of the Smith Family Trust Consolidation
(Tax Map Key (2) 3-9-002:091)

Being a portion of Grant 9664 to A. Akina
(Portion of Lot 14 of the Waiohuli-Keokea Beach Homesteads)

at Waiohuli-Keokea, Kihei, Wailuku, Island of Maui, State of Hawaii

Beginning at the Southwest corner of this easement, being also the Northwest corner of Utility Easement No. 8, being also a point on the West boundary line of Lot 2 of the Smith Family Trust Consolidation on the East side of South Kihei Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being 5,583.37 feet North and 23,312.81 feet West, thence running by azimuths measured clockwise from True South:

1. 169° 42' 00" 21.00 feet along the East side of South Kihei Road;
2. 259° 42' 00" 25.00 feet along the remainder of Lot 2 of the Smith Family Trust Consolidation;
3. 349° 42' 00" 21.00 feet along the remainder of Lot 2 of the Smith Family Trust Consolidation;
4. 79° 42' 00" 25.00 feet along Lot 3-A of the Subdivision of a Portion of Grant 9664 to A. Akina to the point of beginning and containing an area of 525 Square Feet.



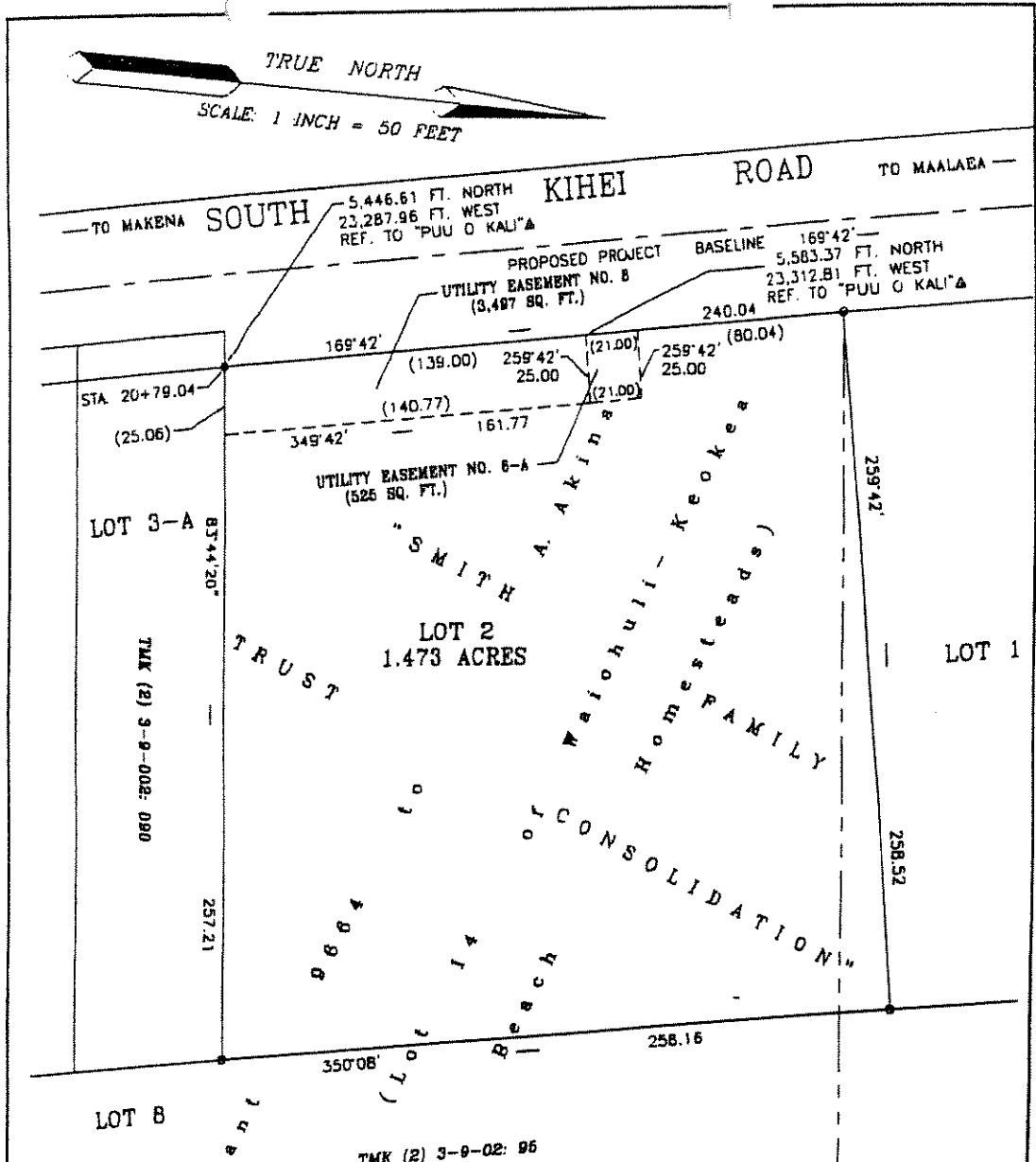
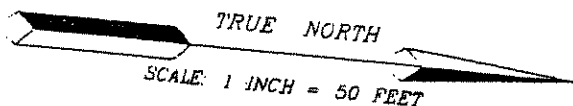
Engineering Division
Department of Public Works
County of Maui

A handwritten signature in black ink, appearing to read "Allen K. Watanabe".

Licensed Professional Land Surveyor
Certificate Number 4970
Expiration Date : April 30, 2008

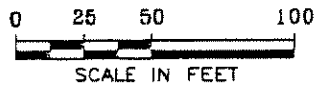
September 11, 2007

Reference: Map No. 22-A South Kihei Road Improvements-Phase III, Federal Aid Project No. STP-3100(10) titled: "Utility Easements No. 8 and 8-A affecting Lot 2 of the Smith Family Trust Consolidation" by Allen Watanabe, Licensed Professional Land Surveyor, Certificate No. 4970-LS, date September 11, 2007.



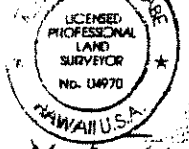
NOTES:

1. Azimuths and coordinates shown hereon refer to Government Survey Triangulation Station "PUU O KALI", designated thus.
2. Owners of adjoining land parcels taken from Tax Map records.



Addition of Utility Easement No. 8-A by:

Engineering Division
Department of Public Works
County of Maui



August M. ...
Licensed Professional Land Surveyor
Certificate Number 4970
Expiration Date: April 30, 2008

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. SEPTEMBER 11, 2007

COUNTY OF MAUI - DEPARTMENT OF PUBLIC WORKS 200 S. HIGH STREET WAILUKU, MAUI, HAWAII		
SOUTH KIHEI ROAD IMPROVEMENTS-PHASE III (LIPOA STREET TO WELAKAHAO ROAD) FEDERAL AID PROJECT NO. STP-3100(10)		
UTILITY EASEMENTS NO. 8 & 8-A AFFECTING LOT 2 OF THE SMITH FAMILY TRUST CONSOLIDATION BEING A PORTION OF GRANT 9664 TO A. AKINA (LOT 14 OF THE WAIHULI-KEOKEA BEACH HOMESTEADS) SITUATED AT WAIHULI-KEOKEA, (KIHEI), WAILUKU, MAUI, HAWAII		
T.M.K.: (2) 3-9-002: 091	LUCA Ref. No.	MAP No. 22-A