

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL
2018 SEP 19 PM 3:12

Date: September 19, 2018
From: Elle Cochran, Chair
Infrastructure and Environmental Management Committee

TRANSMITTAL

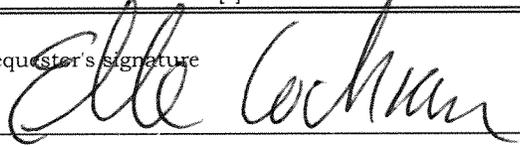
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Richelle Thomson, Esq.

Subject: DEDICATION OF ROADWAY LOTS IN WAILUKU COUNTRY ESTATES SUBDIVISION, TAX MAP KEY (2) 3-3-017:189; AND A GRANT OF NON-EXCLUSIVE EASEMENTS OVER WAIHEE DITCH, TAX MAP KEY (2) 3-3-017:186 (IEM-66)

Background Data: Please see attached mark-up of proposed resolution, revising tax map key number referenced in Exhibit "1" and incorporating the size of the proposed easements and nonsubstantive revisions. Please revise, and if appropriate, approve as to form and legality. A signed, hard copy, including exhibits, is requested.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

RECEIVED
OFFICE OF THE
COUNTY CLERK
2018 SEP 28 PM 3:11

| | |
|---|--|
| Requester's signature  | Contact Person <u>Maggie Clark</u> (Telephone Extension: <u>7661</u>) |
| Elle Cochran | |

- ROUTINE (WITHIN 15 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- RUSH (WITHIN 5 WORKING DAYS)
- URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): September 28, 2018
REASON: For Committee meeting on October 1, 2018

FOR CORPORATION COUNSEL'S RESPONSE

| | | |
|-------------------------|---------------------------------|----------------|
| ASSIGNED TO: <u>DAG</u> | ASSIGNMENT NO. <u>2017-0092</u> | BY: <u>LUV</u> |
|-------------------------|---------------------------------|----------------|

TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

Date 9-28-18
By 
DEPARTMENT OF THE CORPORATION COUNSEL
(Rev. 7/03)

jem:ltr:066acc02

Attachment

Resolution

No. _____

ACCEPTING THE GRANT OF NON-EXCLUSIVE
EASEMENTS SITUATED IN WAILUKU, MAUI, HAWAII, OVER WAIHEE
DITCH, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE

WHEREAS, Wailuku Water Company, LLC, a Hawaii limited liability company (“Grantor”), wishes to grant non-exclusive easements to the County of Maui (“Grantee”) for access purposes, over, under, across, and through those portions of that certain real property situate at Wailuku, Maui, Hawaii, and designated as Tax Map Key No. (2) 3-3-017:186 (Lot 186), as more particularly identified as Easements R-1 and R-2 and described in Exhibits “A-1” and “B-1” as shown in Exhibit “1”, attached hereto and made a part hereof, including the right to construct, reconstruct, install, maintain, operate, repair, replace, and remove the roadway, culverts, and related facilities therein, including any other equipment and appurtenances necessary or expedient for the proper maintenance, operation, or repair of such improvements; and

Resolution No. _____

WHEREAS, a Grant of Easements over Waihee Ditch is attached hereto as Exhibit “1”; and

WHEREAS, Exhibits “A-1” and “B-1” of Exhibit “1” describe the easements and shall be hereinafter referred to collectively as the “Easement Areas”; and

WHEREAS, the Director of Public Works has reviewed said dedication and recommends approval of the same; and

WHEREAS, pursuant to Section 3.44.015(D) of the Maui County Code, the County Council may accept 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 does hereby accept dedication of the Easement Areas, in accordance with the terms and conditions of the Grant of Easements as described in 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

Resolution No. _____

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

APPROVED AS TO FORM
AND LEGALITY:


for MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
2017-0086/2017-0092
IEM-66 2018-09-20 Resolution

LAND COURT

REGULAR SYSTEM

Return by Mail Pick-Up To:

COUNTY OF MAUI
Department of Public Works
200 South High Street
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

GRANT OF EASEMENTS OVER WAIHEE DITCH

PARTIES TO DOCUMENT:

GRANTOR: WAILUKU WATER COMPANY, LLC
P.O. Box 2790
Wailuku, HI 96793

GRANTEE: COUNTY OF MAUI
200 South High Street
Wailuku, HI 96793

TAX MAP KEY: (2) 3-3-017:186

EXHIBIT "1"

GRANT OF EASEMENTS OVER WAIHEE DITCH

THIS GRANT is made this _____ day of _____, 2018, by and between WAILUKU WATER COMPANY, LLC, a Hawaii limited liability company, the mailing address of which is P.O. Box 2790, Wailuku, HI 96793 (hereinafter referred to as the "Grantor") and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, the principal office and mailing address of which is 200 South High Street, Wailuku, Hawaii 96793 (hereinafter referred to as the "Grantee").

WITNESSETH:

That Grantor, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid to the Grantor by the Grantee, and other valuable consideration, the receipt whereof is hereby acknowledged, and subject to the terms, conditions and covenants contained herein and pursuant to Section 3.44.015(D) of the Maui County Code, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, perpetual, nonexclusive easements over, under, across and through those portions of that certain real property situate at Wailuku, Maui, State of Hawaii and designated as Tax Map Key No. (2) 3-3-017:186 ("Lot 186"), as more particularly identified as Easements R-1, consisting of approximately 8,768 sq. ft., and R-2, consisting of approximately 6,976 sq. ft., and described in Exhibit "A", and further shown on Exhibits "A-1" and "B-1" attached hereto and made a part hereof (collectively, the "Easement Areas"). The easements granted hereunder shall be for access purposes, including the right to construct, reconstruct, install, maintain, operate, repair, replace, and remove the roadway, culverts and related facilities (collectively, the "Improvements") therein, including any other equipment and appurtenances necessary or expedient for the proper maintenance, operation or repair of such Improvements; provided, however, that in no way will such easements interfere with the flow of water in the Waihee Ditch and Grantor's rights to the ditch and the water therein shall be preserved.

THE PARTIES HERETO DO FURTHER MUTUALLY COVENANT AND AGREE:

That Grantor shall not at any time during the term of this indenture erect any building foundation or any other physical improvements in the Easement Areas. This provision shall prohibit Grantor from planting grass or shrubs, including trees, within said Easement Areas; provided, however, that Grantor shall have the right to maintain and replace the landscaping existing as of the date of this Agreement that may be located in the Easement Areas.

That 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 Improvements, with the use of said Easement Areas by Grantor, and that after the completion of any work by Grantee, Grantee shall restore the surface of the ground above said Easement Areas to an appropriate condition to the extent that such restoration is reasonably possible.

That Grantee agrees that Grantor shall have perpetual easement rights for use, operation, maintenance, repair, improvement and/or replacement of the waterways, pipelines, systems, and related water transmission facilities in the Waihee Ditch, and the right to use water therefrom, together with the right of access thereto and thereon reasonably required or convenient for such purposes and Grantee shall not obstruct, divert or otherwise interfere with the full and free flowage of water within and through the Waihee Ditch (the "Reserved Rights"). Grantee agrees to comply with requests from Grantor with respect to the Reserved Rights and the Grantee's obligations with respect to said Reserved Rights.

That Grantor shall indemnify and save harmless 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 indemnify and save harmless Grantor, its legal successors and assigns, against loss or damage to the property of Grantor 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 Grantee, its successors and assigns, to the extent that Grantee's liability for such damage or injury has been determined by a court or otherwise agreed to by Grantee, and 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 Improvements constructed, reconstructed or installed within the Easement Areas, and maintained, operated or repaired by Grantee, shall be the property of Grantee.

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

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

GRANTOR:

WAILUKU WATER COMPANY, LLC

By _____

Its

APPROVAL RECOMMENDED:

GRANTEE:

COUNTY OF MAUI

DAVID GOODE
Director of Public Works

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this _____ day of _____, 2018, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

Printed Name: _____

My commission expires: _____

(Official Stamp or Seal)

| | |
|---|---|
| NOTARY CERTIFICATION STATEMENT | |
| Document Identification or Description: Real Property Purchase and Sale Agreement | |
| Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization. | |
| No. of Pages: _____ Jurisdiction: _____ Circuit (in which notarial act is performed) | |
| _____ Signature of Notary | _____ Date of Notarization and Certification Statement |
| _____ (Official Stamp or Seal) | |
| Printed Name of Notary | |

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On _____, 2018, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn or affirmed, 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 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.

Notary Public, State of Hawaii
Printed Name: _____
My commission expires: _____

(Official Stamp or Seal)

| | |
|--|---|
| NOTARY CERTIFICATION STATEMENT | |
| Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization. | |
| No. of Pages: _____ Jurisdiction: Second Circuit (in which notarial act is performed) | |
| _____ Signature of Notary | _____ Date of Notarization and Certification Statement |
| _____ Printed Name of Notary | |
| (Official Stamp or Seal) | |

Exhibit "A"

Easement over portions of the Waihee Ditch, designated on the tax maps of the Second Taxation Division of the State of Hawaii as Tax Map Key No. (2) 3-3-17-186 (the "Property"), being:

- a. The KAMAILE STREET AT WAIHEE DITCH crossing, described by reference to File Plan 2367 as:

A Roadway and Utility Easement affecting a portion of LOT 186 of WAILUKU COUNTRY ESTATES, at Wailuku, Maui, Hawaii, as shown on File Plan No. 2367 filed in the Bureau of Conveyances of the State of Hawaii, and more particularly described as EASEMENT R-1, as shown on said File Plan No. 2367 and further shown on Exhibit A-1 attached hereto, and

- b. The MAIKA STREET AT WAIHEE DITCH crossing described by reference to File Plan 2367 as:

A Roadway and Utility Easement affecting a portion of LOT 186 of WAILUKU COUNTRY ESTATES, at Wailuku, Maui, Hawaii, as shown on File Plan No. 2367 filed in the Bureau of Conveyances of the State of Hawaii, and more particularly described as EASEMENT R-2, as shown on said File Plan No. 2367 and further shown on Exhibit B-1 attached hereto.

Exhibit "A-1"

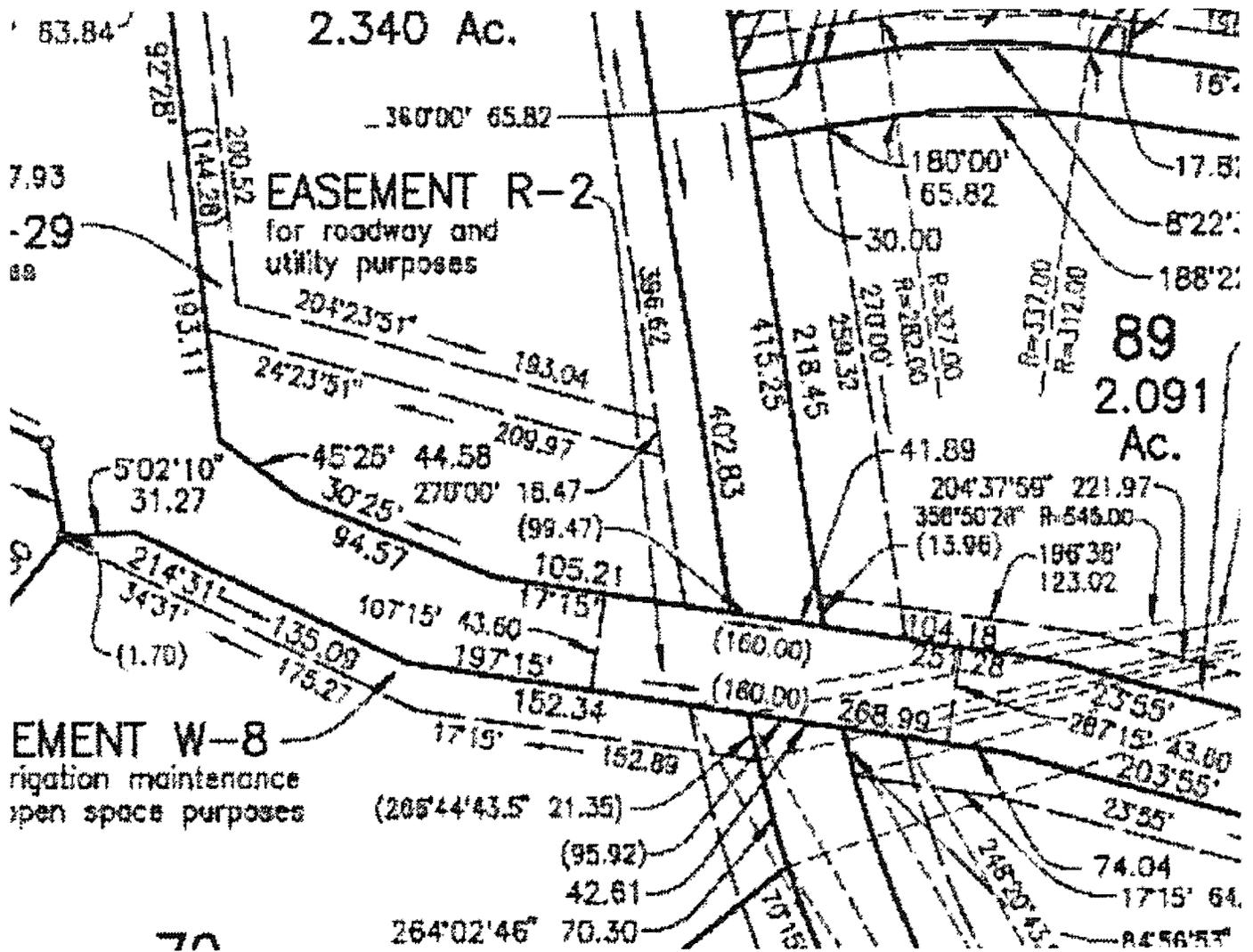


Exhibit "B-1"