COUNCIL OF THE COUNTY OF MAUI

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

December 4, 2015

Committee Report No. 15-168

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 November 16, 2015, makes reference to County Communication 15-241, from the Director of Public Works, transmitting a proposed resolution entitled "TERMINATION OF LICENSE AFFECTING LOTS 143, 144 AND 145 OF THE PUKALANI LOTS AT KEAHUA, KULA, ISLAND OF MAUI, HAWAII."

The purpose of the proposed resolution is to terminate an unused license for drain and sewer line purposes, in favor of the County of Maui, on three lots identified for real property tax purposes as tax map keys (2) 2-3-029:031, (2) 2-3-029:033, and (2) 2-3-030:043, in Pukalani, Maui, Hawaii.

The Director of Public Works informed your Committee the lots' owners are deceased and the lots were never conveyed to another owner. The absence of a current owner has led neighboring property owners to believe the license obligates the County to maintain the lots. The Department wishes to terminate the license to clarify that the County has no obligation over the lots.

He said the license grants to the County the right to install drainage or sewer lines and other equipment within the lots. However, the County has never exercised this right and the Department has no intention to initiate any improvements to the lots.

The Director stated the license does not contain a termination date nor provide a method for terminating the license. The proposed resolution will serve as the County's notice of intent to terminate the

license. Upon its adoption, the resolution will be recorded against the lots at the State Bureau of Conveyances.

A Deputy Corporation Counsel informed your Committee the adoption of the proposed resolution and its recordation at the State Bureau of Conveyances will satisfy the requirements for terminating the license.

Your Committee voted 5-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Cochran and members Baisa, Carroll, Guzman, and White voted "aye." Committee Vice-Chair Hokama and member Crivello were excused.

Your Infrastructure and Environmental Management Committee RECOMMENDS the following:

1. That Resolution _____, attached hereto, entitled "TERMINATION OF LICENSE AFFECTING LOTS 143, 144 AND 145 OF THE PUKALANI LOTS AT KEAHUA, KULA, ISLAND OF MAUI, HAWAII," be ADOPTED; and

2. That County Communication 15-241 be FILED.

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

Elle Cochran

ELLE COCHRAN, Chair

iem:cr:15040aa:jkm

Resolution

No._____

TERMINATION OF LICENSE AFFECTING
LOTS 143, 144 AND 145 OF THE PUKALANI LOTS
AT KEAHUA, KULA, ISLAND OF MAUI, HAWAII

WHEREAS, on February 15, 1952, the County of Maui, then a political subdivision of the Territory of Hawaii, entered into a license agreement with then land owners Frank Munoz, Jessie R. Munoz and Manuel Asue, over and under Lots 143, 144 and 145 of the Pukalani Lots at Keahua, Kula, Island of Maui, Hawaii, further identified by TMK: 2-3-029:031 & 033 and TMK: 2-3-030:043 (hereinafter referred to as the "Lots"), for drain and sewer line purposes, attached hereto as Exhibit "A" (hereinafter referred to as "License"); and

WHEREAS, since the execution of said instrument in 1952, the County of Maui has not installed any drain or sewer lines under or over the Lots, nor does the County plan to install such facilities; and

WHEREAS, the absence of drain and sewer lines means that the County of Maui has not exercised any rights nor incurred any obligations in connection with the License; and

WHERAS, despite the County of Maui's non-use of the License, the recordation of the License against the Lots may cause confusion for landowners and the public; and

WHEREAS, all of the land owners identified as "Licensors" within the License are all believed to be deceased; however, the Lots do not appear to have been probated or otherwise conveyed to any other owner to whom notice of the County of Maui's intent to terminate the License can be delivered; and

Resolution No. _____

WHEREAS, the Council finds that it is in the public's interest to clarify its interests with respect to the Lots by providing publicly recorded notice of its action terminating the License; now, therefore,

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

1. That the Council hereby declares that the indenture recorded in Liber 2566 on Pages 102 through 108, the License, be terminated upon recordation of this Resolution in the Bureau of Conveyances against the subject Lots 143, 144 and 145, as further identified by TMK: 2-3-029:031 & 033 and TMK: 2-3-030:043; and

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

APPROVED AS TO FORM
AND LEGALITY:

MICHAEL HOPPER
Deputy Corporation Counsel
County of Maui
2015-4070

LIBER 2566 PAGE 102

THIS INDENTURE made this 15th day of February, A. D. 1952, by and between FRANK MUNOZ, JESSIE R. MUNOZ and MANUEL ASUK, all of Wailuku, County of Maui, Territory of Hawaii, hereinafter called the "LICENSORS", Parties of the First Part, and the COUNTY OF MAUI, a political subdivision of the Territory of Hawaii, its post office address being Wailuku, County of Maui, Territory of Hawaii, hereinafter called the "LICENSEE", Party of the Second Part,

W I T N E S S E T H:

That the Licensors, in consideration of the sum of ONE DOLLAR ($1.00), to them paid by the Licensee, the receipt whereof is hereby acknowledged, and of the covenants hereinafter contained and on the part of the Licensee, its successors and assigns, to be observed and performed, do hereby grant unto the Licensee, its successors and assigns, forever, the right, in the nature of an easement, to be exercised and enjoyed by the Licensee, its successors and assigns, to construct, install, maintain, operate, repair and remove an underground drain or sewer pipe line or pipe lines, with manholes and other equipment, under and across the hereinafter described parcels of land, hereinafter referred to as the "easement areas."

TOGETHER with the right of ingress to and egress from said easement areas over the land of the Licensors adjacent thereto, for all purposes in connection with the rights hereby granted, and together also with the right to construct, install, maintain, repair and remove, on the said easement areas, such manholes and other equipment as the said Licensee, its successors and assigns, shall deem necessary properly to operate, maintain and repair said underground drain or sewer

EXHIBIT "A"

pipe line or pipe lines.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, said Licensors, their heirs and assigns, and said Licensee, its successors and assigns, hereby covenant and agree as follows:

That said Licensee shall lay, construct and maintain said drain or sewer pipe line or pipe lines in such manner as will not reasonably interfere, at any time, except during the period of construction or repair, with the use of said easement areas by said Licensors, as herein provided, and that after the original construction or any subsequent repair work has been completed, the surface of the ground and of any road, walk or curb above said drain or sewer pipe line or pipe lines shall be restored to its original condition to the extent that such restoration is reasonably possible.

That after the original installation of said drain or sewer pipe line or pipe lines has been completed, the said Licensee shall not be obligated in any manner to move or relocate said pipe line or pipe lines.

That the said Licensee shall indemnify and save harmless the Licensors against loss or damage to the property of the Licensors or to the property of others and from liability for injury to or death of persons in the manner provided by law when such loss, damage, injury or death is caused by the negligent construction, maintenance or operation of said drain or sewer pipe line or pipe lines and when such loss, damage, injury or death arises or results, directly or indirectly, from the negligence of the Licensee, its officers, agents or servants.

That any such pipe line or pipe lines, manholes or other equipment, laid, constructed, maintained, operated or repaired

Misc. Rec. 9926

by the Licensee, within said easement areas, shall become and remain the property of the Licensee.

That the Licensors shall not at any time during the continuance of this agreement erect any building foundations of any kind below the surface of said easement areas or at any time erect any building or structure of any kind, other than roads, walks, curbs or appurtenances thereof, above the surface of the present level within said easement areas, unless such building foundations, building or structure shall be so constructed as not to interfere with the Licensee's said drain or sewer pipe line or pipe lines, manholes or other equipment, and also so as to allow satisfactory access by the Licensee to the said drain or sewer pipe line or pipe lines, manholes or other equipment, for replacement, maintenance, repair or for any other reasonable purpose, and the parties hereto agree that the said Licensee shall not be liable or responsible for any damage to any building foundation, building or structure of any kind caused by or resulting from the exercise by the Licensee of the rights herein granted, except as herein provided; provided, however, that this provision shall not prevent the Licensors from planting or maintaining grass, shrubs and similar plants within said easement areas, or from laying, operating, maintaining, repairing or removing their own water or sewer pipe lines, conduits, or drains below the surface of the said easement areas, provided that such water or sewer pipe lines, conduits, or drains do not interfere with the exercise by the Licensee of the rights herein granted.

That the Licensee shall not assign any right hereby granted or otherwise given than to a duly created or established legal successor, without the written consent of the Licensors.

That the term "Licensors" wherever herein used shall be held to mean and include the Licensors, their heirs and assigns, and that the term "Licensee" wherever herein used shall be held to mean the "COUNTY OF MAUI", its legal successors and assigns, and that this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective heirs and assigns and its successors and assigns.

The parcels of land hereinabove referred to are described as follows:

(1) All of that certain piece, parcel or strip of land, being a portion of Grant 2625 to Kahili, situated between Kihei-Makawao and Pakahi Place of Pukalani Lots, same being also known as Lot 143 of said Pukalani Lots, at Keahua, Kula, County of Maui, Territory of Hawaii, and more particularly described as follows:

Beginning at a pipe at the Southeasterly corner of this strip of land, on the Northwesterly side of Pakahi Place, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KOHA" being 8055.27 feet North and 6434.31 feet East and running by azimuths measured clockwise from true South:

1.	54°	14'	10.22 feet,	along the Northwesterly side of Pakahi Place, to a pipe;
2.	132°	16'	221.03 feet,	along Lot 34 of Pukalani Lots, to a pipe;
3.	234°	22'	10.23 feet,	along the Southeasterly side of Kihei-Makawao Government Road, to a pipe;
4.	312°	16'	221.01 feet,	along Lot 33 of Pukalani Lots, to the point of beginning and containing an area of 2210 square feet.

(2) All of that certain piece, parcel or strip of land, being a portion of Grant 2625 to Kahili, situated between Pakahi and Palua Places of Pukalani Lots, same being also known as Lot 144 of said Pukalani Lots, at Keahua, Kula, County of Maui, Territory of Hawaii, and more particularly described as follows:

Beginning at a pipe at the Southeasterly corner of this strip of land, on the Northwesterly side of Palua Place, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KOHA" being 7782.50

[redacted] running by azimuths

1.	54°	14'	10.22 feet,	along the Northwesterly side of Palua Place, to a pipe;
2.	132°	16'	380.00 feet,	along Lots 70 and 57 of Pukalani Lots, to a pipe;
3.	234°	14'	10.22 feet,	along the Southeasterly side of Pakahi Place, to a pipe;
4.	312°	16'	380.00 feet,	along Lots 58 and 69 of Pukalani Lots, to the point of beginning and containing an area of 3800 square feet.

(3) All of that certain piece, parcel or strip of land, being a portion of Grant 2625 to Kahili, situated between Pakolu and Palua Places of Pukalani Lots, same being also known as Lot 145 of said Pukalani Lots, at Keahua, Kula, County of Maui, Territory of Hawaii, and more particularly described as follows:

Beginning at a pipe at the Southeasterly corner of this strip of land, on the Northwesterly side of Pakolu Place, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KOMA" being 7509.73 feet North and 7034.56 feet East and running by azimuths measured clockwise from true South:

1.	54°	14'	10.22 feet,	along the Northwesterly side of Pakolu Place, to a pipe;
2.	132°	16'	380.00 feet,	along Lots 106 and 93 of Pukalani Lots, to a pipe;
3.	234°	14'	10.22 feet,	along the Southeasterly side of Palua Place, to a pipe;
4.	312°	16'	380.00 feet,	along Lots 94 and 105 of Pukalani Lots, to the point of beginning and containing an area of 3800 square feet.

And, AGNES R. ASUE, wife of one of the Licensors above mentioned, for and in consideration of the premises, does hereby release and remise unto the Licensee, all of her right, title and interest in and to and concerning the above described easement areas as may be inconsistent with any of the rights granted to the said Licensee by the said Licensors under the provisions of this agreement.

IN WITNESS WHEREOF, the said Licensors and Licensee and AGNES R. ASUE, wife of one of the Licensors, have duly caused this instrument to be executed all as of the day and year first above written.

Frank Munoz

Jessie R. Munoz

Manuel Asue

Agnes R. Asue

COUNTY OF MAUI

By Eddie Tam
Its Chairman and Executive Officer
of the Board of Supervisors

TERRITORY OF HAWAII,)
) SS.
COUNTY OF MAUI.)

On this 6th day of February, A. D. 1952, before me personally appeared FRANK MUNOZ, JESSIE R. MUNOZ, MANUEL ASUE and AGNES R. ASUE, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

H. B. Lewis
Notary Public, Second Judicial Circuit,
Territory of Hawaii.

My Commission expires July 20, 1953

LIBER 2565 PAGE 108

[redacted] ss.

On this 14th day of March, A. D. 1952, before me appeared EDDIE TAM, to me personally known, who, being by me duly sworn, did say that he is the CHAIRMAN AND EXECUTIVE OFFICER of the Board of Supervisors of the County of Maui, a political subdivision of the Territory 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 Board of Supervisors; and the said EDDIE TAM acknowledged the said instrument to be the free act and deed of the said County of Maui.

Kimiko A. Tabata
Notary Public, Second Judicial Circuit,
Territory of Hawaii.

My Commission expires June 30, 1953.

Entered of Record MAR 14 1952 at 11:06 o'clock A.M.
and compared. Mark H. Buckwalter Registrar of Conveyances.
By [redacted] Clerk

LIBER 2566 PAGE 102

THIS INDENTURE made this 15th day of February, A. D. 1952, by and between FRANK MUNOZ, JESSIE R. MUNOZ and MANUEL ASUE, all of Wailuku, County of Maui, Territory of Hawaii, hereinafter called the "LICENSORS", Parties of the First Part, and the COUNTY OF MAUI, a political subdivision of the Territory of Hawaii, its post office address being Wailuku, County of Maui, Territory of Hawaii, hereinafter called the "LICENSEE", Party of the Second Part,

W I T N E S S E T H:

That the Licensors, in consideration of the sum of ONE DOLLAR ($1.00), to them paid by the Licensee, the receipt whereof is hereby acknowledged, and of the covenants hereinafter contained and on the part of the Licensee, its successors and assigns, to be observed and performed, do hereby grant unto the Licensee, its successors and assigns, forever, the right, in the nature of an easement, to be exercised and enjoyed by the Licensee, its successors and assigns, to construct, install, maintain, operate, repair and remove an underground drain or sewer pipe line or pipe lines, with manholes and other equipment, under and across the hereinafter described parcels of land, hereinafter referred to as the "easement areas."

TOGETHER with the right of ingress to and egress from said easement areas over the land of the Licensors adjacent thereto, for all purposes in connection with the rights hereby granted, and together also with the right to construct, install, maintain, repair and remove, on the said easement areas, such manholes and other equipment as the said Licensee, its successors and assigns, shall deem necessary properly to operate, maintain and repair said underground drain or sewer

pipe line or pipe lines.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, said Licensors, their heirs and assigns, and said Licensee, its successors and assigns, hereby covenant and agree as follows:

That said Licensee shall lay, construct and maintain said drain or sewer pipe line or pipe lines in such manner as will not reasonably interfere, at any time, except during the period of construction or repair, with the use of said easement areas by said Licensors, as herein provided, and that after the original construction or any subsequent repair work has been completed, the surface of the ground and of any road, walk or curb above said drain or sewer pipe line or pipe lines shall be restored to its original condition to the extent that such restoration is reasonably possible.

That after the original installation of said drain or sewer pipe line or pipe lines has been completed, the said Licensee shall not be obligated in any manner to move or relocate said pipe line or pipe lines.

That the said Licensee shall indemnify and save harmless the Licensors against loss or damage to the property of the Licensors or to the property of others and from liability for injury to or death of persons in the manner provided by law when such loss, damage, injury or death is caused by the negligent construction, maintenance or operation of said drain or sewer pipe line or pipe lines and when such loss, damage, injury or death arises or results, directly or indirectly, from the negligence of the Licensee, its officers, agents or servants.

That any such pipe line or pipe lines, manholes or other equipment, laid, constructed, maintained, operated or repaired

by the Licensee, within said easement areas, shall become and remain the property of the Licensee.

That the Licensors shall not at any time during the continuance of this agreement erect any building foundations of any kind below the surface of said easement areas or at any time erect any building or structure of any kind, other than roads, walks, curbs or appurtenances thereof, above the surface of the present level within said easement areas, unless such building foundations, building or structure shall be so constructed as not to interfere with the Licensee's said drain or sewer pipe line or pipe lines, manholes or other equipment, and also so as to allow satisfactory access by the Licensee to the said drain or sewer pipe line or pipe lines, manholes or other equipment, for replacement, maintenance, repair or for any other reasonable purpose, and the parties hereto agree that the said Licensee shall not be liable or responsible for any damage to any building foundation, building or structure of any kind caused by or resulting from the exercise by the Licensee of the rights herein granted, except as herein provided; provided, however, that this provision shall not prevent the Licensors from planting or maintaining grass, shrubs and similar plants within said easement areas, or from laying, operating, maintaining, repairing or removing their own water or sewer pipe lines, conduits, or drains below the surface of the said easement areas, provided that such water or sewer pipe lines, conduits, or drains do not interfere with the exercise by the Licensee of the rights herein granted.

That the Licensee shall not assign any right hereby granted or otherwise given than to a duly created or established legal successor, without the written consent of the Licensors.

That the term "Licensors" wherever herein used shall be held to mean and include the Licensors, their heirs and assigns, and that the term "Licensee" wherever herein used shall be held to mean the "COUNTY OF MAUI", its legal successors and assigns, and that this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective heirs and assigns and its successors and assigns.

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(1) All of that certain piece, parcel or strip of land, being a portion of Grant 2625 to Kahili, situated between Kihei-Makawao and Pakahi Place of Pukalani Lots, same being also known as Lot 143 of said Pukalani Lots, at Keahua, Kula, County of Maui, Territory of Hawaii, and more particularly described as follows:

Beginning at a pipe at the Southeasterly corner of this strip of land, on the Northwesterly side of Pakahi Place, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KOHA" being 8055.27 feet North and 6434.31 feet East and running by azimuths measured clockwise from true South:

1.	54°	14'	10.22 feet,	along the Northwesterly side of Pakahi Place, to a pipe;
2.	132°	16'	221.03 feet,	along Lot 34 of Pukalani Lots, to a pipe;
3.	234°	22'	10.23 feet,	along the Southeasterly side of Kihei-Makawao Government Road, to a pipe;
4.	312°	16'	221.01 feet,	along Lot 33 of Pukalani Lots, to the point of beginning and containing an area of 2210 square feet.

(2) All of that certain piece, parcel or strip of land, being a portion of Grant 2625 to Kahili, situated between Pakahi and Palua Places of Pukalani Lots, same being also known as Lot 144 of said Pukalani Lots, at Keahua, Kula, County of Maui, Territory of Hawaii, and more particularly described as follows:

Beginning at a pipe at the Southeasterly corner of this strip of land, on the Northwesterly side of Palua Place, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KOHA" being 7782.50

[illegible] and running by azimuths measured clockwise from South:

1.	54°	14'	10.22 feet,	along the Northwesterly side of Palua Place, to a pipe;
2.	132°	16'	380.00 feet,	along Lots 70 and 57 of Pukalani Lots, to a pipe;
3.	234°	14'	10.22 feet,	along the Southeasterly side of Pakahi Place, to a pipe;
4.	312°	16'	380.00 feet,	along Lots 58 and 69 of Pukalani Lots, to the point of beginning and containing an area of 3800 square feet.

(3) All of that certain piece, parcel or strip of land, being a portion of Grant 2625 to Kahili, situated between Pakolu and Palua Places of Pukalani Lots, same being also known as Lot 145 of said Pukalani Lots, at Keahua, Kula, County of Maui, Territory of Hawaii, and more particularly described as follows:

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1.	54°	14'	10.22 feet,	along the Northwesterly side of Pakolu Place, to a pipe;
2.	132°	16'	380.00 feet,	along Lots 106 and 93 of Pukalani Lots, to a pipe;
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4.	312°	16'	380.00 feet,	along Lots 94 and 105 of Pukalani Lots, to the point of beginning and containing an area of 3800 square feet.

And, AGNES R. ASUE, wife of one of the Licensors above mentioned, for and in consideration of the premises, does hereby release and remise unto the Licensee, all of her right, title and interest in and to and concerning the above described easement areas as may be inconsistent with any of the rights granted to the said Licensee by the said Licensors under the provisions of this agreement.

IN WITNESS WHEREOF, the said Licensors and Licensee and AGNES R. ASUE, wife of one of the Licensors, have duly caused this instrument to be executed all as of the day and year first above written.

Frank Munoz

Jessie R. Munoz

Manuel Asue

Agnes R. Asue

COUNTY OF MAUI

By Eddie Tam
Its Chairman and Executive Officer
of the Board of Supervisors

TERRITORY OF HAWAII,)
) SS.
COUNTY OF MAUI.)

On this 15th day of February, A. D. 1952, before me personally appeared FRANK MUNOZ, JESSIE R. MUNOZ, MANUEL ASUE and AGNES R. ASUE, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

H. Bevilacqua
Notary Public, Second Judicial Circuit,
Territory of Hawaii.

My Commission expires July 20, 1955

liber 2565 page 108

[redacted] ss.
County of Maui.

On this 14th day of March, A. D. 1952, before me appeared EDDIE TAM, to me personally known, who, being by me duly sworn, did say that he is the CHAIRMAN AND EXECUTIVE OFFICER of the Board of Supervisors of the County of Maui, a political subdivision of the Territory 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 Board of Supervisors; and the said EDDIE TAM acknowledged the said instrument to be the free act and deed of the said County of Maui.

Kumiko Otsuka
Notary Public, Second Judicial Circuit,
Territory of Hawaii.

My Commission expires June 30, 1953.

Entered of Record MAR 14 1952 at 11:06 o'clock A.M.
and compared. Mark N. Huckabein Registrar of Conveyances.
By [redacted] Clerk