

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

April 1, 2016

Committee
Report No. _____

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

Chair and Members:

Your Housing, Human Services, and Transportation Committee, having met on March 17, 2016, makes reference to County Communication 16-36, from the Director of Housing and Human Concerns, transmitting a proposed resolution entitled "AUTHORIZING THE FIRST AMENDMENT TO THE UNIVERSITY OF HAWAII, MAUI COLLEGE, STUDENT HOUSING LEASE."

The purpose of the proposed resolution is to authorize the University of Hawaii to transition the use of leased property adjacent to the University of Hawaii Maui College, in Kahului, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-8-007:117, from student housing to administrative, educational, and student and faculty housing purposes.

Your Committee notes the lease of the property was entered into on December 15, 1980, and was strictly for student housing. The proposed amendment will broaden the allowed uses for the property.

The Deputy Director of Housing and Human Concerns said the University of Hawaii Maui College intends to transform the facility into a teaching lab for the hospitality program.

A representative of the University informed your Committee the first phase of the project is to remodel two of the four buildings on the property. The University has secured an appropriation of \$3.5 million from the State, and needs to encumber the funds before the end of the fiscal year or the funds will lapse. He also said the University is engaged in private fundraising for phase two of the project.

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

Page 2

Committee
Report No. _____

The representative informed your Committee two of the buildings are currently used as classrooms for the hospitality program. Upon completion of the renovation of all four buildings, the facility will be transformed into a teaching hotel. The hotel will allow students hands-on experience with transient accommodations available to the general public.

He assured your Committee the University will be in compliance with State and County requirements for permits and taxation upon the establishment of the hotel.

In response to your Committee's question, the Deputy Planning Director confirmed the property's zoning and community plan designation allows for the uses indicated in the proposed amendment. She further stated the property is located within the Special Management Area, and the University will be required to obtain a permit for the project.

Your Committee expressed concern about the elimination of the student housing, and emphasized the need for affordable housing, especially for students. The representative informed your Committee the University works to make neighboring properties and privately owned housing units available for students.

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

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.

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

Page 3

Committee
Report No. _____

Your Housing, Human Services, and Transportation Committee
RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled "AUTHORIZING THE FIRST AMENDMENT TO THE UNIVERSITY OF HAWAII, MAUI COLLEGE, STUDENT HOUSING LEASE," be ADOPTED; and
2. That County Communication 16-36 be FILED.

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



STACY CRIVELLO, Chair

hht:cr:16030aa:mmy

Resolution

No. _____

AUTHORIZING THE FIRST AMENDMENT TO THE UNIVERSITY OF HAWAII, MAUI COLLEGE, STUDENT HOUSING LEASE

WHEREAS, the County of Maui and the University of Hawaii entered into that Lease dated December 15, 1980, attached as Exhibit "1" to Exhibit "A", for the area now identified as Tax Map Key No. (2) 3-8-007:117 ("Property"); and

WHEREAS, the University of Hawaii desires to transition the use of the property from solely student housing to administrative, education, and student and faculty housing purposes; and

WHEREAS, the First Amendment to Lease is attached hereto and incorporated herein, as Exhibit "A"; and

WHEREAS, in accordance with Section 3.36.090, Maui County Code, any grant of County real property requires authorization by the Council of the County of Maui; now, therefore,

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

1. That it hereby approves the First Amendment to Lease; and
2. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute any documents necessary in furtherance of this resolution; and

Resolution No. _____

3. That certified copies of this resolution shall be transmitted to the Mayor, the Director of Finance, and the University of Hawaii.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

2014-3060

HHT-30 2016-03-21 Resolution Revised UH Student Housing Lease

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (hereafter the "1st Amendment") made this _____ day of _____, 2016, to be effective as of _____ (hereafter the "Effective Date") by and between the COUNTY OF MAUI, a political subdivision of the State of Hawai'i, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "LESSOR", and the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawai'i, whose address is 2444 Dole Street, Honolulu, Hawaii 96822, hereinafter referred to as the "LESSEE."

W I T N E S S E T H:

WHEREAS, LESSOR and LESSEE entered into that certain Lease dated December 15, 1980 (hereafter the "Lease"), a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference; and

WHEREAS, LESSOR and LESSEE desire to enter into this 1st Amendment and amend the following sections of the Lease: Sections 2 (Observance of Laws), 4 (Use of Premises), and 7 (Indemnity),

NOW, THEREFORE, for and in consideration of the mutual promises and conditions set forth in the Lease and this 1st Amendment, the parties hereby agree as follows:

1. Observance of Laws. Section 2 (Observance of Laws) is amended in its entirety to read as follows:

"2. Observance of Laws. That the Lessee will, during the whole of the said term, keep said premises in a clean and sanitary condition and observe and satisfy all of the laws, ordinances, rules and regulations, at all times during the term of this Lease and option periods, if applicable, observe and comply with all Applicable Laws. "Applicable Laws" mean all federal, state, county, and local laws, statutes, ordinances, codes, rules, and regulations, applicable thereto."

2. Modification to Use of Premises. Section 4 (Use of Premises) is amended in its entirety to read as follows:

"4. Use of Premises. That the Lessee will use or allow to be used the premises hereby demised for administrative, educational, and student and faculty housing purposes including, without limitation, the management and operation of a hospitality training center and/or a visitor industry learning lab which may provide transient accommodations to the general public, all for the benefit of Lessee (including the University of Hawaii Maui College or any lawful successor thereto)."

3. Lessee Indemnity. Section 7 (Indemnity) is amended in its entirety to read as follows:

"7. Indemnity. The Lessee shall indemnify, defend, and hold harmless the Lessor and its officers, employees, and agents from any and all claims of liability for damage to real or personal property or injury to or death of any persons when such damage, injury, or death arises out of the action or omission of the Lessee, its officers or employees in conjunction with the use of the premises by the Lessee during the Lease term hereof, provided that the Lessee shall not be required to indemnify, defend, or hold harmless the Lessor or its officers, employees, and agents from any and all claims of liability for damage to real or personal property or injury to or death of any persons when such damage, injury, or death arises out of the action or omission of the Lessor and/or its officers, employees, or agents relating to the premises. This provision shall not be read or interpreted to create any liability for the Lessee or any person or entity to any person or entity except for the duties to indemnify, defend, and hold harmless set forth herein. This provision is not intended to and shall not be interpreted to benefit any third person, or to benefit or create any third party beneficiary."

4. No other changes. All other terms, conditions, provisions and covenants of the Lease not herein modified by this 1st Amendment shall remain unchanged and shall continue to be in full force and effect.

[Reminder of page intentionally left blank]

[Signature page to follow]

IN WITNESS WHEREOF, the parties have executed this 1st Amendment the day and year first above written.

LESSOR:

COUNTY OF MAUI

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:

CAROL K. REIMANN
Director of Housing and Human Concerns

By _____
DANILO F. AGSALOG
Its Director of Finance

APPROVED AS TO FORM
AND LEGALITY:

JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

LESSEE:

UNIVERSITY OF HAWAI'I

RECOMMEND APPROVAL:

By _____
DAVID LASSNER
Its President

LUI HOKOANA, Chancellor
University of Hawai'i Maui College

APPROVED AS TO FORM:

Office of University General Counsel:

By _____
JAN S. GOUVEIA
Its Vice President for Administration

BRUCE Y. MATSUI
Associate General Counsel

RECORDATION REQUESTED BY:
DEPARTMENT OF THE
CORPORATION COUNSEL

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
OFFICE OF
BUREAU OF CONVEYANCES

AFTER RECORDATION, RETURN TO:

DEPARTMENT OF THE
CORPORATION COUNSEL
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96791

Received for record this MAR 4 1981
day of _____, A.D. 19____
at 1:59 o'clock P.M. and
recorded in Liber _____
on Pages _____

RETURN BY: MAIL () PICK UP ()

L E A S E

THIS INDENTURE OF LEASE, made this 15th day
of December, 1980, by and between the COUNTY OF MAUI,
whose address is 200 South High Street, Wailuku, Hawaii,
hereinafter referred to as the "Lessor," and the UNIVERSITY
OF HAWAII, whose address is 2444 Dole Street, Honolulu,
Hawaii, hereinafter referred to as the "Lessee";

W I T N E S S E T H :

That, the Lessor for and in consideration of the
terms, covenants and conditions herein contained and on the
part of the Lessee to be observed and performed, does,
subject to the terms, conditions and covenants set forth
herein, hereby demise and lease unto the Lessee, and the
Lessee does hereby lease from the Lessor that certain
portion of a parcel of land situate at Owa and Kalua,
Kahului, Wailuku, Maui, Hawaii, identified by Tax Map Key
Number 3-8-07:portion of 1, being a portion of parcel
3-B-1, more particularly described in Exhibit "A" hereto
attached and made a part hereof, and shown on the map
attached hereto as Exhibit "B" and made a part hereof, for
the purpose of site improvements, construction, maintenance
and operation of student housing for Maui Community College.

EXHIBIT " 1 "

TO HAVE AND TO HOLD the same unto the Lessee for the term of FIFTY-FIVE (55) YEARS, commencing on the 15th day of December, 1980 and terminating on the 15th day of December, 2035.

AND the Lessor hereby covenants with the Lessee that the Lessee shall peaceably hold and enjoy the premises for the term demised without hindrance or interruption by the Lessor or anyone lawfully or equitably claiming by, through, or under said Lessor except as herein expressly provided.

IT IS MUTUALLY AGREED by and between the Lessor and the Lessee, as follows:

A. LEASE RENTAL. The Lessee shall pay to the Lessor a lease rent of One Dollar (\$1.00) annually for the subject premises.

B. EXTENSIONS. That at the expiration of the original term of this lease, the lease shall be renewable for two (2) periods, each of up to TEN (10) YEARS in duration. Lessee shall notify Lessor in writing not less than six (6) months prior to the expiration of the term of this lease, and not less than six (6) months prior to the expiration of any extended term of this lease if Lessee intends to lease the premises for an extended period.

C. APPROVAL OF IMPROVEMENTS. That all improvements shall be subject to the prior written approval of the Lessor.

D. CONDEMNATION. That if at any time during said term or any extension thereof, the demised premises or any part thereof shall be taken or condemned for any public

use by any authority having the right of eminent domain, then and in such case, the estate and interest of the Lessee in the said premises so condemned shall at once cease and terminate. The Lessee shall, to the extent permitted by law, be entitled to receive from the condemning authority the full value of the Lessee's permanent improvements so taken; provided, that the Lessee may, in the alternative, remove and relocate its improvements to lands occupied by it. The foregoing rights of the Lessee shall not be exclusive of any other to which it may be entitled by law.

E. TERMINATION. That if Lessee (i) shall fail to observe or perform faithfully any of the other covenants or agreements herein contained and on the part of the Lessee to be observed and performed and any such failure to observe or perform shall continue for a period of ninety (90) days after written notice of such default is given to the Lessee, or (ii) shall abandon (and have received 90 days' notice of Lessor's intention to claim such abandonment) said premises or suffer this lease or any estate or interest hereunder to be taken under any writ of execution, then and in any event, the Lessor may at once enter into and upon the demised premises or any part thereof, or with or without such entry, terminate and cancel this lease and thereupon take possession of the demised premises and thereby become wholly vested with all right, title, and interest of the Lessee therein and expel and remove from the demised premises the Lessee or those claiming under the Lessee and its effects, all without

service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby and without prejudice to any other remedy or right of action which the Lessor may have for such breach or for rent or any other indebtedness owing by the Lessee hereunder, whether theretofore or thereafter accruing or to accrue, or for other or preceding breach of covenant of this lease on the part of the Lessee. Whether or not the Lessor shall have taken any action above permitted, the Lessor may bring an action for summary possession in case of such default. In the event of such resumption of possession under this lease whether by summary proceedings or by any other means, the Lessor, or any receiver appointed by a court having jurisdiction, may dispossess and remove all persons and property from the demised premises, and any property so removed may be stored in any public warehouse or elsewhere at the cost of and for the account of the Lessee, and the Lessor shall not be responsible for the care or safekeeping thereof, and the Lessee hereby waives any and all loss, destruction, and/or damage or injury which may be occasioned in the exercise of reasonable care by any of the aforesaid acts. The Lessor may recover from the Lessee all damages, attorneys' fees and costs which may have been incurred by the Lessor as a result of any default of the Lessee hereunder, including the expense of recovering possession. No re-entry or taking of possession of said premises by the Lessor shall be construed as an election on the Lessor's part to

terminate this lease, unless a written notice that this lease is terminated is given by the Lessor to the Lessee. It is further understood that each and all of the remedies given to the Lessor hereunder are cumulative and that the exercise of one right of remedy by the Lessor shall not impair the Lessor's right to any other remedy.

AND the Lessee further covenants with the Lessor as follows:

1. UTILITY SERVICES. That the Lessee shall pay when due all electricity rates, water rates, sewer rates, garbage rates and other similar charges of every description as to which said demised premises, or any part thereof, or any improvement thereon or for which the Lessee, may, during said term, become liable.

2. OBSERVANCE OF LAWS. That the Lessee will, during the whole of the said term, keep said premises in a strictly clean and sanitary condition and observe and satisfy all of the laws, ordinances, rules and regulations, applicable thereto, and will indemnify the Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonsatisfaction of said laws, ordinances, rules and regulations.

3. MAINTENANCE AND REPAIRS. That the Lessee shall, at its own expense, keep and maintain all buildings and improvements of every nature whatsoever now or hereafter erected, constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

4. USE OF PREMISES. That the Lessee will use or allow to be used the premises hereby demised solely for student housing purposes for Maui Community College or any lawful successor thereto.

5. WASTE, UNLAWFUL USE, ASSIGNMENT. That the Lessee will not make or suffer any strip or waste or any unlawful, improper or offensive use of said premises, nor, without the consent in writing of the Lessor, assign or mortgage this lease.

6. SUBLETTING. That the Lessee shall not sublet the whole or any part of said premises except for purposes of student housing.

7. INDEMNITY. That the Lessee will, to the extent permitted by law, indemnify and hold the Lessor harmless from all losses, costs and expenses with respect to any liens, charges and encumbrances filed against said premises, and from any claims and demands for loss or damage, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire on said premises or any nuisance made or suffered thereon or any failure of the lessee to keep said premises in a safe condition or to perform any of the lessee's covenants herein contained.

8. SAFEGUARDING PERSONS AND PROPERTY. That Lessee shall, at all times, take all necessary safety precautions, measures and controls for the protection of persons and property.

9. SURRENDER. That the Lessee shall at the expiration or sooner termination of this lease, peaceably

and quietly surrender and deliver possession of the demised premises to the Lessor, in good order and condition. Upon such surrender, the Lessee may remove all buildings and improvements, erected by the Lessee on the demised premises, promptly repairing and making good all damage caused by such removal.

IN WITNESS WHEREOF, the COUNTY OF MAUI, by its Mayor, and the UNIVERSITY OF HAWAII, by its PRESIDENT and Vice-President for Administration have executed this indenture the day and year first above written.

COUNTY OF MAUI

By *Lanette Savara*
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:

J. M. Koala
Deputy Corporation Counsel
County of Maui

UNIVERSITY OF HAWAII

By *Lewis Uehara*
Its RESIDENT

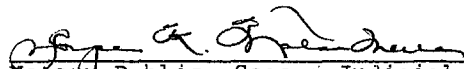
By *Harold S. Mount*
Its Vice President For Administration

APPROVED AS TO FORM:

William H. Maki
Deputy Attorney General
State of Hawaii

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this 5th day of February, 1981,
before me personally appeared HANNIBAL TAVARES, 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 in behalf of said County of Maui by
authority of its Council, and the said HANNIBAL TAVARES
acknowledged the said instrument to be the free act and
deed of said County of Maui.



Notary Public, Second Judicial
Circuit, State of Hawaii

My commission expires: 1/24/82

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 15th day of December, 1980, before me appeared Fujio Matsuda and Harold S. Masumoto, being by me duly sworn, did say that they are the President and Vice-President for Administration, respectively, of the University of Hawaii, an agency of the State of Hawaii, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Regents, and said Fujio Matsuda and Harold S. Masumoto severally acknowledge said instrument to be the free act and deed of said agency as officers and aforesaid.

Gene Amis

Notary public, First Judicial
Circuit, State of Hawaii

My commission expires: 6/8/82



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

November 20, 1979

C.S.F. No. 18,799

MAUI COMMUNITY COLLEGE STUDENT HOUSING PROJECT

PORTION OF PARCEL 3-B-1

Owa and Kalua, Kahului, Wailuku, Maui, Hawaii

Being portions of R.P. 4475, L.C.Aw. 7713, Ap. 23 to V. Kamamalu and R.P. 1996, L.C.Aw. 420 to Kuihelani conveyed to the County of Maui by Alexander and Baldwin, Inc. by deed dated January 28, 1974 and recorded in Liber 9745, Page 358.

Beginning at the southeast corner of this parcel of land, the southwest corner of Maui Community College Site and on the north side of Kaahumanu Avenue, Federal Aid Project F-032-1 (3), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3183.15 feet North and 4452.87 feet East, thence running by azimuths measured clockwise from True South:-

1. 90° 00' 15" 60.00 feet along the north side of Kaahumanu Avenue, Federal Aid Project F-032-1 (3);
2. 90° 00' 15" 275.00 feet along the north side of Kaahumanu Avenue, Federal Aid Project F-032-1 (3);
3. 180° 00' 15" 62.72 feet along the remainders of R.P. 4475, L.C.Aw. 7713, Ap. 23 to V. Kamamalu and R.P. 1996, L.C.Aw. 420 to Kuihelani;
4. Thence along the remainder of R.P. 1996, L.C.Aw. 420 to Kuihelani, on a curve to the right with a radius of 1441.35 feet, the chord azimuth and distance being:
190° 25' 15" 521.21 feet;
5. 290° 50' 15" 335.00 feet along the remainder of Parcel 3-B-1 of Maui Community College Student Housing Project;
6. Thence along Maui Community College Site, on a curve to the left with a radius of 1106.35 feet, the chord azimuth and distance being:
10° 25' 15" 400.07 feet;
7. 0° 00' 15" 62.72 feet along Maui Community College Site to the point of beginning and containing an AREA OF 4.045 ACRES.

Vehicle access shall not be permitted into and from Kaahumanu Avenue, Federal Aid Project F-032-1 (3) over and across Course 2 of the above-described parcel of land.

The above-described Portion of Parcel 3-B-1 is subject, however, to the Proposed South Papa Avenue Extension and more particularly described as follows:-

Beginning at the southeast corner of this parcel of land, the southwest corner of Maui Community College Site and on the north side of Kaahumanu Avenue, F.A.P. F-032-1 (3), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUNE" being 3183.15 feet North and 4452.87 feet East, thence running by azimuths measured clockwise from True South:

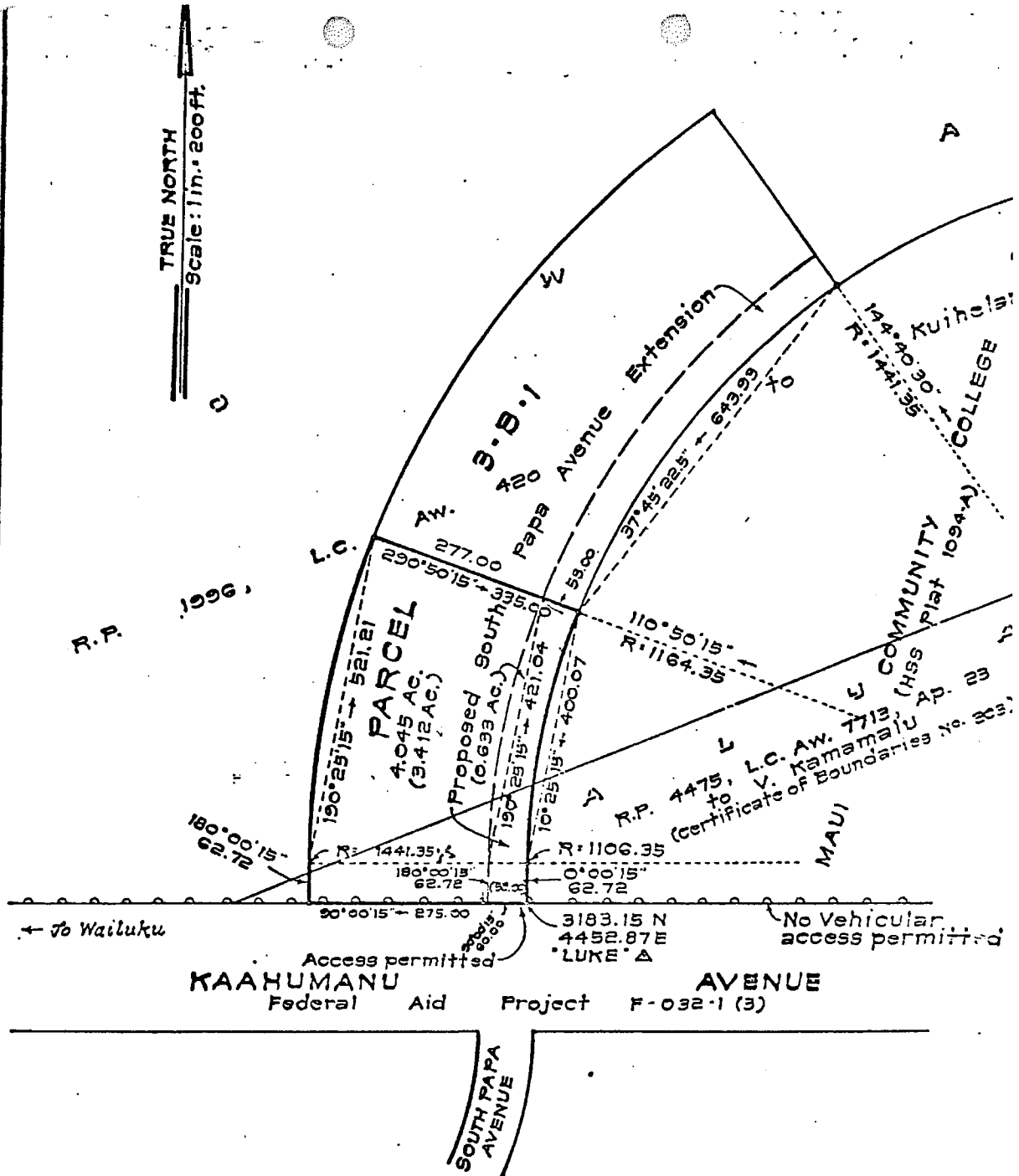
1. 90° 00' 15" 58.00 feet along the north side of Kaahumanu Avenue, Federal Aid Project F-032-1 (3);
2. 180° 00' 15" 62.72 feet along the remainder of R.P. 4475, L.C.Aw. 7713, Ap. 23 to V. Kamamalu;
3. Thence along the remainders of R.P. 4475, L.C.Aw. 7713, Ap. 23 to V. Kamamalu and R.P. 1996, L.C.Aw. 420 to Kuihelani, on a curve to the right with a radius of 1164.35 feet, the chord azimuth and distance being:
190° 25' 15" 421.04 feet;
4. 290° 00' 15" 58.00 feet along the remainder of a portion of Parcel 3-B-1 of Maui Community College Student Housing Project;
5. Thence along Maui Community College Site, on a curve to the left with a radius of 1106.35 feet, the chord azimuth and distance being:
10° 25' 15" 400.07 feet;
6. 0° 00' 15" 62.72 feet along Maui Community College Site, to the point of beginning and containing an AREA OF 0.633 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

Compiled from map
by Norman Saito,
Calc. by J. Chrystal, Jr.,
HSS Plat 1094-A and
Govt. Survey Records.

ac



**MAUI COMMUNITY COLLEGE
STUDENT HOUSING PROJECT
PORTION OF PARCEL 3-B-1
Owa and Kalua, Kahului, Wailuku, Maui, Hawaii**

Scale: 1 inch = 200 feet

JOB MA-440 (79)
C. BK 4, CRYSTAL

--- denotes access permitted
--- denotes no vehicle access permitted

TAX MAP 3-B-07
C. S. F. No. 18,799

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

GNX NOV. 20, 1979