


DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740
FAX: (808) 270-7152

April 4, 2003

Memo To: G. Riki Hokama, Chair
Budget and Finance Committee

From: Traci Fujita Villarosa 
Deputy Corporation Counsel

Subject: Community Development Block Grant (CDBG) Program for the 2003 Program Year
(Fiscal Year 2004 Budget) (BF-2)

You have asked this office for advice regarding an issue that arose at the March 18, 2003 Budget and Finance Committee meeting in which the leases for Maui Youth and Family Services, Inc. ("Maui Youth and Family Services") and The Maui Farm, Inc. ("Maui Farm") were discussed. In particular, you asked that this office advise you on whether it is the County, as lessor, or the lessee who is responsible for site drainage improvements.

I have confirmed with Alson Tamashiro that only Maui Farm requested CDBG funds to make site drainage improvements.¹ It is my understanding that a representative from Maui Youth and Family Services testified at the March 18, 2003 meeting and confirmed that there was a drainage problem in their area. Therefore, because only Maui Farm requested CDBG funding for site drainage improvements, I will limit this memorandum to discussion of the Maui Farm lease.

The Maui Farm lease ("MF Lease") is dated January 23, 1990. See Exhibit "A." The County of Maui leased TMK No. 2-5-004:005, approximately 8.31 acres, to the Maui Farm for a term of 55 years starting March 1, 1990 and ending February 28, 2045, at one dollar per year.

Paragraph 3 of the MF Lease states, "Lessee shall use or allow the premises to be used only for a youth rehabilitational (sic) farm training project."

Paragraph 4 of the MF Lease states, "Lessee may, at its own expense, construct and install on the premises farm dwellings, storage facilities, office building, and other similar

¹ Gale Gnazzo, Manager of Maui Youth and Family Services, confirmed with this office that they do not have any on-site drainage problems.

MEMO TO: G. Riki Hokama, Chair
Page 2
April 4, 2003

improvements normally associated with farming."

Paragraph 6 of the MF Lease states, "Lessor (sic) shall, at its own expense, maintain and repair the premises, landscaping and all improvements now or hereafter on the premises in good, sanitary and safe condition."

There appears to be a typographical error in Paragraph 6 of the MF Lease. The standard language in County leases usually holds the Lessee responsible for maintaining and repairing the premises, landscaping and improvements in good, sanitary and safe condition. It is unknown why the MF Lease states that the Lessor is responsible for maintaining and repairing the premises, landscaping and improvements. In practice the Lessee, Maui Farm, has been maintaining and repairing the premises, landscaping, and improvements since the inception of the MF Lease. This office will work with the Department of Housing and Human Concerns to initiate an amendment to correct the error in paragraph 6 of the MF Lease.

David Hutchinson, an investigator with the Department of the Corporation Counsel ("Mr. Hutchinson"), met with Paula Ambre, Manager of Maui Farm ("Ms. Ambre"), to gather information on the drainage problem. The Maui Farm drainage problem appears to stem in part from the fact that the entire property is located in a low-lying area. See Exhibit "B." Run-off in this area flows southwest toward a drainage ditch located west of Ike Road. In addition, five Maui Farm buildings were constructed south of (i.e., below) a private paved roadway with the driveways and carports facing the roadway. See Exhibit "C." Thus, the natural flow of drainage leads water directly into the Maui Farm building carports as well as under the buildings.

Ms. Ambre told Mr. Hutchinson that Maui Farm is willing to make the necessary improvements to resolve the on-site drainage problem. However, Ms. Ambre expressed a concern to Mr. Hutchinson that approximately two to three inches of compacted mud and gravel have accumulated on Ike Road. Ike Road is a paved road owned by the County.

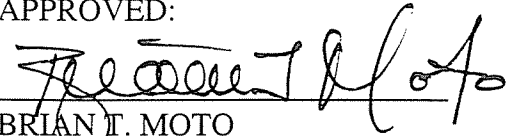
Apparently the debris primarily comes from drainage from a dirt road easement located off Ike Road and between the Hawaii Job Corps and Maui Youth and Family Services. See Exhibit "D." The County granted the road easement to Alexander and Bladwin, Inc. The dirt road goes northeast to the HC&S fields. It also appears that construction vehicles from the Maunaolu Plantation subdivision utilize the dirt road to access Ike Road. All other private roads off of Ike Road are paved and Mr. Hutchinson did not see any evidence of muddy run-off coming from these roads.

This office will notify the Department of Public Works and Environmental Management and the Department of Housing and Human Concerns regarding the debris problem affecting Ike Road.

MEMO TO: G. Riki Hokama, Chair
Page 3
April 4, 2003

.....
If you should have any further questions, please do not hesitate to contact me.

APPROVED:


BRIAN T. MOTO
Corporation Counsel

CC: Gilbert Coloma-Agaran, Director, Department of Public Works and Environmental
Management
Blaine Kobayashi, Deputy Corporation Counsel
Edward Kushi, Deputy Corporation Counsel
Alice Lee, Director, Department of Housing and Human Concerns

Certified to be a true and correct copy of the document
recorded on 4-21-92 at 8:01,
in the Bureau of Conveyances, State of Hawaii, as
Document No. 92-061350.

Island Title Corporation .

By J. Delima

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK UP ()

ISLAND TITLE CORPORATION
ITC - Maui

ITC

ACCOMMODATION

CS 16378

LEASE

THIS LEASE, made this 23 day of January, 1990,
by and between MAUI FARM INC., whose mailing address is RR1 Box
67A, Wailuku, Maui, Hawaii 96793, hereinafter called the
"Lessee", and the COUNTY OF MAUI, a political subdivision of
the State of Hawaii, whose principal place of business and
mailing address is 200 South High Street, Wailuku, Maui,
Hawaii 96793, hereinafter called the "Lessor";

W I T N E S S E T H :

Lessor does hereby lease unto Lessee all of that
certain parcel of land situate at Sunnyside, Hamakuapoko,
Makawao, Maui, State of Hawaii, being TMK 2-5-004:005 a
portion consisting of approximately 8.31 acres, as shown on

EXHIBIT "A"

Exhibit "A" attached hereto and by reference made a part hereof, subject, however, to the following terms, covenants and conditions:

1. Lessee shall pay a rental of ONE AND NO/100 DOLLARS (\$1.00) per year, payable in advance upon the execution date hereof and the first day of each following year during the term hereof.

2. The term of this lease shall be fifty-five (55) years commencing on the first day of March, 1990 and shall expire February 28, 2045, unless earlier terminated as herein provided.

3. Lessee shall use or allow the premises to be used only for a youth rehabilitational farm training project.

4. Lessee may, at its own expense, construct and install on the premises farm dwellings, storage facilities, office building, and other similar improvements normally associated with farming.

5. The Lessee shall, within five (5) years after the date of lease, have a facility suitable for its programs and in accordance with such plans and specifications submitted by the Lessee for approval by Lessor and in compliance with all laws, ordinances, rules and regulations applicable thereto.

6. Lessor shall, at its own expense, maintain and repair the premises, landscaping and all improvements now or hereafter on the premises in good, sanitary and safe condition.

7. Lessee shall at its own expense, provide or

acquire all utilities and other services that may be necessary to conduct the use permitted hereunder.

8. Lessee acknowledges the charitable nature of this lease and that Lessor has not undertaken a title examination of the premises. Lessee, therefore, accepts this lease subject to all existing rights, privileges and easements that may have attached to the premises prior to the making hereof.

9. Lessee shall pay all taxes, assessments, duties and other governmental or quasi-governmental charges of any sort which shall, pertaining to the term of this lease, be charged, assessed, imposed or become due or payable upon or on account of the premises, or any portion thereof, or the improvements now or hereafter thereon, whether the same are or shall be assessed to or be payable at law by either Lessor or Lessee.

PROVIDED, HOWEVER, that where said taxes, assessments, duties, or other charges may be paid in installments, Lessee shall pay only those installments, together with interest on unpaid balances, that apply to periods all or a portion of which fall within the term of this lease, and Lessee shall have no responsibility for the payment of any such installments which are payable with respect to any period falling wholly outside said term.

10. Lessee shall indemnify and save harmless the Lessor from any and all claims and demands against it for damage or injury to persons or property that shall or may arise

by reason of the exercise by the Lessee of its rights hereunder, not caused by the negligence of the Lessor, its agents, servants or employees acting within the course and scope of their employment, and from and against all damages, costs, counsel fees, expenses or liabilities incurred or resulting from any such claim or demand or any action or proceeding brought thereon. Lessee shall upon demand reimburse Lessor for reasonable attorney's fees and other costs and expenses incurred by Lessor in connection with any litigation wherein the Lessee is found liable.

10. Lessee shall reimburse Lessor upon demand for all costs and expenses, including reasonable attorney's fees, incurred by Lessor in enforcing any covenant and in remedying any breach of covenant herein contained.

11. Upon the expiration of the term or other termination of this lease, Lessee shall peaceably surrender possession of the premises to Lessor; provided, however, that Lessee may, or if requested in writing by Lessor, Lessee shall remove all improvements built or installed thereon by Lessee and shall restore the ground area to the same or as good condition as such ground area was in at the time of execution hereof within thirty (30) days after such expiration or termination.

PROVIDED, HOWEVER, that any failure by Lessee to observe or perform any covenant or condition of this lease shall constitute a breach hereof, and if any such breach shall

continue for thirty (30) days, Lessor may at its option, terminate this lease without prejudice to any right or remedy Lessor might otherwise have. The acceptance of rent shall not be deemed to be a waiver by Lessor or any breach.

12. If at any time during the term hereof the premises, or any part thereof, shall be condemned or taken by eminent domain the term hereof shall terminate as to that part so taken as of the date of final decree or notice, unless there is appeal or other reconsideration of the matter, in which case such termination shall be effective as of the date of final determination of such appeal or reconsideration, and all compensation payable on account of such taking shall be paid to and be the sole property of Lessor, except that Lessee shall be entitled to the compensation payable with respect to any improvements that are removable by Lessee under the terms hereof; and if all or so much of premises are taken as to make the premises unsuitable for the purposes of this lease, this lease may be cancelled at Lessee's option, provided Lessee shall have given Lessor written notice of Lessee's intention so to terminate in sufficient time to enable Lessor to present to or against the condemning authority Lessor's claim for compensation or for loss or damage arising from such termination.

13. Lessee shall not assign or mortgage this lease or any interest hereunder, nor sublet the premises, in whole or in part, without obtaining prior written consent of Lessor.

14. The terms, covenants and conditions of this lease shall be mutually binding upon and inure to the benefit of the said parties hereto and the successors and assigns of Lessor and the successors and permitted assigns of Lessee.

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

LESSEE:

MAUI FARM INC.

By Charles T. Powell
CHARLES T. POWELL
Its Executive Director

LESSOR:

COUNTY OF MAUI

By Hannibal Tavares
HANNIBAL TAVARES
Its Mayor County of Maui

APPROVED AS TO FORM
AND LEGALITY:

Howard M. Fukushima
HOWARD M. FUKUSHIMA
Deputy Corporation Counsel
County of Maui
mauifrm5/agreements/epg

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 19th day of January, 1990, before me appeared CHARLES T. POWELL to me personally known, who, being by me duly sworn did say that he is the Executive Director and respectively, of MAUI FARM INC., a Hawaii non-profit corporation; ~~that the seal affixed to the foregoing instrument is the corporate seal of said corporation;~~ that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said CHARLES T. POWELL acknowledged said instrument to be the free act and of said corporation.

*W
N.Y.*

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

L.S.

Janette D. Briamato
Notary Public, State of Hawaii
My commission expires: 7-7-90

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 23 day of January, 1990, before me 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 on 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.

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

L.S.

Linda K. Paanadris
Notary Public, State of Hawaii
My commission expires: 10/10/90

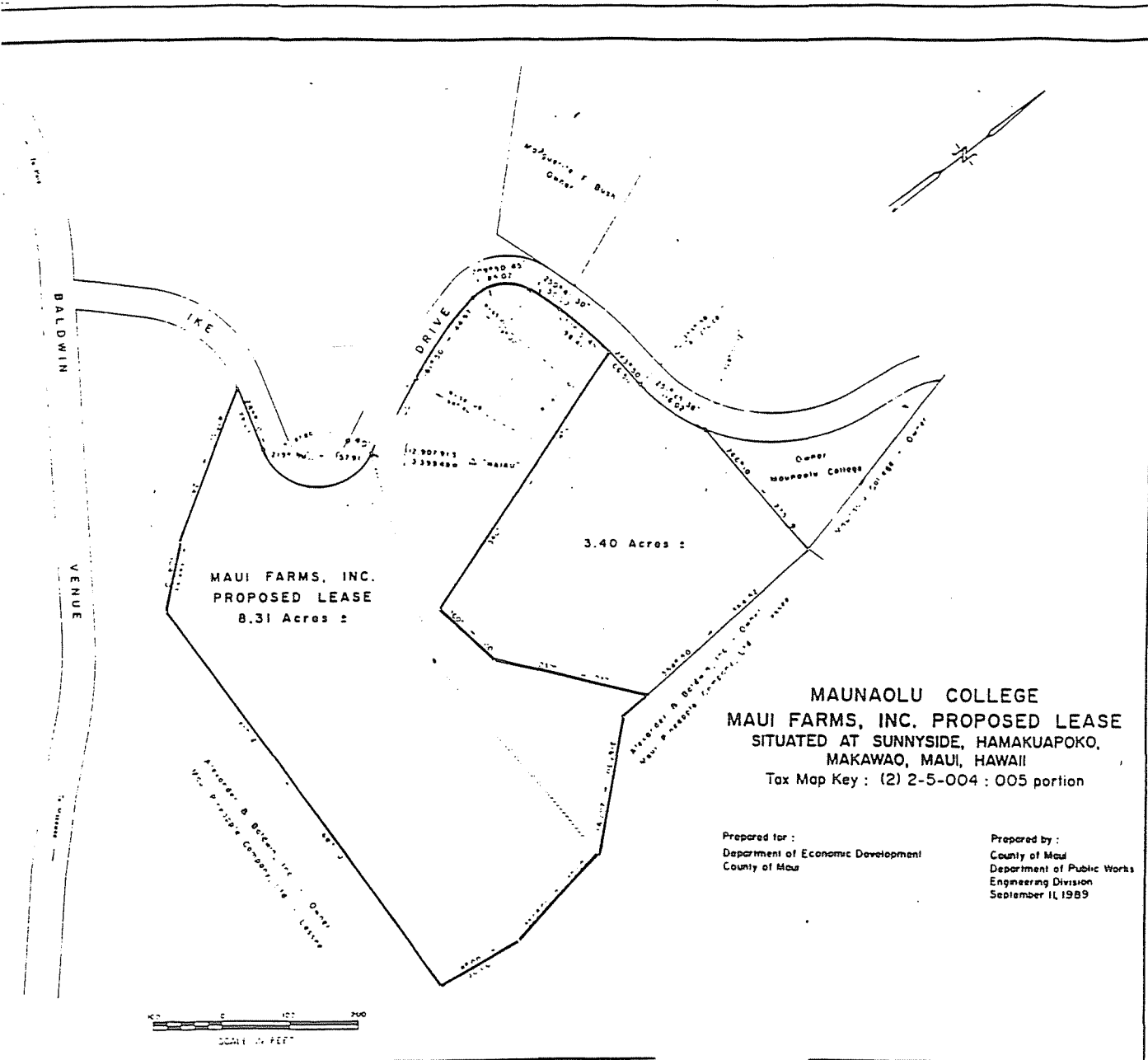
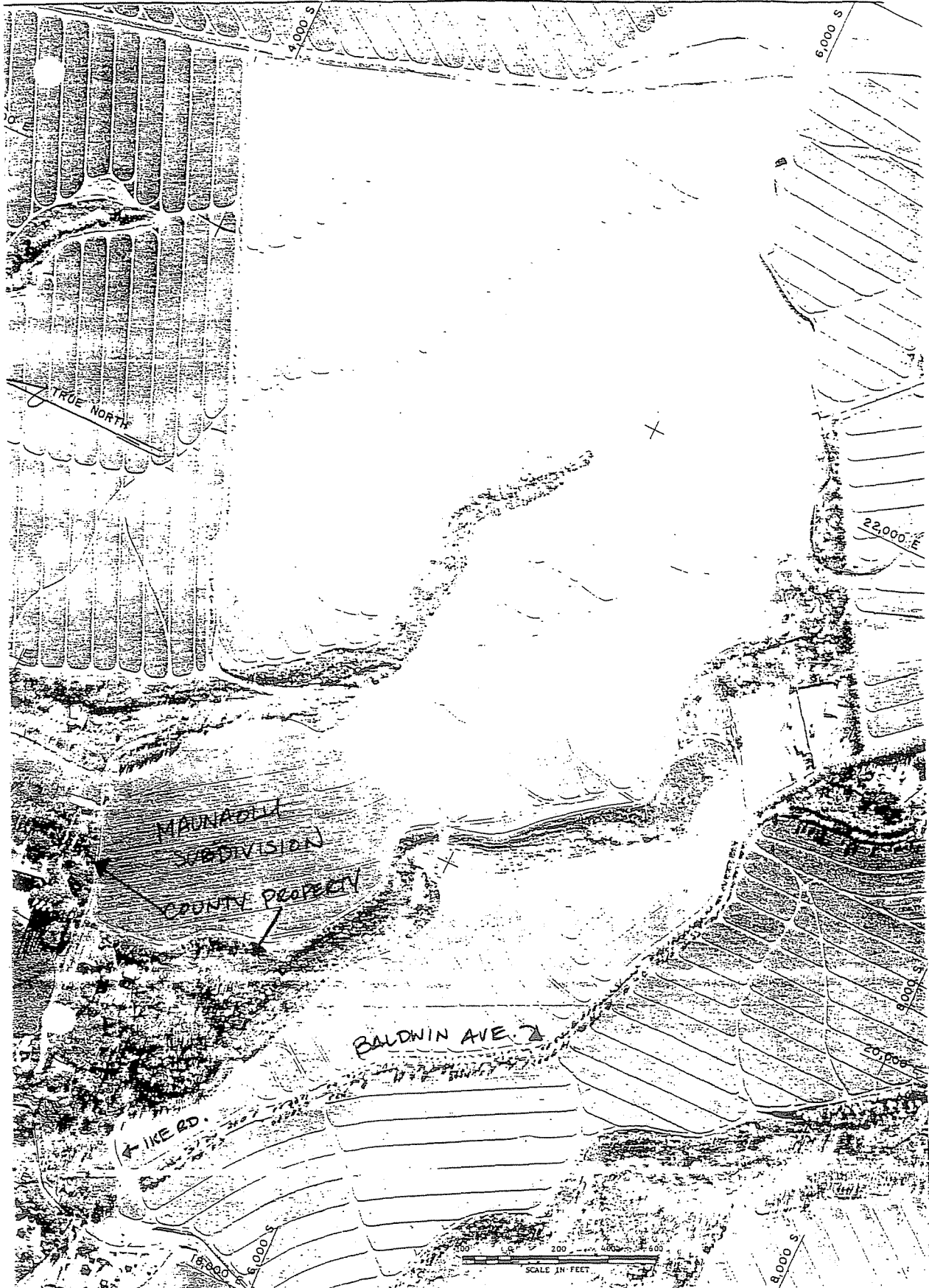


EXHIBIT "A"

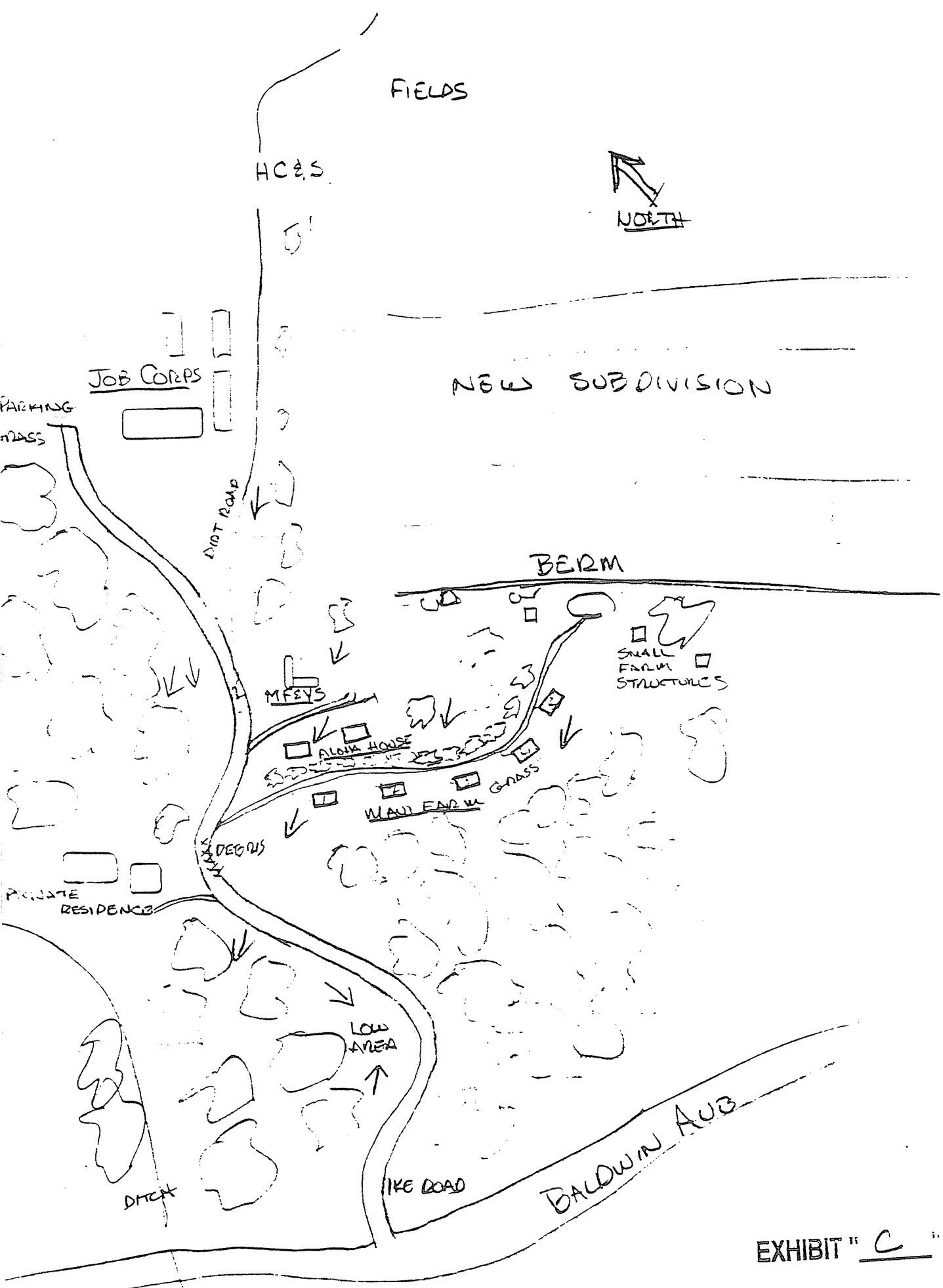


CORPORATION
 ANT STREET
 HAWAII

PHOTO MAP
 OF MAUI PINEAPPLE CO
 FIELD 41
 MAUI, HAWAII

SCALE 1" = 200'
 ORIGIN OF COORD PUUNENE
 DATE OF PHOTO 8-21-64

EXHIBIT "B"

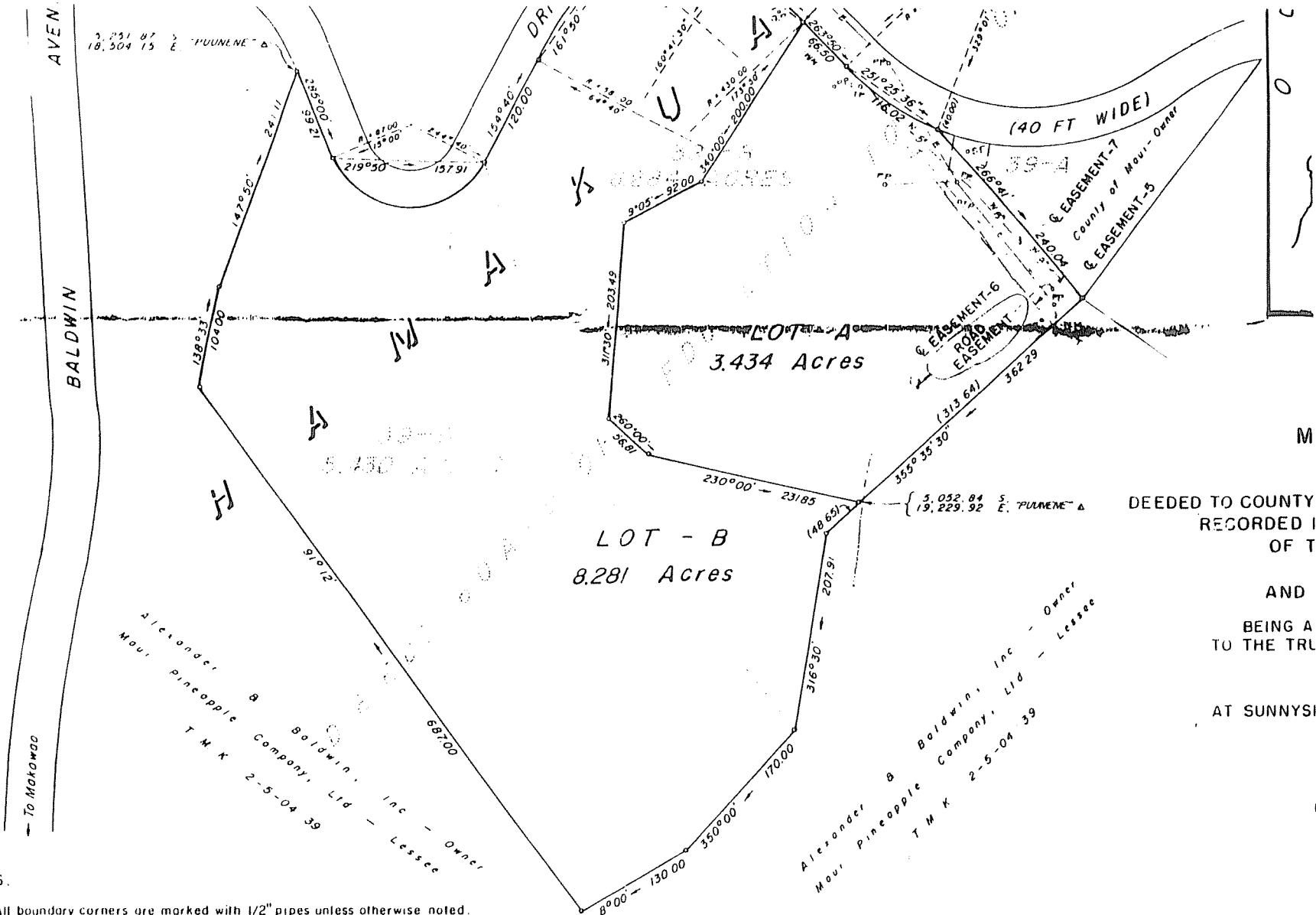


NOT TO SCALE

STRUCTURES IN APPLY LOCATION. NUMBER OF STRUCTURES APPROX.

D. NOTCHMAN 3-3-72

EXHIBIT "C"



DEEDED TO COUNTY
 RECORDED I
 OF T
 AND
 BEING A
 TO THE TR
 AT SUNNYSI

EXHIBIT 'D'

NOTES.

- 1 All boundary corners are marked with 1/2" pipes unless otherwise noted.
- 2 All azimuths and record coordinates refer to Government Survey Triangulation Station "PUUNENE"
- 3 Owners of adjoining lands are from records of the Tax Maps Branch
- 4 Road easement (40-foot wide) in favor of Alexander and Baldwin, Inc.
- 5 Easement 5 (25-foot wide) for electric purposes in favor of Maui Electric Company, Ltd.
- 6 Easement 6 (25-foot wide) for telephone and telemark purposes in favor of Hawaiian



To Makawao

BALDWIN AVENUE

S. 231.47 2
 18,504.15 E "PUUNENE" Δ

S. 052.84 5
 19,229.92 E "PUUNENE" Δ

Alexander & Baldwin, Inc - Owner
 Maui Pineapple Company, Ltd - Lessee
 T M K 2-5-04 39

Alexander & Baldwin, Inc - Owner
 Maui Pineapple Company, Ltd - Lessee
 T M K 2-5-04 39