

# REQUEST FOR LEGAL SERVICES

**Date:** March 7, 2024  
**From:** Shane M. Sinenci, Chair  
Water Authority, Social Services, and Parks Committee

TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Kristina C. Toshikiyo, Esq.

**Subject:** RESOLUTION 24-48, AUTHORIZING THE GRANT OF REAL PROPERTY TO HALE MAKUA HEALTH SERVICES (WASSP-9)

**Background Data:** Please see revised resolution. Please submit your response to wassp.committee@mauicounty.us with a reference to WASSP-9.

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

Requestor's signature  Shane M. Sinenci, Chair	Contact Person <u>Clarissa MacDonald</u> (Telephone Extension: <u>7135</u> )
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ROUTINE (WITHIN 15 WORKING DAYS)       RUSH (WITHIN 5 WORKING DAYS)  
 PRIORITY (WITHIN 10 WORKING DAYS)       URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): \_\_\_\_\_  
REASON: \_\_\_\_\_

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

wassp:ltr:009acc01:clm

Attachment

# Resolution

**No. 24-48, CD1**

AUTHORIZING THE GRANT AND DISPOSITION OF REAL PROPERTY  
LOCATED AT 472 LAAU STREET, KAHULUI, HAWAII,  
TO HALE MAKUA HEALTH SERVICES

WHEREAS, the County of Maui (“County”) is the owner of a parcel of real property located at 472 Laau Street, Kahului, Hawaii, tax map key number (2) 3-8-007:084 (“Property”), comprising 8.02 acres, shown as Lot 2-A-1 in the attached Exhibit “1”; and

WHEREAS, since 1977, Hale Makua Health Services (“HMHS”) has leased the Property from the County to provide and operate healthcare programs including long-term nursing care, rehabilitation services, and adult day health; and

WHEREAS, HMHS’s current lease with the County commenced on January 1, 1995, for a term of 75 years; and

WHEREAS, HMHS’s mission is, in part, to create environments that enhance the lives of the County’s frail and vulnerable elderly, as described in the attached Exhibit “2”; and

WHEREAS, on April 1, 2022, the Maui County Council adopted Resolution 22-69, CD1, entitled “AUTHORIZING THE DISPOSITION OF REAL PROPERTY TO HALE MAKUA HEALTH SERVICES”; and

WHEREAS, Resolution 22-69, CD1, authorized the disposition of a portion of County real property described as tax map key (2) 3-8-007:097, more commonly known as the Kahului Community Center Park’s “Gateball Field”; and

WHEREAS, the “Gateball Field” will be subdivided from the entire County-owned parcel prior to transferring title to HMHS; and

WHEREAS, HMHS further desires to obtain the Property from the County to assist in its efforts to improve and expand its healthcare services to the community; and

## **Resolution No. 24-48, CD1**

WHEREAS, in recognition of the need to expand healthcare services to the community, the County finds that it is in the public interest to dispose of the Property and to grant the Property to HMHS; and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions relating to the allowable uses by HMHS and remedies available to the County in the event of a violation of the terms of use are attached as Exhibit “3”; and

WHEREAS, if the Council approves the grant of the Property, HMHS will consolidate the Property with the subdivided “Gateball Field” into one large parcel; and

WHEREAS, in accordance with Section 3.36.090, Maui County Code, the Council may authorize the grant of real property by resolution; and

WHEREAS, in accordance with Section 3.44.020, Maui County Code, the Council may dispose of County real property by adoption of a resolution; and

WHEREAS, in accordance with Section 3.44.030(A), Maui County Code, the Council may waive the requirement of public auction, after public notice, for the disposition of County real property in a manner other than public auction, by adoption of a resolution approved by two-thirds of its members; and

WHEREAS, in accordance with Section 3.44.070(A), Maui County Code, the Council may waive the requirement of appraisal for the disposition of real property in fee simple by adoption of a resolution; now, therefore,

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

1. That it authorizes the grant and disposition of real property to Hale Makua Health Services in accordance with Sections 3.36.090 and 3.44.020, Maui County Code;
2. That the Council finds it is in the public interest to waive the requirements of public auction and appraisal for the

**Resolution No. 24-48, CD1**

disposition of real property in accordance with Sections 3.44.030(A) and 3.44.070(A), Maui County Code;

3. That it authorizes the Mayor, or the Mayor's duly authorized representative, to execute all necessary documents associated with the grant and disposition of real property; and
4. That certified copies of this Resolution be transmitted to the Mayor; Director of Housing and Human Concerns; Director of Finance; and Wesley Lo, Chief Executive Officer, Hale Makua Health Services.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

wassp:misc:009reso01:clm

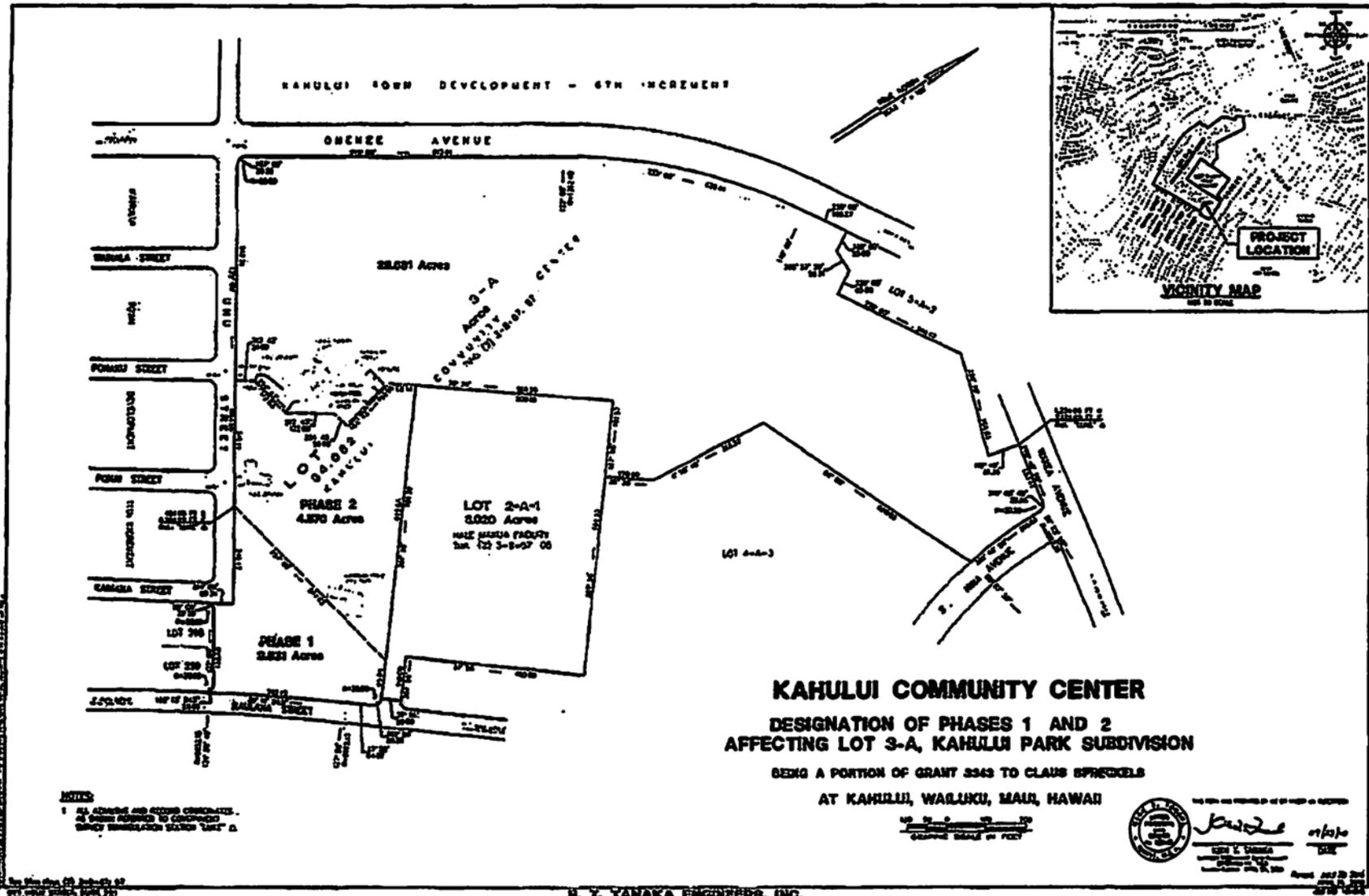


EXHIBIT "1"



**COUNTY OF MAUI**  
 200 South High Street  
 Wailuku, Hawaii 96793

Date of Application: 1/30/2024

**GRANTS OF REAL PROPERTY**

**APPLICANT**

Legal Name of Organization: Hale Makua Health Services  
 Address: 472 Kaulana Street  
Kahului, HI 96732  
 Director/Manager: Edward Romson (Chair, Board of Directors)  
 Phone: (808) 446-5531 Fax: \_\_\_\_\_  
 Organization President: Wesley Lo (CEO)  
 Phone: (808) 871-9217 Fax: \_\_\_\_\_  
 Contact Person (Grant Writer): Traci Nunokawa  
 Title: Administrative Director Phone: (808) 298-1616

Total annual budget of organization: \$ \_\_\_\_\_

Has the applicant applied for funds from the County of Maui this fiscal year?

Yes Source: Active multi-year grants with OED (2) and DHHC (1)  No

*Please check one:*

Property LEASE ( If intended use an entire parcel )  LICENSE to occupy ( If intended use is for a portion of a parcel )

County Department Responsible for Property, Parcel, or Facility: Department of Housing and Human Concerns

TERM REQUESTED: \_\_\_\_\_ Years TYPE OF REQUEST:  New  Renewal  Extension

**DESCRIPTION OF PROPERTY:**

Tax Map Key: 3-8-007-084  
 Acreage or square footage of parcel: 8.020 acres  
 Address of parcel (if available): 472 Kaulana Street, Kahului, HI 96732

Please provide a Tax Map Key, available at <http://www.co.maui.hi.us/index.asp?NID=757>.

In one (1) sentence, please DESCRIBE THE INTENDED USAGE of the facility/site for which the lease/license is being requested.

**Transfer of the subject property will enable Hale Makua Health Services to improve and expand existing healthcare services for the County's frail and vulnerable elderly population.**



**Grants of Real Property**  
**NARRATIVE APPLICATION**

**INSTRUCTIONS:**

- Λ Be sure to respond to each of the following questions.
  - Λ State the question OR number of your responses to correspond with each question.
  - Λ Please limit your narrative response to ten (10) pages.
1. Provide a description of the nature and purpose of the agency requesting the lease or license-to-occupy, including:
    - goals and objectives of the organization
    - population clientele served
    - services provided (*including numbers served*)
    - sources of funding/support for the organization's services and activities
    - administrative/management structure
  2. Please explain the intended usage of the facility (or site) for which the lease/license-to-occupy is being requested. Include information about:
    - the specific use(s)/activity(ies) to be conducted at the facility/site
    - the reason and justification of need for these services/activities
    - the target population to be served at the facility/site
    - the estimated average number of people using the facility/site on a weekly basis
    - the frequency of use (i.e. daily, monthly, quarterly, etc. and number of hours per day) of the facility/site
  3. Explain how/where the services/activities described above are currently being carried out and how use of the requested facility/site will improve delivery of these services/activities.
  4. Describe the management plan for the facility/site. Who and how will daily management of the facility/site be handled?
  5. What would the impact be on the services/activities to be conducted at/through the facility/site IF a lease/license to occupy is not granted?
  6. If major improvements/construction is planned on the requested site, please provide the following:
    - Budget including projected costs and funding sources and amounts. Please identify firm/committed funding sources and amounts.
    - Description of the planned improvement including plans or at least a conceptual drawing(s) of the facility.



**Grants of Real Property**  
**APPLICANT SUBMITTAL/QUALIFYING STANDARDS**

Hale Makua Health Services (Applicant) submits this application to receive a grant of real property lease/license to occupy for improvement and expansion of healthcare services (Project Title) and hereby agrees to utilize and manage the real property according to the terms and conditions of the lease/license to occupy agreement. The Department of Housing and Human Concerns reserves the right to revoke the lease/license to occupy agreement at any time the applicant/grantee is not in compliance with the terms of said agreement and in accordance with the cancellation provisions contained in said agreement. It is the policy of the County of Maui and for those who do business with the County to provide equal employment opportunities to all persons regardless of race, physical disabilities, color, religion, sex, age or national origin as mandated by Federal Civil Rights Act, as amended, and any other federal state laws relating to equal employment opportunities.

**AUTHORITY AND CAPACITY OF APPLICANT**

The applicant assures that it has the authority and capacity to develop and submit the application, and to manage the real property for which a lease/license to occupy is being requested and to carry out programs pursuant to the application.

**QUALIFYING STANDARDS FOR APPLICANTS**

An applicant making a request for a grant of real property shall meet all of the following standards: (Please check all boxes which your organization complies with)

- Be a profit organization incorporated under the laws of the State of Hawaii, or a nonprofit organization determined to be exempt from federal income tax by the Internal Revenue Service and in good standing with the State Department of Commerce and Consumer Affairs;
- As a nonprofit organization have a board of directors whose members have no conflict of interest and serve without compensation;
- Have signed bylaws, charter of incorporation and policies which describe the manner in which business is conducted. Such documents shall include provisions relating to nepotism, potential conflict of interest situations, non discrimination and financial audit requirements;
- Be licensed and accredited in accordance with applicable requirements of federal, state and county governments, as necessary;
- Be current in all state, federal and local tax payments and;
- Post and maintain the following drug free policy for staff and program participants, "This is a tobacco, alcohol and drug free work place and program." Wherever appropriate, the applicant also agrees to integrate alcohol, tobacco, and other drug free messages and prevention materials, information and activities into programs/activities it conducts at the County property for which a lease/license to occupy is being requested.

**RECORDS AND REPORTS**

The applicant shall submit an annual report using the prescribed format as appended to the lease/license to occupy agreement.

**GRANT CONDITIONS**

The applicant agrees to comply with the following conditions before receiving a grant of real property:

- A. Employ and/or have under contract such person(s) as are qualified to manage the real property for which a lease/license to occupy is requested;
- B. Employ and/or have under contract such person(s) as are qualified to engage in the activity to be conducted in the County facility for which a lease/license to occupy is requested; and provided that for nonprofit organizations, no two or more members of a family or kin of the first or second degree shall be employed or under contract by the organization;
- C. Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, physical handicap, marital status, parental status, arrest and court record, National Guard participation, or HIV infection;
- D. Provide certification of necessary insurance;
- E. Comply with such other requirements to ensure adherence by the provider or recipient with applicable federal, state, and county laws; and
- F. Allow the Department of Housing and Human Concerns and County Auditors full access to records, reports, files, and other related documents in order that the program, management, administrative and fiscal practices of the recipient may be monitored and evaluated to assure the proper and effective administration of the program/activities for which use of County real property is being requested.

**RECOGNITION**

The grant recipient will give the County of Maui appropriate recognition in all County-funded programs, audio/visual, publicity and advertising, and printed materials.

**GRIEVANCE PROCEDURE**

The applicant will adopt a grievance procedure to assure proper accounting for any concerns and complaints about its programs or services that may arise from its members, employees, clients or from other members of the public.

**DISCLOSURE OF INFORMATION**

All information, data, or any other material provided to the County by virtue of this application shall be subject to the Uniform Practice Act (UIPA), Chapter 92F, Hawaii Revised Statutes. All such material is deemed government record, open to the public and may be provided to other public and/or private funding sources.

**CONTINUED ELIGIBILITY**

Any recipient or provider who withholds or omits any material facts or deliberately misrepresents such facts to the County of Maui shall be in violation of the terms of this agreement. Such recipient or provider shall be prohibited from receiving any grant, subsidy, purchase of service, or lease/license agreement from the County of Maui for a period of up to five years.

**UNSIGNED PROPOSALS WILL NOT BE ACCEPTED!**

Wesley Lo  
Wesley Lo | Jan 13 2024 10:04 HST

Signature of President/Chairperson/Other Authorized Officer

Date

**Wesley Lo, CEO**

Print Name and Title

Edward Romson

Signature of Director/Manager Authorized Officer

Date

**Edward Romson (Chair, Board of Directors)**

Print Name and Title



COUNTY OF MAUI

Real Property Lease/License Application

Financial Information

Include a copy of the current year operational budget for the programs/services conducted at/through the facility for which you are requesting a lease/license to occupy. Show separately County grant income and expenses, if any.

Form with 6 numbered questions regarding fees, commercial activities, budget approval, meeting minutes, bank reconciliations, and pending litigation. Includes checkboxes for YES/NO and text boxes for explanations.

I hereby certify that this information is true and correct to the best of my knowledge. Agency: Hale Makua Health Services Phone: (808) 871-9217 Prepared by: Wesley Lo, CEO Certified by: Edward Romson, Board Chair



COUNTY OF MAUI

## Grants of County Real Property

### SUPPORTING DOCUMENTS CHECKLIST

In accordance with the rules and regulations to seek a grant of County real property, please submit the following documents or items in the order listed below:

- One (1) complete ORIGINAL application – signed and dated – with all supporting documents.
- Three (3) copies of only the Narrative Section of the completed application.

**ONE (1) OF EACH OF THE FOLLOWING DOCUMENTS:** Attach only to the ORIGINAL grant application document, the following:

- **ORGANIZATIONAL FLOW CHART** (show placement within the organization of the program for which a lease/license to occupy is requested)
- **FINANCIAL INFORMATION** (including operational budget)
- **LIST OF CURRENT BOARD OF DIRECTORS** and Officers to include:
  - Dates of expiration of terms of office
  - Board of Directors meetings schedule for the current year
- **ANNUAL FINANCIAL STATEMENTS** – Agency's past two (2) years' annual financial statements:
  - 1) Prepared by a qualified accountant and approved/signed by the Executive Director; **OR**
  - 2) Prepared and signed by a Certified Public Accountant (CPA)
- **CURRENT AUDIT** – Provide most recent/current Audit with Management Letter (if none, so state and submit a certification signed by a CPA that none was produced. All nonprofit organizations must have an audit prepared by an independent CPA at least every three (3) years.
- **IRS FORM 990** – Most current document for fiscal/calendar year.
- **INTERNAL REVENUE SERVICE (IRS) LETTER** – Verifying agency's tax-exempt status for nonprofit organizations; **OR** verification of current tax status for profit organizations.
- **ARTICLES OF INCORPORATION:** Must be signed and dated.
- **BY-LAWS:** Must contain specific clauses regarding nepotism and conflict of interest and must be signed and dated.
- **CERTIFICATE OF GOOD STANDING** – Must be an original or certified copy; stamped, signed, and dated by the Internal Revenue Service (IRS) and the Hawaii State Department of Commerce and Consumer Affairs (DCCA).
- **LIABILITY INSURANCE CERTIFICATE** – Current and valid; Comprehensive liability insurance must be issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii; and the insurance certificate must state the following:
  - Λ County named as additional insured
  - Λ No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000
  - Λ No erosion of limit by payment of defense costs.
  - Λ Minimum annual aggregate limit of \$2,000,000.
  - Λ Carrier must be rated no less than "A-" as established by "AM Best" or "Standard & Poor" ratings.

## Grants of Real Property

Applicant: Hale Makua Health Services

### NARRATIVE APPLICATION

1. Provide a description of the nature and purpose of the agency requesting the lease or license-to-occupy, including:

- goals and objectives of the organization
- population clientele served
- services provided (*including numbers served*)
- sources of funding/support for the organization's services and activities
- administrative/management structure

#### Goals and objectives of the organization:

Hale Makua Health Services (HMHS), a 501(c)3 healthcare organization, was established in 1946 to care for the frail, vulnerable elderly who needed 24-hour care and had no family or resources to provide that care. is the only freestanding provider of nursing home care on Maui. HMHS operates two licensed intermediate and skilled nursing home facilities (342 beds), a Medicare-certified home health agency and an adult day health program.

HMHS is one of Maui's largest non-government employers, employing over 400 Maui residents in a variety of fields ranging from nursing and nutrition services to human resources and finance. The organization serves over 1,200 frail elderly and disabled individuals in their homes and in the community.

HMHS aims to provide quality care to Maui's frail elders and disabled individuals of all ages throughout the continuum of healthcare services that the organization provides. To support this effort, HMHS seeks to continue its growth and expand capacity to prepare for an increased need for services.

#### Population clientele served:

HMHS serves Maui County residents and visitors of all ages, primarily individuals over age 65 and low income.

#### Services provided (including numbers served):

The organization primary services are centered on two nursing homes in Wailuku (90 beds) and Kahului (252 beds) that provides skilled and intermediate care nursing care, including inpatient and outpatient physical, occupational and speech therapy. HMHS nursing homes serve about 750 individuals annually. The only other nursing home provider is Kula Hospital (104 beds).

HMHS also operates a Medicare-certified home health care agency, which provides skilled nursing and physical, occupational and speech therapy in the comfort of clients' own homes. About 400 individuals are served annually through this program.

The adult day health program provides day care services and an exercise program for clients during the day. This program serves about 75 seniors annually.

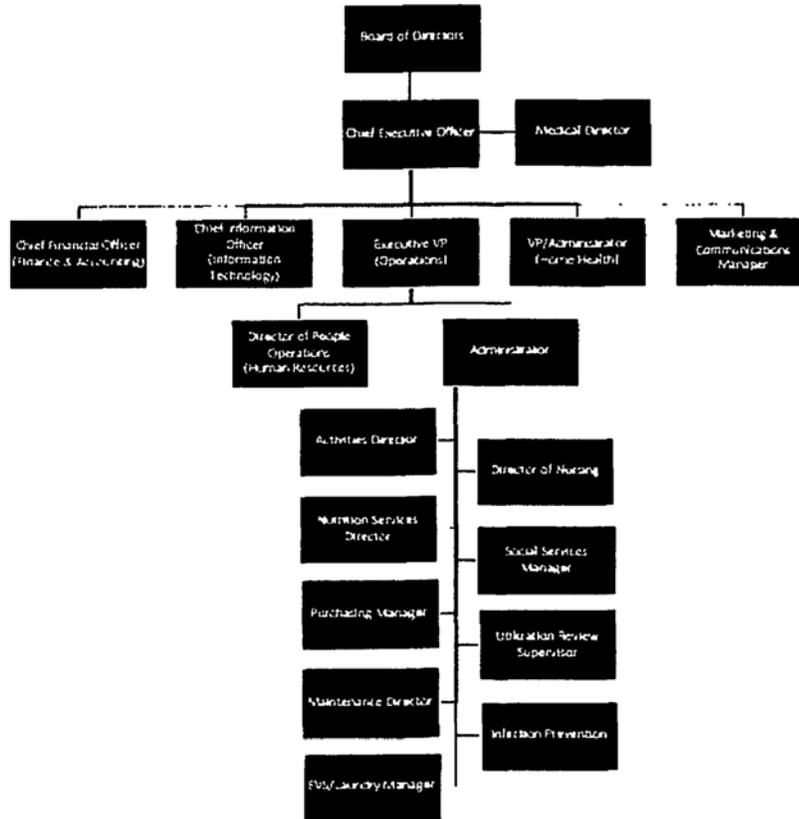
#### Sources of funding/support for the organization's services and activities

Funding of HMHS' operations comes primarily through government reimbursements from Medicare and Medicaid. Over 85% of Hale Makua Wailuku residents and over 75% of the Hale Makua Kahului residents are Medicaid recipients. Medicare provides coverage for 6% of residents at the Kahului facility, and about 2% at the Wailuku facility. Private or Kaiser healthcare insurance provides coverage for an average of 11-13% of HMHS residents.

HMHS is actively engaged in fundraising to support its mission and programs. Through federal, state and county grants, special events, annual giving program and other fundraising activities, HMHS has raised \$1.1 million in 2022.

Narrative Application (Hale Makua Health Services)

Administrative/management structure



2. Please explain the intended usage of the facility (or site) for which the lease/license-to-occupy is being requested. Include information about:

- the specific use(s)/activity(ies) to be conducted at the facility/site
- the reason and justification of need for these services/activities
- the target population to be served at the facility/site
- the estimated average number of people using the facility/site on a weekly basis
- the frequency of use (i.e. daily, monthly, quarterly, etc. and number of hours per day) of the facility/site

The specific use(s)/activity(ies) to be conducted at the facility/site

The site will allow HMHS to continue its efforts to improve and expand existing healthcare services for the County's frail and vulnerable elderly population.

The reason and justification of need for these services/activities

According to the 2010 census, Maui's resident population is expected to grow from 129,471 in 2005 to 176,687 in 2030, indicating a population increase of 16% between 2010 and 2020. The population of those aged 75 and older is expected to continue to increase.

The surge of Baby Boomers who have not yet reached the typical age for nursing home level of care, and an overall longer expectancy, will further contribute to the increased demand for these services.

Narrative Application (Hale Makua Health Services)

Maui also sees an in-migration of retirees. By 2030, it is anticipated that individuals over the age of 65 will represent 20% of Maui's population. In comparison, only 5.88% of Maui's population was over the age of 65 in 1970. This indicates that there will be an even greater number of individuals exiting the workforce and more individuals who may eventually need nursing care as they age.

The target population to be served at the facility/site

The target population are seniors that live on the island of Maui, as well as individuals who need skilled therapy in recovering from injury or illness.

The estimated average number of people using the facility/site on a weekly basis

Approximately 261 individuals could use the facilities at any given time, plus staff.

The frequency of use (i.e. daily, monthly, quarterly, etc. and number of hours per day) of the facility/site

Individuals being provided housing and rehabilitation services on-site would most likely use the site around the clock daily. Individuals attending the adult day health program could vary in attendance of 8-9 hours on 1-6 days per week.

3. Explain how/where the services/activities described above are currently being carried out and how use of the requested facility/site will improve delivery of these services/activities.

Currently, HMHS provides rehabilitation, nursing home and adult day health services at its Kahului facility located at 472 Kaulana Street. Licensed for 252 intermediate and skilled nursing home beds and adult day health, this facility also houses administrative services and a kitchen that supports the Wailuku nursing home. Grant of the property will better position HMHS to respond to a growing demand for services through enhancement of existing infrastructure and development of new facilities.

4. Describe the management plan for the facility/site. Who and how will daily management of the facility/site be handled?

Day to day oversight of the existing Hale Makua Kahului facility is provided by a licensed Administrator, along with management in clinical and ancillary support functions.

5. What would the impact be on the services/activities to be conducted at/through the facility/site IF a lease/license to occupy is not granted?

Current operations would continue; however, this site presents an opportunity for HMHS to expand its ability to accommodate the increased demand for care and services on Maui.

Built in 1966 and 1978, respectively, both Wailuku and Kahului facilities are aging. HMHS has completed a study on the cost to maintain and repair the facilities. Without a change to current programming and reimbursement, the cost to maintain and repair the buildings over the next few years are so prohibitive, they would jeopardize the organization's ability to continue providing care for Maui's frail and vulnerable elderly.

6. If major improvements/construction is planned on the requested site, please provide the following:

- Budget including projected costs and funding sources and amounts. Please identify firm/committed funding sources and amounts.
- Description of the planned improvement including plans or at least a conceptual drawing(s) of the facility.

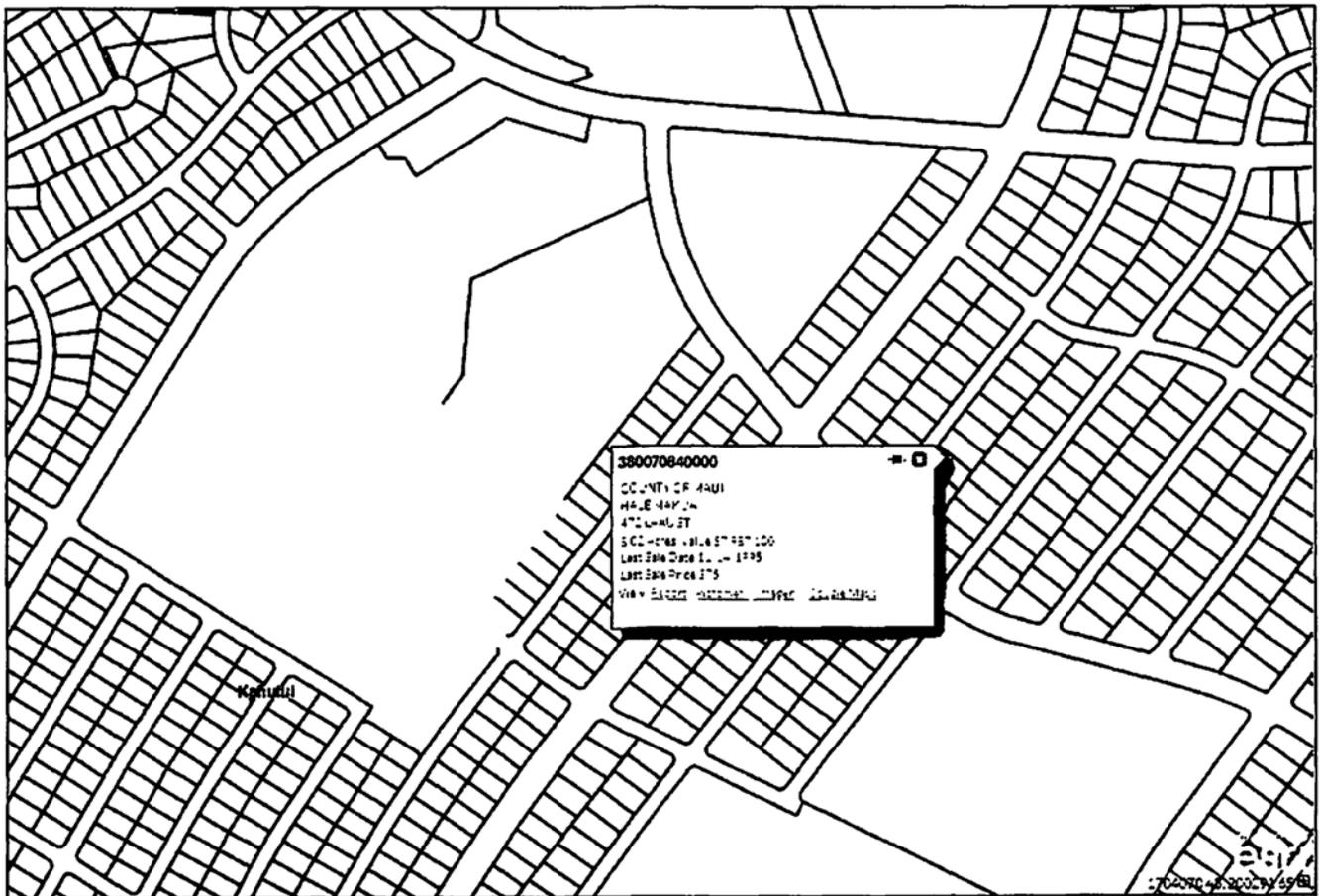
Narrative Application (Hale Makua Health Services)

Budget including projected costs and funding sources and amounts. Please identify firm/committed funding sources and amounts.

Not applicable to grant of the subject property.

Description of the planned improvement including plans or at least a conceptual drawing(s) of the facility.

Not applicable to the grant of the subject property.



# DHHC Lease Application (Rev. 04.2021)\_HMHS with Narrative App2

Final Audit Report

2024-01-30

Created:	2024-01-30
By:	Traci Nunokawa (tnunokawa@ohanapacific.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeVoMC2X9bo3wsGxSZyedDubkRT2iqZIF

## "DHHC Lease Application (Rev. 04.2021)\_HMHS with Narrative App2" History

 Document created by Traci Nunokawa (tnunokawa@ohanapacific.com)  
2024-01-30 - 8:01:18 PM GMT

 Document emailed to Wes Lo (wes.lo@ohanapacific.com) for signature  
2024-01-30 - 8:02:14 PM GMT

 Email viewed by Wes Lo (wes.lo@ohanapacific.com)  
2024-01-30 - 8:03:33 PM GMT

Signer Wes Lo (wes.lo@ohanapacific.com) entered name at signing as Wesley Lo  
2024-01-30 - 8:04:36 PM GMT

Document e-signed by Wesley Lo (wes.lo@ohanapacific.com)  
Signature Date: 2024-01-30 - 8:04:38 PM GMT - Time Source: server

 Document emailed to Edward Romson (romson@rocair.com) for signature  
2024-01-30 - 8:04:40 PM GMT

 Email viewed by Edward Romson (romson@rocair.com)  
2024-01-30 - 8:45:34 PM GMT

Document e-signed by Edward Romson (romson@rocair.com)  
Signature Date: 2024-01-30 - 8:46:05 PM GMT - Time Source: server

 Agreement completed.  
2024-01-30 - 8:46:05 PM GMT

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL :

COUNTY OF MAUI  
DEPARTMENT OF FINANCE  
200 S. HIGH STREET  
WAILUKU, HAWAII 96793

TYPE OF DOCUMENT:

(TOTAL PAGES: \_\_\_\_\_)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

PARTIES TO DOCUMENT:

DECLARANT: COUNTY OF MAUI

TAX MAP KEY FOR PROPERTY: (2) 3-8-007:084

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this “**Declaration**”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 2024 (the “**Effective Date**”) by the County of Maui, whose address is 200 S. High Street, Wailuku, Hawaii 96793 (hereinafter referred to as “**Declarant**”).

RECITALS:

A. Declarant is the owner of that certain parcel of land situate, lying and being at Kahului, Maui, Hawaii, designated on the tax maps of the Second Taxation Division of the

EXHIBIT "3"

State of Hawaii as 3-8-007:084, commonly referred to as the “Hale Makua Kahului” (the “**Property**”), and more particularly described in Exhibit A attached hereto.

B. Declarant intends to convey the Property to Hale Makua Health Services, a Hawaii domestic nonprofit corporation (“**Hale Makua**”), which provides healthcare and other related services.

C. In connection with the conveyance of the Property to Hale Makua concurrently herewith, Declarant wishes to subject the Property to the provisions of this Declaration restricting the use of the Property as set forth below.

ARTICLE 1:  
DECLARATION AND PERMITTED USES

1.1 Declaration. For the purposes set forth in this Declaration, Declarant declares that the Property is and shall be subject to the covenants, conditions and restrictions set forth in this Declaration, until this Declaration is terminated or withdrawn by Declarant, or Declarant’s successors or assigns. All covenants, conditions and restrictions set forth in this Declaration are made for the benefit of the Property, Declarant and the residents of the County of Maui; and shall operate as covenants running with and touching the land described in Exhibit A attached hereto, and shall apply to and bind the respective owners and successors in interest of any of the owners from time to time of the Property, and all lessees, sublessees, licensees or vendees of all or any portion of the Property, and shall be enforceable as such in accordance with the terms and provisions of this Declaration.

1.2 Permitted Uses. The Property shall be used solely for the provision of healthcare and related, complementary and/or support services and uses, including, but not limited to, the provision of residential nursing care, outpatient services and medical clinics, educational services, rehabilitation services, ancillary care and alternative healthcare services such as traditional Chinese medicine.

1.3 Change in Use. Any change, expansion or modification to the permitted uses shall be subject to (i) the prior written approval of Declarant, which approval may be withheld in Declarant’s sole discretion, and (ii) the consent of the Maui County Council.

1.4 Abandonment; Condemnation. In the event that the Property is abandoned, then in addition to any other remedy available to Declarant, Declarant may undertake to acquire the Property by condemnation. In such action, the parties agree that the value of the Property shall be \$1.00 and the value of the improvements thereon constructed by the owner of the Property after the date of this Declaration shall be the tax assessed value thereof determined by the County of Maui for the fiscal year in which the condemnation proceedings are initiated. For purposes of this Agreement, the Property will be deemed to be “abandoned” in the event the Property is not open for business for a permitted use for a period of twelve (12) consecutive months, excluding periods of non-use due to force majeure and renovations.

ARTICLE 2:  
DECLARANT REMEDIES

2.1 Remedies. Declarant and only Declarant shall have the right, power, and authority to enforce the covenants under this Declaration. Declarant's sole remedy under this Declaration shall be the enforcement of the foregoing covenants at law or in equity, including, without limitation, specifically enforcing the performance thereof. Declarant shall have no obligation to enforce any of the provisions of this Declaration. The failure to enforce any provision hereof shall not constitute a waiver of any right to enforce such provision or any other provision hereof.

2.2 Certain Protections. No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair (a) the conveyance of the Property by Declarant to Hale Makua; or (b) any lien of any mortgage taken in good faith and for value, or (c) the title or interest acquired in the Property by any purchaser upon the foreclosure of any mortgage or other lien on the Property. Any such purchaser on foreclosure shall, however, take subject to all provisions of this Declaration.

ARTICLE 3:  
MISCELLANEOUS

3.1 No Third Party Beneficiaries. This Declaration is not intended, and shall not be deemed or construed, to confer any rights, power or privileges on any person or entity other than Declarant.

3.2 Governing Law; Venue. The interpretation, construction and enforcement of this Declaration, and all matters relating hereto, shall be governed by the laws of the State of Hawaii. Any judicial proceeding brought by any party on any dispute arising out of this Declaration or any matter related thereto shall be brought in the Second Circuit Court of the State of Hawaii.

3.3 Notices. Any notices, requests, demands, consents and other communications provided for or contemplated under this Declaration may be given sufficiently for all purposes in writing and: (a) mailed as registered or certified mail, addressed to such party at its post office address specified below or the last such address designated by such party in writing to the other; or (b) delivered personally.

Declarant:

The County of Maui  
200 S. High Street

Wailuku, Hawaii 96793  
Attention: Department of Finance

Hale Makua:

Hale Makua Health Services  
472 Kaulana Street  
Kahului, Hawaii 96732  
Attention: Wesley Lo

With a copy to:

Chun Kerr LLP  
999 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Attn: Danton S. Wong

3.4 Severability. If any term, provision, covenant or condition of this Declaration should be held by any court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Declaration shall remain in full force and effect.

3.5 Amendment; Termination. Except as otherwise specifically provided herein, the terms, covenants, conditions and restrictions set forth in this Declaration may only be amended or terminated, in whole or in part, upon the written approval thereof by the Declarant and the owner of the Property and the recordation of a written instrument in the Bureau of Conveyances of the State of Hawaii or in the Land Court of the State of Hawaii, if applicable, setting forth such amendment or termination signed by the Declarant with the joinder of the owner of the Property.

*[The Remainder of This Page Intentionally Left Blank;  
Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be duly executed and delivered as of the Effective Date.

COUNTY OF MAUI

By: \_\_\_\_\_  
RICHARD T. BISSEN, JR.  
Its Mayor

REVIEWED AND APPROVED:

\_\_\_\_\_  
LORI TSUHAKO  
Director of the Housing and Human Concerns

ACCEPTED:

\_\_\_\_\_  
SCOTT K. TERUYA  
Director of Finance

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
KRISTINA C. TOSHIKIYO  
Deputy Corporation Counsel

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared RICHARD T. BISSEN, JR., 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 pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said RICHARD T. BISSEN, JR. acknowledged the said instrument to be the free act and deed of said County of Maui.

\_\_\_\_\_  
Name:

Notary Public, State of Hawaii

My commission expires:

(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Declaration of Covenants, Conditions and Restrictions

Doc. Date: \_\_\_\_\_ or  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

(Official Stamp or Seal)

\_\_\_\_\_  
Printed Name of Notary

**EXHIBIT A**

**Property Description**

DESCRIPTION  
**LOT 2-A-1**  
**KAHULUI PARK SUBDIVISION**

All of that certain parcel of land, being Lot 2-A-1 of the Kahului Park Subdivision (the map thereof not being recorded), being all of Lot 4-A-1 and portion of Lot 5-A-1 of said Kahului Park Subdivision, being also a portion of Grant 3343 to Claus Spreckels, situated at Wailuku, Island and County of Maui, State of Hawaii and being more particularly described as follows:

Beginning at a found 3/4-inch pipe at the easterly corner of this parcel of land, on the northwesterly boundary of Lot 91 of the Kahului Town Development, 9th Increment, File Plan 954, said point being also the southerly corner of Lot 4-A-3 of said Kahului Park Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being:

61.13 feet North  
7,034.20 feet East

and running by azimuths measured clockwise from true South:

1. 37° 56' 00" 450.00 feet along Lots 91 to 97, inclusive, of said Kahului Town Development, 9th Increment, File Plan 954 and along the remainder of said Grant 3343 to Claus Spreckels to a 3/4-inch pipe;
2. 307° 56' 00" 110.00 feet along Lot 97 of said Kahului Town Development, 9th Increment, File Plan 954 and along the remainder of said Grant 3343 to Claus Spreckels to a found 1/2-inch pipe at the northerly corner of the intersection of Laau and Kaulana Streets;
3. 37° 56' 00" 50.00 feet along the northwesterly end of said Laau Street to a found 1/2-inch pipe at the westerly corner of the intersection of said Laau and Kaulana Streets;
4. 127° 56' 00" 791.39 feet along Lot 3-A of said Kahului Park Subdivision and along the remainder of said Grant 3343 to Claus Spreckels to a 3/4-inch pipe;

5. 216° 30' 00" 500.15 feet along same to a 3/4-inch pipe;
6. 307° 56' 00" 191.57 feet along same to the westerly corner of said Lot 4-A-3 of the Kahului Park Subdivision;
7. 307° 56' 00" 502.33 feet along said Lot 4-A-3 of the Kahului Park Subdivision and along the remainder of said Grant 3343 to Claus Spreckels, to the point of beginning and containing an area of 8.020 Acres, more or less.

Prepared By:

**NEWCOMER-LEE  
LAND SURVEYORS, INC.**  
A Hawaii Corporation

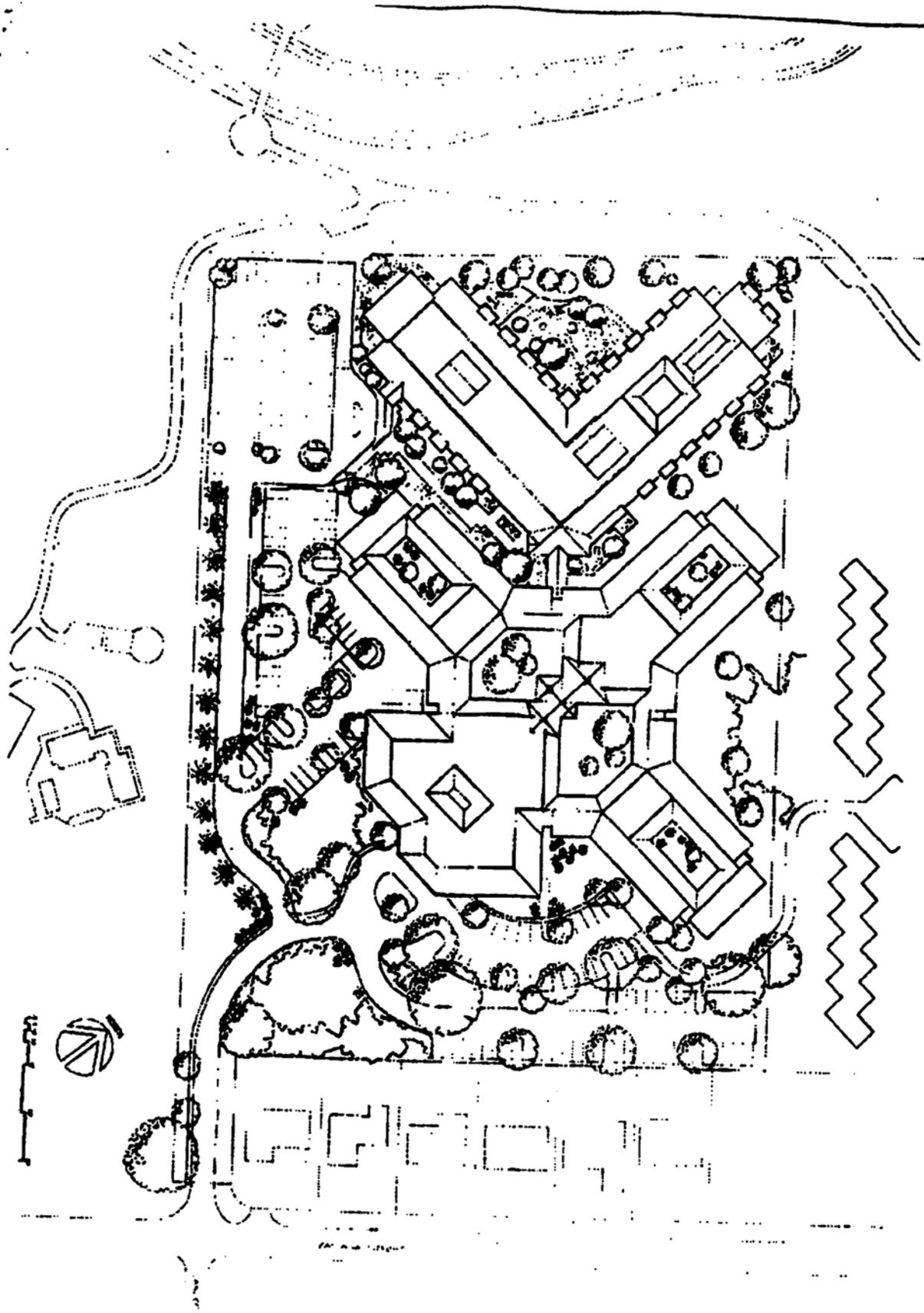


This description was prepared from a survey on the ground performed by me or under my direct supervision.

*Bruce R. Lee*

**BRUCE R. LEE**  
Licensed Professional Land  
Surveyor Certificate No. 5983-LS

1/11/95  
HALE MAKUA  
File 92-3144  
48/EE-LOT 2A.073



SITE PLAN

FALE  
MAKUA  
KAPILI

2010-2011  
10/10/10

ARCHITECTS  
H. A. W. A. I. I.

1  
10/10/10

38°30'00"

599.16

307'66"00"

127'66"00" - 141.97

38°30'00" -  
120.00

LOT 4-A-1  
5.608 ACRES

LOT 2-A-1  
8.020 ACRES

307'66"00"

502.33

791.59

7.0  
Re  
Re

3756'00"

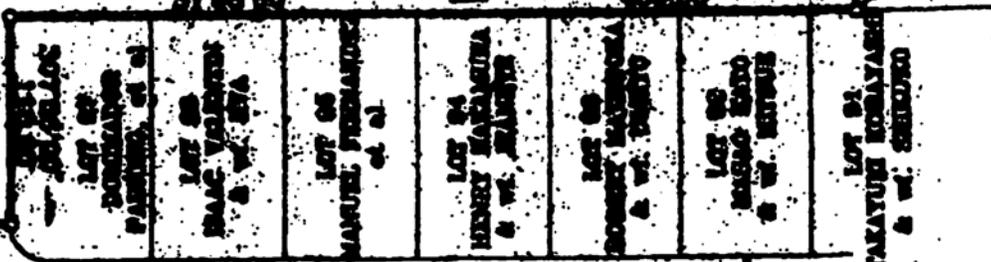
450.00

3756'00" 50.00

52'56"00" 26.28

R=20.00

3756'00"  
64.97



STREET

50' R/W To So. Hina

"KAHULUI TOWN DEVELOPMENT"  
9th INCREMENT

AU ST.

R=6662.16

OWN  
th

AS  
ES

AUS