

October 9, 2018

MEMO TO: IEM-79

F R O M: Elle Cochran, Chair   
Infrastructure and Environmental Management Committee

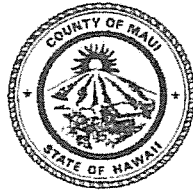
SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO  
PERMITTED USE, OVERUSE AND MANAGEMENT OF THE  
BANYAN TREE PARK IN LAHAINA** (IEM-79)

The attached informational document pertains to Item 79 on the Committee's agenda.

iem:ltr:079atrans01

Attachment

ALAN M. ARAKAWA  
Mayor



KA'ALA BUENCONSEJO  
Director

BRIANNE L. SAVAGE  
Deputy Director

**DEPARTMENT OF PARKS & RECREATION**  
700 Hali'a Nakoa Street, Unit 2, Wailuku, Hawaii 96793

(808) 270-7230  
FAX (808) 270-7934

June 27, 2018

Suzanne D. Case, Chairperson  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Consent to Lease of Lands under Governor's Executive Order  
No. 16 [Tax Map Key: (2)4-6-001:009] and Executive Order  
No. 80 [Tax Map Key: (2)4-6-001:001 por.] to The Lahaina  
Restoration Foundation

Maui

CONTROLLING AGENCY:

County of Maui, Department of Parks and Recreation

APPLICANT:

The Lahaina Restoration Foundation

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

ZONING:

State Land Use District: Urban  
County of Maui CZO: Historic District 1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO  X

CURRENT USE STATUS:

Governor's Executive Order No. 16 and No. 80 to County of Maui  
for Public purposes.

**ITEM M-10**

LEASE TERMS & CONDITIONS:

LOCATION:

Portions of Government lands situated at Lahaina, Maui identified by Tax Map Key: (2) 4-6-001:009 & 001 por., as shown on the attached map labeled Exhibit A.

AREA:

TMK (2) 4-6-001:009 consisting of 1.94 acres, more or less.  
TMK (2) 4-6-001:001 consisting of 0.2796 acre, more or less

CHARACTER OF USE:

The Old Lahaina Courthouse will be used as a museum, visitor center, offices, meeting room/video theater, and art galleries. The Banyan Tree and Keawaiki Parks will be used as public parks for recreation, events and festivals purposes.

TERM:

Lease shall commence upon execution and expire ten years, thereafter with an option to extend for one additional ten year term.

RENT AMOUNT:

\$100 (one hundred dollars) per annum.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The controlling agency shall be responsible for ensuring compliance with Chapter 343, HRS.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>X</u>	NO
Registered business name confirmed:	YES	<u>X</u>	NO
Applicant in good standing confirmed:	YES	<u>X</u>	NO

REMARKS:

The Lahaina Restoration Foundation (LRF) is dedicated to the maintenance, improvement and beautification of Lahaina's historic and cultural sites, parks and open spaces. LRF will manage the events at the Banyan Tree Park in a fair and equitable manner with no charge to the state, county or the event organizers. The events will be accessed a fee (TBD) which will be used for park improvements such as new benches, a small stage, new signs and improved maintenance such as power washing.

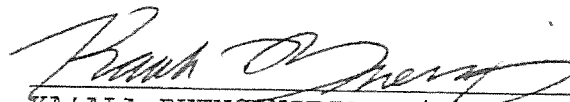
The intention is to continue the sub-leasing of the Old Lahaina Courthouse to Lahaina Arts Association and Lahaina Town Action Committee, with LRF operating the Heritage Museum. Each of the three tenants, all of which are 501C non-profits, fund all the daily maintenance of the building and public restrooms. Additionally, each tenant contributes monthly to a reserve fund for CIP projects such as termite tenting, floor refinishing etc. The LRF manages the building at no charge to the state, county or tenants.

RECOMMENDATION:

That the Board consent to the lease between County of Maui and The Lahaina Restoration Foundation and allowing LRF to sublease the Old Lahaina Courthouse to the Lahaina Arts Association and Lahaina Town Action Committee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



KA'ALA BUENCONSEJO, Director  
Department of Parks and Recreation  
County of Maui

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources  
State of Hawaii





W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner of two certain parcels of land that Lessee has managed or maintained as described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, the State of Hawaii, through Executive Order Nos. 16 and 80, has assigned control and management of these two parcels, hereinafter collectively referred to as the "Premises", to the County of Maui as follows:

Parcel 1: Executive Order No. 16, attached hereto as Exhibit "B", and by reference incorporated herein, pertains to Tax Map Key No. (2) 4-6-001:009, consisting of approximately 1.94 acres, hereinafter referred to as "Banyan Tree Park," which includes the Old Lahaina Courthouse building; and

Parcel 2: Executive Order No. 80, attached hereto as Exhibit "C", and by reference incorporated herein, pertains to Tax Map Key No. (2) 4-6-001:001 (por.), consisting of approximately 0.2796 acres, which is commonly referred to as "Keawaiki (Small Harbor) Park", and is hereinafter referred to as "Keawaiki Park"; and

WHEREAS, Lessee has managed, maintained and renovated the Old Lahaina Courthouse building and the grounds of Banyan Tree Park since 1997; and

WHEREAS, Lessee has maintained the grounds at Keawaiki Park since 1980; and

WHEREAS, the County of Maui supports Lessee and hopes to assist Lessee by granting this Lease so that Lessee may continue to conduct its activities on the Premises;

NOW, THEREFORE, Lessor, for and in consideration of Lessee's covenants and agreements set forth herein, does hereby agree to grant a lease to Lessee and Lessee hereby accepts said lease on the terms and conditions set forth below:

A. Premises. The Banyan Tree Park parcel, Tax Map Key No. (2) 4-6-001:009 (Executive Order No. 16, Exhibit "B") and the Keawaiki Park parcel, Tax Map Key No. (2) 4-6-001:001 (por.) (Executive Order No. 80, Exhibit "C"), are more particularly shown on Exhibit "D", attached hereto by reference incorporated herein.

B. Use of Premises. Lessee shall continue to manage and maintain the Old Lahaina Courthouse located within Banyan Tree Park as a museum, visitor center, offices, meeting room/video theater, and art galleries. Lessee shall continue to manage and maintain the grounds of Banyan Tree Park, and shall use the Park for public park use, recreation, events and festivals. Lessee shall maintain and manage the grounds of the Keawaiki Park for public park purposes. All use shall be in compliance with policies and guidelines set forth by the Cultural Resource Commission for Historic Districts, the National Park Service for National Historic Districts, and the Board of Land and Natural Resources. The use of the Premises for any other purpose shall require the prior written approval of Lessor, through its



Director of the Department of Parks and Recreation ("Director") and the State of Hawaii, Board of Land and Natural Resources ("BLNR").

C. Term. This Lease shall commence upon execution and expire ten years thereafter, unless sooner terminated as provided herein, with an option to extend for one additional ten year term. To exercise the extension option, Lessee must submit a written request to the Director at least one year prior to expiration of the initial lease term.

D. Cancellation. The Lease shall be subject to immediate cancellation in the event of disapproval of Executive Order No. 16 or Executive Order No. 80, by the Hawaii State Legislature pursuant to Section 171-11, Hawaii Revised Statutes.

E. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor the nominal rental amount of ONE HUNDRED DOLLAR (\$100.00) per annum for the Premises, the receipt and sufficiency of which is hereby acknowledged.

F. Indemnification. Lessee shall indemnify, defend, and hold harmless the Lessor, the State of Hawaii, and their respective Lessor's departments, directors, officers, employees, and agents from and against any and all claims for bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from Lessee's actions or activities on the Premises.

G. No Disturbance: Lessee acknowledges and confirms that the Premises are public parks used by the general public. This

Lease does not alter the status of the Premises as a public park, nor does this Lease alter the County's duties to users of the Premises except as explicitly provided herein. Lessee and anyone claiming under Lessee, shall limit their activities to the Premises covered by this Agreement and will exercise its rights in a manner causing as little interference as reasonably possible with the use of the Premises by Lessor and the general public. Lessee and anyone claiming under Lessee shall obey all reasonable rules, regulations, instructions and/or directions of Lessor and Lessor's officers, directors, employees, or agents with respect to same.

H. Permit required. If Lessee desires to have temporary, exclusive use of portions of the Premises other than as set forth in this Lease, Lessee shall apply for a use permit with the Department of Parks and Recreation.

I. Additional Covenants, Terms and Conditions. Additional covenants, terms and conditions of this Lease are set forth in Exhibit "E" attached hereto and by reference made a part hereof.

J. Grant requirements. Within three (3) weeks after the end of the fiscal year, Lessee shall transmit to the Department of Parks and Recreation a report, using Exhibit "F", containing the following information for the quarter and for the fiscal year to date:

1. Program status summary;
2. Program data summary;
3. Status review of any sub-leases;

4. Summary of participant characteristics;
5. Changes in real property tax assessment for the real property;
6. Earnings from the grant of real property; and
7. Narrative report.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the date set forth above.

LESSOR:

COUNTY OF MAUI

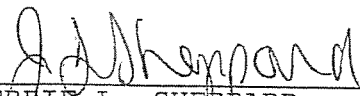
By \_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

By \_\_\_\_\_  
MARK R. WALKER  
Its Director of Finance

APPROVAL RECOMMENDED:

\_\_\_\_\_  
BUTCH KAALA BUENCONSEJO  
Director of Parks  
and Recreation

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JERRIE L. SHEPPARD  
Deputy Corporation Counsel  
County of Maui

2016-0909

2018-03-06 Lease revised by DLNR

LESSEE:

THE LAHAINA RESTORATION  
FOUNDATION

By David Allaire  
(Signature)

DAVID ALLAIRE  
(Print Name)

Its PRESIDENT  
(Title)

By Theo Morrison  
(Signature)

Theo Morrison  
(Print Name)

Its Executive Director  
(Title)

APPROVED BY THE BOARD OF LAND  
AND NATURAL RESOURCES AT ITS  
MEETING HELD ON: \_\_\_\_\_  
and \_\_\_\_\_  
APPROVED:

\_\_\_\_\_  
CARTY CHANG  
Acting Chairperson  
Board of Land and  
Natural Resources

Date \_\_\_\_\_

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STATE OF HAWAII        )  
                                   )       SS.  
 COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared ALAN M. ARAKAWA, 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 ALAN M. ARAKAWA 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.

[Signature]

\_\_\_\_\_  
 Notary Public, State of Hawaii

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

My commission expires: \_\_\_\_\_

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII        )  
                                   ) SS.  
 COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance 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 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER 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.

[Stamp or Seal]

\_\_\_\_\_  
 Notary Public, State of Hawaii

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

My commission expires: \_\_\_\_\_


NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 09 day of March, 2018, before me personally appeared David G Allaire, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

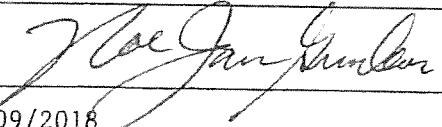
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 Notary Public, State of Hawaii

l.s.

Print Name: Noe Jan Gumboc

My commission expires: 02/28/2020

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>Undated</u>	# Pages: <u>11</u>
Notary Name: <u>Noe Jan Gumboc</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>The Lahaina Restoration Foundation</u>	
<u>Lease of County Recreational Space -----</u>	
<u>-----</u>	
<u>-----</u>	
[Stamp or Seal] l.s.	
Notary Signature: 	
Date: <u>03/09/2018</u>	

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 09 day of March, 2018, before me personally appeared Theo C Morrison, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

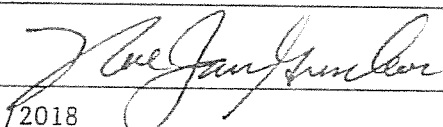
[Stamp or Seal]

  
 Notary Public, State of Hawaii

L.S.

Print Name: Noe Jan Gumboc

My commission expires: 02/28/2020

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>Undated</u>	# Pages: <u>11</u>
Notary Name: <u>Noe Jan Gumboc</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>The Lahaina Restoration Foundation</u>	
<u>Lease of COunty Recreational Space -----</u>	
<u>-----</u>	
<u>-----</u>	
[Stamp or Seal] L.S.	
Notary Signature: 	
Date: <u>03/09/2018</u>	





COUNTY OF MAUI  
DEPARTMENT OF PARKS AND RECREATION

MAUI COUNTY GRANTS OF REAL PROPERTY

APPLICANT

Legal Name of Organization: The Lahaina Restoration Foundation

Address: 120 Dickenson St., Lahaina, HI 96761

Director/Manager: Theo Morrison, Executive Director

Phone: (808) 661-3262 Fax: \_\_\_\_\_

Organization President: David Allaire

Email: \_\_\_\_\_ Phone: (808) 661-3262 Fax: \_\_\_\_\_

Contact Person (Grant Writer): Theo Morrison

Email: theo@lahainarestoration.org Title: Exec. Director 808-661-3262

Total annual budget of organization: \$1,279,487

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

Yes Source: OED, DPR  No

Requesting Lease of entire parcel  Requesting License to Occupy a portion of a parcel

TERM OF LEASE/LICENSE REQUESTED: 20 Years Annual Fee Requested \_\_\_\_\_

TYPE OF REQUEST:  New  Renewal  Extension

DESCRIPTION OF PROPERTY: TMK:

1. Banyan Tree Park/Old Courthouse: TMK: 460010090000, Address: 648 Wharf St., Lahaina., Area: 1.94 acres of real estate for which lease is being requested.
2. Keawaiki Park: TMK:460010010000, Address: 0 Wharf St. Lahaina. Area: .2796

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

1. The current use of the Old Lahaina Courthouse will remain, per the Old Lahaina Courthouse Task Force, as a museum, visitor center, offices, meeting room/video theater, art galleries, with Banyan Tree Park continuing to be used for recreation and as a site for events and festivals.
2. The use of the Keawaiki Park will remain as park use.

EXHIBIT " A "

## APPLICANT SUBMITTAL

Lahaina Restoration Foundation (Applicant) submits this application to receive a grant of real property lease/license to occupy for Banyan Tree Park, Old Lahaina Courthouse, Courthouse Park (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 Parks and Recreation 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, nondiscrimination 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 Parks and Recreation 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!**

David Allaire  
Signature of President/Chairperson/Other Authorized Officer

6.23.16  
Date

David Allaire President, Lahaina Restoration Foundation  
Print Name and Title

Theo Morrison  
Signature of Director/Manager Authorized Officer

June 23, 2016  
Date

Theo Morrison, Executive Director, Lahaina Restoration Foundation  
Print Name and Title

## NARRATIVE APPLICATION

### INSTRUCTIONS:

1. Description of the nature and purpose of the agency requesting the lease.

#### Goals and Objectives:

Lahaina Restoration Foundation is a 501c3 non profit organization chartered in 1962. The mission statement of the LRF reads “ LRF exists to restore, preserve and protect the physical, historical and cultural legacies of Lahaina, and honor the era of the Hawaiian monarchy”.

“Our vision is that Lahaina’s prominent place in Hawaii’s history and rich cultural traditions are celebrated and, through authentic preservation of significant sites, buildings and artifacts, its story is shared.

#### Services Provided:

The Foundation oversees and maintains 13 major historic structures in Lahaina and operates 6 museums. The Foundation maintains several collections of artifacts, manuscripts, maps, photographs, logs and other materials representative of Lahaina’s rich history. These collections and archives are available to the public and researchers by request.

The Foundation operates and maintains the Baldwin Home Museum, Hale Pa’i Museum and Research Center, Lahaina Heritage Museum, Lahaina Plantation Museum, Old Lahaina Prison and the Wo Hing Museum which are open to the public on a daily basis (Hale Pa’i is open M – W from 10 – 4 pm). The Foundation manages the Old Lahaina Courthouse and maintains public parks and open spaces in Historic Lahaina Town.

Public events are an important component of Lahaina Restoration Foundation’s out reach into the community. LRF conducts the monthly, free Hawaiian Music Series on the Baldwin Home Lawn, a free, weekly taro patch education program, a weekly candlelit tour of the Baldwin Home and four, free, two - day Chinese cultural events at the Wo Hing Museum. LRF also participates in the Na Kamehameha Parade, Maui Matsuri, the (new) Plantation Festival at Queen Ka’ahumanu Center. LRF organized the popular two day Lahaina Plantation Days for seven years.

#### Annual Number of people served (estimate):

Museum Attendance: 50,000

Special Events: 8,000

Public parks and open space: 700,000

**Sources of funding and support:**

Lahaina Restoration Foundation has multiple sources of funding which provide a strong and secure financial base for the organization. LRF owns the Baldwin Home compound and receives income from rentals, the parking lot and museum admissions. Additionally, LRF owns the Seaman's Hospital and Plantation House from which LRF receives rental income. LRF also receives income from membership, grants, donations, sponsors and gift store sales.

LRF has a robust volunteer program with volunteers providing a major part of the labor at all public events and outreach programs.

**Administrative/management structure:**

The day to day operations of LRF are managed by the executive director who reports to the Board of Directors. The executive assistant provides administrative support. The Baldwin Home, Hale Pa'i and Wo Hing museum are staffed with docents. The chief engineer is responsible for the maintenance of the buildings, a grounds keeping crew maintains the parks and open spaces and an exhibit designer builds the museum and traveling displays. Graphics, accounting, marketing and other services are provided by independent contractors,

2. The intended usage of the Banyan Tree Park, Old Lahaina Courthouse, Keawaiki Park,

**Specific uses/activities to be conducted at the site**

1. We plan to continue the uses and activities that are currently being conducted at Banyan Tree Park and in the Old Lahaina Courthouse. We will be following the CRC regulations for the festivals in the park and following the Old Lahaina Courthouse Task Force Report for uses and activities in the building.
2. Keawaiki Park was executive ordered to the County for park use only and we intend to keep it for park use.

**Justification of need for these activities:**

1. The current activities at the Old Lahaina Courthouse were identified by the community, during the meetings of the Old Lahaina Courthouse Task Force in 1995, as important services the community would like to see continue at this location. The Lahaina Arts Society has been in the building for more than 40 years, LahainaTown Action Committee has been a tenant since 1995. LRF has been managing the museum

and the building since 1997. Activities at Banyan Tree Park have been on-going for numerous years and are sanctioned and regulated by the CRC.

2. Keawaiki Park serves the community as a great place to watch the activities of the Lahaina Harbor as well as a place to wait for friends and family arriving from Lanai or Molokai , or to board a ferry to Molokai or Lanai.

**Target populations to be served:**

1. The target groups Banyan Tree Park and the Old Courthouse will serve include both resident and visitors. The resident population includes student at King Kamehameha III School, residents of the nearby housing areas, visitors and residents shopping, dining or engaging in recreational activities in Lahaina. There are also over 50 cruise ships which anchor in Lahaina each year and thousands of passengers visit the Old Lahaina Courthouse and Banyan Tree Park.
2. The target population to be served at Keawaiki Park consists of anyone traveling to Lanai or Molokai, or waiting for passengers from there to disembark. Others use the park to watch the harbor activities or wait for a fishing or charter boat to arrive.

**Estimated average number of people using the facility and site on a weekly basis:**

1. With an estimated 500,000 people a year coming to both the Banyan Tree Park and the Courthouse there are approximately 9,615 facility users on a weekly basis.
2. With an estimated 200,000 people a year using the Keawaiki Park, there are approximately 3,846 weekly users.

**Frequency of use:**

1. The Banyan Tree Park closes at midnight and the Old Courthouse is open from 9 to 5 daily, seven days a week including most holidays.
2. The Keawaiki Park is open daily and is most heavily used from dawn to dusk.

**3. Current delivery of services**

1. After the County restoration of the Old Lahaina Courthouse in 1997, the recommendations of the Old Lahaina Courthouse Task Force were put into place. Thus, LRF became the building manager and a variety of improvements, such as daily cleaning of all common areas and public restrooms, maintenance of landscaping next to the building, painting of interior walls, oversight of sprinklers, basement pumps, electrical systems, elevator operations etc. was implemented. In addition, LRF staff is on call 7 days a week to deal with emergencies as they arise. LRF pays upfront for all maintenance services and repairs in the building and charges back the tenants on a monthly basis depending on the amount of space they occupy.

As the manager of the Old Lahaina Courthouse, LRF was able to obtain a \$650,000 grant in 2010 from the National Marine Sanctuary Foundation for a restoration of the interior and the build out of the Lahaina Heritage Museum and the Video Theater. LRF received another grant, in 2012, of \$50,000 from the Freeman Foundation for the repair and replacement of all the wooden doors and windows in the building and the repair of a large crack on the north exterior wall of the building.

LRF maintains the Courthouse Park and Banyan Tree Park through the historic district groundskeeping grant from the County of Maui DPR. Additionally County of Maui DPR provided funding for the current improvement project at Keawaiki Park.

**Predicted improvement if LRF obtains the lease for the Old Courthouse, Banyan Tree Park & Keawaiki Park.**

LRF has managed the Old Lahaina Courthouse since 1999.

With the addition of Banyan Tree Park and Keawaiki Park to the LRF responsibilities, these parks would attain the same level of excellence that is now seen at the Courthouse. As the leaseholder for the Banyan Tree Park, LRF will provide oversight for all the events and festivals while ensuring that the user fees generated from these events are used to further improve the park.

**4. Management Plan for the facility and site:**

We will continue with the successful management plan for the courthouse that is currently in place.

Management Plan for Old Lahaina Courthouse (current):

The Chief Engineer of LRF is responsible for the following:

- Inspection of the courthouse common areas M – F morning.
- Oversight of all needed building repairs, routine maintenance.
- Purchase of all supplies for public restrooms
- Inspection of daily cleaning of common areas and restrooms
- Inspection to ensure building is safe for all users
- Approval of all receipts for goods and services used at the courthouse
- Response to emergency calls from tenants

Chief Engineer reports to the Executive Director

The LRF Executive Assistant is responsible for:

- Inputting approved receipts for courthouse maintenance costs.
- Billing tenants for their % of common area costs based on the % of space they occupy in the building.

The LRF Executive Assistant reports to the Executive Director



The Executive Director is responsible for oversight of staff and the procurement of new funding for building improvements.

#### Management Plan for Banyan Tree Park

The LRF Head Grounds Crew is responsible for the following:

- Ensuring that the park is cleaned of leaves and rubbish daily
- Trash barrels are emptied daily
- Irrigation and landscaping are maintained
- Lighting is maintained
- Safety hazards are reported to the Executive Director
- Violations of the Historic District Ordinances are reported to the Executive Director

The LRF Executive Assistant is responsible for the following:

- Billing all festival organizers for the park user fee
- Note: The existing Historic Districts Groundskeeping Grant funds the maintenance of Banyan Tree Park.

#### Management Plan for Banyan Tree Festivals and Events:

The LRF Executive Assistant is responsible for the following:

- Working with festival organizers to schedule an annual calendar of events
- Working with festival organizers to solve scheduling disputes
- Ensuring that all festival organizers follow the CRC event guidelines for Banyan Tree Park.

#### Management Plan for Keawaiki Park:

The LRF Head Grounds Crew is responsible for the following:

- Ensuring that the park is cleaned of leaves and rubbish daily
- Trash barrels are emptied daily
- Irrigation and landscaping are maintained
- Lighting is maintained
- Safety hazards are reported to the Executive Director
- Violations of the Historic District Ordinances are reported to the Executive Director
- Note: The existing Historic Districts Groundskeeping Grant funds the maintenance of Keawaiki Park
- State DLNR Boating Division is responsible for maintenance and repair of public restroom facility located at site.

Executive Director is responsible for oversight of all staff, appropriation of festival park fees to park improvements, and obtaining additional funds for park improvements.

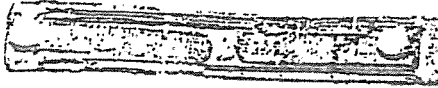
With this lease, LRF would be responsible for all maintenance and repair of the Old Lahaina Courthouse, Banyan Tree Park and Keawaiki Park with the exception of: 1. Tree trimming (Coconut, Banyan, Monkeypod trees), 2. Major repairs (\$5,000+) to the electric, sewer, water service 3. Major repairs (\$5,000+) to the exterior of the courthouse including roof, walls, stairs, lanai etc. 4. Replacement of outdoor lamps to conform to new federal standards. 5. Major damage from natural disaster such as earthquake, tidal wave, wind event etc. 6. Maintenance and repair of Harbor public restrooms located next to Keawaiki Park.

**5. Impact to services/activities at the site if lease is not granted.**

Without the expertise and experience of LRF management at the Old Lahaina Courthouse the building would revert, very quickly, to what it was in the 1980s – a dirty, unkempt public space with overflowing toilets, safety violations, maintenance issues and tenant disputes. There would be a huge public outcry.

Without LRF's management and oversight, Banyan Tree Park and Keawaiki Park would quickly become undesirable places with safety, security and cleanliness issues and the quality of the public's recreational experience at these two parks would plummet.

6. There are no major improvements planned on the requested sites at this time with the exception of the already in progress– Banyan Tree Paver Project , and Lahaina Harbor Front Improvement Project both of which are funded by the County of Maui Parks and Recreation.



C O P Y

EXECUTIVE ORDER NO. 16.

SETTING ASIDE LAND FOR PUBLIC PURPOSES.

I, WALTER P. FREAR, Governor of the Territory of Hawaii, by virtue of the authority vested in me by the last paragraph of Section 5 of the Act of Congress approved May 27, 1910, entitled "An Act to Amend An Act Entitled 'An Act to Provide a Government for the Territory of Hawaii,' approved April Thirtieth, Nineteen Hundred", and every other authority me hereunto enabling, do hereby order that the following described land be and the same is hereby set aside for public purposes, to-wit, for the uses and purposes of the County of Maui:

1. That certain lot, now used mainly for court house and jail purposes, situated at Wailuku, Island and County of Maui, and bounded as follows:

Beginning with the Southwest corner of property of E. A. Wadsworth on the east side of High Street, which corner is by the true azimuth 356° 21' 275.1 ft. from the center of a well known large stone in the curb line at the southwest corner of the Pioneer Store property, and running thence by true azimuths:

1. 354° 52' 205.0 ft. along inner edge of concrete sidewalk to the Northwest corner of the "County Building" lot formerly the Wailuku Union Protestant Church lot.
2. 273° 20' 302.2 ft. along said county building lot, to an iron bar driven under stone wall and fence at west corner of ancient taro patch.
3. 134° 04' 267.5 ft. along properties of W. Sommerfield & Mrs. Rodrigues along fence on West side of Kuleana ditch to corner of W. J. Robinson's fence.
4. 83° 43' 101.0 ft. along fence on south side of W. J. Robinson's property.
5. 81° 30' 204.9 ft. along picket fence along properties of W. J. Robinson & E. A. Wadsworth to S. E. Corner of office building.
6. 84° 10' 36.3 ft. along southeast side of office building to initial point and containing an area of 75,756 sq. ft. or 1.74 acres.

excepting and reserving for the use of the Territory so long as it may require the same so much of the court house building now on said lot as it now uses for tax or other purposes.

EXHIBIT B

Post-It® Fax Note	7871	Date	8/16/99	# of pages	5
To	PAT NITTA	From	FLOYD		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	7878	Fax #			

8/16/99 17:04

2. That certain lot, now used mainly for court house and park purposes, situated at Lahaina, Island and County of Maui, and bounded as follows:-

Beginning at the west corner of this lot, from which the W. E. corner of the H. E. iron leg of light house bears 124° 19' 140.9 and the center of the court house flag pole bears 352° 13' 142.3 feet, and running thence by true azimuths:-

1. 330° 21' 305.9 ft. along edge of road,
2. 240° 30' 268.4 ft. along edge of road,
3. 150° 18' 319.3 ft. along edge of road,
4. 57° 09' 268.5 ft. along edge of road to point of beginning and containing 1.94 Acres,

excepting and reserving for the use of the Territory as long as it may require the same so much of the court house building now on said lot as it now uses for tax or other purposes,

3. That certain lot, now used mainly for jail purposes, situated at Lahaina, Island and County of Maui, and bounded as follows:-

Beginning at the east corner of this lot, from which north corner of the county stable lot bears 60° 19' 568.3 ft. and running thence by true azimuths:-

1. 84° 02' 185.8 ft. along road.
2. 153° 42' 206.4 ft.
3. 245° 02' 161.4 ft.
4. 327° 01' 205.1 ft. along road to point of beginning and containing 0.22 Acre.

4. That certain lot, now used mainly for stable purposes, situated at Lahaina, Island and County of Maui, and bounded as follows:-

Beginning at the north corner of this lot, on the east edge of road, the direct azimuth and distance to the east corner of Lahaina Court House lot being 111° 41' 434.4 ft. and running thence by true azimuths:-

1. 337° 23' 93.0 ft. along stable building.
2. 58° 29' 118.6 ft. along fence.
3. 162° 05' 102.6 ft. along W. Decote's land to edge of road.
4. 243° 15' 124.9 ft. along road to point of beginning and containing 11988 sq. ft. or 0.276 Acres.

5. That certain lot, now used mainly for court house purposes, situated at Makawao, Island and County of Maui, and bounded as follows:-

Beginning at the west corner of this lot, the co-ordinates from H. A. Cos., Trig. Station "28" being 245.0 ft. south and 245.6 ft. east, and running thence by true azimuths:-

1. 221° 17' 170.8 ft. along Kawaapaa House lot.
2. 157° 54' 44.0 ft. along wire fence.
3. 237° 00' 22.0 ft. along road.
4. 324° 05' 296.0 ft. along wire fence to Chia post.
5. 59° 35' 197.5 ft. along wire fence.
6. 143° 25' 192.0 ft. along fence to point of beginning and containing 1.05 acres.

6. That certain lot, now used mainly for court house purposes, situated at Hana, Island and County of Maui, being that portion of L. C. A. 419 to Kawainui, conveyed in deed of A. Uuna to Minister of Interior, dated Oct. 11, 1871, Liber 33, P. 252; and bounded as follows:-

Beginning at the southeast corner of this lot whose coordinates from the H. G. S. Trig. Station, Kauiki are 365.8 feet north and 1271.5 feet west, and running thence by true azimuths:

1. 70° 28' 102.5 ft. along fence along properties of W. F. Hain & A. Y. Aicma.
2. 161° 20' 83.5 ft. along stone wall along land of H. Csted.
3. 156° 42' 150.5 ft. along stone wall along land of H. Csted.
4. 245° 33' 72.0 ft. along stone wall along Kaelepu Sugar Co.
5. 331° 03' 245.0 ft. along government road to initial point and containing an area of 20188 sq.-ft. or 0.464 Acres.

7. That certain lot, now used mainly for court house purposes, situated at Kipahulu, Island and County of Maui, and bounded as follows:-

Beginning at the northeast corner of this lot whose coordinates from H. G. S. "Kipahulu" Protestant Church Station" said station being an iron pipe at edge of bluff, makai of church are 215.0 ft. south and 526.3 ft. west, and running thence by true azimuths:-

1. 79° 25' 202.0 ft. along stone wall along school lot.
2. 341° 00' 65.5 ft. along stone wall.
3. 257° 15' 164.5 ft. along stone wall.

4. 187° 15' 82.3 ft. along stone wall along government road initial point and containing 14888.0 sq. ft. or 0.34 acres.

*Handwritten notes:*  
Address  
in Ex. Ord. No. 16  
No. 24.12.19675

5. That certain lot, now used mainly for Court House purposes, situated at Pukoo, Island of Molokai, County of Maui, being that portion of Grant 678 conveyed in deed of Peter H. Treadway to Minister of Interior dated Jan. 5, 1869, and bounded as follows:

Beginning at Southeast corner of this lot, whose coordinates from H. G. S. Trig Station, Kapulehu are 1416.5 ft. north and 640.8 ft. East, and running thence by true azimuths:-

- 1. 68° 10' 100.0 ft. along remainder of Gr. 678
- 2. 158° 10' 254.5 ft. along remainder of Gr. 678 to edge of 40' rd.
- 3. 245° 48' 100.2 ft. along wakai edge of road
- 4. 358° 10' 258.5 ft. along fish pond to point of beginning and containing 0.612 acres.

*Handwritten note:* The Key 5-7-07-64 portion of Gr 678 - See Exec Order 675

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the Territory to be affixed.

Done at the Capitol at Honolulu this 24th day of August, Nineteen Hundred and twelve.

W. F. Frear

By the Governor

H. A. MOTT-SMITH

Secretary of Hawaii.

Executive Order No. 30

## Setting Aside Land for Public Purposes

J. C. J. McCarthy, Governor of the Territory of Hawaii, by virtue of the authority vested in me by the last paragraph of Section 5 of the Act of Congress approved May 27, 1910, entitled "An Act to Amend an Act Entitled 'An Act to Provide a Government for the Territory of Hawaii,' approved April Thirtieth, Nineteen Hundred," and every other authority me hereunto enabling, do hereby order that the following described land be and the same is hereby set aside for public purposes, to-wit, for

### Park Purposes.

The said piece of land hereinafter described shall be exclusively and continuously used by the County of Maui for park purposes. The piece of land hereby set aside for the foregoing public purpose is situated in the Town of Lahaina, County of Maui, opposite the Lahaina Court House Lot, and is more particularly described by metes and bounds as follows:

"Beginning at a 3/4 inch twisted steel bar on Wharf Street, the coordinates of which referred to Government Survey Triangulation Station 'Laina' are 8796.2 feet South and 2459.4 feet West, and which bears by true azimuth and distance from the Maui County Street Monument at the intersection of Wharf and Hotel Streets, 347° 53' 49.7 feet, and running by true azimuth:-

1. 330° 13' 276.0 feet along chain fence along Wharf Street;
2. 59° 28' 50.6 feet Along chain fence along Canal Street to a low stonewall;
3. 152° 12' 277.0 feet along stonewall along beach;
4. 240° 33' 41.0 feet along chain fence to point of beginning.

AREA 12,640 SQUARE FEET.

Together with all the beach fronting above described lot, and lying Northwest and between same and high-water mark."

EXHIBIT " C "

IT IS PROVIDED, HOWEVER, and this Order is made upon the express condition that if the County of Maui shall fail to maintain and/or use said tract of land for the public purpose herein described, or shall use said land for purposes other than park purposes, then the right of use hereby granted shall immediately cease, and the same shall revert and revert in and to the Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the Territory of Hawaii to be affixed.

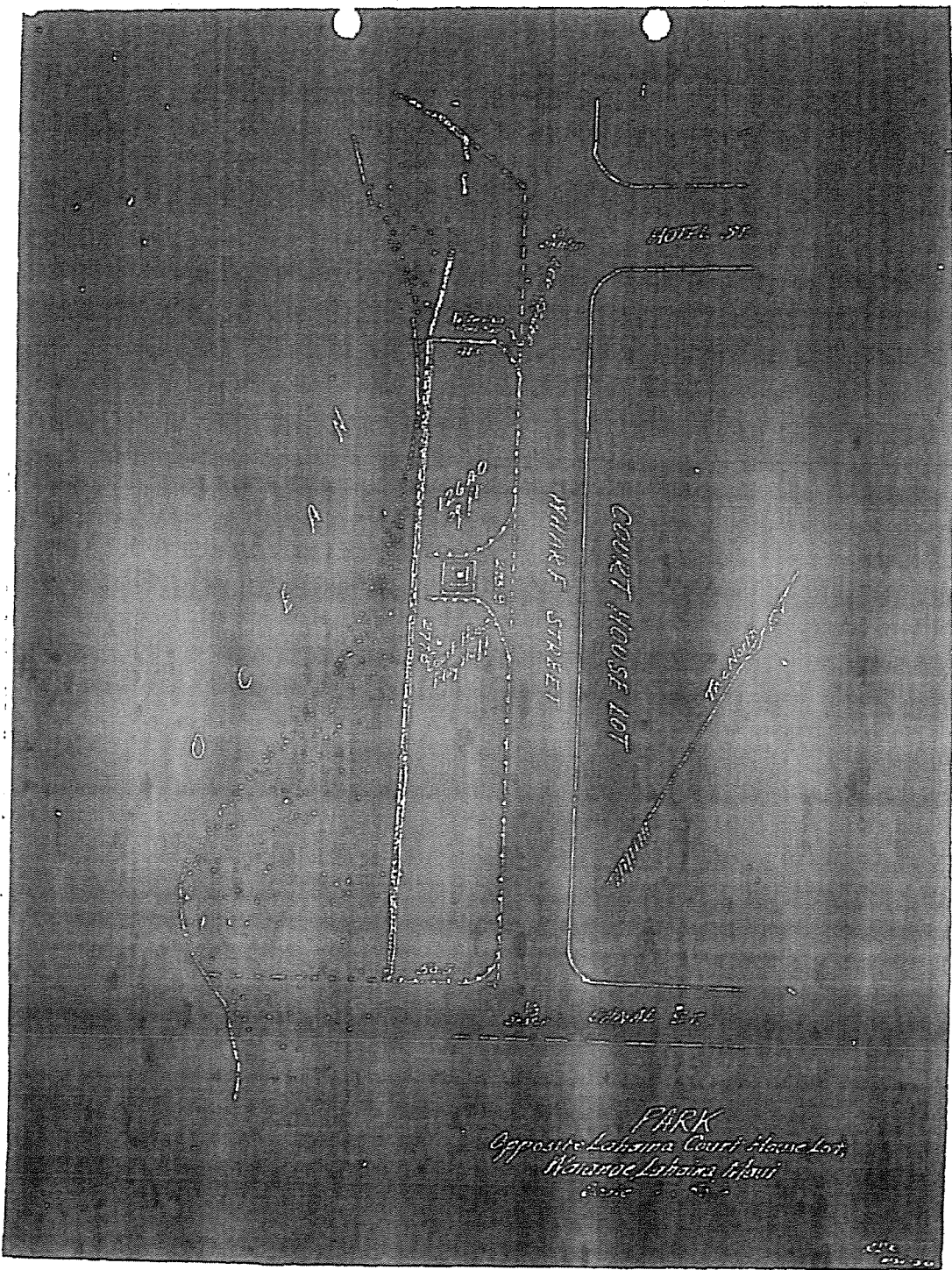
DONE AT THE CAPITOL at Honolulu this 27th day of October, Nineteen Hundred and Twenty.

By the Governor,

*Wm. P. Lawrence*  
Secretary of Hawaii.

*[Signature]*





PARK  
Opposite Lahaina Court House Lot,  
Waianae Lahaina, Hawaii

1911  
100 200

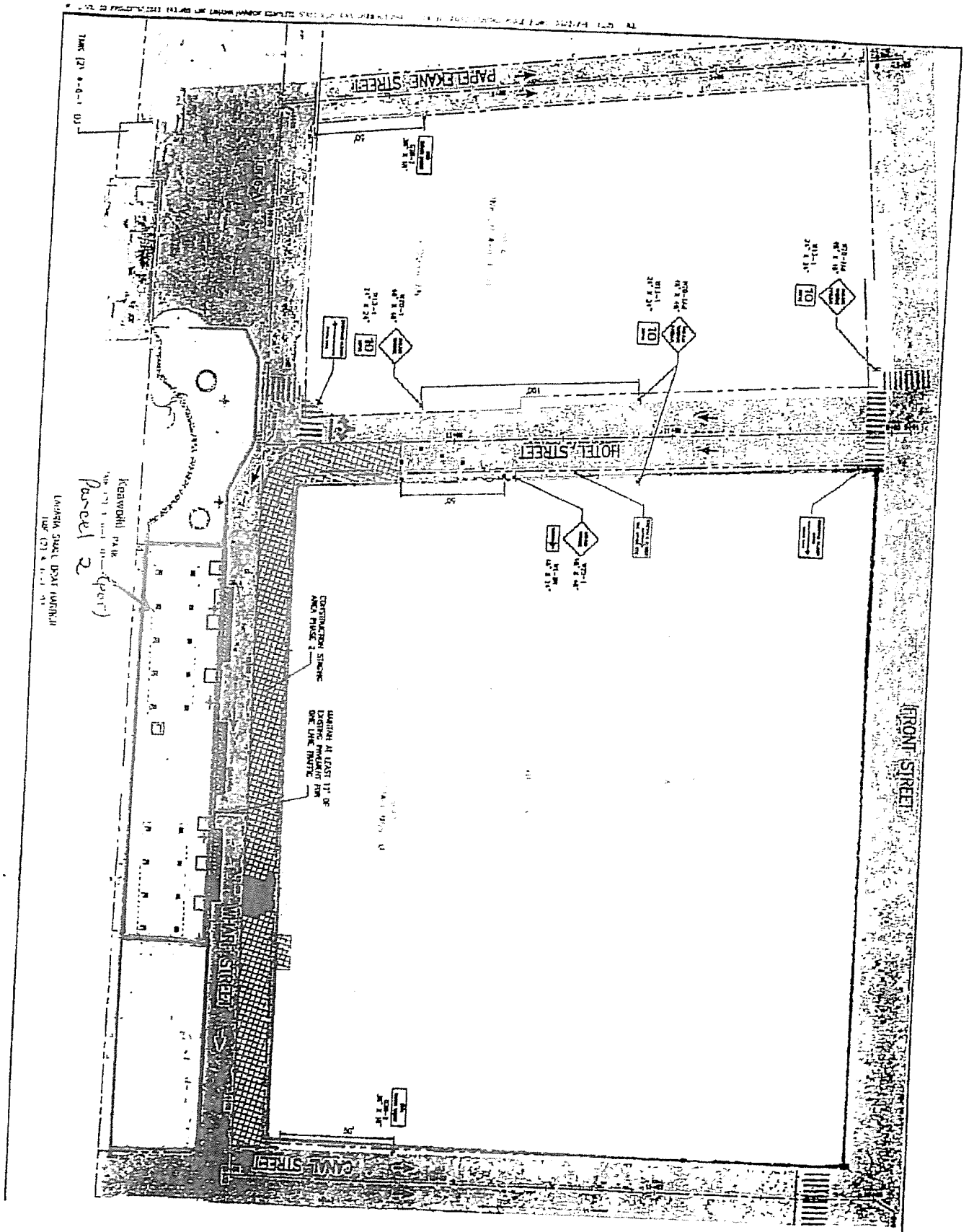


EXHIBIT " D "

EXHIBIT "E"

GENERAL TERMS AND CONDITIONS

In consideration of the grant of COUNTY funds, GRANTEE covenants and agrees to the following terms and conditions in the use and administration of COUNTY funds. In the event the following conditions conflict with any term, provision, condition and/or covenant contained in the body of the Agreement and any subsequent amendments, the terms, provisions, conditions and/or covenants contained in said body shall prevail.

- 1) RECORD KEEPING. Grantee shall keep records and prepare reports, including detailed, separate financial records relating to all grant funds received from the County. All accounts shall be prepared and maintained according to generally accepted accounting principles and as otherwise provided by law to ensure the effective administration of the grant. Grantee shall maintain such accounts and documents in a manner as to permit an expeditious determination to be made at any time of the status of funds within the award, including any disposition of all funds received from County and the nature and amount of all charges claimed to be against such funds. To facilitate the auditing process, Grantee's general ledger shall be organized to reflect the separation of County grant funds and expenses from other funds of the Grantee. Grantee shall maintain in its files, at all times, documentation certifying that the work described in any invoices, executed contracts or reimbursement requests submitted to the County are complete, correct, and in accordance with the terms of this Agreement.
  
- 2) QUARTERLY REPORTS. Grantee shall provide County with written, narrative, quarterly status reports within thirty (21) calendar days of the end of each report quarter (excluding the final quarter). These reports shall contain the following information:
  - a. Summary of program status in relation to goals, objectives and scheduled actions steps outlined in the grant application;
  - b. Contact information and all other relevant information regarding people or businesses served;
  - c. Financial status of County funds used; and
  - d. If appropriate, a report regarding progress towards meeting performance standards and economic self-sufficiency.

EXHIBIT " E "

- 3) FINAL REPORT. Within 30 (thirty) days of expiration of the Performance Schedule or completion of the Project, or termination of the agreement, whichever is sooner, Grantee shall submit to County a final project report, in a form satisfactory to the County agency administering this grant. This report shall document Grantee's efforts toward meeting the requirements of this agreement, and contain the following:
- a. An inventory of all equipment costing \$250.00 or more acquired with funds provided under this agreement;
  - b. A list of expenditures incurred in the performance of this agreement;
  - c. A summary of program status in relation to goals, objectives, and scheduled action steps outlined in the grant application;
  - d. Contact information and all other relevant information regarding people or businesses served;
  - e. Financial status report of County funds used; and
  - f. If appropriate, a narrative report regarding progress towards meeting performance standards and economic self-sufficiency.
- 4) FINANCIAL AUDITS. Grantee shall supply County with a copy of its annual financial statements that shall be prepared by a Certified Public Accountant. Grantee shall allow County to audit Grantee's records, report books, and other financial records upon request of County to determine compliance with the terms of this agreement. Grantee shall cooperate fully and assist County in such an audit.
- 5) NONPROFIT STATUS. If Grantee is a nonprofit organization, Grantee shall establish and be governed by bylaws or policies that shall include provisions relating to nepotism and management of potential conflict of interest situations, as required by Section 3.36.040(c), Maui County Code.
- 6) INSURANCE. In order to protect itself as well as the County under this Agreement, Grantee shall obtain, pay for, and keep in force throughout the period of this Agreement comprehensive liability insurance 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. The Carrier shall be rated no less than "A-" as established by "AM

Best" or "Standard & Poor" ratings.

The insurance policy, as evidence by issuance of a "Policy Endorsement", shall name County, its officers, employees and agents as "Additional Insured", and shall include a duty to defend the County, its officers, employees and agents against any loss, liability, claim, and demand for injury or damage, including but not limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Grantee's actions and/or performance of this Agreement.

Unless otherwise agreed to by County through the joint decision and discretion of the Director of the Department of Finance and the Director of the Department of Parks and Recreation, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Grantee shall furnish the County with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Agreement, the Grantee shall, upon renewal of the insurance policy, provide the County with a copy of the renewed insurance policy certificate together with the required endorsements.

Unless waived by the County, the insurance policy shall expressly state that the coverage provided under such policy shall not be cancelled or terminated, unless the Carrier has first given the County thirty (30) calendar days prior written notice of the intended cancellation or termination.

- 7) INDEMNIFICATION. To the extent permitted by law, Grantee shall indemnify, defend, release, and hold

harmless the County, its officers, agents, and employees from and against any and all manner of action and claim arising, either directly or indirectly, out of or resulting from the errors, omissions, or acts of Grantee, its officers, its employees, or its agents occurring during, or in connection with, the performance of the Grantee's services under this Agreement. The Grantee's obligations under this section shall survive and shall continue to be binding upon Grantee notwithstanding the expiration, termination or surrender of this Agreement.

- 8) SUBCONTRACTS. The Grantee shall not procure or subcontract any part of the services under this Agreement without the prior written consent of the County. All subcontracts entered into by the Grantee shall be in writing.
- 9) EMPLOYEE COMPENSATION. Grantee shall not compensate its employees more than the wages then prevailing in the State of Hawaii for employees with similar skills and abilities. Grantee shall not pay any commissions, bonuses or similar to its employees.
- 10) COUNTY RECOGNITION. Grantee shall give the County and State of Hawaii, if applicable, appropriate recognition in all grant-funded programs and printed materials. All such printed materials must be approved by the County prior to printing and/or use.
- 11) GRANTEE COMPLIANCE. Grantee shall strictly comply with its articles of incorporation and/or bylaws and all relevant County, State and Federal rules and regulations concerning Grantee's policies and operations.
- 12) NO DISCRIMINATION. Grantee shall not discriminate in the hiring of staff, compensation, terms or conditions of employment of individuals, use of volunteers, or delivery of client services on the basis of sex, sexual orientation, national origin, age, race, color, religion or disability. Grantee shall comply with all applicable Federal and State laws prohibiting discrimination.
- 13) MODIFICATION OF AGREEMENT. Any modification, alteration or change to this Agreement, including, but not limited to, modification of the services to be performed, modification of the scope of services to be performed, extension of time of performance, or changes to the approved budget, shall be made by written supplemental agreements executed by the County and Grantee.

- 14) SUSPENSION OR TERMINATION OF AGREEMENT. If, for any cause, the County finds that the Grantee has failed to satisfactorily fulfill in a timely or proper manner its obligations under this Agreement or if the Grantee breaches any of the promises, terms, or conditions of this Agreement and, having been given reasonable notice of an opportunity to cure any such default, fails to take satisfactory corrective action within the time specified by the County, the County shall have the right to suspend or terminate this Agreement by giving written notice to the Grantee of such suspension or termination. Further, the County may suspend or terminate this Agreement without cause by giving written notice to the Grantee thirty (30) calendar days before the effective date of such suspension or termination. Upon termination of this Agreement, all finished or unfinished documents, data, studies, and reports purchased or prepared by the Grantee pursuant to this Agreement shall be transferred to the County.
- 15) COSTS INCURRED DUE TO SUSPENSION OR TERMINATION. The County shall not reimburse the Grantee for any costs incurred by the Grantee during suspension or after termination of this Agreement unless the County authorizes such costs in the Notice of Suspension or Termination issued to the Grantee.
- 16) WITHHOLDING OF PAYMENTS. County may withhold any and all payments to Grantee if the costs set forth in a reimbursement request are, in the County's determination, unreasonable, or if Grantee fails to comply with the terms of this Agreement in any manner whatsoever.
- 17) PROSELYTIZATION PROHIBITED. Grant funds shall not be used to recruit or convert a person to a new faith, institution, or cause.
- 18) ENTERTAINMENT OR PERQUISITES PROHIBITED. Grantee shall not use any grant funds for purposes of entertainment or perquisites. For purposes of this Agreement, "perquisites" means a privilege provided or service rendered by Grantee to an employee, officer, director, or member of Grantee to reduce that individual's personal expenses.
- 19) LOBBYING PROHIBITED. Grantee shall not use grant funds for lobbying purposes or activities.
- 20) REVERSION OF ASSETS. The Grantee is prohibited from disposing any real or personal property acquired with

County funds received under this Agreement, without first receiving prior written consent of the County. Should the Grantee cease to use any real or personal property acquired with County funds for the purposes or personal property acquired with County funds for the purposes described in this Agreement, the Grantee shall either:

- a. Pay the County the current fair market value of the asset; or
- b. Transfer control of the asset to the County.

Unless instructed otherwise by the County in writing, within thirty (30) days of the expiration or termination of this agreement, the Grantee shall transfer to the County:

- a. Any County funds on hand at the time of expiration or termination of this Agreement;
- b. Any account receivables attributed to the use of County funds; and
- c. Any real and/or personal property acquired or improved in whole or in part with County funds.

- 21) PRODUCTION OF INFORMATION. If applicable, Grantee shall comply with all requests of the State of Hawaii for information and reports regarding the project and Grantee's operations.
- 22) COMPLIANCE WITH LAWS. Grantee shall comply with all applicable Federal, State and County laws, rules, regulations, licensing requirements, applicable accreditation and other standards of quality generally accepted in the field of Grantee's activities.
- 23) METHOD OF PAYMENT. Unless otherwise specified herein, Grantee shall submit on its company/agency's letterhead written reimbursement request to the County for payment of grant funds. Payment shall be made as work is performed and the required invoices, billing statements, or other documents are submitted. Each reimbursement request shall:
  - a. Identify the Project, the nature of the work or materials provided, and the specific Phase of the Project for which the work or materials were provided;
  - b. Be signed by an authorized representative of Grantee as to its accuracy and verified by a designated County official;
  - b. Include a certification by Grantee that the work for which payment is requested was performed in accordance with the terms of this agreement;
  - c. Include copies of receipts, canceled checks,



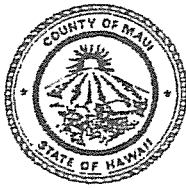
- certified payroll records for the applicable time period or phase for which payment is requested, vendor agreements, and/or other documents providing verification of work completed in accordance with this agreement; and
- d. Be presented in duplicate, with two (2) complete sets of all items submitted.

The County will reserve 10% of the grant award as a final payment. Final payment on this Agreement shall be available upon completion of Grantee's program, receipt by County of a final report which County finds to be acceptable, and if applicable receipt of a certified copy of a State of Hawaii Tax Clearance Certificate for the Grantee validated by the State of Hawaii Department of Taxation and the Internal Revenue Service or other forms of documentation that meet the requirements of County policy and are deemed acceptable by County.

- 24) PROGRAM INCOME. "Program Income" means gross income received by Grantee generated from the use of County funds. In no event shall any of the income, earnings, or assets of the Program, including any and all grant funds, surplus funds, or Program Income as described herein, be distributed by Grantee to, or for the benefit of, its corporate directors, officers, members, employees, or consultants. Discretionary use of Program Income by Grantee is strictly prohibited.
- 25) PROCUREMENT. If Grantee contracts for the design and/or construction of any structure, defined for purposes hereof as any construction involving a load-bearing wall, Grantee shall comply with the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes, any County procurement policies for the procurement of contracts for design and/or construction of any structures as defined herein. Grantee shall ensure that all procurement transactions for construction of non-structures, as defined herein, and all procurement transactions for goods and services are conducted in a manner to provide, to the maximum extent possible, open and free competition.
- 26) INSPECTIONS AND MONITORING. Grantee shall permit the County or its duly authorized agent free access to any al all Grantee programs, facilities, event or activities without advance formal notification or appointment when such access is for the express purpose of monitoring, investigation, researching or formulating programs, services or related policies and procedures or when County is otherwise in the pursuit of any official business relative to any aspect of this agreement.

In the event Grantee fails to adhere to any of the conditions listed herein, County may withdraw any part or all of the grant. Grantee shall be held liable for any grant funds expended in a manner inconsistent with this Agreement, including any attachments incorporated therein.

END OF EXHIBIT "E"



# DEPARTMENT OF PARKS AND RECREATION

700 Hali'a Nako'a Street, Unit 2, Wailuku, Hawaii 96793

## ANNUAL REAL PROPERTY GRANT REPORT

Report Period: Fiscal Year July 1, \_\_\_\_\_ - June 30, \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

Tax Map Key Number(s): \_\_\_\_\_

Department of Parks and Recreation's Mission: The purpose of the Department of Parks and Recreation is to provide safe, satisfying and cost-effective recreational opportunities for the residents of and visitors to Maui County.

### INSTRUCTIONS

Provide a narrative response to each question below for each quarter and fiscal year.

#### I. Program Data/Status Summary

- a. List each program goal/benchmark for the leased/licensed site and how it contributes towards the Parks Department's mission (noted above).
- b. What objectives/action steps were completed this fiscal year for each goal?
- c. What measurable outcomes were achieved this fiscal year?
- d. Were your organization's programs/activities open to the public? If so, how were they promoted to residents and visitors?
- e. Give actual number of people attended at activities, programs and events on property for each quarter of the fiscal year.
- f. What objectives/actions steps will be accomplished during the next fiscal year?

#### II. Narrative Report

- a. What program challenges occurred this fiscal year and how were they addressed and/or resolved?
- b. Describe any staff changes in your organization.
- c. Were there any fundraising activities on leased/licensed property? If so, please indicate how many, type of activity, primary beneficiary of the fundraising, and how your organization participated and benefited from the activity.
- d. Describe improvements on the property, its condition, and your risk evaluation program. How often are site inspections done and by who?
- e. Disclosure of any organizational conflict of interest and criminal violations.
- f. Were audits done this fiscal year? When is the next audit planned for your organization?

Please submit the following information with this report:

- a. Board of Directors' Minutes.
- b. Updated list of Board of Directors
- c. Financial status report including but not limited to the total revenue generated on the property leased/licensed.
- d. Update Tenant Contact Information Form.
- e. Current Liability Insurance Certificate naming the County of Maui as additional insured.

Report Prepared by: \_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EXHIBIT " E "**

D. M. ARAKAWA  
Mayor

MICHAEL W. FOLEY  
Director

WAYNE A. BOTEILHO  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

August 11, 2004

**MEMORANDUM**

**TO: MAUI COUNTY CULTURAL RESOURCES COMMISSION**

**FROM: MICHAEL W. FOLEY** *M. W. Foley*  
Planning Director

**SUBJECT: REVISED POLICY FOR USE OF BANYAN TREE PARK, LAHAINA**

Banyan Tree Park, located in the Lahaina National Landmark District, has been the site of ongoing arts and crafts fairs since the 1970s. Over the years, there have been community concerns regarding the commercial nature and frequency of park activities. The Maui County Department of Parks and Recreation and the Maui County Arborist Committee are concerned over the park's increasing activities, commercial sales, and the health of the Banyan Tree. The Maui County Cultural Resources Commission (CRC) has expressed its concerns regarding the Park's historic status and appropriate use in the Lahaina National Historic Landmark District. In response to public complaints, the Planning Department requested that the Maui County Cultural Resources Commission reconsider the appropriate use of the County's Banyan Tree Park. At its regular meeting of March 4, 2004, the Commission deferred action on this matter, requesting additional information from the Arborist Committee and identification of other venues for events.

Chapter 19.52.090 E addresses selling in public places in the historic districts:

*It is unlawful for any person to carry on or solicit business in any location on any street, highway, or sidewalk. The same is also unlawful in any location, in any park or open space that is owned or maintained by a government agency without the approval of the Cultural Resources Commission, and the responsible government agency having administrative authority over the park or open space.*

With this authority, the Maui County Cultural Resources Commission again considered policy revisions for the use of Banyan Tree Park at its regular meeting of August 5, 2004. The CRC voted to approve the following policy for the use of Banyan Tree

Maui County Cultural Resources Commission  
August 11, 2004  
Page 2

Park in the Lahaina National Historic Landmark District:

1. That art fairs be operated no more than three weekends in a row, with the fourth weekend to be used as "rest" for the tree and to provide the community with an opportunity to enjoy a passive park. Special events at the park may be accommodated, but the principal of providing a "rest" day for the tree should be maintained. At least twelve (12) rest weekends each year shall be observed.
2. That art fairs in Banyan Tree Park be limited to twenty-five (25) booths.
3. That all arts and crafts sold at Banyan Tree Park be handmade in Maui County and sold by the artist and/or an immediate member of the artist's family. An immediate family member shall be defined as a spouse, son/son-in-law, daughter/daughter-in-law, sibling, mother/mother-in-law, father/father-in-law, brother-in-law, sister-in-law, grandparent or grandchild.
4. That applicants obtain Historic District approval from the Cultural Resources Commission.
5. That the Cultural Resources Commission shall have the right to review and approve all criteria used to determine who may participate in an organization's art fair at Banyan Tree Park.
6. That applicants for art fairs obtain the approval of the Department of Parks and Recreation for the use of Banyan Tree Park prior to the day of the event. The Parks Department shall have the authority to require additional restrictive provisions and regulations to protect the Banyan Tree.
7. That there be no structure in Banyan Tree Park for the collection of money. All sales transactions shall be conducted inside the Lahaina Courthouse building.
8. That all organizations using Banyan Tree Park shall abide by the rules and regulations established by the Maui County Arborist Committee, as noted in Item 6 of the Committee's July 21, 2004, letter:
  - a. No climbing on the tree.
  - b. No swinging from the roots of the tree.
  - c. No motorized vehicles allowed in the park.
  - d. No nailing or stapling is permitted on the tree.

**Maui County Cultural Resources Commission  
August 11, 2004  
Page 3**

- e. Foreign matter should never be applied to the surface of the tree, i.e. paint, oil, etc.
  - f. No pruning or physical injury to the tree.
  - g. Toxic materials (herbicides, oils, etc.) should not be applied under the canopy of the tree without the guidance of the Maui County Arborist.
  - h. No cooking or fires be permitted under the canopy of the tree.
  - i. No fireworks are permitted under the canopy of the tree.
9. That all structures be of a temporary nature and installed no earlier than the day of the event. Booths shall be no larger than 10' x 10' and shall be removed at the close of each day of the event.
  10. That no staking shall occur within Banyan Tree Park.
  11. That no signs shall be displayed advertising any portion of the event, except those that are permitted by a Historic District Sign permit.
  12. That all music in Banyan Tree Park be restricted to live performances. Music shall not be allowed to create any deleterious effect, including sound levels that might create a nuisance to nearby merchants, building occupants, or the general public. No prerecorded music is to be played at any event.
  13. That the appropriate building permits be obtained from the Department of Public Works and Environmental Management, if applicable.
  14. That Banyan Tree Park shall be cleaned of all trash immediately following the event.
  15. That Banyan Tree Park permit holders shall carry liability insurance for the event for a minimum of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) and shall name the County of Maui as an additional insured.
  16. That the LTAC and LAS do not have exclusive rights to permits granted for Banyan Tree Park.
  17. That a time limit of one year shall apply to ongoing art fairs at Banyan Tree Park. The Cultural Resources Commission, the Department of

Maui County Cultural Resources Commission  
August 11, 2004  
Page 4

Planning, and the Department of Parks and Recreation shall review arts fairs on an annual basis.

18. That full compliance with all other applicable governmental requirements shall be rendered.

The CRC deferred action on a condition that would ban food booths at art fairs and special events, pending further direction on this matter from the Department of Parks and Recreation. CRC members unanimously agreed that food is a cultural practice and supports allowing food booths at art fairs and special events. The CRC will reconsider the issue of food booths after the Parks Department has provided additional information.

MWF:DED:jlj

c: Alan Arakawa, Mayor  
Glenn Correa, Director, Department of Parks and Recreation  
Kelvin Nelson, Chairman, Maui County Arborist Committee  
Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shimoto, PE, Planning Program Administrator (2)  
Dawn E. Duensing, Cultural Resources Planner  
Simone Bosco, Staff Planner  
Keoki Freeland, Lahaina Restoration Foundation  
Theo Morrision, Lahaina Town Action Committee  
Lahaina Arts Society  
K:\WP\_DOCS\PLANNING\LTR\2004\BanyanTreePolycmemo1.wpd

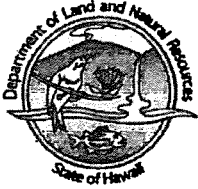
LINDA LINGLE  
GOVERNOR OF HAWAII



PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

YVONNEY Y. IZU  
DEPUTY DIRECTOR - WATER



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

54 High Street, Room 101  
Wailuku, Hawaii 96793  
PHONE: (808) 984-8103  
FAX: (808) 984-8111

July 22, 2004

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ms. Simone Bosco, Staff Planner  
Department of Planning  
County of Maui  
250 South High Street  
Wailuku, HI 96793

Dear Ms. Bosco:

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED  
04 JUL 23 PM 2:33

Subject: Subject I.D.: 2004/0001, TMK: (2) 4-6-001:009, Revised and Updated Amendment to the He U'I Cultural Arts Festival, Lahaina Town Action Committee

By Governor's Executive Order No. 16-2, the County of Maui obtained jurisdiction and management control over the subject parcel for public purposes.

At its meetings of December 12, 1997, Agenda Item D-1, October 8, 1999, Agenda Item D-3, and February 25, 2000, Agenda Item D-7, the Board of Land and Natural Resources approved of certain uses, leases and subleases of the Lahaina Courthouse and the Lahaina Banyan Tree Park (please see copies enclosed).

It appears that you were well aware of the conditions set by the Board for the use of the Park and had the Lahaina Town Action Committee respond to those criteria. The responses appear to be satisfactory in the case of the Board's conditions; however, we'd like to point out that the Board also required the users to additionally comply with other criteria that may be determined by the County of Maui.

Thank you for the opportunity to review and comment on the subject matter. If you have any questions, please call me at 984-8103.

Sincerely,  
  
Jason K. Koga, District Land Agent

Enclosures

c: District Files, N. Vaccaro

EXHIBIT 6



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

February 25, 2000

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

MAUI

County of Maui Request to Amend Previous Board Approval of December 12, 1997, Agenda Item  
D-1, Tax Map Key: 4-6-01: 09, Lahaina, Maui.

REQUESTOR:

County of Maui, Department of Parks and Recreation

LEGAL REFERENCE:

Chapter 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lahaina, situated at Lahaina, Maui, identified by Tax Map Key:  
4-6-01: 09, as shown on the attached map labeled Exhibit A.

ZONING:

State Land Use District:  
County of Maui Zoning:

Urban District  
Park, Historic District

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:  
YES \_\_\_ NO X

CURRENT USE STATUS:

Currently under Executive Order No. 16-2 to the County of Maui for courthouse, jail and public purposes.

CHAPTER 343 - ENVIRONMENTAL IMPACT STATEMENT:

*The requested after the fact use by the County of Maui has actually existed for over thirty (30) years with no Board approval. Accordingly, the requested use of the land does not differ from this previous use. Therefore, pursuant to Section 11-200-8(a)(1) of the Environmental Impact*

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

ITEM D-7

2/25/2000

*Statement Rules, Exempt Classes of Action, the County of Maui, as indicated in their January 20, 2000 letter (Land Board Exhibit B), has determined that they are exempt from the preparation of an environmental assessment.*

REMARKS:

*At its meeting of December 12, 1997, the Board, under Agenda Item D-1, reviewed and approved the County of Maui's request to lease the Old Lahaina Courthouse, under Executive Order No. 16-2, for uses other than County (public) purposes. Approval was subject to certain conditions, part of which were the following:*

3. *That the uses shall be limited to the following:*

- a. *Museum*
- b. *Art Gallery*
- c. *Visitor Center of Lahaina Town*
- d. *Community Center (meeting room/classroom)*
- e. *Office Administrative Space*

4. *That the potential users must meet the following requirements:*

- a. *The organizations are tax-exempt, non-profit*
- b. *Their occupancy in the building must provide a demonstrated public benefit to the Lahaina Community and to the citizens of Maui County*
- c. *The activities of the organizations shall have a significant education component*
- d. *Other criteria as may be determined by the County of Maui*

5. *Prior to issuing the leases to the selected organizations, the County of Maui shall request approval from the Board.*

*On October 8, 1999, the Board, under Agenda Item D-3, found that the County of Maui's proposed users did meet the use condition and the established potential user criteria condition, and in accordance with Condition No. 5, approved the County of Maui's request to lease the courthouse to the Lahaina Restoration Foundation and sublease to the Lahaina Art Society and Lahaina Town Action Committee.*

*Although the courthouse has become an established historic landmark within the Lahaina area, the ~~Lahaina~~ Banyan Tree Park, which is located on the same piece of set aside land, has also pulled its weight as a significant historical site. For many years, the County has allowed use of the park area for exhibits, arts and crafts sales, community events, and other non-county public events without Board approval. With the County's recent wish to comply with Section 171-11, HRS, for use of the courthouse building, the Department of Parks and Recreation has become aware that the uses allowed at the Lahaina Banyan Tree Park were never in compliance with this section also.*

*Accordingly, the Department of Parks and Recreation is requesting Board approval to amend their previous action of December 17, 1997, Agenda Item D-1, by adding a new use section for the park area which will include arts and crafts exhibits and sales, cultural demonstrations, community events and other related activities. The proposed users will be non-profit organizations and will be required to meet the same potential user criteria established with the courthouse.*

RECOMMENDATION:

That the Board amend their previous December 12, 1997, Agenda Item D-1, approval with changes (underlined) to Condition Nos. 3 and 4, as follows:

4. The additional uses for the courthouse shall be limited to the following:
- a. Museum;
  - b. Art Gallery;
  - c. Visitor Center of Lahaina Town;
  - d. Community Center (meeting room/classroom); and
  - e. Office Administrative Space

The uses for the Lahaina Banyan Tree Park shall be limited to the following:

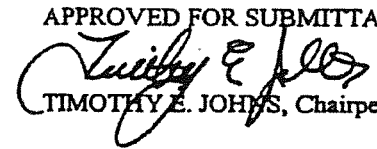
- a. Arts and crafts exhibits and sales;
- b. Cultural demonstrations;
- c. Community events; and
- d. Other related activities

5. The potential users for both the courthouse and Lahaina Banyan Tree Park must meet the following characteristics:
- a. The organizations are tax-exempt, non-profit;
  - b. Their occupancy in the courthouse or the park must provide a demonstrated public benefit to the Lahaina Community and to the citizens of Maui County;
  - c. The activities of the organizations shall have a significant educational component; and
  - d. Other criteria as may be determined by the County of Maui.

Respectfully submitted,

  
PHILIP OHTA  
Maui District Land Agent

APPROVED FOR SUBMITTAL:

  
TIMOTHY E. JOHNS, Chairperson