

COUNCIL OF THE COUNTY OF MAUI

**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

November 7, 2014

**Committee
Report No. _____**

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

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on October 14, 2014, makes reference to County Communication 14-235, from the Managing Director, transmitting a proposed resolution entitled "ACCEPTING THE GRANT OF A LEASE FOR THE HAMOA BEACH SHOWER AREA, PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE".

The purpose of the proposed resolution is to accept a lease, for \$1 per year, from Heavenly Hana, LLC, for a portion of the property identified as TMK: (2) 1-4-010:001, located in Hana, Maui, Hawaii, to allow public use of an outdoor shower and the surrounding 100-square-foot area at Hamoa Beach.

The Chair of your Committee noted the outdoor shower is located on property owned by Heavenly Hana, LLC, adjacent to Hamoa Beach. The company maintained the shower until it was shut down in October 2012 because of the high cost of main waterline repairs and water. The Chair further noted the lease would expire on June 30, 2064, and the County would pay all water utility costs for the outdoor shower, along with the nominal sum of \$1 per year.

The Managing Director stated the shower had been heavily utilized by residents of Hana, as well as guests of the Travaasa Hotel Hana (formerly known as Hotel Hana-Maui), who have been left without a public shower for the past two years. Shower water costs were high because of the spigot-type faucet that had been on the shower.

Your Committee noted the hotel manager stated the water bill alone ranged from \$20,000 to \$24,000 per year – a higher-than-normal amount resulting from a break in the main waterline.

The Managing Director informed your Committee the main waterline would be repaired by Ma Ka Hana Ka 'Ike, Inc. ("nonprofit"), a local, nonprofit company for at-

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risk youth. The County would not be responsible for maintaining the property because maintenance would be undertaken by Heavenly Hana, LLC and the nonprofit, with periodic oversight by the County. The Managing Director added the County intends to install a submeter on the waterline and a faucet with an automatic shutoff.

A Deputy Corporation Counsel advised your Committee the County would not own the waterline and would pay only water costs. The Deputy Corporation Counsel added the language of the lease is sufficient to cover the responsibilities of the parties with respect to the waterline, maintenance, and participation by the nonprofit. The lease is intended to make the shower operational again.

Regarding the extent of the County's potential liability as a result of the proposed lease's indemnification provision, the Deputy Corporation Counsel opined that while there is a certain exposure to the County to liability under the provision, the parties, the nonprofit, and the Department of Parks and Recreation would try to minimize exposure to the best of their abilities. He added the parties and nonprofit will work together to make sure the shower is safe for users.

The Interim Director of Parks and Recreation stated the Department supports the proposed resolution. She said beach showers are amenities that get used heavily at beach parks, representing a significant benefit to the community.

The Managing Director indicated that working with the nonprofit would be the County's way of partnering with the community to turn the shower back on and provide clean water for the public to enjoy.

Your Committee recommended a nonsubstantive revision to the Maui County Code provision in the resolution.

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

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

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**ECONOMIC DEVELOPMENT, ENERGY,
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Committee
Report No. _____

Your Economic Development, Energy, Agriculture, and Recreation Committee
RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled
“ACCEPTING THE GRANT OF A LEASE FOR THE HAMOA BEACH
SHOWER AREA, PURSUANT TO CHAPTER 3.44, MAUI COUNTY
CODE”, be ADOPTED; and
2. That County Communication 14-235 be FILED.

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



DON S. GUZMAN, Chair

Resolution

No. _____

ACCEPTING THE GRANT OF A LEASE FOR THE HAMOA BEACH SHOWER AREA,
PURSUANT TO CHAPTER 3.44, MAUI COUNTY CODE

WHEREAS, HEAVENLY HANA, LLC ("Heavenly Hana") is the owner of real property where the outdoor shower at Hamoa Beach is located; and

WHEREAS, Heavenly Hana has agreed to grant a lease to the County of Maui for the outdoor shower and the surrounding area for the nominal sum of ONE DOLLAR (\$1) per year; and

WHEREAS, the County of Maui will be responsible for the payment of all water utility costs; and

WHEREAS, the proposed Lease is attached hereto as Exhibit "A"; and

WHEREAS, pursuant to Section 3.44.015(C), Maui County Code, the Council, by resolution, may accept a gift or donation of real property or any interest in real property by resolution, approved by a majority of its members; now, therefore,


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

1. That the Council hereby accepts the grant of the Lease for the outdoor shower and surrounding area, in the form attached hereto as Exhibit "A," pursuant to Section 3.44.015(C), Maui County Code; and

2. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute all necessary documents in connection with said Lease; and

3. That certified copies of this resolution be transmitted to the Mayor, the Director of Parks and Recreation, and Heavenly Hana, LLC.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY DEOKA
Deputy Corporation Counsel
County of Maui

S:\ALL\JTU\RESOS\Hamoa Beach Shower Lease.wpd

W I T N E S S E T H:

WHEREAS, Lessor and Lessee hope and desire to allow for public use of the outdoor shower area at Hamoa Beach; and

WHEREAS, Lessor is the owner of the outdoor shower and the surrounding area; and

WHEREAS, Lessor has agreed to lease the outdoor shower and the surrounding area to Lessee so that public use may continue; 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 Premises shall comprise the outdoor shower area and the area immediately surrounding it, a ten (10) foot by ten (10) foot area centered on the center of the outdoor shower, located on Tax Map Key No. (2)1-4-010:001, as shown on Exhibit "1", attached hereto and made a part hereof, hereinafter referred to as the "Premises."

B. Use of Premises. Lessee shall utilize the Premises solely for use as an outdoor shower. The general public shall be allowed to utilize the outdoor shower.

C. Term. This Lease shall commence upon execution and expire upon the 30th day of June 2064, unless sooner terminated as provided herein.

D. Rent. Lessor reserving and the Lessee yielding and paying to the Lessor a rental of ONE DOLLAR (\$1.00) per annum, the receipt and sufficiency of which is hereby acknowledged.

E. Water Fees. Lessee shall be responsible for payment of all water utility costs for the outdoor shower.

F. Maintenance. Lessor shall continue to maintain the outdoor shower and the surrounding area, maintenance shall be to the level reasonably acceptable level agreed to by the Parties.

G. Indemnification. Lessee, to the extent permitted by law, shall indemnify and save Lessor harmless against and from any and all suits, claims, damages, judgments, costs, and expense, including reasonable attorney's fees, arising from the Lessee's use of the Premises.

H. "As Is" Condition. Lessor has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the Premises, whether or not such conditions are known to Lessor or reasonably discoverable by Lessee. Lessee accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.

I. Early Termination. Either party may terminate this Lease, for any reason whatsoever, upon thirty (30) days written notice to the other party.

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

LESSOR:

HEAVENLY HANA, LLC

By 
(Signature)

G. DOUGLAS WILEY
(Print Name)

Its MANAGER
(Title)

By _____
(Signature)


(Print Name)

Its _____
(Title)

LESSEE:

COUNTY OF MAUI

APPROVAL RECOMMENDED:


BRIANNE L. SAVAGE
Deputy Director, Department
of Parks and Recreation

Interim

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:


JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

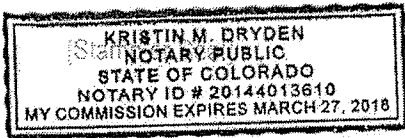
By _____
DANILO F. AGSALOG
Its Director of Finance

S:\A\LA\CTC\MD\Hanao Beach Shower Lease (7.15.14).epd

STATE OF Colorado)
County of Denver) SS.

On this 22nd day of July, 2014, before me personally appeared G. Douglas Wiley, Jr., 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.



Kristin M. Dryden
Notary Public, State of Colorado

Print Name: Kristin M. Dryden

My commission expires: March 27, 2018

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF _____)
) SS.
)
_____)

On this _____ day of _____, 20____, before me personally appeared _____, 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 _____

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

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.

[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: _____	

Notary Signature: _____	[Stamp or Seal]
Date: _____	

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me appeared DANILO F. AGSALOG, 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 DANILO F. AGSALOG 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.

Notary Seal

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

Ld. Ct. App. 1602 (Pending)

4473, 6923, Mahala Award 3 to A. Keohokalole

HANEEO GOVERNMENT ROAD (30 FT. WIDE)

EXCLUSION B of Ld. Ct. App. 1602 (Pending)

Portion
2809.09 Ft. South
6240.47 Ft. East
ref. to Govt. Survey
Trig. Sta. KEAKAAMANI

Ld. Ct. App. 1602
(Pending)
Hana Ranch Co. Ltd.
(Owner)

Grant 2677

to Hanai, Hekiku and Kapaka

74,260 Sq. Ft. or 1.705 Acs.

Total Area 74,600 Sq. Ft. or 1.710 Acs.

Shower

Portion of Grant 2621 to Kabawala et al
Ld. Ct. App. 1605 (Pending)
Hana Ranch Co. Ltd. - (Owner)

Scale 1" = 40'

NOTE: Figures shown thus ③ indicate number of course in description.
Owners of adjacent lands are from records of the Taxation Maps Bureau.