

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

December 14, 2004

**Committee  
Report No.**

04-219

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

Chair and Members:

Your Committee of the Whole, having met on November 29, 2004, makes reference to County Communication No. 04-217, from the Mayor, transmitting a proposed resolution entitled "AUTHORIZING AN AMENDMENT TO THE GRANT OF A LEASE OF REAL PROPERTY TO LAHAINA RESTORATION FOUNDATION".

The purpose of the proposed resolution is to extend by five years the term of a lease granted to the Lahaina Restoration Foundation (LRF) for the Old Lahaina Courthouse (Courthouse), identified for Real Property Tax purposes as Tax Map Key No. (2) 4-6-001:009. Your Committee notes that the original Lease and Management Agreement (Lease) provided for a two-year term which expired on March 15, 2002. LRF has since been holding over on a month-to-month basis, pursuant to Page 12, Paragraph F, of the Lease.

By correspondence dated September 9, 2004, the Chair of your Committee requested that the Mayor provide a copy of the executed Lease, a copy of the executed Grant Agreement for a Lease of County Real Property (Grant), any proposed amendments for which Council approval is being sought, and a revised proposed resolution incorporating certain nonsubstantive revisions.

By correspondence dated September 10, 2004, the Chair of your Committee requested that the Director of Finance indicate whether LRF had complied fully with the terms and conditions of the Lease.

By correspondence dated September 10, 2004, the Chair of your Committee requested that the Corporation Counsel advise: (1) whether the State Board of Land and Natural Resources (BLNR) is required to first review and approve any proposed amendments, including an extension, to the Lease and the Grant; (2) whether a new appraisal of the fair market rental value of the property is required in light of the expiration of the lease term; (3) whether LRF must first receive the recommendation of the Grants Review Committee for the

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requested five-year extension at a rent below fair market value; and (4) whether certain housekeeping revisions should be made to the proposed lease amendment.

By correspondence dated September 17, 2004, the Department of the Corporation Counsel, on behalf of the Office of the Mayor, provided a copy of the executed Lease and a revised proposed resolution incorporating nonsubstantive revisions, and indicated that a copy of the executed Grant could not be located.

By correspondence dated September 23, 2004, the Director of Finance provided a copy of correspondence dated September 16, 2004, from LRF, transmitting quarterly income statements for the Courthouse for the period January 2, 2000 through September 30, 2004, and noting the inclusion of \$5 in lease rent.

By correspondence dated September 27, 2004, the Chair of your Committee requested that the Mayor respond to those portions of the September 9, 2004 request that remained unanswered.

By correspondence dated October 27, 2004, the Department of the Corporation Counsel responded as follows: (1) since the request is to extend the term of the Lease without changes to the use or other material provisions, the Department does not believe that BLNR consent is required; however, a representative of BLNR had not yet been consulted; (2) an update of the 1999 fair market rental valuation of \$84,000 had not been obtained, and one is not required; (3) Grants Review Committee review and approval is not required for the extension; and (4) boilerplate lease provisions would be reviewed and updated if deemed advisable.

By correspondence dated October 28, 2004, the Chair of your Committee requested that the Chairperson of BLNR advise whether BLNR is required to review and approve a request for a five-year extension to the Lease for the Courthouse.

By correspondence dated November 1, 2004, the Chair of your Committee supplemented the request to the Chairperson of BLNR with a copy of the October 27, 2004 response from the Department of the Corporation Counsel.

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By correspondence dated November 4, 2004, the Chairperson of BLNR advised that BLNR's consent is not required for a lease extension, but would be required for a new lease of the Courthouse. The Chairperson suggested that legal counsel evaluate whether the two-year lease executed on February 15, 2000 may be "extended" (despite having expired) or whether a new lease must be executed.

By correspondence dated November 8, 2004, the Chair of your Committee transmitted to the Corporation Counsel a copy of correspondence dated November 4, 2004, from the Chairperson of BLNR, and requested that the Department respond to the question posed by BLNR.

By correspondence dated November 18, 2004, the Department of the Corporation Counsel responded that the Lease could be retroactively amended to reflect a lease term extension of seven years, resulting in an amended lease period of March 15, 2000 up to and including March 15, 2009. The Department also transmitted a revised proposed resolution reflecting the amended lease term, a revised proposed lease amendment, and a revised proposed grant agreement.

At its meeting, your Committee met with the Director of Finance; the Director of Parks and Recreation; the Deputy Director of Parks and Recreation; the Special Events/Grants Coordinator, Department of Parks and Recreation; an Executive Assistant to the Mayor; a Deputy Corporation Counsel; and George "Keoki" Freeland, the LRF Executive Director.

Your Committee received public testimony from three individuals.

On behalf of the West Maui Taxpayers Association, its Executive Director stated that it is always in the County's best interest to have good stewards for public property.

The LRF Executive Director testified that, under the Lease, LRF is required to operate the facility in accordance with the Old Lahaina Task Force recommendations, which require a gallery, museum, visitor center, public meeting room, and office space. There are two sublessees—the Lahaina Town Action Committee and the Lahaina Arts Society—which also occupy the premises. Mr. Freeland noted that a major problem in maintaining the premises is the

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toilets, due to heavy use by members of the public who attend activities at the Banyan Tree and cruise ship visitors. The facilities were designed to accommodate visitors to and occupants of the Courthouse. LRF has two areas of responsibility: (1) the Courthouse; and (2) the Banyan Tree Park, through a separate grant. The three occupants of the Courthouse share building maintenance costs. The cost of caring for the park and the rest of Front Street is covered by grant monies. The cruise ship industry has not offered to share any costs of maintaining the Courthouse facilities.

The LRF President testified that usage of the Courthouse bathrooms is very heavy. She also noted that the size of the bathroom facilities will be increased in 2006.

The Director of Finance informed your Committee that LRF has satisfied the Lease's payment terms, which call for \$1 per year in rent. He noted that a review of the financial records reveals that LRF's expenses are quite substantial in consideration of its revenue, with net losses in consecutive years. However, LRF has demonstrated a good-faith effort to comply with the Lease and provide critical services at the Courthouse.

The Executive Assistant to the Mayor stated that the Mayor supports the request. LRF maintains the park and the Courthouse well. No complaints from users of the facility have been received.

Your Committee discussed the payment of utility charges for use of the premises, noting that the Lease provides that LRF pay all utility charges when due. The Special Events/Grants Coordinator, Department of Parks and Recreation, informed your Committee that the Department pays annual water and sewer charges associated with the Courthouse, amounting to approximately \$4,000 and \$6,000, respectively. The Director of Finance indicated that the County pays for electrical use at the Banyan Tree site, which costs approximately \$2,000 per month.

Your Committee questioned whether the Administration would approach the cruise ship industry for contributions toward maintenance fees. The Executive Assistant to the Mayor advised that the Mayor's Cruise Ship Task Force is evaluating the issue.

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The Deputy Director of Parks and Recreation informed your Committee that the Department manages grants and leases to LRF and supports the requested lease extension. The Department does not believe, however, that the County should bear the brunt of impacts arising from cruise ship visitors.

Your Committee discussed environmental impacts by the cruise ship industry on land and whether an environmental assessment should be done. The Deputy Corporation Counsel advised that similar issues have been raised on Molokai, but that he is unaware of the status of any decision.

Your Committee also discussed the lack of a current fair market rental appraisal of the property, which was valued in 1999 at \$84,000 per year. The Deputy Corporation Counsel noted that he would estimate the current value to be higher; however, irrespective of the fair market rental value, LRF's request would still remain at \$1 per year.

The Director of Finance noted that commercial rents in that area have historically increased 10 to 12 percent per year. He also noted that LRF receives approximately \$100,000 per year for maintenance of the park area.

The Deputy Director of Parks and Recreation informed your Committee that the Department does not currently have future capital improvement projects planned for the Courthouse.

The Director of Finance informed your Committee that he is not aware of any specific risk assessment for the Courthouse. However, the Department does maintain a risk management structure that applies to all public buildings.

Your Committee expressed displeasure at the posture of the request, which seeks an extension of a two-year lease more than two years after it had expired. Your Committee discussed whether a lease extension is the appropriate vehicle or a new lease should be proposed. The Deputy Corporation Counsel, referring to his Department's response dated November 18, 2004, opined that the Council can either retroactively amend the Lease or require that a new lease be submitted, noting that LRF has been in continuous possession of the premises since the Lease expired.

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Your Committee discussed with Mr. Freeland the possibility of additional revenue sources being created, as well as the structural condition of the historic building. Mr. Freeland noted that the building could use termite treatment and a better drainage system for the basement, which floods during high tide and strong rains, in addition to better drainage for the toilets. He also described the history of renovations to the building.

Your Committee discussed the need for improved communications regarding the condition of the Courthouse, while acknowledging that LRF has done a good job with limited resources. Your Committee urged that proposals be made to ensure that the structural soundness of the building is maintained and that issues raised at the meeting are addressed. Your Committee also urged that the Administration explore ways to better police the expiration of leases of County real property.

Your Committee voted to recommend adoption of the revised proposed resolution and filing of the communication.

Your Committee is in receipt of a further revised proposed resolution, approved as to form and legality, incorporating nonsubstantive revisions.

Your Committee of the Whole RECOMMENDS the following:

1. That Resolution No. \_\_\_\_\_, as revised herein and attached hereto, entitled "AUTHORIZING AN AMENDMENT TO THE GRANT OF A LEASE OF REAL PROPERTY TO LAHAINA RESTORATION FOUNDATION" be ADOPTED; and
2. That County Communication No. 04-217 be FILED.

Adoption of this report is respectfully requested.

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**ROBERT CARROLL** **Chair**

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**MICHAEL J. MOLINA** **Member**

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**DAIN P. KANE** **Vice-Chair**

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**WAYNE K. NISHIKI** **Member**

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**G. RIKI HOKAMA** **Member**

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**JOSEPH PONTANILLA** **Member**

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**JO ANNE JOHNSON** **Member**

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**CHARMAINE TAVARES** **Member**

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**DANNY A. MATEO** **Member**