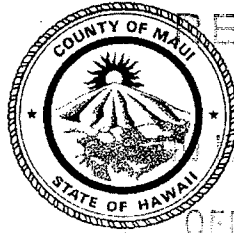


MICHAEL P. VICTORINO
Mayor

PATRICK K. WONG
Acting Corporation Counsel

EDWARD S. KUSHI, JR.
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761



RECEIVED

MAR -5 AM 10:43


OFFICE OF THE
COUNTY COUNSEL

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

March 5, 2019

MEMORANDUM

TO: Mike J. Molina, Chair
Governance, Ethics, and Transparency Committee

FROM: Kristin K. Tarnstrom, Deputy Corporation Counsel 

SUBJECT: Litigation Matter – Settlement of Claims and Lawsuits (GET-1)
The Makawao Cemetery Association, Inc. v. The Office of Veterans Services, et al., Civi No. 15-1-0209(2)

Our Department respectfully requests authorization to discuss settlement of the above-referenced lawsuit.

It has recently been communicated to the County that this action is very time-sensitive, and federal funding for the State of Hawaii expansion project at the Makawao Veterans Cemetery is threatened by delay. We ask to be placed on the next possible committee meeting agenda.

A copy of the proposed (1) Intergovernmental Agreement with the State of Hawaii Department of Defense, The National Cemetery Administration of the U.S. Department of Veterans Affairs, the State Historic Preservation Division of the Department of Land and Natural Resources, and the Advisory Council on Historic Preservation to Set Forth Guidelines to Maintain the Maui Veterans Cemetery at "Shrine Status"; (2) Intergovernmental Agreement with the State of Hawaii Department of Defense, Office of Veterans Services Setting forth the Maintenance of the Maui Veterans Cemetery to "Shrine Status"; and (3) the "Maui Veterans Cemetery Grounds Maintenance and Management Plan – Standard Operating Procedures" to Maintain the Cemetery at "Shrine Status" are attached.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

Should you have any questions or concerns, please do not hesitate to contact us. Thank you for your anticipated assistance in this matter.

KKT/jcm

cc:

ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO (1) ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII DEPARTMENT OF DEFENSE, THE NATIONAL CEMETERY ADMINISTRATION OF THE U.S. DEPARTMENT OF VETERANS AFFAIRS, THE STATE HISTORIC PRESERVATION DIVISION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION TO SET FORTH GUIDELINES TO MAINTAIN THE MAUI VETERANS CEMETERY AT “SHRINE STATUS”; (2) TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII DEPARTMENT OF DEFENSE, OFFICE OF VETERANS SERVICES SETTING FORTH THE MAINTENANCE OF THE MAUI VETERANS CEMETERY TO “SHRINE STATUS”; AND (3) APPROVAL OF THE “MAUI VETERANS CEMETERY GROUNDS MAINTENANCE AND MANAGEMENT PLAN – STANDARD OPERATING PROCEDURES” TO MAINTAIN THE CEMETERY AT “SHRINE STATUS”.

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The County of Maui (“County”); the State of Hawaii Department of Defense (“State”); the National Cemetery Administration of the U.S. Department of Veterans Affairs (“NCA”); the State Historic Preservation Division of the Department of Land and Natural Resources (“SHPD”); and the Advisory Council on Historic Preservation wish to enter into a Memorandum of Agreement (“MOA”) setting forth essential terms for the operations and maintenance of the Maui Veterans Cemetery located in Makawao, Maui, Hawaii. The purpose of this MOA is to comply and honor the requirements of Section 106 of the National Historic Preservation Act.

The State received funding from the NCA to expand the Maui Veterans Cemetery, and such funding requires the grounds of the cemetery be maintained at “Shrine Status.” Shrine Status is established by various NCA standards.

Under State of Hawaii Executive Order 3279, the County manages the Maui Veterans Cemetery. In addition, Section 363-5, Hawaii Revised Statutes, states that the County “shall make provisions for the maintenance and upkeep of the [veterans] cemetery.” The potential increased maintenance responsibility of maintaining the cemetery to Shrine Status may place additional financial obligations upon the County.

Because the Makawao Veterans Cemetery shares a boundary with an historic property, the Makawao Cemetery, the NCA had to undertake an analysis of the potential effects the expansion project may have on the historical Makawao Cemetery. Several efforts to mediate any effect of the expansions were undertaken by the parties, resulting in the MOA attached hereto as Exhibit “1”.

The MOA sets forth the terms decided upon at the various mediations and consultations between the above-mentioned parties. The MOA is subject to Maui County Council approval by the terms of the agreement, as well as Maui County Code Section 2.20.020.

The MOA directs the State and County to work together to draft a Memorandum of Understanding (“MOU”) and a Cemetery Grounds Management Plan (“Plan”) to further detail how the County will manage the Maui Veterans Cemetery to ensure it maintains “Shrine Status.” The MOU, is referenced in the MOA as “Attachment B,” attached hereto as Exhibit “2”. The MOU must also be passed with County Council approval according to the terms of the agreement, as well as Maui County Code Section 2.20.020. The Plan, attached hereto as Exhibit “3” must also be passed with Maui County Council approval according to the terms of the MOA and MOU, and Maui County Code Section 2.20.020.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or

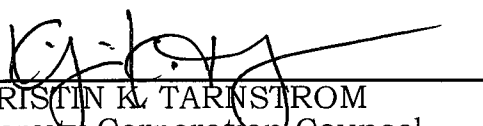
any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

The impetus for the MOA, MOU, and the Plan arose from the Makawao Cemetery Association filing a Complaint against various State of Hawaii agencies and the County, in Civil No. 15-1-0209(2), Circuit Court of the Second Circuit, State of Hawaii; and against various federal and State of Hawaii agencies in a Federal Court action, of which the County is not a party. Section 3.16.020(B), Maui County Code, provides that any settlement in excess of \$7,500 shall require Council authorization.

SECTION 2. Council Authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to enter into an intergovernmental agreement in the form of the MOA attached hereto as Exhibit "1."

SECTION 3. Effective Date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



KRISTIN K. TARNSTROM
Deputy Corporation Counsel
County of Maui

LIT-5483 / 2019-1-28 Bill for Ordinance – MOA, MOU, Plan

MEMORANDUM OF AGREEMENT
AMONG THE NATIONAL CEMETERY ADMINISTRATION OF THE
U.S. DEPARTMENT OF VETERANS AFFAIRS,
THE HAWAII STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE STATE OF HAWAII DEPARTMENT OF DEFENSE, OFFICE OF VETERANS SERVICES AND THE
COUNTY OF MAUI REGARDING A GRANT TO SUPPORT IMPROVEMENTS
TO THE MAUI VETERANS CEMETERY,
MAKAWAO, MAUI, HAWAII

WHEREAS, the National Cemetery Administration (NCA) of the U.S. Department of Veterans Affairs (VA) has made a grant to the State of Hawaii Department of Defense, Office of Veterans Services (OVS) to support expansion and improvement of the Maui Veterans Cemetery in Makawao on Maui, Hawaii; and

WHEREAS, NCA has determined that issuance and administration of its grant to OVS constitutes an undertaking requiring review under Section 106 of the National Historic Preservation Act, and has determined the undertaking's area of potential effects (APE) to include the existing and expansion property of the Maui Veterans Cemetery and the adjacent privately controlled Makawao Cemetery; and

WHEREAS, OVS expansion and improvements include additional parking and paved access roads, additional crypts, sidewalks for visitors with mobility issues, construction of a maintenance building and shed, and landscaping to follow construction; and

WHEREAS, the State of Hawaii Executive Order 3279 established public land for the Makawao Veterans Cemetery Site "to be under the control and management of the County of Maui" in 1985; and

WHEREAS, the State of Hawaii Revised Statutes Section 363-5 requires, inter alia, the County of Maui (County) to pave roadways and walks, install curbs, build fences, plant trees, shrubs and grass, and make provisions for maintenance and upkeep; and

WHEREAS, NCA has determined that this undertaking will have adverse effects on the Makawao Cemetery, which NCA and the Hawaii State Historic Preservation Officer within the State Historic Preservation Division (SHPD) agree is eligible for the National Register of Historic Places; and

WHEREAS, NCA has consulted with the SHPD in accordance with 36 CFR § 800.6 to consider alternatives to resolve these adverse effects; and

WHEREAS, pursuant to 36 CFR § 800.6 (a)(1) and 800.6(a)(1)(iii), NCA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination and invited ACHP to participate in consultation, and the ACHP has participated; and

WHEREAS, NCA has consulted with OVS and the County and has invited both parties to sign this agreement as invited signatories; and

WHEREAS, NCA has consulted with the Maui County Veterans Council (Veterans Council), Makawao Cemetery Association (MCA) and Maui Green and Beautiful and has invited them to sign the agreement as concurring parties; and

WHEREAS, Maui Cultural Resources Commission, Makawao Community Association, Maui Burial Council, Maui County Planning Department, Maui County Planning Commission, and State of Hawaii Aha Moku Advisory Committee were invited to participate in consultation and they have elected not to participate; and

WHEREAS, the NCA, SHPD, ACHP, OVS, the County, Veterans Council, MCA, and Maui Green and Beautiful have consulted to resolve the undertaking's adverse effects,

NOW, THEREFORE, the NCA, SHPD, ACHP, OVS, and the County, agree that the undertaking will be carried out in accordance with the following stipulations, in order to take into account its effects on historic properties.

STIPULATIONS

NCA will ensure the following measures are implemented:

I. Phase I Construction in Lot 2

- A. Phase I includes improvements to Lot 2 with paved parking, landscaping, construction of a maintenance building and other improvements for expansion of the cemetery. The project does not affect Lot 1 and construction may continue to completion.
- B. OVS will ensure that construction contractors and equipment will not damage any existing landscape or historic elements in Lot 1 and Lot 2.

II. Entry Gate and Rock Wall

- A. The ornamental entry gate to Lot 1 to be similar in design and structure to the existing gates at Kauai Veterans Cemetery and West Hawaii Veterans Cemetery. The gate height will not exceed six feet.
- B. The rock wall at the entry to Lot 1 will be compatible in type and style to the existing walls of the Makawao Cemetery. The wall will be built with dry-stacked basalt field rock and will not exceed three feet above the adjacent ground surface in height to allow view planes of the cemeteries.
- C. The gate and rock wall will be sited approximately as shown in the April 5, 2017 drawing of Lot 1 (Attachment A), subject to safety and setback requirements.

III. Signage

- A. OVS will provide space on the rock pillars located on each side of the entry gate for OVS and MCA signs.
- B. The signs will be similar in design, size, style and material. Placement will be on opposite sides of the entry gate.

IV. Landscape Design

- A. OVS will engage a landscape architect to develop the landscape design for Lot 1 using native Hawaiian species and other plant species such as Jacaranda.
- B. The County will review and comment upon the proposed landscape design within 30 calendar days of date of receipt of the proposed design as it has primary management and maintenance responsibilities. OVS will take the comments into account prior to any implementation.
- C. Final landscape design is subject to Maui County permit approvals.
- D. To avoid blocking views of the Makawao Cemetery from entry to Lot 1, OVS will ensure that only plants unlikely to exceed three feet in height at maturity will be planted along Baldwin Avenue.
- E. OVS will plant native trees and shrubs reaching a height greater than six feet on the north boundary of the Makawao Cemetery at the maintenance area and shed to screen the facility from view.
- F. Based on recommendations by a qualified arborist, OVS will include in the landscape design a protective root zone around the two Cook Island Pines (*Araucaria columnaris*) near the east boundary of Lot 1. Parking will not be allowed under the trees and within the tree protection zone to avoid compaction of the soil, root damage, and the hazard of falling branches.

V. Lot 1 Design for Parking

- A. OVS developed a draft scheme for Lot 1 (Attachment A) that reflects the discussion of the February 4, 2016 and December 13, 2016 consultation meetings. The draft scheme of Lot 1 was provided to all consulting parties for review and comment in January 2018 as part of the consultation process.
- B. OVS will ensure the following agreed-to elements will be in the final Lot 1 design.
 - i. The two Cook Island Pines and the open grass area in front of the Makawao Cemetery's main west entrance and east of the main entry road will be retained.

ii. A maximum of four parallel parking stalls will be located on the west side of the entry road. The open grass area fronting the Makawao Cemetery and the parallel parking stalls may be reduced to accommodate the required 24-foot roadway width to allow for two-way traffic.

iii. A straight header curb will be on the roadway side and a protective curb or berm on the south side of the Cook Island Pine trees to prevent parking within the root zone protection area. The main entry roadway will have rolled curbs along its eastern edge fronting the Makawao Cemetery. The roll curbs will transition to straight curbs in the vicinity of the Cook Island Pines to prevent parking under and near the trees to avoid root damage.

iv. Parking on the grass along the area fronting the west side of Makawao Cemetery will be allowed for ceremonies, funerals and memorials for both cemeteries when those events cannot be accommodated by the parking provided at the Committal Shelter.

v. No signage will be placed and no berms will be constructed on the grass area between the entry road and the Makawao Cemetery.

- C. OVS will provide the final Lot 1 design to all consulting parties for review no later than six months after execution of this MOA. All consulting parties have 30 calendar days from date of receipt to provide their comments to OVS. OVS, in consultation with NCA, will finalize the design and implement it. The final Lot 1 design is subject to County permit approvals.

VI. Access to Makawao Cemetery

A. The main entry road, the road through the Maui Veterans Cemetery ten-acre expansion parcel (Lot 2), all paved parking stalls and the paved apron access to the Makawao Cemetery as expanded in the draft Lot 1 (Attachment A) will be available for vehicular and pedestrian use for those seeking access to Makawao Cemetery.

B. Paved access, no less than 15 feet in width, is provided from the main entry gate to the Makawao Cemetery second gate. The straight header curb and the protective curb or berm will continue on the outside of the Cook Island Pines protection zone and terminate on the south side of Makawao Cemetery second entry gate.

C. The paved apron access to the Makawao Cemetery second entry gate will be located on the north side of the straight header curb and the protective curb or berm in order to protect the Cook Island Pines.

D. A paved apron access way, no less than 15 feet in width, is provided for the Makawao Cemetery third entry gate east of the new access road leading to the north section of the Maui Veterans Cemetery.

E. A paved apron access, no less than 15 feet in width, is provided for the Makawao Cemetery fourth entry gate east of the new access road leading to the north section of the Maui Veterans Cemetery.

VII. Plan for Long Term On-going Maintenance

- A. OVS shall develop and execute a Memorandum of Understanding (MOU) with the County that specifies implementation of a Cemetery Grounds Management Plan (Plan). Both the MOU and the Plan are included in Attachment B of this MOA.
- B. The Plan shall conform to the NCA National Shrine Commitment Operational Standards and Measures (Version 5.1, July 2014) The County agrees that under the Plan, it must maintain the grass to meet NCA Shrine Standards once the improvement project is completed and maintenance responsibilities are conveyed to the County and accepted by Maui County Council. The Plan will recognize unique environmental factors of upland Maui and incorporate management concerns such as type of grass. The County will adhere to the Plan for all its maintenance activities.
- C. The MOU and Plan will address specific efforts to be taken by OVS and the County to discourage non-cemetery activities from occurring within the Maui Veterans Cemetery; the standard of care for grass maintenance to conform to NCA Shrine Standards; cost-sharing mechanisms between OVS and the County; and what steps to take and when to take them if the integrity of the grass or root systems of the Cook Island Pines are damaged or threatened.
- D. The Plan will provide a process for OVS and the County to determine if the grass and root systems of the Cook Island Pines are being damaged to the degree that soil and mud are more prevalent than grass and not acceptable under NCA Shrine Standards and the County must erect systems of bollards connected by chains to prevent additional damage. The County will revive, reseed or otherwise cause the grass to become healthy with complete coverage prior to removal of the bollard and chain system. OVS and the County will decide on a case-by-case basis when the bollards may be removed for cemetery events.
- E. The Plan will be developed jointly by OVS and the County. Subject to Stipulation VII.H. the Plan will be presented for acceptance to both OVS and the County accepting authorities

within six months of execution of this MOA. NCA will review the draft Plan prior to finalization to determine if it complies with NCA operational directives.

- F. If the Plan is not adhered to or not implemented properly, OVS, NCA, and the County will meet to determine the specific issues and develop measures to address the issues. If an entity other than OVS, NCA or the County objects to how the Plan is being implemented, the objections will be addressed under Stipulation VIII.A.
- G. To the extent any part of the maintenance described in the Plan conflicts with this MOA, this MOA shall prevail.
- H. This MOA, including provisions as provided herein, as well as the MOU and Plan are subject to Maui County Council approval. The County will seek such approval upon completion of the MOU and the Plan. If such approval is not obtained, the parties will work toward a draft that will meet the concerns of Maui County Council, re-draft any relevant terms, and present again for Maui County Council approval. The parties may do this until this MOA, the MOU and Plan are accepted, or instructed by the Maui County Council further recommended changes would be futile. If Maui County Council refuses to approve such MOA, MOU and/or Plan, NCA must consult with consulting parties to develop a new MOA, MOU and/or Plan.

VIII. Administrative Stipulations

A. Resolving Objections

1. Should any party to this MOA object in writing to NCA regarding any action carried out or proposed with respect to the undertaking, or to implementation of this MOA, NCA will consult with the objecting party and such other parties as may be interested, to resolve the objection.
2. If after initiating such consultation NCA determines that the objection cannot be resolved through consultation, NCA will forward all documentation relevant to the objection to the ACHP, including NCA's proposed response to the objection.
3. Within 30 days after receipt of all pertinent documentation, the ACHP will exercise one of the following options:
 - a. Advise NCA that the ACHP concurs in NCA's proposed response to the objection, whereupon NCA will respond to the objection accordingly; or
 - b. Provide NCA with recommendations, which NCA will take into account in reaching a final decision regarding its response to the objection; or
 - c. Notify NCA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4), and proceed to refer the objection and comment. NCA will take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4).

4. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, NCA may assume the ACHP's concurrence in its proposed response to the objection.
5. NCA will take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; NCA's responsibility to carry out all actions under this MOA that are not the subject of the objection will remain unchanged.
6. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA or the effect of the undertaking on historic properties be raised by a member of the public, NCA will notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

B. Reporting

1. On or before September 30, and each year thereafter until all stipulations of this MOA have been satisfied, the OVS will ensure that:
 - a. A progress report with status updates on each stipulation is prepared and distributed to all parties to this MOA, and made available to the public; and
 - b. The parties will be given 60 calendar days from date of receipt to review the report and consider whether adjustments to this MOA, or its termination, are in order.

C. Duration and Amendment

1. If the terms of this MOA have not been implemented by September 30, 2023, this MOA will expire. Prior to such event, NCA may consult with the other signatories to reconsider the terms of the MOA. If the signatories agree, the MOA may be amended.
2. Any signatory to this MOA may propose to NCA that the MOA be amended, whereupon NCA will consult with the other parties to this MOA to consider such an amendment. If all signatories agree, the MOA may be amended. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

D. Termination

1. If any signatory to this MOA determines that its terms will not or cannot be carried out, such party may propose to the other parties to this MOA that it be terminated.

2. The party proposing to terminate this MOA will notify all parties to this MOA, explaining in writing the reasons for termination and affording them at least 30 calendar days to consult and seek alternatives to termination. The parties will then consult.
3. Should such consultation fail, NCA or other signatory party may terminate the MOA by notifying all parties in writing.
4. Should this MOA be terminated, NCA will either:
 - a. Consult in accordance with 36 CFR § 800.6 to develop a new MOA; or
 - b. Request the comments of the ACHP pursuant to 36 CFR § 800.7.

E. Anti-Deficiency Act

This MOA is subject to the Anti-Deficiency Act (31 U.S.C. Section 1341). NCA's responsibilities under this agreement are contingent upon the availability of appropriated funds from which payment, if any, can be made. Should funds not be available to allow NCA to meet its responsibilities, NCA will defer its final decision(s) on implementing the undertaking until it has re-initiated consultation and complied with 36 CFR §§ 800.4 through 800.7 as applicable.

G. County Council Appropriation

All financial obligations by the County as set forth in this agreement shall be subject to and conditioned upon annual appropriation by the Maui County Council. The County and Council will act in good faith to appropriate the monies necessary to meet the obligations under the MOA.

Execution and submission of this MOA, and implementation of its terms evidence that NCA has afforded the ACHP an opportunity to comment on the undertaking and its effects on historic properties, and that NCA has taken into account the effects of the undertaking on historic properties.

SIGNATORIES

NATIONAL CEMETERY ADMINISTRATION OF THE U.S. DEPARTMENT OF VETERANS AFFAIRS

_____ Date: _____

George D. Eisenbach Jr. Director, Veterans Cemetery Grants Program

SIGNATORIES

HAWAII STATE HISTORIC PRESERVATION OFFICER

_____ Date: _____

Alan Downer, Executive Administrator

SIGNATORIES

ADVISORY COUNCIL ON HISTORIC PRESERVATION

_____ Date: _____

John M. Fowler, Executive Director

INVITED SIGNATORIES

STATE OF HAWAII DEPARTMENT OF DEFENSE, OFFICE OF VETERANS SERVICES

_____ Date: _____

Ronald Han, Director

INVITED SIGNATORIES

COUNTY OF MAUI, PUBLIC WORKS

_____ Date: _____

Michael Victorino, Mayor of the County of Maui

CONCURRING PARTIES

MAUI COUNTY VETERANS COUNCIL

_____ Date: _____

Dr. Robert Santry, President

CONCURRING PARTIES

MAKAWAO CEMETERY ASSOCIATION

_____ Date: _____

Camille Lyons, President

CONCURRING PARTIES

MAUI GREEN AND BEAUTIFUL

_____ Date: _____

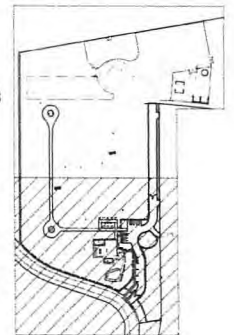
Elaine Malina, President

MAUI VETERANS CEMETERY
 LOT 1 DRAFT SCHEME 5 SOUTH
 APRIL 05, 2017



- PAVED APRON DRIVEWAY TO MCA
 *PROVIDE ADDITIONAL PAVED DRIVEWAY NEAR NORTHWESTERN CORNER OF MCA EXPANSION LOT
- PAVED ACCESSWAY TO MCA
- ROOT CUT DISTANCE FOR EXISTING COOK ISLAND PINES TO REMAIN
- PLANTING CURB AND/OR BERM
- END OF ROLLED CURB
- PEDESTRIAN GATE
- SIDEWALK
- 3 PARALLEL PARKING STALLS
- REMOVEABLE BOLLARDS AND CHAIN
- GRASS AREA APPROX. 55'-0" TO 79'-0" WIDE
- HEADER CURB, TYP.
- TWO WAY TRAFFIC
- START OF ROLLED CURB
- 6' H ORNAMENTAL ENTRY GATE

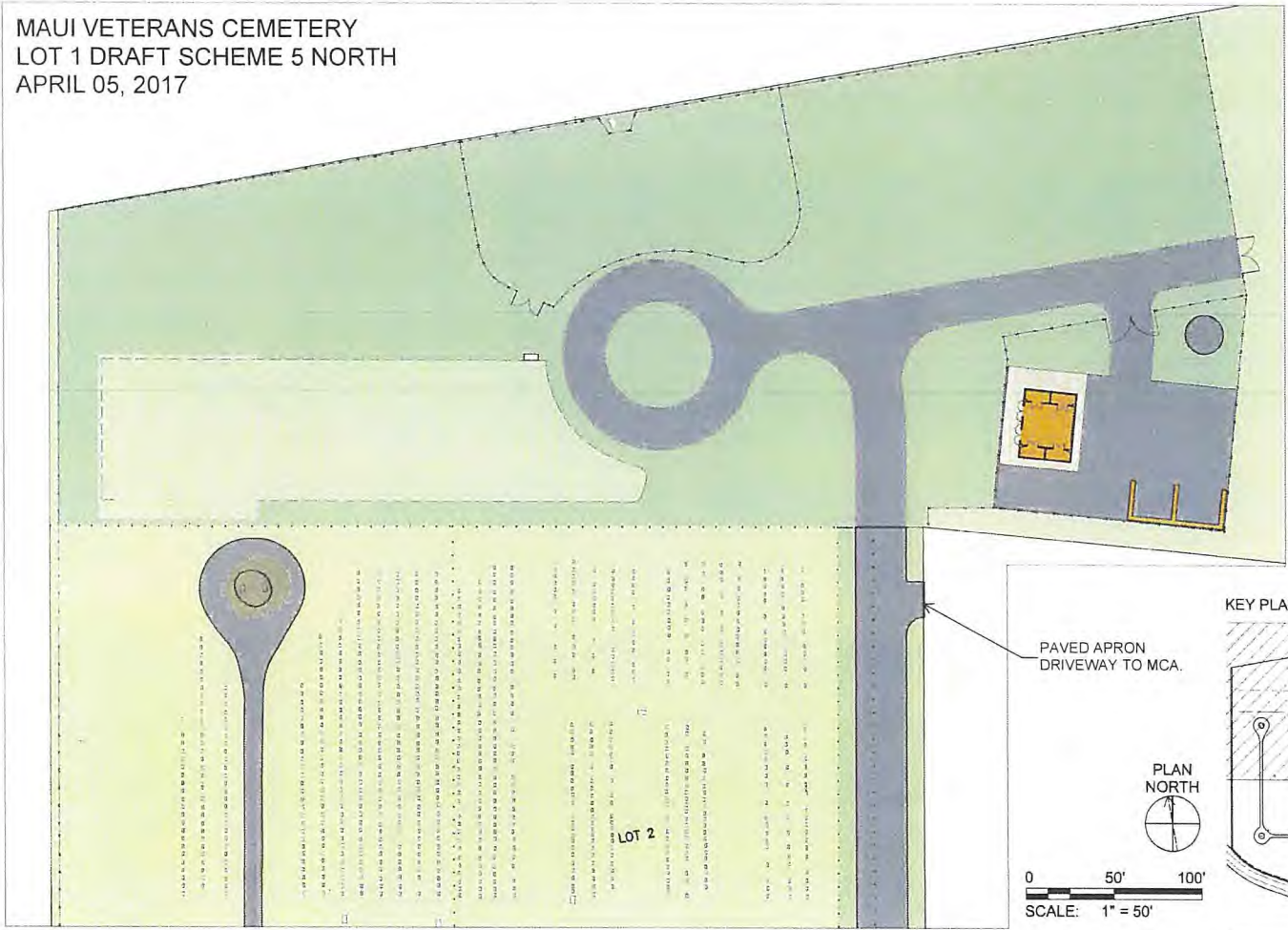
KEY PLAN



0 50' 100'
 SCALE: 1" = 50'

A

MAUI VETERANS CEMETERY
LOT 1 DRAFT SCHEME 5 NORTH
APRIL 05, 2017

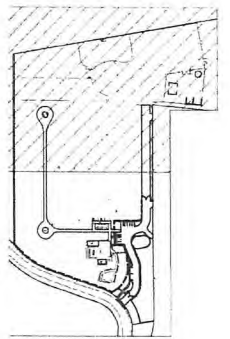


PAVED APRON
DRIVEWAY TO MCA.



0 50' 100'
SCALE: 1" = 50'

KEY PLAN



**MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF HAWAII OFFICE OF VETERANS SERVICES AND
THE COUNTY OF MAUI REGARDING THE MAINTENANCE OF THE
MAUI VETERANS CEMETERY**

WHEREAS This Memorandum of Understanding is entered into on this _____ day of _____, 2018, by and between the State of Hawai'i Office of Veterans Services (OVS) and the County of Maui, Department of Public Works (County).

WHEREAS the State of Hawai'i Department of Defense and Office of Veterans Services is expanding, developing and improving the Maui Veterans Cemetery for the benefit of veterans and their family members.

WHEREAS the State of Hawai'i Office of Veterans Services is required to provide a cemetery that meets the requirements of the National Cemetery Administration (NCA) Shrine Commitment Operational Standards, including the condition of the turf and trees.

WHEREAS as part of the improvement and expansion of the Maui Veterans Cemetery, parking on the grass area in the Maui Veterans Cemetery will be limited in the event that the turf falls below the NCA Shrine Operational Standards.

WHEREAS upon the completion of the improvement and expansion project and after Maui County Council approval, the State of Hawai'i will transfer maintenance responsibilities of the Maui Veterans Cemetery to the County of Maui.

NOW THEREFORE, the parties agree as follows:

- A. This agreement and all of its terms are subject to Maui County Council Approval.
- B. The parties agree to jointly develop a Cemetery Grounds Management and Maintenance Plan (Plan) that will be presented to, and is subject to approval from, the Maui County Council.
- C. According to the Plan, the County's maintenance of the cemetery will conform to the requirements of the most current NCA National Shrine Commitment Operational Standards and Measures. Under the Plan, the County and OVS will also recognize the unique environmental factors of upland Maui and incorporate appropriate management concerns, including the type of turf used.
- D. The Plan will address specific efforts to be taken by the County to enforce non-cemetery related activities from occurring within the improvement project; the standard of care for grass maintenance to conform to NCA Shrine Operational Standards; and what steps will be taken if the integrity of the grass or root system

of the Cook pines located adjacent to the MCA's cemetery are damaged or threatened.

- E. The County is not responsible for bringing the cemetery itself, including the cemetery grass, up to "shrine status," under the NCA National Shrine Operational Standards, but rather agrees to maintain and operate the cemetery after it is handed over to the County in accord with existing agreements.
- F. If the Plan is not passed by the Maui County Council concurrently with the MOA, the Plan shall be developed jointly by OVS and the County and presented to the Maui County Council within six months after the execution of the MOA amongst the US Department of Veterans Affairs, National Cemetery Administration, The Advisory Council on Historic Preservation and the State of Hawaii Department of Defense Regarding a Grant to Support Maui Veterans Cemetery ("MOA"), unless final execution of the MOA follows this agreement, in which case this agreement and the Plan shall be incorporated into the MOA.
- G. If the Plan is approved by the Maui County Council, the County of Maui's Department of Public Works will follow the Plan for all of the cemetery maintenance activities.
- H. The County will not be responsible for maintenance of the improvement project under the Plan until completion of the project, and upon OVS official transfer and acceptance of maintenance responsibilities to the County of Maui.
- I. Once the Plan is developed and approved by Maui County Council, the County will maintain the cemetery, including the grass, as directed by the Plan, to meet the NCA National Shrine Operational Standards. If OVS or the County determines that the root systems of the Cook Pines located on "Lot 1" i.e., the parking and entrance area of the cemetery grounds, are being damaged or that the condition of the grass in the Veterans Cemetery does not meet the NCA Shrine Operational Standards, the County shall erect a system of bollards connected by chains to prevent additional damage. The County shall revive, reseed or otherwise return the condition of the grass to meet NCA Shrine Standards. The bollards shall be the property and responsibility of the County.
- J. This MOU is meant to direct the Plan that will be generated by the OVS and County. To the extent that any portion of this MOU conflicts with the Plan, the MOU shall be followed. To the extent this MOU or the Plan conflicts with the MOA, the MOA shall be followed.

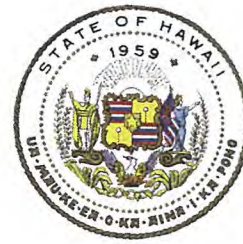
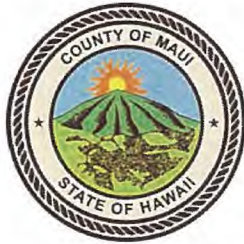
IN WITNESS WHEREOF, this Memorandum of Understanding has been duly executed by or on behalf of the parties hereto as of the date above first written.

Ronald Han
Director, State of Hawai'i Office of Veterans
Services

County of Maui
Mayor Michael Victorino

COUNTY OF MAUI
DEPT. OF PUBLIC WORKS-HIGHWAYS DIV.
MAUI VETERANS CEMETERY
1295 Makawao Avenue
Makawao, HI 96768
808-572-7272

STATE OFFICE OF VETERANS SERVICES
Patterson Rd, E-Wing, Rm 1-A103
Honolulu, HI 96819-1522
808-433-0420



Maui Veterans Cemetery

Grounds Management & Maintenance Plan-Standard Operating Procedures **("Plan")**

This Grounds Management and Maintenance Plan of monthly tasks applies to the Maui Veterans Cemetery, located in Makawao, on the island of Maui, in the State of Hawaii. The County of Maui, Department of Public Works-Highway Division shall be responsible for the implementation and performance of the Grounds Management and Maintenance Plan. Full implementation of this plan is contingent upon the availability of adequate fiscal assets and maintenance personnel. **This Plan is effective after acceptance of the County Council and upon the handover of maintenance responsibilities from the state when the cemetery construction is complete. It is understood the County is not responsible for bringing the cemetery itself into shrine status, but rather maintaining and operating the cemetery in accord with existing agreements. The Plan shall remain in effect unless rescinded by mutual agreement of the County of Maui and State of Hawaii, Department of Defense, Office of Veterans Services.**

GENERAL REQUIREMENTS

- The County of Maui, Department of Public Works (County) shall perform an assessment of the Maui Veterans Cemetery at least twice annually to ensure the cemetery facilities and grounds are maintained in compliance with the National Cemetery Association (NCA) Shrine Commitment Operational Standards and Measures to maintain "Shrine Status."

Performance of the Self-Assessment shall be in accordance with the latest version of the Veterans Cemetery Grants Service Compliance Review Program Self-Assessment Guide for State and Tribal Cemeteries.

In addition, the grass and grounds within the cemetery shall be maintained in accordance with the guidelines established in the most current version of the National Cemetery Association (NCA) Handbook 3420 and to the extent it applies to Hawaii's unique environment, and the conditions that existed at the time of transfer and acceptance of maintenance responsibilities.

- The State of Hawaii Office of Veterans Services (OVS) and/or their representative shall perform an assessment of the Maui Veterans Cemetery at least once annually to ensure that the cemetery facilities and grounds are being maintained in compliance with this Plan and the NCA Shrine

Commitment Operational Standards and Measures. Any deficiencies found shall be brought to the attention of the County for corrective action.

In accordance with the Memorandum of Agreement (MOA) Among the National Cemetery Administration of the U.S. Department of Veterans Affairs, the Hawaii State Historic Preservation Officer, the Advisory Council on Historic Preservation and the State of Hawaii Department of Defense, Regarding a Grant to Support Improvements to the Maui Veterans Cemetery, Makawao Maui Hawaii, wherein the OVS and County of Maui are invited signatories, parking will be allowed on the grass area located within Lot 1 fronting the MCA for ceremonies, funerals and memorial services when those events cannot be accommodated by the paved parking provided at the Committal Shelter and along the roadways. The grass area on which parking will be allowed is defined as the area between the MCA's rock wall along its western property boundary and the new concrete curb to the west along the Maui Veterans Cemetery paved entry road, and the area of the two (2) existing Cook Pine Trees to the north immediately adjacent to the Makawao Cemetery entry gate, to the Maui Veterans Cemetery ornamental fencing and rock wall fronting Baldwin Avenue to the South.

- The County shall be responsible for the periodic inspection of the condition of the grass, grounds and Cook Pine tree root system in the area fronting the MCA, and determining whether the NCA shrine standards have been compromised. As part of the periodic inspections, the County shall submit a photos via email each month to the OVS validating the grass, grounds and Cook Pine Tree root system are being maintained in a healthy condition in accordance with the NCA shrine standards.
- In the event it is determined that the parking causes or has caused damage to the grass and grounds, or the root system of the Cook Pine trees, that compromise the minimum standards of the NCA Shrine standards, the County shall take the following action:
 - Erect a system of bollards and chains to prevent parking on the grass
 - Notify the OVS that damage to the grass and grounds or root system of the Cook Pine Trees has occurred and the area has been closed to parking. As part of the notification, the County shall submit a report (supplemented with photos) describing the damage and required repairs. The OVS and/or its representative, at its discretion, may inspect the premises and damage incurred.
 - Restore the grass, grounds and/or Cook Pine Tree root system in a timely manner to meet or exceed the minimum NCA Shrine standards.
 - Notify the OVS when repairs have been completed. As part of the notification, the County shall submit photos validating the completion of repairs and condition of the affected grass, grounds and/or root system of the Cook Pine Trees. The OVS and/or its representative, at its discretion, may inspect the premises and repairs made.
 - The County shall not remove the system of bollards and chains until the grass and grounds have been restored to a level that meets or exceeds the minimum NCA Shrine standards and has been approved for reopening by the OVS.
- The OVS and/or their representative may inspect the premises at any time and possesses the authority to notify the County that the grass and grounds are not in compliance with the NCA

Shrine standards and that action and repairs as noted above is necessary. Upon notification, the County shall take the action as noted above to restore the grass and grounds to meet or exceed the minimum NCA Shrine standards, at least to the level the cemetery met when it was handed over by OVS. The OVS and/or their representative also possess the authority to determine whether the grass and grounds has been sufficiently restored and can be reopened for use.

- Pursuant to Section VII(c) of the MOA pertaining to non-cemetery activities, the County of Maui Department of Public Works shall implement and post signs referencing the attached General Information, Rules and Regulations to discourage non-cemetery activities (e.g. any form of sports or recreation) from occurring within the Maui Veterans Cemetery and to provide instructions to the visitor on the required decorum of the Maui Veterans Cemetery.
- All costs associated with maintenance of the Maui Veterans Cemetery in compliance with the NCA Shrine Commitment Operational Standards and Measures shall be borne by the County of Maui and supplemented with a stipend from the State of Hawaii in accordance with the parties' July 1, 2001 Memorandum of Understanding which is still in full force and effect. OVS, as the State entity, delegates to the County the responsibility of acquiring a federal stipend for every Veteran interred in the Maui Veterans Cemetery, in accordance with the allowable stipend rate (currently \$749.00 per interred Veteran) by the Department of Veteran Affairs (VA). The County will submit VA Form 21P-530a, State Application for Interment Allowance Under 38 U.S.C. Chapter 23, directly to the VA for processing and will receive payment directly from the VA. The OVS will also provide one (1) polyurethane casket vault as needed per Veteran or eligible family member, at no cost to the County, for use with each in-ground casket interment should the family choose in writing not to utilize the cemetery's pre-placed concrete crypts.
- **Casket Vaults:** The County will coordinate the ordering and delivery of casket vaults with the Cemetery Operations Manager, Office of Veterans Services, Hawaii State Veterans Cemetery ((808) 233-3630).
- **Complaints:** Formal and Non-Formal complaints shall be received by the County Cemetery Grounds Caretaker, and warrant immediate action. Complaints shall be assigned as a work order within 5 days upon receipt. Complaints include Marker clean up, realignment, repair of sunken graves, removal of pests and repair of turf damage or irrigation.

DAILY TASKS

The following tasks shall be performed daily:

- **Restrooms:** Restrooms shall be inspected, cleaned and properly supplied on a daily basis.

WEEKLY TASKS

- **Trash:** Empty and clean all cemetery trash receptacles on a regular basis, with an emphasis on the morning of a first working day after a weekend, holiday or any combination thereof and ensure litter and fallen branches are consistently picked up. All trash receptacles on the cemetery grounds shall be emptied every Friday, especially before a holiday weekend or on Thursday if the holiday is on a Friday.

MONTHLY TASKS

- **Marker Check-In / Installation:** The adjusted procedures on Marker Check-In/Installation shall be instituted. All Markers received shall be checked in within two days of the date received. Marker installation shall then follow as a high priority and completed within two (2) weeks, contingent on weather and availability of maintenance personnel.
- **Columbarium Markers:** Installation to occur every two weeks or more often, as needed to meet timely Marker installation guidelines.
- **Pruning of Trees & Large Shrubs:** Survey property and prune/remove any trees limbs or large shrubs that present an unattractive appearance or a hazard to cemetery visitors, or is in the way of mowing/trimming equipment.
- **Trimming of Hedges and Shrubs:** Perform as needed, generally twice a month. Weeding by hand done in some areas if needed.
- **Equipment Cleaning, Maintenance & Repair:** Clean equipment and tools daily after use. Sharpen and/or replace mower blades once-a-month or as needed. For equipment requiring repair or replacement, complete the required forms, notify the supervisor, and pursue the repairs and/or replacement in a timely manner so as to not jeopardize maintenance operations.
- **Leaf Pickup:** Remove leaves from turf areas as needed, weather permitting, with mulching mowers and leaf blowers and garden rakes.
- **Mowing of Cemetery Grounds:** Mowing and trimming of Cemetery grounds, including edging around markers, shall be performed in a rotation beginning with visually prominent areas, and proceeding to grave sections, curbsides, and perimeter property lines, at least twice a month or as needed, contingent on weather situations and availability of maintenance personnel.
- **Cemetery Floral sweeps:** Floral arrangements from recent burials shall be removed 7 days after interment date. Unsightly and faded flowers, potted plants and prohibited items shall be removed once a month contingent on weather and availability of maintenance personnel.
- **Pest Control:** Perform as needed. Be observant and identify issues with insects (e.g. bees, wasps, ants, etc.) and feral animals.
- **Irrigation:** Identify leaks or abnormal anomalies in the ground turf that could be linked to a water or sewer line leak. Perform maintenance on the irrigation pump system once a quarter and monitor tank levels and weekly. Clean pump area monthly.

MONTH SPECIFIC TASKS

January

- **Holiday Flower Pickup:** Potted plants and wreaths not more than two (2) feet in height will be permitted on gravesites beginning ten (10) days before through ten (10) days after Christmas

day. Potted plants shall be removed and disposed of after the tenth-day following Easter Sunday. Remove Christmas wreaths, flowers, and prohibited items from Cemetery grounds after January 4th.

February

- **Drain Maintenance:** Clear all drains of debris, branches and ground cover to prevent flooding and clogging of drains.
- **Flag Pole Maintenance:** Inspect and identify any deficiencies and malfunctions with the setup and operation of all Cemetery flagpoles. Repair as needed.
- **Bench Mark Maintenance:** Clear bench marks used for gravesite plotting. If needed plot new rows for assigning graves.

March

- **Holiday Flower Pickup:** Potted plants and wreaths will be permitted on gravesites beginning ten (10) days before through ten (10) days after Hana Matsuri. Potted plants, wreaths, flowers and prohibited items shall be removed and disposed of after the tenth-day following Hana Matsuri.

April

- **Pressure Washing:** Pressure wash curbsides and water stations in preparation for Memorial Day Ceremony, as required.
- **Parking Lots:** Ensure that all parking lot area striping, informational and traffic signs throughout the cemetery are visible and in good condition in preparation for Memorial Day Ceremony, as required.

May

- **Memorial Day Preparation:**
 - Put up and remove all flags for Ceremony, as required.
 - Prepare grave flags for distribution by Scouts or other organization. Assist with placing of flags and removal for Ceremony, as required.
 - Receive Lei for distribution by Scouts or other organization. Assist with placing of lei and removal for Ceremony, as required.
 - Assemble and disassemble Ceremony Tents, sound system, flags (if utilized) and other items for Memorial Day Ceremony, as required.

June

- **Normal monthly maintenance.**

July

- **Holiday Flower Pickup:** Potted plants and wreaths will be allowed beginning July 12 through August 15 during O-Bon services. Potted plants, wreaths, flowers and prohibited items shall be removed after August 15.

August/September

- **Holiday Flower Pickup:** Potted plants and wreaths will be allowed beginning July 12 through August 15 during O-Bon services. Potted plants, wreaths, flowers and prohibited items shall be removed after August 15.
- **Drain Maintenance:** Clear all drains of debris, branches and ground cover to prevent flooding and clogging of drains.
- **Flag Pole Maintenance:** Inspect and identify any deficiencies and malfunctions with the setup and operation of all Cemetery flagpoles. Repair as needed.
- **Bench Mark Maintenance:** Clear bench marks used for gravesite plotting. If needed plot new rows for assigning graves.

October/November

- **Pressure Washing:** Pressure wash curbsides, sidewalks and water stations in preparation for Veterans Day Ceremony, as required.
- **Parking Lots:** Ensure that all parking lot area striping, informational and traffic signs throughout the cemetery are visible and in good condition in preparation for Veterans Day Ceremony, as required.
- **Veterans Day Preparation:**
 - Prepare flag ground holders and put up and remove all flags for Ceremony, as required.
 - Assemble and disassemble Ceremony Tents, sound system, flags and other items for Veterans Day Ceremony, as required.

December

- **Holiday Flower Pickup:** Potted plants and wreaths will be allowed beginning December 15 through January 4th during the Christmas Holiday. Potted plants, wreaths, flowers and prohibited items shall be removed after January 5th.