

ORDINANCE NO. _____

BILL NO. 96 (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO 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”

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

SECTION 1. Purpose. The County of Maui (“County”); 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; 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 State recently 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.

The MOA attached hereto as Exhibit "1" sets forth the terms decided upon at various mediations and consultations between the above-mentioned parties. The MOA directs that the State and County 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 future MOU and Plan shall be subject to Maui County Council approval.

The impetus for the MOA 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. To avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, the parties have attempted to reach a resolution of the claims by way of an MOA, the MOU, and Plan.

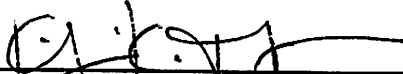
Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

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 / 2017-10-5 Bill for Ordinance - MOA - + Cemeteries

**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
AND THE STATE OF HAWAII DEPARTMENT OF DEFENSE,
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, NCA has determined that this undertaking will have adverse effects on the Makawao Cemetery, which NCA and the Hawaii State Historic Preservation Division (SHPD) agree is eligible for the National Register of Historic Places; and

WHEREAS, NCA has consulted with the SHPD and OVS 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), NCA has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation, and the ACHP has participated; and

WHEREAS, NCA has invited Maui County Department of Public Works (County) to participate in consultation and they have participated; and

WHEREAS, NCA has invited the Maui County Veterans Council (Veterans Council), Makawao Cemetery Association (MCA) and Maui Green and Beautiful to participate in consultation and they have participated; and

WHEREAS, Maui Cultural Resources Commission, Makawao Community Association, Maui Burial Council, Maui County Planning Department, Maui County Planning Commission, 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, OVS, ACHP, the County, Veterans Council, MCA, Maui Green and Beautiful have consulted to resolve the undertaking's adverse effects,

NOW, THEREFORE, the NCA, ACHP, SHPD, 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

- I. Allowance for Continuing Work on Phase I
 - A. Phase I construction may continue on the expansion portion of the project.
 - B. OVS will ensure that construction contractors and equipment will not damage any existing landscape or contributing features of the historic property in Lot 1 and Lot 2.

- II. Entry Gate and Rock Wall
 - A. OVS shall design the ornamental entry gate to Lot 1 to be similar to the existing gates found at the Kauai Veterans Cemetery and West Hawaii Veterans Cemetery. The gate height shall 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. OVS will use dry-stacked basalt field rock and ensure that the wall does not exceed three feet above the adjacent ground surface in height to allow view planes of the cemeteries.
 - C. OVS will insure that the gate and rock wall are sited approximately as shown in the April 2017 drawings, subject to safety and setback requirements.

- III. Signage
 - A. Space shall be provided on the rock pillars, located on each side of the entry gate for OVS and MCA signs.
 - B. OVS and MCA signs shall be similar in design, size, style and material. Placement will be on opposite sides of the entry gate; one for the Maui Veterans Cemetery and one for the Makawao Cemetery. OVS will review the planned Makawao Cemetery sign to insure consistency in both designs prior to MCA's final preparation, fabrication, and installation of the sign.
 - C. OVS will fabricate and install the Maui Veterans Cemetery sign.

- IV. Landscape Design
 - A. OVS will engage a landscape architect to develop the landscape design using Native Hawaiian species and other acceptable plant species (e.g. Jacaranda).
 - B. County will have the opportunity to review and comment upon the proposed landscape design within 30 calendar days of date of receipt of the proposed design. 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 that will not 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. OVS obtained the services of a qualified arborist with experience in Hawaiian flora, who assessed the health and likely lifespan of the two Cook Island Pines (*Araucaria columnaris*) near the eastern boundary of Lot 1. They are estimated to survive approximately 50 – 100 years. It was recommended parking not be allowed under the trees and within the tree protection zone to avoid compaction of the soil and root damage, and the hazard of falling branches.

V. Lot 1 Design for Parking

- A. OVS developed a design for Lot 1 that reflects the discussion of the February 4, 2016 and December 13, 2016 consultation meetings. [Attachment A]
- B. The design retains 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.
- C. 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.
- D. A straight header curb is included in the new design on the roadway side and a protective curb or berm on the south side of the Cook Island Pines 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.
- E. 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.
- F. No signage will be placed, and no berms will be constructed on the grass area between the entry road and the Makawao Cemetery.
- G. OVS, in consultation with NCA, will finalize the design and implement it.

VI. Access to Makawao Cemetery

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

- B. A paved apron access way, no less than 15 feet in width, will be provided on Lot 1, from the main entry to the Makawao Cemetery second entry gate. The straight header curb and the protective curb or berm will continue on the outside of the root zone protection area for the two Cook Island Pines and terminate on the southerly side of the Makawao Cemetery second entry gate. 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 two Cook Island Pines.
- C. A paved apron access way, no less than 15 feet in width, will be provided on Lot 1, between the new access road and the Makawao Cemetery's third entry gate. This paved apron access will be designed and constructed at an approximate 70-degree angle to facilitate turning off the access road and into the Makawao Cemetery's third entry gate.
- D. A paved apron access, no less than 15 feet in width, will be provided on Lot 1, between the new access road and the Makawao Cemetery's fourth entry gate in the northern portion of the Makawao Cemetery, as expanded.

VII. Long Term On-going Maintenance

- A. OVS shall develop a Memorandum of Understanding (MOU) with the County that specifies implementation of a Cemetery Grounds Management Plan (Plan). Once finalized by the parties and approved by Maui County Council, the Plan will become Attachment B to this MOA.
- B. The Plan shall conform to the NCA National Shrine Commitment Operational Standards and Measures (Version 5.1, July 2014). 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 Upcountry Maui and incorporate appropriate management concerns (e.g. type of turf). County will adhere to the Plan for all its maintenance activities.
- C. The MOU and Plan will address, *inter alia*, 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 that if OVS and the County determine that 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, County must erect systems of bollards connected by chains to prevent additional damage. The County shall 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 and chains may be removed for social events.

- E. The Plan will be developed jointly by OVS and the County. Subject to VII. H., the Plan will be presented for acceptance to both OVS and 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 County will meet to determine the specific issues and develop measures to address the issues. If an entity other than OVS, NCA or County objects to how the Plan is being implemented, the objections shall be addressed under Stipulation VIII. A.
- G. To the extent any part of the maintenance described in the Plan conflicts with this or any other agreement, this MOA shall prevail.
- H. This MOA, including the provisions as provided herein, as well as the MOU and Plan are subject to Maui County Council approval. County will seek such approval upon completion of the MOU and 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 to determine if consulting parties agree to develop a new MOU.

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(ies) within 30 calendar days of receipt of the objection to resolve the objection.
 - 2. If resolution is obtained, NCA will notify all signatories, and absent any additional objections, implement the MOA in accordance with the resolution.
 - 3. 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.
 - 4. Within 30 days after receipt of all pertinent documentation, the ACHP will exercise one of the following options:
 - i. Advise NCA that the ACHP concurs in NCA's proposed response to the objection, whereupon NCA will respond to the objection accordingly and provide its written response to all parties; or
 - ii. Provide NCA with advice on the resolution, which NCA will take into account in reaching a final decision regarding its response to the objection. Prior to reaching a final decision on the objection, NCA will prepare a written response that takes into account any advice from the ACHP regarding the objection.

- iii. If ACHP does not provide its response within the 30-day time period, NCA may assume the ACHP's concurrence in its proposed response to the objection. NCA may make a final decision on the objection and provide a written response to all signatories and concurring parties and proceed accordingly.
 5. 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.
 6. NCA's responsibility to carry out all actions under this MOA that are not the subject of the objection will remain unchanged.
 7. 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 the end of the federal fiscal year, September 30, and each year thereafter until all stipulations of this agreement have been satisfied, the OVS will ensure that a progress report with status updates on each stipulation is prepared and distributed to all parties to this agreement, and made available to the public.
 2. The parties will be given 60 days to review the report and consider whether adjustments to this agreement, or its termination, are in order.
- C. Duration
 1. If the terms of this MOA have not been implemented by September 30, 2022, this MOA will be considered null and void.
 2. In such event NCA will so notify the parties to this MOA, and if it chooses to continue with the undertaking, will re-initiate review of the undertaking in accordance with 36 CFR Part 800.
- D. Amendment
 1. Any signatory to this MOA may propose to NCA that the MOA be amended, prior to September, 2022.
 2. NCA will consult with the other parties to this MOA to consider such an amendment, 36 CFR § 800.6(c)(1) will govern the execution of any such amendment.
- E. Termination
 1. If NCA determines that it cannot implement the terms of this MOA, or if the SHPD or ACHP determines that the MOA is not being properly implemented, 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 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:

- i. Consult in accordance with 36 CFR § 800.6 to develop a new MOA; or
- ii. Request the comments of the ACHP pursuant to 36 CFR § 800.7.

F. Anti-Deficiency Act

This agreement 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 and the VA have taken into account the effects of the undertaking on historic properties, and afforded the ACHP an opportunity to comment on the undertaking and its effects 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

HAWAII STATE HISTORIC PRESERVATION OFFICER

_____ Date: _____

Alan Downer, Executive Administrator

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

COUNTY OF MAUI

_____ Date: _____

Mayor Alan M. Arakawa

CONCURRING PARTIES

MAUI COUNTY VETERANS COUNCIL

_____ Date: _____

Dr. Robert Santry, President

MAKAWAO CEMETERY ASSOCIATION

_____ Date: _____

Camille Lyons, President

MAUI GREEN AND BEAUTIFUL

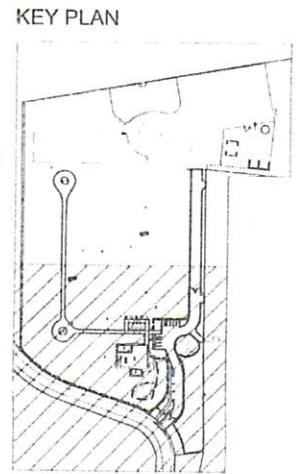
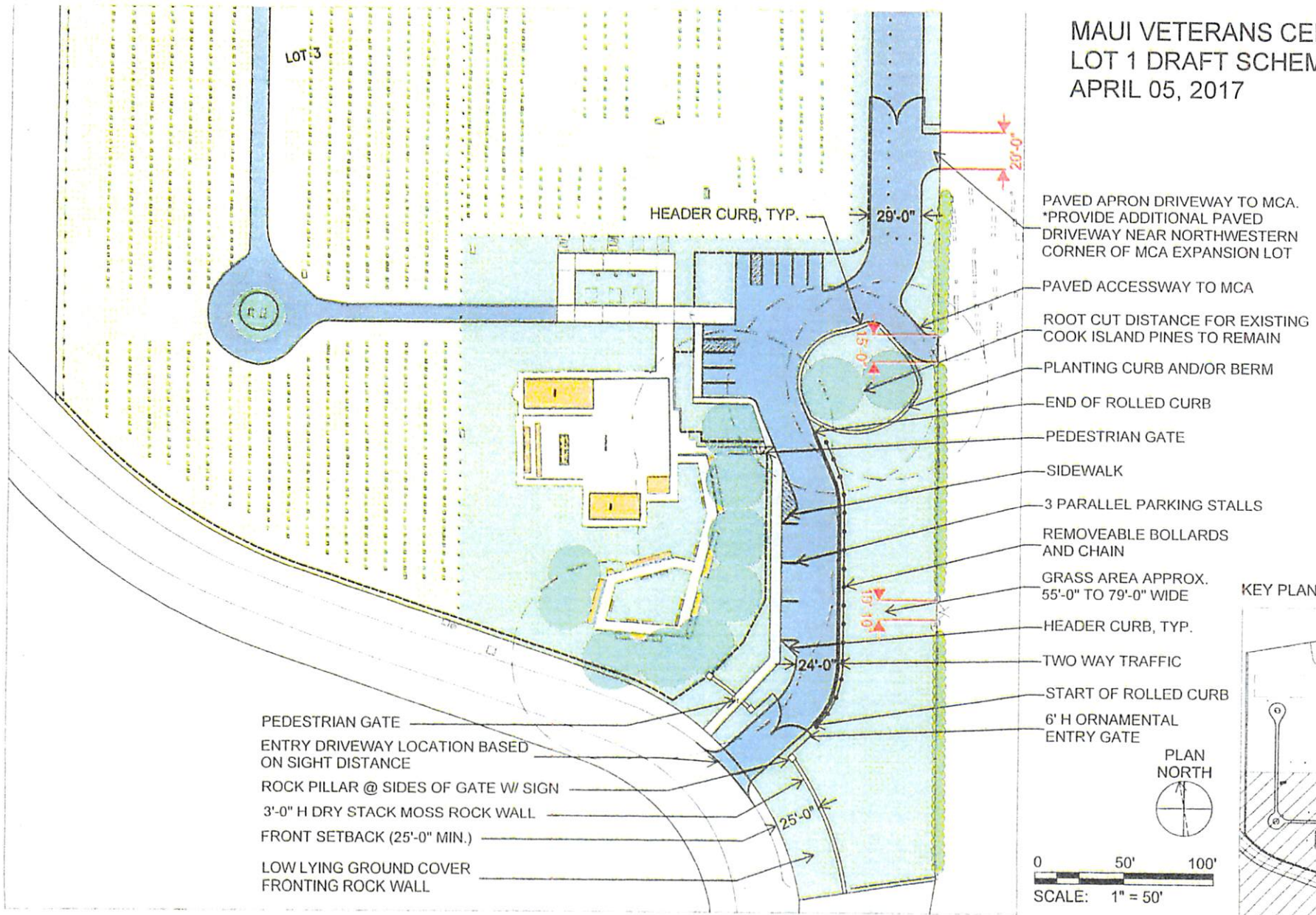
_____ Date: _____

Barbara Hernandez, President

Attachment A: Lot 1 design drawing

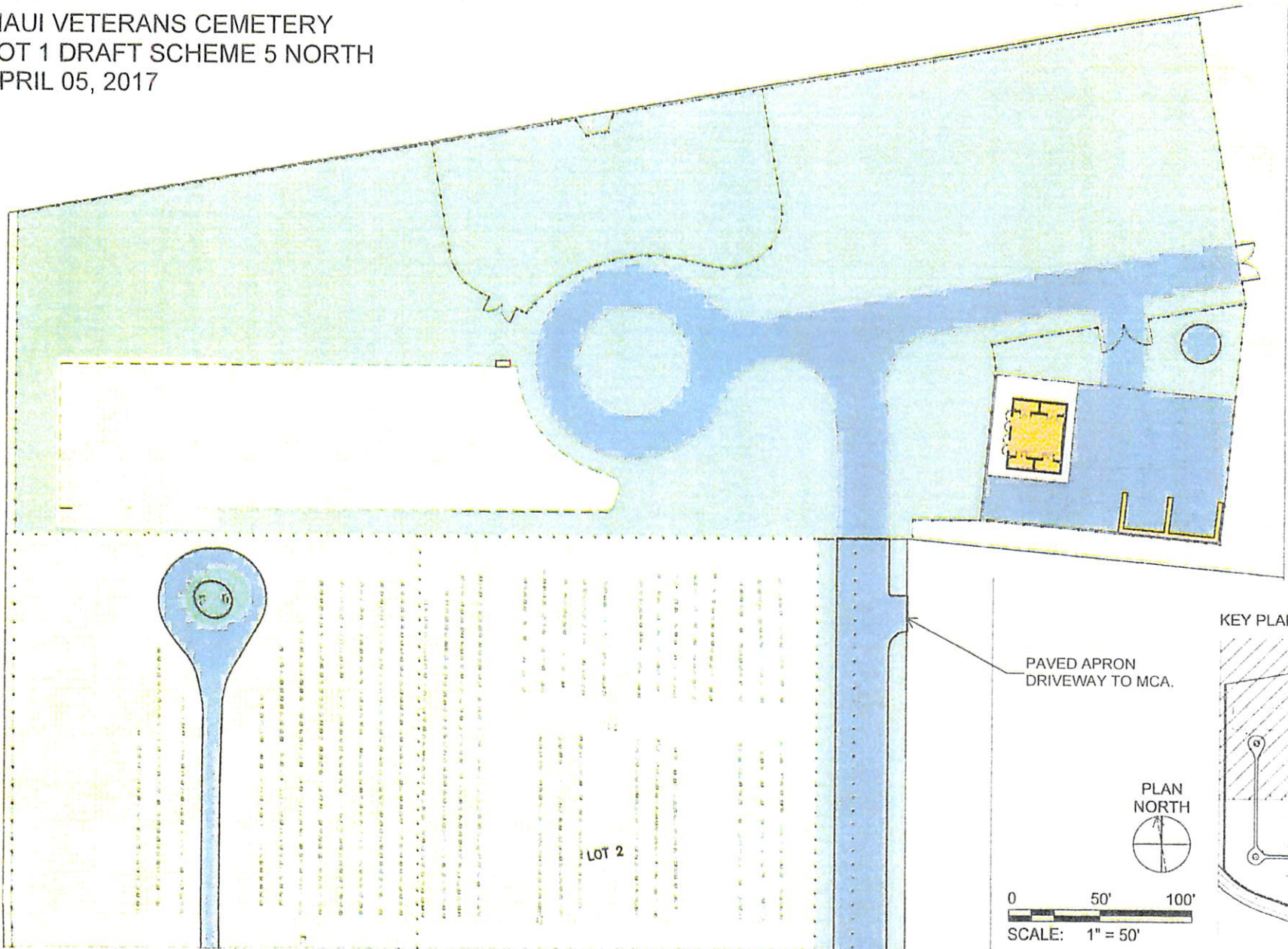
Attachment B: Maintenance Plan when agreed to and finalized per Stipulation VII. A.

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

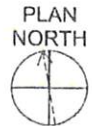


ATTACHMENT "A"

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

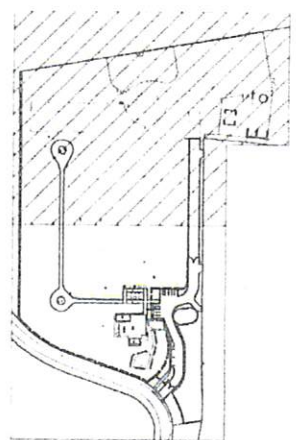


PAVED APRON
DRIVEWAY TO MCA.



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

KEY PLAN



ATTACHMENT "A"

DIGEST

ORDINANCE NO. _____
BILL NO. 96 (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO 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"

This bill proposes to authorize the Mayor to enter into an intergovernmental agreement with the State 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, setting forth essential terms for the operations and maintenance of the Maui Veterans Cemetery in Makawao, Maui, Hawaii, at Shrine Status.

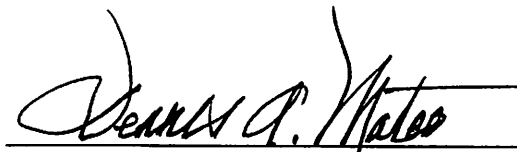
I, DENNIS A. MATEO, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 96 (2017) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 3rd day of November, 2017, by the following vote:

AYES: Councilmembers Alika Atay, Eleanora Cochran, S. Stacy Crivello, G. Riki Hokama, Kelly T. King, Yuki Lei K. Sugimura, Vice-Chair Robert Carroll, and Chair Michael B. White.

NOES: None.

EXCUSED: Councilmember Donald S. Guzman.

DATED at Wailuku, Maui, Hawaii, this 6th of November, 2017.



DENNIS A. MATEO COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.