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OFFICE OF THE  
COUNTY COUNCIL

March 19, 2019

Via Hand Delivery

Chairperson Michael J. Molina  
Members of the Council Committee on  
Governance, Ethics and Transparency  
Council of the County of Maui  
c/o Office of Council Services  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

Re: Committee Agenda for Thursday, March 21, 2019; Bill 96 (2017) (GET-11(25))  
Litigation Matters (Settlement Authorization: Authorizing the Mayor of the  
County of Maui to Enter into Intergovernmental Agreements and Approve a  
Grounds Management and Maintenance Plan Relating to the Maui Veterans  
Cemetery in Makawao  
*Makawao Cemetery Association v. The Office of Veterans Services et al.*; Civil  
15-1-0209(2)  
*Makawao Cemetery Association v. Eisenbach et al.*; Civil No. 15-00458

Dear Chairperson Molina and Committee Members:

This letter is written on behalf of the Makawao Cemetery Association ("MCA") regarding the matters referenced above. Previous Mayor Alan Arakawa and Director of Public Works David Goode provided vital support to the MCA that allowed MCA to achieve many of its goals in protecting the historic values evidenced by the Makawao Cemetery and the joint uses of Lot 1 over many years for access and parking. In deference to this support and in support of Maui's veterans, MCA will not stand in the way of Council approval of the Memorandum of Agreement ("MOA") and the Memorandum of Understanding ("MOU").

This is not to state that MCA is satisfied with the Section 106 process or that the two lawsuits in which MCA is the Plaintiff have been settled or resolved. The Section 106 Consultation was reopened in 2018. The Department of Veterans Affairs ("VA") sent drafts of the MOA and MOU to consulting parties on February 5, 2018 requesting comments within thirty days. MCA submitted its comments and suggestions on a timely basis on February 28, 2018. This comment letter is attached hereto as Exhibit "1." To date, MCA has received no response to these comments from the VA.

Among other matters, MCA has taken the position that it must be granted the status of an Invited Signatory to the MOU recognizing that the MCA has been, is, and will be in the future, a

full partner with the responsibility to protect and preserve the historic values that all parties agree are represented in MCA's Cemetery, the Makawao Cemetery, and Lot 1, that has been jointly used for many years by the MCA and the VA and will continue to be jointly used in the future, and surrounding areas.

The Director of Public Works wrote a letter dated December 12, 2018 supporting the recognition by the VA of MCA as an Invited Signatory. The VA has promised a response to this letter, however, MCA has not been provided with any written response addressing this issue from the VA.

MCA became aware shortly before this matter was placed on the Agenda of your Committee that revised, final copies of the MOA and MOU existed, although they had not been provided to MCA. Counsel for the MCA has had discussions with Deputy Corporation Counsel Kristin Tarnstrom about MCA's concerns and manners in which they may be able to be addressed. MCA has also been contacted by Mayor Victorino. Ms. Tarnstrom was able to obtain the consent of the VA to provide a copy of the revised, final MOA to MCA and she has done so.

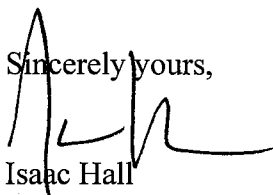
The Agenda for this meeting was posted online on Friday, March 15, 2019. This is the first time that MCA has been able to review, together, the revised, final MOA, the MOU and the supporting documents before your Committee. The MOA has been significantly revised and "watered down" to the detriment of MCA in comparison to the MOA that the MCA reviewed in February 2018, over one year ago. Had MCA been given the opportunity, MCA would have objected to these revisions. MCA objects to these revisions now.

MCA began work on an agreement between the County of Maui and the MCA to address some of the deficiencies perceived by the MCA in the MOA and MOU and that could also settle some of the issues raised in the two lawsuits in which MCA is the Plaintiff. This work has not been completed. Ms. Tarnstrom is on the mainland. MCA has recently been directed to work with Deputy Corporation Counsel Moana Lutey on these matters. MCA will do so.

It is unlikely that this agreement can be finalized by March 21, 2019. MCA respectfully requests that your Committee recognize that these negotiations are taking place and state a willingness to address this agreement on any first reading of these Bills.

MCA thanks you for the opportunity to address these issues. Please feel free to contact me to discuss these issues.

Sincerely yours,



Isaac Hall

IH/gr

Encl:

Ccs:

Mayor Victorino

Clients

Moana Lutey

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February 28, 2018

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Via Email and U. S. Mail

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Re: Maui Veterans Cemetery Expansion and Improvement Project  
FAI No. HI-12-31; DAGS Job No. 15-14-7509  
Section 106 Consultation Process  
National Historic Preservation Act, 16 U.S.C §§ 470 et seq.

Dear George Eisenbach, Thomas Paquelet, Tom McCulloch, Christopher Daniel and Amanda Weston:

This letter is addressed to George Eisenbach and Thomas Paquelet and for the Veterans Cemetery Grants Program, National Cemetery Administration, United States Department of Veterans Affairs ("NCA"), as the "agency official," to Tom McCulloch and Christopher Daniel for the Advisory Council on Historic Preservation ("ACHP"), and to Amanda Weston, as counsel for the Office of Veterans Services, Department of Defense, State of Hawaii ("OVS").

This letter is written on behalf of the Makawao Cemetery Association, Inc. (“MCA”), the Plaintiff in *The Makawao Cemetery Association v. Eisenbach, et al.* and a consulting party in the above referenced matter. MCA clearly met the tests for participation as a consulting party due (1) to the nature of [MCA’s] legal or economic relation to the undertaking or affected properties and (2) MCA’s concern with the undertaking’s effects on historic properties. See 36 CFR §800.2(c)(5).

MCA thanks Mr. Eisenbach for his letter dated January 17, 2018 responding to MCA’s letter to him dated November 8, 2017.<sup>1</sup> MCA responds to the January 17, 2018 letter of Mr. Eisenbach below.

MCA also thanks Mr. Eisenbach for his letter dated February 5, 2018, continuing the Section 106 consultation and attaching:

1. A revised draft of the [Section] 106 MOA;
2. Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017 (Proposed Attachment A to the MOA), the April 5, 2017 draft represented by NCA to be the most recent version;
3. Memorandum of Understanding Between the State of Hawaii Office of Veterans Services and the County of Maui Regarding Maintenance of the Maui Veterans Cemetery (Proposed by NCA as Attachment B to the MOA);
4. Draft “Maui Veterans Cemetery Grounds Management & Maintenance Plan – Standard Operating Procedures (SOP) (Proposed by NCA as Attachment B to the MOA); and
5. Draft “Maui Veterans Cemetery – General Information/Rules and Regulations”

MCA received a hard copy of this letter and the attachments on February 12, 2018 such that the due date for these comments is thirty (30) days after February 12, 2018 per Mr. Eisenbach’s instructions. MCA responds below to the NCA letter dated February 5, 2018 as a potential “party” and “signatory” to the proposed Memorandum of Understanding (“MOA”).

**I. MCA APPRECIATES THE AGREEMENTS REACHED TO AVOID ADVERSE EFFECTS TO THE MAKAWAO CEMETERY, THE HISTORIC PROPERTY REQUIRING PROTECTION, DURING THE SECTION 106 FACE-TO-FACE CONSULTATION MEETINGS ON FEBRUARY 4, 2016 AND DECEMBER 13, 2016**

It is the position of MCA that, through the positive and productive in-person Section 106 Consultation that took place on Maui, agreements were reached resolving the adverse effects of the undertaking on the Makawao Cemetery, as expanded, and Lot 1, both of which are historic properties entitled to protection pursuant to the National Historic Preservation Act, 16 U.S.C §§ 470 et seq.

The purpose of this letter is to make every effort to maintain these positive and

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<sup>1</sup> MCA’s letter dated November 8, 2017 is already a part of the record in this case. MCA hereby realleges and incorporates by reference the contents of that letter here.

productive relationships in order to ensure that some of the agreements reached – that are not yet memorialized in the Memorandum of Agreement (“MOA”) – are included within any final MOA so that all parties are able to sign the MOA with the knowledge that what was agreed to resolve the adverse effects of the undertaking has been included in the MOA.

## **II. COMPLETION OF THE SECTION 106 CONSULTATION PROCESS HAS BEEN HINDERED BY LACK OF COMMUNICATION AND COOPERATION**

Unfortunately, progress towards the completion of the Section 106 Consultation process and the execution of an MOA on an amicable basis has been hindered by a lack of communication and cooperation. The primary reason agreements were reached during the Section 106 consultation meetings on February 4, 2016 and December 13, 2016 is because consulting parties and stakeholders met together in one room and conducted face-to-face discussions that allowed dialogue in a collegial setting. There was an exchange of views, an opportunity to appreciate better the positions of other participants and the ability, during the course of the meetings, to mold solutions, after considering a wide range of options, that were satisfactory to all consulting parties. There have been no similar meetings since December 13, 2016.

Several modifications to the MOA were made after December 13, 2016, without the knowledge of the MCA and without any participation by the MCA. MCA has been invited to submit comments on some of the proposed MOAs, and these comments, in a few instances, have been accepted, but, in most instances, have been rejected, without any response from the NCA or OVS and without any explanation or reason provided by NCA or OVS for rejecting the proposed additions. Also, terms protective of the interests of MCA have been deleted from proposed MOAs, again, without any discussion with MCA and without any explanation or reason provided to MCA by NCA or OVS for deleting the specific protective terms.

MCA is concerned that the same sort of “consultation” objected to above will occur with respect to the most recent draft MOA upon which MCA now comments, namely that MCA will submit requested additions or deletions and that the NCA or OVS will unilaterally reject some that are significant to MCA without providing any reasons for doing so. MCA believes that this is arbitrary action and does not constitute “consultation” in good faith to avoid, minimize or mitigate adverse effects to a historic property, here, the Makawao Cemetery.

The MCA submits these comments in the hopes that there will be true consultation facilitating an amicable resolution regarding terms to be contained within the MOA that will avoid, minimize or mitigate adverse effects to the historic Makawao Cemetery.

## **III. TERMS TO BE ADDED TO, OR DELETED FROM, THE CURRENTLY PROPOSED MOA**

- A. Any VA/OVS Fence Along the Flag Portion of Lot 1 Shall Not Exceed Four (4) Feet in Height**
  - 1. Height of OVS Fence Along the Flag Portion of Lot 1 Shall Not Exceed Four (4) Feet in Height**

The NCA, in its letter dated January 17, 2018, stated that:

With respect to the height of any fence constructed by OVS, please review the revised MOA upon receipt and include any related concerns with your comments.

MCA does so now.

NCA originally planned to construct a six-foot high chain link fence along the common boundary with MCA in the flag pole portion of Lot 1. In order to preserve views from the historic Makawao Cemetery, as expanded, to the West Maui mountains, NCA and OVS agreed to reduce the height of this fence to a maximum of four feet. MCA proposed the addition of this language in its comments dated April 6, 2017; see, §IV.I.

To reflect and be consistent with the agreements reached on February 4, 2016 and on December 13, 2016, language in the MOA should be added expressly stating as follows:

Any fence or wall constructed by OVS/NCA along the common boundary with the Makawao Cemetery within the flag pole portion of Lot 1 shall not exceed the height of four feet from the natural grade.

This language should be inserted as Insert 1 as indicated below Section IV.D on the proposed MOA attached hereto.<sup>2</sup>

## **2. MCA Fencing**

The NCA had earlier adopted language suggested by MCA in its proposed MOA dated September 2017, providing that:

MCA may continue the four-foot high wrought iron fence and hedging along its common boundary with the flag lot portion of the Veterans ten-acre expansion parcel, leaving openings for the gates to the third and fourth entries to the Makawao Cemetery, as expanded.

The NCA letter dated January 17, 2017 now takes the position that this language is unnecessary because the NCA agrees that the NHPA act does not limit nor prohibit MCA's ability to continue the wrought iron fence or to remove the existing chain link fence, if MCA chooses to do so. MCA will rely on these representations by the NCA, particularly because MCA's proposals will protect the integrity of the historic Makawao Cemetery.

## **B. Landscaping**

There was a great deal of discussion on February 4, 2016 and on December 13, 2016 on the appropriate landscaping to be planted on the NCA/OVS side of the common boundary with the Makawao Cemetery in the flag pole portion of Lot 1. It was agreed that views to and from the Makawao Cemetery should not be blocked because these views contribute to the historic

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<sup>2</sup> In requesting inserts or deletions to documents MCA recognizes that renumbering or re-lettering may be necessary.

context and characteristics of the Makawao Cemetery.

The MOA must include language addressing, in particularity, the landscaping along the common boundary with the Makawao Cemetery in the flag pole portion of Lot 1. The Makawao Cemetery, as expanded, as part of a historic property, must have the views to the West Maui mountains protected.

MCA requests the addition of the following language in the MOA to protect existing available views to the greatest extent possible from the Makawao Cemetery, as expanded, to the West Maui mountains:

OVS may plant native or other trees or shrubs, acceptable to OVS, Public Works and MCA, on the easterly side of the roadway and on the westerly side of any fencing of the NCA or OVS, on the flag portion of the ten-acre expansion parcel, instead of the originally planned crepe myrtle trees. Such trees or shrubs shall not exceed six (6) feet in height upon growth to full anticipated height and appropriate spacing shall be left between the trees or shrubs and their canopies to afford a view of the West Maui Mountains from the Makawao Cemetery between the trees and shrubs and their canopies.

This language should be inserted as Insert 2 as indicated below Section IV.D on the proposed MOA attached hereto. This language must be included in the MOA for the additional reasons given in Section IV below.

### C. Sidewalk and Minimum Width of Grassed Parking Area

The NCA, in its letter dated January 17, 2018, explains its reasoning for inserting a sidewalk into the Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017. The NCA represents, as is pertinent, that:

The sidewalk will be designed so that it is consistent with agreements reached at the December 13, 2016 consulting meeting and **to maximize green space between the Veteran cemetery hardscapes and the Makawao Cemetery boundary.** (Emphasis added)

MCA suggests that the language quoted immediately above should be inserted into the MOA in order to preserve the availability of the area agreed to on December 13, 2016 for grass parking.

This language should be inserted as Insert 3 as indicated below Section V.C on the proposed MOA attached hereto.

The parties reached some agreements during the December 13, 2016 consultation meeting that were memorialized in a plot plan and a written statement. Photographs of these two documents have already been made part of the record of this case by MCA.

On the plot plan agreed to on December 13, 2016 a maximum width, designated as “max’,” establishes the width between the Veterans Cemetery hardscapes and the Makawao

Cemetery boundary. This width was established before the sidewalk was inserted into the plans. The Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017 states, too vaguely, that the grass area is “55’-0” to 79’-0” wide.” NCA and OVS have not calculated the width, in feet, between the Veteran cemetery hardscapes and the Makawao Cemetery boundary where “max” is indicated on the plot plan agreed to on December 13, 2016. This width needs to be calculated and indicated on the design plan.

Even a cursory comparison of the plot plan agreed to on December 13, 2016 and the Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017 shows that, to make room for the sidewalk, the four parking stalls and roadway have been relocated closer to the boundary of the Makawao Cemetery thereby diminishing the area available for grass parking for a substantial length along the entry roadway.

Modifications to the Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017 will be necessary in order to comply with the representations of the NCA in its letter dated January 17, 2018.

#### **D. Removal of Ambiguities**

Some ambiguous, conflicting or inconsistent terms have been included in the documents transmitted for review and comment by the NCA. These are addressed below.

##### **1. Inconsistency Regarding Pre-Condition to Grass Parking**

Section V.E. of the proposed MOA states, as is pertinent here:

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.**

The language contained at the top of page 2 of the “Maui Veterans Cemetery Grounds Management & Maintenance Plan – Standard Operating Procedures (SOP)” is at variance with the MOA. This language is quoted below:

In accordance with the Memorandum of Agreement (MOA) between the State of Hawaii, County of Maui and the Makawao Cemetery Association (MCA), 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 additional requirement that parking “along the roadways” must be used before grass parking is allowed is inconsistent with agreements reached during the consultation meetings on February 4, 2016 and December 13, 2016. MCA agrees to first “exhaust” available paved parking at the Committal Center and on the roadways within the non-flag pole portion of Lot 1. This is what MCA agreed to during the consultation meetings on February 4, 2016 and December 13, 2016. MCA never agreed that users of the Makawao Cemetery would first “exhaust” all parking available on all of the roadways within the Veterans Cemetery, as expanded, before parking on the grass. This would be extremely inconvenient, particularly for the more elderly people who typically attend ceremonies, funerals and memorials at the Makawao Cemetery.

The words “and along the roadways” must be deleted from the top of page 2 of the “Maui Veterans Cemetery Grounds Management & Maintenance Plan – Standard Operating Procedures (SOP).”

This language should be deleted as Deletion 1 as indicated on the top of page 2 of the “Maui Veterans Cemetery Grounds Management & Maintenance Plan – Standard Operating Procedures (SOP)” attached hereto.

## **2. Ambiguity Regarding the Purpose and Availability of Grass Parking**

Section V.E. of the proposed MOA states, as is pertinent here:

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 ...

Section VII.D of the proposed MOA contains a term that conflicts with Section V.E. of the proposed MOA. Section VII.D of the proposed MOA provides, as is pertinent here:

**OVS and the County will decide on a case-by-case basis when the bollards and chains may be removed for social events.** (Emphasis added)

It is unclear whether NCA is attempting to draw some distinction between “ceremonies, funerals and memorials” and “social events.” Perhaps, NCA is attempting to distinguish parking for events such as Veterans Day and the Fourth of July, as social events, from more religious purposes, such as “ceremonies, funerals and memorials.” If so, this should be more clearly stated and a definition of “social events” as opposed to “ceremonies, funerals and memorials” should be added to the MOA.

## **3. Conflict Between MOA and Plot Plan Regarding Third MCA Entrance**

The MOA provides that the paved apron access way between the new access road and the Makawao Cemetery’s third entry gate 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. See, §VI.C.

The Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017 does not show this 70-degree angle.

To remove this inconsistency and to avoid any confusion in the future, the Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017 should be revised to show the access road into the Makawao Cemetery's third entry gate at a 70-degree angle.

**E. Keys to Gate**

The proposed MOA already includes the following language protecting MCA's ability to use all of the roadways within the Veterans Cemetery, as expanded:

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.

See, Section VI.A.

A locked gate prevents the ability of MCA, and those seeking access to the Makawao Cemetery, from using the roadways made available to them by the MOA provision above. The Administrator of the Makawao Cemetery needs to be able to unlock and lock this gate particularly during the weekends and after hours.

The NCA, in its letter dated January 17, 2018, states that MCA's need to be provided with a key to lock and unlock the second gate, that is located across Lot 1, to the north of the Makawao Cemetery third entry gate, during the weekends and after hours "is not related to historic preservation" and is "outside the scope of the 106 MOA. The letter further states:

It is VA's opinion that MCA will need to negotiate this item separately with Maui County.

MCA will rely upon this representation by the NCA, particularly that the approval of NCA is not necessary in seeking the ability to unlock and lock the gate. MCA has contacted representatives of the County of Maui about this matter and has been informed that the County is willing to provide the Administrator of the Makawao Cemetery with the ability to unlock and lock this gate. MCA has also contacted counsel for OVS, and OVS has not stated any objections.

As such, MCA suggests that the County agree, in writing, with the MCA to the following language:

A second gate is located across Lot 1 and the roadway, to the north of the Makawao Cemetery third entry gate, which is open during weekdays and during certain hours. A key to this gate shall be provided by Public Works, County of Maui to MCA so that MCA has access beyond the gate during the weekend and after hours.

This language may be included in the Memorandum of Understanding Between the State of Hawaii Office of Veterans Services and the County of Maui Regarding Maintenance of the Maui

Veterans Cemetery (Proposed by NCA as Attachment B to the MOA) or in some other writing ensuring its enforceability.

#### **IV. THE STRUCTURE OF THE CURRENT PROPOSED MOA MANDATES THAT SUBSTANTIVE PROTECTIVE TERMS BE INCLUDED WITHIN THE MOA**

##### **A. Proposed Deferral of Review of Important Documents Until After Signing of the MOA**

The structure of the current MOA under review proposes to defer review by consulting parties of significant documents until after the MOA has already been executed. According to an ACHP Guidance, only the “Signatories” are absolutely required to sign an MOA, here NCA, SHPD and ACHP.<sup>3</sup> **Once all of the signatories have signed the agreement, it is executed and goes into effect.** The Guidance states of “Concurring Parties:”

**In accordance with 36 CFR § 800.6(c)(3), a concurring party is a consulting party invited to concur in the agreement document but who does not have the authority to amend or terminate the agreement. Like an invited signatory's signature, a concurring party signature is not required to execute the agreement; a concurring signature is essentially an endorsement of the agreement. Thus, the refusal to sign by any party asked to concur in the agreement does not prevent the agreement from being executed.**

Once the signatories execute the MOA, the terms contained within the MOA may be implemented. Review and consultation after the execution of the MOA does not assure that comments received, after the execution of the MOA, will be adopted or that post-MOA execution review will provide necessary protection to a historic property.

Here, NCA proposes to receive comments on several important documents after the MOA is executed, potentially placing in jeopardy the historic integrity of the Makawao Cemetery and historically important resources within the Area of Potential Effect.

##### **1. Long Term On-Going Maintenance**

###### **a. Language in the Proposed MOA on Long Term On-Going Maintenance**

The subject matter of Section VII of the proposed MOA is “Long Term On-Going Maintenance.” Section VII.A. of the proposed MOA states:

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<sup>3</sup> NCA apparently intends OVS and the County, as “Invited Signatories,” to sign the MOA. The Draft MOU states, in paragraph E: “The Plan shall be developed jointly by OVS and the County and presented to the Maui County Council within three 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.”

OVS shall develop a Memorandum of Understanding (MOU) with the County that specifies implementation of a Cemetery Grounds Management and Maintenance Plan (Plan). Once finalized by these parties and approved by Maui County Council, the MOU and Plan will become Attachment B to this Memorandum of Agreement (MOA).

Sections VII. E., F., G., and H. of the proposed MOA provide:

- 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 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 shall be addressed under Stipulation VIII. A.
  - G. To the extent any part of the maintenance described in the Plan conflicts with this 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. The 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.
- b. Memorandum of Understanding Between the State of Hawaii Office of Veterans Services and the County of Maui Regarding Maintenance of the Maui Veterans Cemetery (MOU)**

The proposed Memorandum of Understanding Between the State of Hawaii Office of Veterans Services and the County of Maui Regarding Maintenance of the Maui Veterans Cemetery ("MOU") states, in Paragraph E, as is pertinent here:

The Plan shall be developed jointly by OVS and the County and presented to the Maui County Council **within three 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. (Emphasis added)

There are inconsistencies between the proposed MOA and MOU with regard to the deadline for the approval by the Maui County Council of the MOU and MOA. The MOA sets the deadline for “within six months of the execution of the MOA.” See, Section VII.E. The MOU sets the deadline for “within three months of the execution of the MOA.” See, Paragraph E.

What is important, however, is that Maui County Council approval of the MOU and MOA is to take place after the execution of the MOA. MCA objects to this deferral of review until after the execution of the MOA. See Section IV.B below.

## **2. Landscape Design**

Throughout the Section 106 consultation process, MCA has expressed its concern that landscaping, unless planned and implemented properly, will have adverse impacts on the Makawao Cemetery, as the protected historic property. No landscape plan currently exists. This is so even though the MOA admits that views of, and from, the Makawao Cemetery, as a historic property, deserve protection and should not be blocked.

The subject matter of Section IV of the MOA is “Landscape Design.” The MOA provides, in Sections IV.A. and B. that:

- 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. OVS will provide the landscape design to all consulting parties for review. All consulting parties shall have 30 calendar days from date of receipt to provide comments to OVS. OVS, in consultation with County, will take the comments into account prior to any implementation.

There has already been ample time to prepare a “landscaping plan” for review within the Section 106 consultation process. MCA has never seen any Landscaping Plan for Lot 1 prepared by a landscape architect engaged by OVS.

Sections IV.C, D, E and F set out substantive requirements for landscaping. The only protection that consulting parties have that their concerns about landscaping receive protection in this process is if terms that they propose are included in the MOA. MCA proposes terms to be included within Section IV of the MOA on “Landscape Design.” Because of the proposed deferral of review of the Landscape Plan until after the MOA is executed, it is vitally important that MCA’s proposed additions to the MOA are adopted to ensure that the Makawao Cemetery is protected from the adverse impacts of this project.

The MOA delegates preparation of the landscaping plan to OVS. The MOA limits participation in decisions regarding the finalization of the landscaping plan to OVS in consultation with the County alone.

No commitment is made to develop the landscape plan prior to execution of the MOA or to conduct this consultation prior to execution of the MOA or to circulate the landscape plan approved by OVS, in consultation with the County, prior to execution of the MOA, or to attach the landscape plan to the MOA.

This scheme is not acceptable and violates the duty to consult in good faith to avoid, minimize or mitigate adverse effects to the Makawao Cemetery, the historic property requiring protection here. MCA must be able to review this Landscaping Plan within the Section 106 Consultation process and before the MOA is executed. See Section IV.B below.

### **3. Lot 1 Design for Parking**

The subject matter of Section V of the MOA is “Lot 1 Design for Parking.” Section V.A. of the MOA references a “draft scheme for Lot 1 (dated April 5, 2017)” and provides further:

Based on the draft design scheme and comments received on it, OVS will develop a design plan.

No “design plan” for Lot 1 exists at this stage of the Section 106 consultation process. There has already been ample time to prepare a “design plan” for review within the Section 106 consultation process. Section V.G of the proposed MOA states:

OVS will provide the design plan to all consulting parties for review. All consulting parties shall have 30 calendar days from date of receipt to provide their comments to OVS. OVS, in consultation with NCA, will finalize the design plan and implement it.

The MOA delegates preparation of the design plan to OVS. The MOA limits participation in decisions regarding the finalization of the design plan to OVS in consultation with NCA alone.

No commitment is made to develop the design plan prior to execution of the MOA or to conduct this consultation prior to execution of the MOA or to circulate the design plan approved by OVS, in consultation with NCA, prior to execution of the MOA, or to attach the design plan to the MOA.

This scheme is not acceptable and violates the duty to consult in good faith to avoid, minimize or mitigate adverse effects to the Makawao Cemetery, the historic property requiring protection here. See Section IV.B below.

### **B. Objection to Deferral of Review Until After Execution of the MOA**

It is not possible for the NCA to conclude that the adverse impacts of the project on the Makawao Cemetery, the historic property, have been avoided, minimized or mitigated based upon its delegation of its responsibilities to OVS to prepare plans, after the MOA has already been executed, that may or may not avoid, minimize or mitigate these adverse effects.<sup>4</sup> In result, MCA has no assurances that its historic cemetery has been protected as intended by the statute and applicable regulations.

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<sup>4</sup> Immediately above the signature lines on the proposed MOA, the MOA states: “**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.**” (Emphasis added)

**V. THE DEED CONDITION REQUIRING THAT LOT 1 BE USED FOR “PARKING AND ROAD PURPOSES ONLY” NECESSITATES GREATER INVOLVEMENT OF THE MAKAWAO CEMETERY ASSOCIATION IN DECISION-MAKING REGARDING THE AVAILABILITY OF THE GRASSED AREA FOR PARKING**

MCA was an early proponent of a plan that would permit the continuation of grass parking on Lot 1, as occurs throughout Maui, and the maintenance of the grass to Shrine Standards. MCA has always acknowledged that the agreement, help and cooperation of NCA, the County and OVS was necessary for acceptance of this plan. MCA appreciates that NCA, the County, OVS and MCA reached an agreement to this effect.

MCA never intended, however, to delegate all decision-making to the County, OVS and NCA with regard to when and how grass parking would be opened or closed to those attending ceremonies, funerals and memorials at the Makawao Cemetery – without any participation or involvement by MCA. Yet this is what is being proposed through the MOA and the documents attached to the NCA letter dated January 17, 2018.

**A. The Legal Rights of MCA through the Deed Condition Regarding the Use of Lot 1**

NCA and OVS have ignored the significant property rights possessed by MCA in Lot 1. The Makawao Cemetery Association conveyed Lot 1, 2.0 acres in size, to the County of Maui in 1951:

SUBJECT, HOWEVER, to the following conditions, to-wit:

1. That said Lot 1 shall be used by the Grantee, its successors and assigns, for parking and road purposes only; and
2. That said Lot 2 shall be used by Grantee, its successors and assigns, for cemetery purposes only;

**AND this conveyance is made upon the express condition that said granted premises shall be used by said Grantee, its successors and assigns, only for the purposes specified above.** (Emphasis added)<sup>5</sup>

The effect of this Deed condition is a matter of state property law. Courts throughout the United States have construed Deed provisions similar to these and concluded that this language creates a fee simple determinable or a fee simple subject to a condition subsequent. The long-time use of Lot 1 for parking and road purposes, such as here, amounts to a dedication of the land to be used for parking and road purposes only. Some Courts have reviewed the same language and held that the Grantee, the County of Maui, and its successors and assigns, here the State of Hawaii, hold a fee simple absolute subject to a trust for the charitable purpose – the trust purpose in this case would be assuring the use of Lot 1 for parking and road uses only.

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<sup>5</sup> This Deed is submitted as MCA “Exhibit 6” in this case. At the request of Tom King, a cleaner copy of this same Deed was made part of the record. See MCA “Exhibit 49.” This Deed is recorded in the Bureau of Conveyances, State of Hawaii at Liber 2453, Page 117. The legal effect of this Deed is one subject matter of *The Makawao Cemetery Association v. OVS, et al.*, Civil No. 15-1-0209(2), now pending in the Second Circuit Courts, State of Hawaii. OVS and the County of Maui are both parties to this lawsuit.

The Grantor, MCA, has a right to insist upon the observance of the trust provisions. MCA was and is clearly an intended beneficiary of the condition that Lot 1 be used for parking and road uses only. This condition was to assure that Lot 1 would be available for parking for those attending ceremonies, funerals and memorials at the Makawao Cemetery and the Veterans Cemetery.

NCA, OVS and the County cannot extinguish or usurp these vested property interests in Lot 1 possessed by MCA on behalf of those parking on Lot 1 to attend ceremonies, funerals and memorials at the Makawao Cemetery. MCA, for the purposes of facilitating an accord with NCA and OVS, was willing to agree that the grass upon which parking was to occur must be maintained to National Shrine standards. MCA, for the purposes of facilitating an accord with the County of Maui, was willing to agree that the County of Maui would maintain this grass to National Shrine standards and could install bollards and chains to temporarily suspend grass parking if the condition of the grass fell below these standards and to remove the bollards and chains once the County took steps to care for the grass so that it once again met National Shrine standards.

What MCA did not do was to cede all of its authority over parking on Lot 1 to the NCA, OVS and the County of Maui. The rights of those persons attending ceremonies, funerals and memorials at the Makawao Cemetery to park on the grass on Lot 1 are at stake. MCA requires protection that arbitrary or rigid decisions on when the bollards and chains are installed and removed are not made adversely affecting MCA's rights to park on Lot 1. MCA must be included to a reasonable extent in decision-making regarding the installation and removal of the bollards and chains on Lot 1.

**B. MCA Has Not Been Provided with A Stake in Grass Parking Decision-Making**

**1. Decision-making Regarding the Erection and Removal of Bollards and Chains**

**a. Section VII. D of the Proposed MOA**

Section VII. D of the Proposed MOA states:

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.**



b. **Provisions in the “Maui Veterans Cemetery Grounds Management & Maintenance Plan – Standard Operating Procedures (SOP)”**

The “Maui Veterans Cemetery Grounds Management & Maintenance Plan – Standard Operating Procedures (SOP)” provides on p. 2:

In the event it is determined that the parking causes 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 written 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. The OVS and/or their representative also possesses the authority to determine whether the grass and grounds has been sufficiently restored and can be reopened for use.

These terms place all of the authority to control when grass parking can and cannot take place on Lot 1 in the hands of OVS and the County. No role, of any kind, has been given to MCA.

**C. Necessary Revisions to Provide MCA with Notice and Opportunity to Participate in Decision-making Regarding Grass Parking**

The rights of those persons attending ceremonies, funerals and memorials at the Makawao Cemetery to park on the grass on Lot 1, as protected by the 1951 Deed conditions, are at stake. MCA requires protection that arbitrary or rigid decisions on when the bollards and chains are installed and removed are not made thereby adversely affecting MCA's rights to park on Lot 1.

MCA does not object to some identified representative of OVS making determinations regarding the status of the turf within the grass parking area or some identified representative of the County determining when bollards and chains can be installed or removed.

The persons responsible for these decisions must be identified and their contact information must be made available to MCA. The bases or reasons for any decision to install or remove the bollards and chains must be provided to MCA. MCA must be provided the opportunity to have some input regarding these decisions.

MCA suggests that, with regard to each applicable document and with each reference to the entity empowered to decide whether or not National Shrine standards for turf are or are not being met – that the words “with notice to MCA and consultation with, and the receipt and consideration of input of MCA.” These same words should be added with regard to each applicable document and with each reference to the entity empowered to decide whether or not to install or remove the bollards and chains.

This language should be inserted as Insert 4 as indicated in Section VII.D of the proposed MOA and as indicated within the SOP attached hereto.

MCA cannot operate the Makawao Cemetery and schedule or enable ceremonies, funerals and memorials at the Makawao Cemetery without having prior notice of proposed decisions regarding the installation or removal of the bollards and chains and the ability to have some input on these decisions before they are implemented.

**VI. MCA IS ENTITLED TO SIGN THE MOA IN THE CAPACITY AS AN “INVITED SIGNATORY”**

MCA has thoroughly addressed its entitlement to sign the MOA in the capacity of an “Invited Signatory,” instead of as a “Consulting Party,” in its letter dated November 8, 2017. The NCA suggests in its letter dated January 17, 2018 that this may be among those issues for which “VA has not finalized a decision” and regarding which it “intends to utilize the continuation of this 106 consultation process and input received from all consulting parties to inform its decision-making.” MCA, therefore, realleges and incorporates by reference the contents of its letter dated November 8, 2017, particularly Section IV covering this subject

matter.<sup>6</sup>

**A. MCA is a Major Stakeholder in this Case**

MCA has a significant stake in assuring that the protections afforded by the MOA in this case are not amended or terminated, potentially causing adverse effects to its property, the Makawao Cemetery, as expanded, or to Lot 1.

MCA owns the Makawao Cemetery, as expanded, that has been determined to be a historic property.

MCA owned the fee to Lot 1 and conveyed it initially to the County of Maui in 1951, subject to a Deed Restriction and Easements, benefitting the MCA and the Makawao Cemetery. The State of Hawaii now owns the underlying fee to Lot 1, subject to these significant beneficial real property interests possessed by MCA in Lot 1, namely the Deed Restriction providing that “Lot 1 shall be used by the Grantee, its successors and assigns, for parking and road purposes only” and a twenty-foot wide easement over Lot 1 providing access to the Makawao Cemetery.

A recorded easement now exists, from Baldwin Avenue, over and across Lot 1, along the boundary of the Makawao Cemetery, benefitting the Makawao Cemetery property and the MCA. To effectuate any agreed-upon MOA and Plot Plan MCA would be responsible for cooperating to relocate and terminate the above-described easement.

Lot 1 is described by the NCA as “the shared entrance to and parking area for both cemeteries,” meaning the Makawao Cemetery and the Veterans Cemetery. MCA has used Lot 1, based upon the 1951 Deed Restriction and easement, as the entry, and for grass parking, for the Makawao Cemetery for at least sixty-five years. How Lot 1 is improved as the entry to the historic Makawao Cemetery, how parking takes place on Lot 1 for those attending services at the historic Makawao Cemetery and the effect of any use of Lot 1 on the historic Makawao Cemetery is of vital importance to the MCA.

It was through the efforts of the MCA, in filing *The Makawao Cemetery Association v. Eisenbach, et al.*, that the NCA recognized that MCA’s cemetery, the Makawao Cemetery, as expanded, and Lot 1, are eligible for the National Register of Historic Places and were determined to be historic properties protected by the National Historic Preservation Act, 16 U.S.C §§ 470 et seq.

**B. The Regulations Require the Recognition of MCA as an “Invited Signatory”**

The MCA has formally sought recognition as an “Invited Party,” in its comments submitted to the NCA on April 6, 2017, and elsewhere.

The federal regulations on the “Protection of Historic Properties,” in 36 CFR 800.6 (c)(2), entitled “Invited signatories,” state as follows:

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<sup>6</sup> As already noted, MCA’s letter dated November 8, 2017 is already a part of the record in this case.

(i) The agency official **may invite** additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official **may invite** an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to **historic properties located off tribal lands** to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official **should invite** any party that assumes a responsibility under a memorandum of agreement to be a signatory. (Emphasis added)

The NCA has some discretion about inviting signatories to sign MOAs generally and when they are Native Americans attaching religious or cultural significance to **“historic properties located off tribal lands.”** See, 36 CFR 800.6 (c)(2)(i) and (ii) above. This discretion is signaled by the use of the words “may invite.” The use of the word “may” is held to confer discretion.

The agency has discretion when the concern is with lands other than those owned by the consulting party. If the Native American group is not concerned with its own tribal lands and is, instead, concerned with different or other lands, the agency has discretion about whether to invite that group to be an “Invited Signatory.”

It would be different if the group were concerned with the historic significance of lands that it owned. This is the case here. MCA, likewise, is concerned with the historic significance of its own land, the Makawao Cemetery, as expanded, and with Lot 1.

By these regulations, discretion does not exist to refuse to invite a party as a signatory when “any party assumes a responsibility under a memorandum of agreement.” See, 36 CFR 800.6 (c)(2)(iii) above. Under these circumstances, the regulations provide that the agency “should invite” that party to be a signatory to the MOA. There is no discretion here. The agency has a duty to invite such a party to be an “Invited Signatory.”

MCA assumes responsibilities under the MOA, expressly or by implication. Although the NCA and OVS have attempted to avoid these facts, they remain true. MCA is entitled to recognition as an “Invited Signatory.”

### **C. The Draft MOAs Initially Recognized the Responsibilities Assumed by MCA But Thereafter Progressively Obscured or Deleted Them**

MCA has already fully documented how the early versions of MOAs assigned responsibilities in its letter dated November 8, 2017.<sup>7</sup> These provisions were all eventually

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<sup>7</sup> The ACHP “Guidance on Section 106 Agreement Documents” states under the heading of “Do the stipulations clearly identify who is responsible for carrying out each measure?” and state: **“Section 106 agreement documents should clearly identify the responsible party for each action.** Sometimes agreements are explicit about the measures that will be carried out but fail to clearly assign the duty to implement such measures to a specific party or parties. For example, an agreement may state: “Prior to its demolition, Building X will be documented in accordance with Historic American Buildings Survey (HABS) standards.” While this statement specifies the action, it fails to identify who will carry it out. Changing the statement in the following manner identifies both the responsible party

deleted or obscured in subsequent MOAs, without any reason or explanation being given for doing so. The current MOA also avoids assigning responsibilities to MCA when they are plainly warranted.

**D. To Effectuate Any Agreed-Upon MOA and Plot Plan, Responsibilities are Placed upon MCA**

A recorded easement now exists, from Baldwin Avenue, over and across Lot 1, along the boundary of the Makawao Cemetery, benefitting the Makawao Cemetery property and MCA.<sup>8</sup> This easement conflicts with the MOA and the Maui Veterans Cemetery Lot 1 Draft Scheme 5 South, dated April 5, 2017. To effectuate any agreed-upon MOA and Plot Plan, MCA is responsible, at least by implication, for cooperating to relocate and terminate the above-described easement. MCA is willing to be responsible for this action as part of any agreed-upon MOA and plot plan. This is a rather obvious responsibility that must be assumed by MCA which is, for no stated reason, ignored.

**E. There Would Be a Higher Level of Commitment to Success and Continued Engagement and Partnership in the Process with MCA as an “Invited Signatory”**

The ACHP “Guidance on Section 106 Agreement Documents” concludes the section on “Invited Signatories, as follows:

**Asking parties to be invited signatories to a Section 106 agreement can evidence a higher level of commitment to success in the agreement's implementation as well as continued engagement and partnership in the process. (Emphasis added)**

This is precisely what MCA seeks here.

**F. Application of All Considerations**

Attention cannot be focused on one element, alone, in deciding whether MCA is entitled to be an “Invited Signatory,” namely, whether or not MCA, in the view of NCA, assumes a responsibility under the MOA. This element can be controlled by whomever has ultimate responsibility for drafting the MOA when, as here, MCA has actual or implied responsibilities, as a matter of fact.

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and the specific action: "Prior to its demolition, the Department of the Navy will document Building X in accordance with HABS standards." **Specifying the party assigned to implement each measure should help avoid confusion and disagreement and any delay in the agreement's completion and implementation that may result from disputes or misunderstandings. (Emphasis added)**

<sup>8</sup> See Exhibits 6 and 49, already part of this record. In addition, Paul Turner conveyed to the Makawao Cemetery Association Lot “5”, the 7.454-acre parcel, through a Deed dated December 3, 2013 and recorded on December 6, 2013 in the Bureau of Conveyances of the State of Hawaii as Document No. A-50880188, based upon an earlier version of the subdivision plat, dated February 9, 2013, and Turner also conveyed to MCA the easement designated on the survey plat and described as follows: “Together with an existing 20-foot easement affecting Lot 4 of the “Paul Turner Subdivision” (Subdivision File No. 2.3186) as recorded with the Bureau of Conveyances, State of Hawaii, Book 2283, Page 281, Area=9,250 sq. ft.”

Other factors plainly militate in favor of MCA's entitlement to be an "Invited Signatory," including, but not limited to: (1) MCA's ownership of the historic property to be protected and preserved through this consultation; (2) MCA's property interests in Lot 1 – as the beneficiary of the Deed Condition requiring Lot 1 to be used for parking and road purposes only and as the benefited party to a twenty (20) wide access easement currently burdening Lot 1 and (3) as noted above, according to ACHP's Guidance, including MCA as an "Invited Signatory" will "evidence a higher level of commitment to success in the agreement's implementation as well as continued engagement and partnership in the process."

MCA seeks inclusion and partnership in the implementation of the MOA to assure that the adverse effects to its property, the Makawao Cemetery, the historic resource entitled to protection here, are actually avoided, minimized or mitigated. No other party has a greater interest in assuring the protection of the Makawao Cemetery than the MCA. The NCA, OVS and the County plainly do not have a similar degree of commitment to protecting the historic values present in the Makawao Cemetery and the surrounding area affected by the project, including Lot 1. The only way to make sure that Makawao Cemetery is preserved as a historic property is to make MCA a full partner in this enterprise as an "Invited Signatory." To refuse to do so would violate the letter and spirit of the applicable statutory and regulatory provisions and guidances and would constitute an abuse of discretion.

#### **G. MCA is Entitled to Sign the MOA as an "Invited Signatory"**

Unless MCA is an "Invited Signatory," the agreements that it has worked so hard to reach on December 13, 2016, in the MOA and in the Plot Plan, can all be amended or terminated, without the approval of the MCA. The MCA has a significant stake in assuring that the protections afforded by the agreements reached on December 13, 2016, the MOA and the Plot Plan in this case are not amended or terminated, potentially causing adverse effects to the Makawao Cemetery, as expanded, and Lot 1.

The whole point of MCA's securing recognition of the historic significance of the Makawao Cemetery and Lot 1 and participating in Section 106 Consultation could be rendered meaningless if the MOA could be amended or terminated in a manner that causes adverse effects to MCA's historic Makawao Cemetery or Lot 1 – which is very important to MCA as an entryway and parking area for its cemetery. Without the status of an "Invited Signatory," the objections of MCA could be ignored.

The MCA must be recognized as an "Invited Signatory" to assure that the MCA has the ability to protect and preserve, into the future, the Makawao Cemetery, as expanded (that the MCA owns) and Lot 1, both of which are historic properties.

These responsibilities cannot be left to parties that have a significantly less and more distant interests in the protection of the Makawao Cemetery. MCA is entitled to sign the final MOA in the capacity of an "Invited Party" and we trust that the final MOA will provide as much.

## VII. CONCLUSION

MCA is still hopeful that the agreements reached in the positive and productive in-person Section 106 Consultation meeting that took place on December 13, 2016 can lead to an amicable resolution of the issues raised.

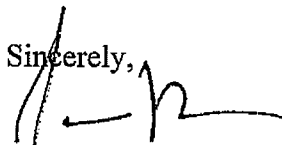
MCA also supports the development of a MOU with the Department of Public Works, County of Maui that specifies implementation of a Cemetery Grounds Management Plan, which permits the continuation of grass parking on Lot 1.

There remain, for MCA, a few more issues, addressed in this letter, to resolve, at which point all of the parties will be able to agree that the Section 106 Consultation was a success and the adverse impacts of the undertaking have been avoided, minimized or mitigated.

This letter should be made part of the record in this case and taken into consideration in further consultations in this case.

Please contact Ms. Camille Lyons or myself to discuss these issues further.

Sincerely,



Isaac Hall  
Attorney for the  
Makawao Cemetery Association, Inc.

IH/gr

Encls.

Ccs:

Ms. Camille D. Lyons

MCA

Michelle DeGrandi (Via Email)

Douglas Pulak (Via Email)

Claudia Nissley or successor NCA agent (Via Email)

Thomas F. King or successor NCA agent (Via Email)

Alan Downer (Via Email)

Susan Lebo (Via Email)

Chris Nakahashi (Via Email)

Andrew Phillips (Via Email)

Annalise Kehler (Via Email)

David Goode (Via Email)

Kristin Tarnstrom (Via Email)

Claudia Hadjigeorgiou (Via Email)

Neal Mitsuyoshi (Via Email)

Gina Ichiyama (Via Email)

Ronald Han (Via Email)

Lloyd Maki (Via Email)

Debbie Harada (Via Email)

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 the Maui County Department of Public Works (County) to participate in consultation, and the County has 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, and the State of Hawaii Aha Moku Advisory Committee were invited to participate in consultation, and they have elected not to participate; and

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

NOW, THEREFORE, 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. Subject to safety and setback requirements, OVS will insure that the gate and rock wall are sited approximately as shown in the "Maui Veterans Cemetery Lot 1 Draft Scheme 5 South," dated April 5, 2017 (Attachment A).
  
- III. Signage
  - A. OVS shall provide space 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. OVS will provide the landscape design to all consulting parties for review. All consulting parties shall have 30 calendar days from date of receipt to provide comments to OVS. OVS, in consultation with County, 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.

← Insert 1  
← Insert 2

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 draft scheme for Lot 1 (dated April 5, 2017), that reflects the discussions of the February 4, 2016 and December 13, 2016 consultation meetings (Attachment A). Copies of the draft scheme were provided to consulting parties for review and comment in January 2018 as part of the consultation process. Based on the draft design scheme and comments received on it, OVS will develop a design plan.

B. The design plan will retain 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.

← Insert 3

D. A straight header curb is included 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 will provide the design plan to all consulting parties for review. All consulting parties shall have 30 calendar days from date of receipt to provide their comments to OVS. OVS, in consultation with NCA, will finalize the design plan 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.





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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 and Maintenance Plan (Plan). Once finalized by these parties and approved by Maui County Council, the MOU and Plan will become Attachment B to this Memorandum of Agreement (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 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.  Insert 4
- 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 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.  Insert 4  
If an entity other than OVS, NCA or the 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 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. The 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 signatories and concurring 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.
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. NCA may make a final decision on the objection and provide a written response to all signatories and concurring parties and proceed accordingly.
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, 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

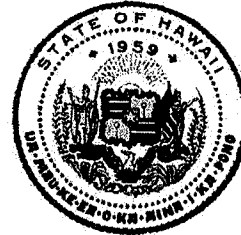
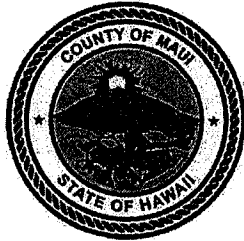
Attachment A: Lot 1 design drawing

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



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



August 23, 2017

**Maui Veterans Cemetery**  
**Grounds Management & Maintenance Plan-Standard Operating Procedures**  
**(SOP)**

This Grounds 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 Maintenance Plan. Full implementation of this plan is contingent upon the availability of adequate fiscal assets and Maintenance personnel. **This SOP is effective immediately and shall remain in effect unless rescinded by mutual agreement of the County of Hawaii 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 (Version 5.1, July 2014; see attachment; [www.venderportal.ecms.va.gov](http://www.venderportal.ecms.va.gov);) to achieve "Shrine Status." 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.

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.

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 (see attachment).

- 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 SOP 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) between the State of Hawaii, County of Maui and the Makawao Cemetery Association (MCA), 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. Deletion
- The County shall be responsible for the periodic inspection (to include after each funeral and memorial service) 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 report (supplemented with photos) 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 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 written 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

Insert 4

the minimum NCA Shrine standards. The OVS and/or their representative also possesses the authority to determine whether the grass and grounds has been sufficiently restored and can be reopened for use.

- The County of Maui Department of Public Works shall implement 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.
- OVS, as the State entity, delegates to the County the responsibility of acquiring a 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 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:** 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 addressed 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:**
  - Prepare flag ground holders and put up and remove all flags for Ceremony, as required.
  - Prepare grave flags for distribution by Scouts Organization. Assist with placing of flags and removal for Ceremony, as required.
  - Prepare Lei for distribution by Scouts Organization. Assist with placing of lei and removal for Ceremony, as required.
  - Assemble and disassemble Ceremony Tents, sound system, flags 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 4<sup>th</sup> during the Christmas Holiday. Potted plants, wreaths, flowers and prohibited items shall be removed after January 5<sup>th</sup>.