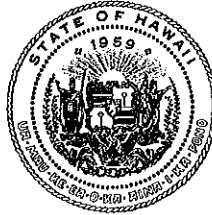


LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

August 3, 2007

LAURA H. THIELEN  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ALLAN A. SMITH  
INTERIM DEPUTY DIRECTOR - LAND

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, HI 96813

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO AN *IN SITU* BURIAL AGREEMENT WITH HANA BEACHFRONT ASSOCIATES FOR UNMARKED BURIAL SITES LOCATED ON THEIR PROPERTY AT HANEO' O ROAD, HANA DISTRICT, ISLAND OF MAUI [TMK (2) 1-4-08:01]

Submitted for your consideration is a request to enter into an *In Situ* burial agreement with Hana Beachfront Associates to implement the conditions agreed upon by the landowner and accepted by the State Historic Preservation Division.

Section 6E-43, and 6E-43.6, Hawaii Revised Statutes, require the State to regulate the proper treatment of human skeletal remains over fifty years old, at any site other than a known, maintained, actively used cemetery. In order to provide perpetual protection for the newly established burial site for the skeletal remains, its location will be recorded in the Bureau of Conveyances together with the attached *In Situ* agreement. This *In Situ* Agreement establishes a twenty feet permanent buffer zone, access rights for lineal and cultural descendants and states that the burial will not be willfully disturbed by the landowner, its successors and assigns.

The office of the Attorney General has conducted a review of the *In Situ* agreement and all suggested amendments were incorporated into the attached agreement.

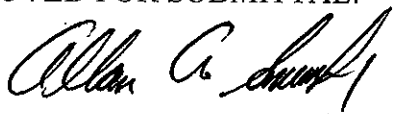
RECOMMENDATION

That the Board authorize the Interim Chairperson to execute the attached *In Situ* agreement with Hana beachfront Associates.

Respectfully submitted,

  
\_\_\_\_\_  
MELANIE CHINEN, Administrator  
Historic Preservation Division

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
*for* LAURA THIELEN, Interim Chairperson  
Board of Land and Natural Resources



WHEREAS, the parties desire to enter into this Agreement to leave *in situ*, the burial sites.

NOW THEREFORE, in consideration of the above and the terms and conditions contained herein, the parties agree as follows:

1. The Landowner agrees to allow any skeletal remains to be left *in situ* in the Landowner's property located at Haneo'o Road, Hana, Maui [TMK: (2) 1-4-08:01] and designated State Site No. 50-50-13-4233.

2. The Landowner, upon recommendation from the Department of Land and Natural Resources (DLNR) and the Maui/Lanai Island Burial Council (MLIBC), agrees to establish a permanent twenty (20) foot buffer zone completely surrounding the possible burial sites.

3. The Landowner, upon recommendation from the DLNR and the MLIBC, agrees that no digging shall take place within the buffer zone. Landscaping with grass or shallow rooted native plants may occur within the permanent buffer zone; provided, however, no landscaping shall be allowed on the suspected burial site features.

4. Interim and long-term preservation as set forth in the approved Burial Treatment Plan shall ensure that the integrity and context of the possible burial sites are preserved.

5. The Landowner agrees to identify the location of the possible burial sites on a map and provide such information to the DLNR, Division of Historic Preservation.

6. The Landowner agrees to provide living Cultural and Lineal descendants, as determined by the MLIBC in conjunction with the State Historic Preservation Division ("SHPD") Burial Sites Program, access rights to visit the burial sites for cultural purposes. The access rights shall be by the most direct route across the Landowner's real property. A list of names and contact information of the Cultural and Lineal descendants shall be provided to the Landowner by the SHPD-Burial Sites Program. Such right of access shall be subject to the rules and policies of the Landowner. Cultural and Lineal descendants are to contact the Landowner or their representatives thereof to confirm dates and times of visitation. The request for visitation must be made at least 48 hours in advance to confirm date and time.

7. The Landowner, on behalf of itself and its successors and assigns, covenant and agree not to willfully disturb in any manner, or allow the disturbance of in any manner, the repose of any human skeletal remains which are buried at its property at Haneo'o Road, Hana, Maui [TMK: (2) 1-4-08:01], and designated State Site No. 50-50-13-4233.

8. In the event the Landowner learns that the human skeletal remains, or any part thereof, are unearthed by natural causes or otherwise, the Landowner agrees to immediately notify the DLNR. The Landowner agrees not to handle the human skeletal remains in any manner. The DLNR, upon recommendation of the MLIBC, shall take proper action to secure the remains in place.

IN WITNESS WHEREOF, the STATE OF HAWAI'I, by its Board of Land and Natural Resources, has caused the Seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Agreement to be executed as of the day, month, and year first above written.

STATE OF HAWAI'I

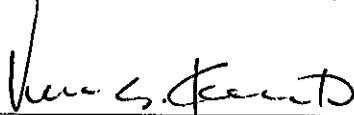
By \_\_\_\_\_  
Chairperson, Board of Land and Natural Resources

By \_\_\_\_\_  
Member, Board of Land and Natural Resources

LANDOWNER  
Hana Beachfront Associates

By \_\_\_\_\_  
Gary Stice,

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

Dated: 7/19/07

STATE OF HAWAI'I

)

) SS.

COUNTY OF

)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ to me known to be the person described in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawai'i

My commission expires: \_\_\_\_\_

# EXHIBIT 'A'

## Exhibit A

<p><b>State Site #:</b>  <b>Site Type:</b>  <b>Function:</b>  <b>Total Features:</b>  <b>Dimensions:</b>  <b>Elevation:</b></p>	<p>50-50-13-4233            Cement Graves and Water Rounded Boulder Alignments            Historic Graveyard            3            63.0 m.<sup>2</sup> (635.2 ft.<sup>2</sup>)            5.0 m. (18.4 ft.) a.m.s.l.</p>	<p>CSH Site : 1</p>
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**Description:** State site number 50-50-13-4233 (CSH site 1) is a burial site located in the central *mauka* (western) portion of the project area (Figure 10). The graves are located at the base of three tall (80 feet or more) Norfolk pine trees. The number of graves is undetermined although two local informants recall as many as nine graves being visible in the past. The site covers an area measuring approximately 7 m (23 feet) north-south by 9 m (29.5 feet) east-west. There are at least two historic graves, clearly visible with cement crypts. To the north of the crypts are a series of water-worn basalt boulder alignments which likely mark historic or possibly prehistoric graves. Interviews with local residents (former residents of the project area) indicate that the crypts predate the mid-1920s. One former resident, Mrs. Lei Mamo Lee recounted playing on the crypts as a child--this was most likely in the early to mid 1920s. Mrs. Lee further recounted that the crypts were directly behind the house that stood on the property until the 1946 tidal wave. She had no recollection of other areas in the project area where graves were present. Another local informant, Kekula P. Bray, is a lineal descendent of burials found here. Her testimony establishes the ethnicity of the burials as Hawaiian and further identifies several individuals interred at specific graves. This information was gathered by Theresa Donham on a field inspection of the site in 1996 and during interviews with Ms. Bray. Three features were designated: feature A is the largest cement crypt; feature B is the smaller cement crypt; and feature C consists of the boulder alignments north of the cement crypts.

Feature A is the largest and eastern-most crypt. It consists of a large cement rectangular solid measuring 0.6 m high by 1.7 m across by 2.4 m long. The crypt is constructed of cement in which basalt boulders are incorporated (at least at its base). The surface is smooth and regular. The crypt is collapsed and/or partially buried and lists to the north. It is possible that it is no longer in situ. Mrs. Sharon Mynar, another resident informant, told how one of the crypts had been struck and damaged by a backhoe subsequent to the 1946 tidal wave by the then property owner, Mr. Louis Cullen. It is possible this event was responsible for the current listing condition of this crypt. No identification marks, inscriptions, or dates were visible on the crypt surface. At the northwest corner is a large cylindrical water rounded boulder measuring 30 cm in diameter and 70 cm long. Adjacent to this stone is a large fragment of cement construction--which is either a part of a crypt-like construction--or some other foundation. At the south end of the crypt, emerging from the cement of the crypt's top surface, is a rusted metal piece. This is the remnant of a metal cross that Mrs. Sharon Mynar said was knocked off at the time Mr. Cullen hit the crypt. Between feature A and feature B (located 2 m to the northwest) is a shallow depression (50 cm in diameter by 25 cm deep) which appears recent--possibly from the recent grubbing of the project area. There is also an alignment of six water rounded boulders which form a right angle.

Feature B appears less disturbed than feature A. It is a crypt of similar construction materials and style, but with a different form. It consists of a rectangular base, measuring 1 m by 1.6 m by 0.15 m high, on top of which is a second rectangular form, measuring 0.6 m by 1.2 m by 0.45 m high, which has a domed surface. At the east end of the crypt is a similar rusted metal piece--likely the base of an ornament. No dates or inscriptions were visible on feature B. There is no evidence that this feature was moved.

Feature C consists of the water-rounded boulder alignments directly to the north of feature B (see Figure 10). Consisting of a single course of stones (from 2 to 25 cm high), most of which have been partially buried by the surrounding sediment, these alignments are likely the remnants of grave markers.

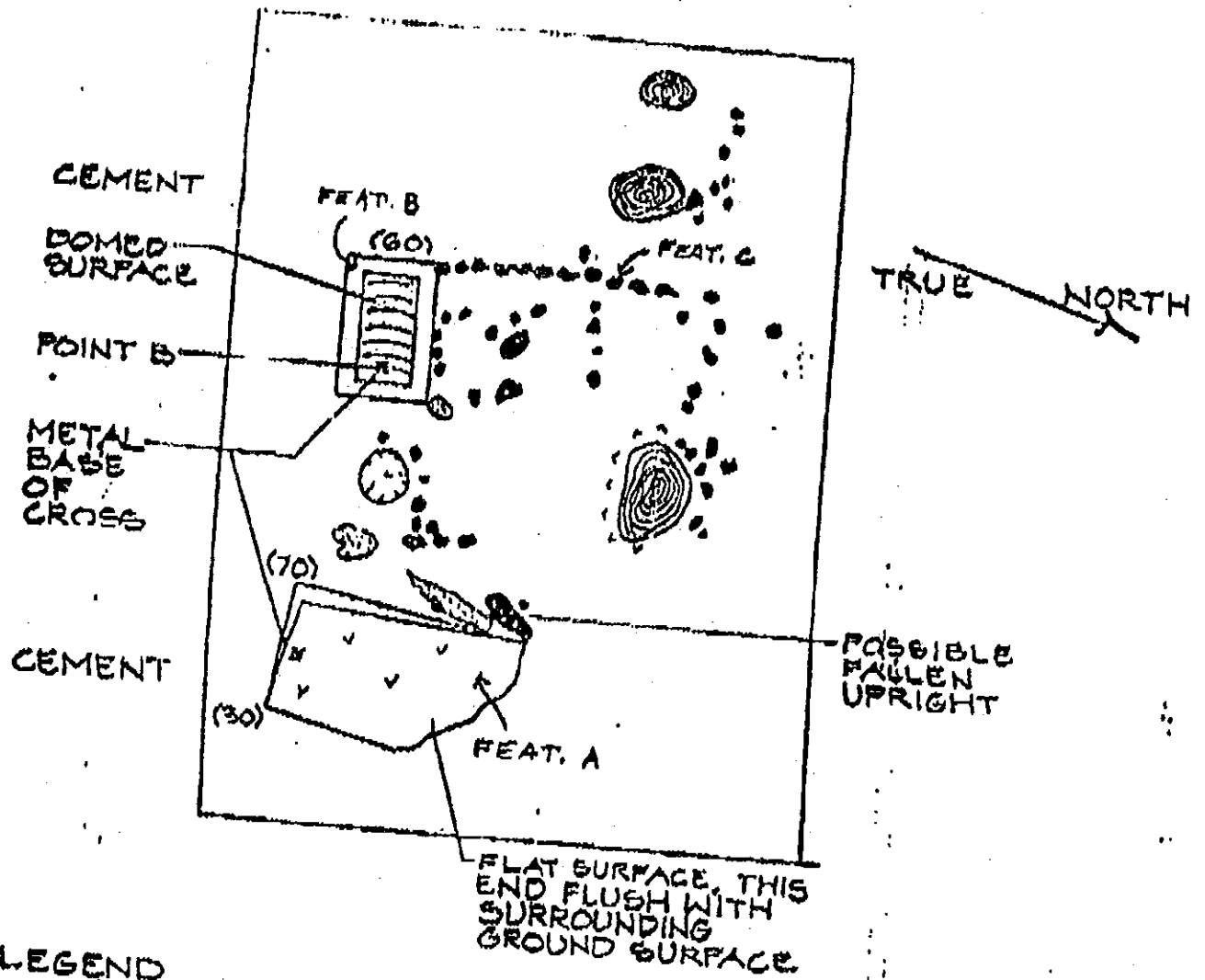
Ms. Theresa K. Donham of the State Historic Preservation Division made a field inspection of the project area on September 30, 1990. Concerning the burial site 50-50-13-4233 she states, "Information provided by local residents indicates that there are nine graves at this site. Surface indications of at least eight possible graves were observed during the inspection" (letter to Mr. Glen Ueno, Department of Public Works, Wailuku, October 18, 1990, LOG NO: 18314 DOC NO: 9610KD12). Our interview with long time resident of the project area Mrs. Lei Mamo Lee gave further indication that the two cement crypt features were not the only burials at site 50-50-13-4233. Mrs. Lee was unsure of the exact number but she indicated that there were approximately five grave monuments at the site when she was a child (the 1920s). Although the exact number of burials is unclear, it is fairly certain that more than two individuals are buried at site 50-50-13-4233.

The scouring effects of the 1946 tidal wave completely demolished the two houses that were then sitting on the project area. It is certain that the tidal wave impacted the graves at site 50-50-13-4233--especially if the grave monuments were of less resistant stacked stone construction instead of cement.

The age of the burial site is most likely historic--however, there could be prehistoric burials among the historic ones. The ethnicity of the burials is difficult to determine. Further interviews with local informants and studies of written records may identify the names and histories of who was buried at the site. Our informants, Mrs. Lei Mamo Lee and Mrs. Sharon Mynar, felt that one of the individuals may have been Mrs. Mynar's maternal great aunt.

# EXHIBIT 'B'

Exhibit B (1)

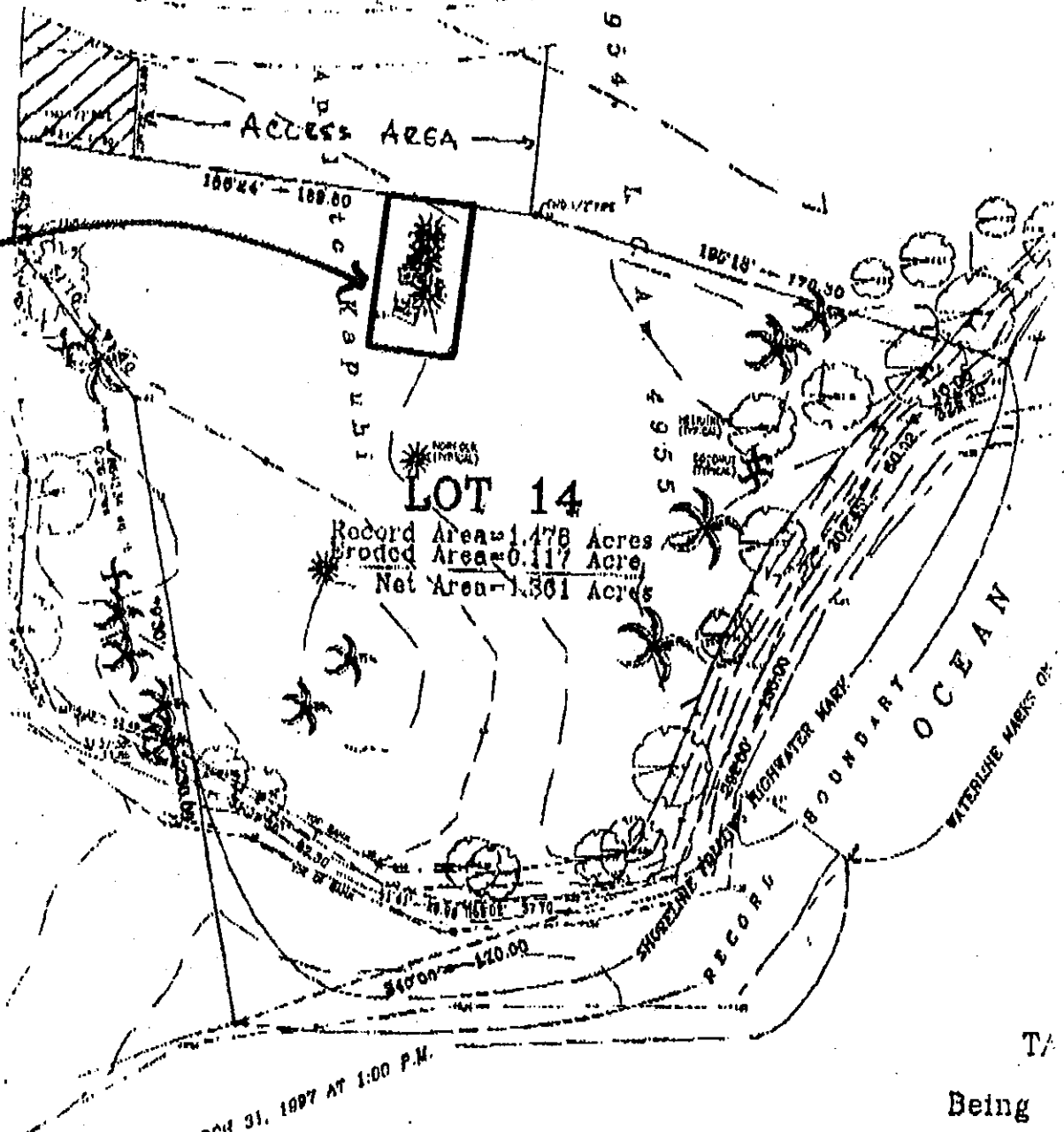


- LEGEND**
- BASALT BOULDERS, WATER ROUNDED
  - ⊙ FRAGMENTS OF CEMENT CONSTRUCTION
  - ⊙ 80' HIGH NORFOLK PINES
  - ⊙ DEPRESSION
  - (60) HEIGHTS IN CENTIMETERS
  - v v DIRECTION OF SLOPE

Figure 10 Plan View of Site 50-50-13-4233  
 (Drawing Frame Represents Proposed Burial Site Boundary)

T.M.K. (2) 1 4-07 : 00  
"MAINA AHIHOI"  
STATE OF HAWAII  
(owner)

Approximate  
Location of  
Site 4233  
Burial Preserve



SETTING MARKS ON MARCH 31, 1997 AT 1:00 P.M.  
PACIFIC

This work was prepared by me  
or under my direct supervision.  
VALERA, INC.

*Richard V. Valera*  
Richard V. Valera  
Licensed Professional Land Surveyor



TA  
Being  
Land Commi