

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

July 8, 2014

**Committee  
Report No.** \_\_\_\_\_

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

Chair and Members:

Your Land Use Committee, having met on June 18, 2014, makes reference to County Communication 14-65, from Council Chair Gladys C. Baisa, transmitting a proposed resolution, entitled "APPROVING THE LOCATION AND BOUNDARIES OF A CEMETERY IN MAKAWAO, HAMAKUAPOKO, MAUI, HAWAII (MAKAWAO CEMETERY)".

The purpose of the proposed resolution is to approve the location and boundaries of the Makawao Cemetery on approximately 7.454 acres, Makawao, Hamakuapoko, Maui, identified as TMK: (2) 2-4-002:001 ("property"). The property is owned by the Makawao Cemetery Association, and is proposed for cemetery purposes, pursuant to Chapter 441, Hawaii Revised Statutes ("HRS").

Your Committee notes Section 441-2, HRS, requires any person who establishes, maintains, improves, or operates a cemetery file with the Bureau of Conveyances or Land Court a written certificate of dedication, containing a description of the land or other property to be made available for cemetery purposes, and dedicating the property exclusively for cemetery purposes.

Your Committee further notes Section 441-4, HRS, prohibits the extension of any existing cemetery without approval by the relevant county council. Council approval may be established by filing with the Bureau of Conveyances or Land Court a certified copy of a resolution approving the location and boundaries of the cemetery property to be extended.

Your Committee further notes Section 441-2, HRS, requires the filing of a "certificate of dedication" to confirm the subject property will be used exclusively for cemetery purposes. The law is silent as to whether such filing must take place prior to or after any required land use entitlements are granted.

The Planning Director stated the Department of Planning is in support of the proposed resolution.

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A Planner from the Department of Planning stated the Makawao Cemetery Association will have two options to pursue in order to allow the property to be used for cemetery purposes. The first is to obtain a State District Boundary Amendment, a Community Plan Amendment, and a Change in Zoning. The second option is to seek a State Land Use Commission Special Use Permit to temporarily allow cemetery use in the State Agricultural District for a set period of time.

The Deputy Corporation Counsel stated the landowner would need to go to court to have the certificate of dedication removed to allow the property to be used for other purposes.

The Treasurer of the Makawao Cemetery Association acknowledged the Association is aware of the constraints on the use of the property. He stated the Association's intention is to use the property for cemetery purposes only, and the Association understands the property cannot be used for other purposes, irrespective of current or future land use entitlements.

Your Committee acknowledged the need to expand the cemetery because it has reached capacity and plots are no longer available. Your Committee encouraged the Association to seek a permanent solution by seeking land use entitlements rather than the temporary alternative of requesting a Special Use Permit.

Your Committee voted 7-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Carroll, Vice-Chair Guzman, and members Cochran, Couch, Hokama, White, and Victorino voted "aye". Committee members Baisa and Crivello were excused.

Your Land Use Committee RECOMMENDS the following:

1. That Resolution \_\_\_\_\_, attached hereto, entitled "APPROVING THE LOCATION AND BOUNDARIES OF A CEMETERY IN MAKAWAO, HAMAKUAPOKO, MAUI, HAWAII (MAKAWAO CEMETERY)", be ADOPTED; and
2. That County Communication 14-65 be FILED.

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**LAND USE COMMITTEE**

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



\_\_\_\_\_  
ROBERT CARROLL, Chair

lu:cr:14021aa:scj

# Resolution

No. \_\_\_\_\_

APPROVING THE LOCATION AND BOUNDARIES OF A  
CEMETERY IN MAKAWAO, HAMAKUAPOKO, MAUI, HAWAII  
(MAKAWAO CEMETERY)

WHEREAS, Makawao Cemetery Association, a Hawaii nonprofit corporation, owns and operates the cemetery known as Makawao Cemetery in Makawao, Hamakuapoko, Maui, Hawaii; and

WHEREAS, Section 441-2, Hawaii Revised Statutes, requires that Makawao Cemetery Association record a certificate of dedication containing a description of the land used for cemetery purposes and dedicating the property exclusively to cemetery purposes; and

WHEREAS, Makawao Cemetery Association is prepared to record such a certificate of dedication, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Section 441-4, Hawaii Revised Statutes, requires that the Maui County Council approve the location and boundaries of the cemetery; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That pursuant to Section 441-4, Hawaii Revised Statutes, the Council hereby approves the location and boundaries of a cemetery on that certain parcel of property located at Makawao, Hamakuapoko, Island and County of Maui, State of Hawaii, comprised of approximately 7.454 acres and identified for real property tax purposes by Tax Map Key No. (2) 2-4-02:01, as set forth in Exhibit "1" to Exhibit "A" attached hereto; and
2. That Makawao Cemetery Association is authorized to record a certified copy of this Resolution or take any other action necessary to comply with Section 441-2, Hawaii Revised Statutes; and
3. That a certified copy of this resolution be transmitted to the Makawao Cemetery Association and the Mayor of the County of Maui.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA  
Department of the Corporation Counsel  
County of Maui  
paf:jkm:14-039a

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY:  MAIL  PICKUP

Makawao Cemetery Association  
P.O. Box 175  
Makawao, Hawaii 96768

TAX KEY NO.: (2) 2-4-002-001

Total Number of Pages: -08-

CERTIFICATE OF DEDICATION OF LAND FOR CEMETERY PURPOSES

DECLARANT: Makawao Cemetery Association  
Post Office Box 175  
Makawao, Maui, Hawaii 96768

**EXHIBIT "A"**

CERTIFICATE OF DEDICATION OF LAND FOR CEMETERY PURPOSES

THIS DECLARATION, made this 20 day of February, 2014, by MAKAWAO CEMETEREY ASSOCIATION, a Hawaii nonprofit corporation, whose principal place of business is located in Makawao, and whose mailing address is Post Office Box 175, Makawao, Maui, Hawaii 96768, hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS, Declarant has managed and operated the Makawao Cemetery since 1949 on certain property dedicated for cemetery purposes located in Makawao, Maui, Hawaii, and identified as Tax Map Key No. (2) 2-4-002-001 containing approximately 2.838 acres (the "Cemetery"); and

WHEREAS, Declarant has negotiated and purchased an additional 4.616 acres of real property adjacent to the Cemetery and completed a consolidation and resubdivision to said parcels to expand the size of the Cemetery to a total of 7.454 acres, hereinafter referred to as the "Cemetery Property", which is more particularly described in Exhibit "1" attached hereto and made a part hereof; and

WHEREAS, the Declarant desires to dedicate the Cemetery Property for cemetery purposes in order to comply with the requirements of Chapter 441, Hawaii Revised Statutes.

NOW, THEREFORE, the Declarant makes the following Declaration:

1. Declarant hereby declares and agrees that the Cemetery Property is held and shall be held, conveyed, mortgages, encumbered, leased, rented, used, occupied and improved subject to the declaration and restriction that the Cemetery Property shall be used only for cemetery purposes, as set forth in Chapter 441, Hawaii Revised Statutes.

2. That the Cemetery Property and all parts thereof, is and shall be held subject to such covenants, conditions and restrictions, which shall be effective as to and shall run with the land as to the Cemetery Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawaii, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Cemetery Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Cemetery Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration.

3. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

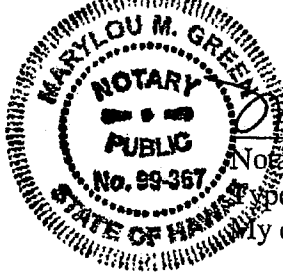
DECLARANT:

MAKAWAO CEMETERY  
ASSOCIATION, a Hawaii nonprofit  
corporation

By Camille D. Lyons  
Printed Name: Camille D. Lyons  
Its: President & Secretary

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 20th day of February, 2014, before me personally appeared Camille D. Lyons, to me personally known, who, being by me duly sworn, did say that ~~he~~she is the President of the Makawao Cemetery Association, a Hawaii nonprofit corporation, and that the foregoing instrument was signed on behalf of said nonprofit corporation by authority of its Board of Directors, and the said Officer acknowledged the foregoing instrument to be the free act and deed of said nonprofit corporation.



Marylou M. Green  
Notary Public, State of Hawaii  
Typed or Printed Name: Marylou M. Green  
My commission expires: July 31, 2017

HAWAII NOTARY CERTIFICATION	
Date of document: <u>February 20, 2014</u>	# Pages: <u>8</u>
Name of Notary: <u>Marylou M. Green</u>	<u>Second</u> Circuit
Document Description: <u>Certificate of Dedication of Land for Cemetery Purposes</u>	
<u>Marylou M. Green</u> Notary Signature	<u>2/20/2014</u> Date

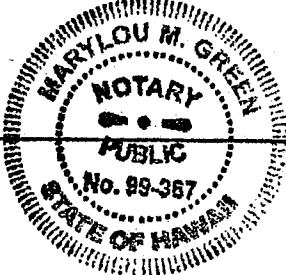




EXHIBIT "1"

All that certain parcel of land known as Lot 5 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186) being all of the Makawao Cemetery [Tax Map Key (2) 2-4-02:001] and portion(s) of Royal Patent 7512, Land Commission Award 11,216, Apana 27 to M. Kekauonohi and Royal Patent Grant 64 to William A. McLane.

Situate at  
Makawao, Hamakuapoko, Maui, Hawaii  
Tax Map Key (2) 2-4-002: 01 & 07

Beginning at a ½ inch pipe (set) at the Southwesterly corner of this parcel of land, being the Southeasterly corner of Lot 4 of the "Paul Turner Subdivision"(Subdivision File No. 2.3186), and a point on the Northwesterly property boundary line of Lot 13 of the "Haleakala Ranch Homesteads" (Tax Map Key (2) 2-4-03:18], the coordinates of said point of beginning are based on actual filed locations and referred to Government Survey Triangulation Station "Piipholo", being 3,201.35 feet North and 6,663.86 feet West and running by azimuths measured clockwise from True South; thence,

1. 171° 19' 00" 285.20 feet along the Northeasterly property boundary line of Lot 4 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), to a ½ inch pipe (found); thence,
2. 171° 31' 00" 479.12 feet along the same, to a ½ inch pipe (set); thence,
3. 267° 00' 35" 706.18 feet along the Southerly property boundary line of Lot 4 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), to a ½ inch pipe (set); thence,
4. 39° 29' 00" 44.16 feet along the Northwesterly property boundary line of Lot 14 of the "Haleakala Ranch Homesteads" [Tax Map Key (2) 2-4-03:19], to a ½ inch pipe (found); thence,
5. 25° 08' 00" 20.30 feet along the Northeasterly property boundary line of Lot 13 of the "Haleakala Ranch Homesteads" [Tax Map Key (2) 2-4-03:18], to a ½ inch pipe (found); thence,
6. 12° 48' 00" 240.90 feet along the same, to a ½ inch pipe (found); thence,
7. 14° 27' 00" 42.50 feet along the same, to a ½ inch pipe (found); thence,

- |     |     |     |     |        |  |
|-----|-----|-----|-----|--------|--|
| 8.  | 71° | 22' | 00" | 121.82 | feet along the same, to a ½ inch pipe (set); thence,                                   |
| 9.  | 50° | 24' | 00" | 50.92  | feet along the same, to a ½ inch pipe (set); thence,                                   |
| 10. | 48° | 02' | 30" | 58.60  | feet along the same, to a ½ inch pipe (set); thence,                                   |
| 11. | 17° | 45' | 00" | 269.46 | feet along the same, to a ½ inch pipe (set); thence,                                   |
| 12. | 62° | 41' | 00" | 70.38  | feet along the same, to a ½ inch pipe (set); thence,                                   |
| 13. | 66° | 23' | 30" | 161.39 | feet along the same, to a point of beginning and<br>containing an area of 7.454 acres. |

TOGETHER WITH an existing 20 feet wide easement affecting Lot 4 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), as recorded in the Bureau of Conveyances, State of Hawaii, in Book 2283, Page 281, area = 9,250 square feet more or less.

BEING all of the property conveyed by the following:

**Warranty Deed**

Grantor : Paul Turner, a married man, and Makawao Cemetery Association, a Hawaii non-profit corporation

Grantee : Makawao Cemetery Association

Dated : December 3, 2013

Recorded : December 6, 2013, in the Bureau of Conveyances of the State of Hawaii, as Document No. A-50880188

Confirmation of Boundary and Reciprocal Quitclaim Deed dated December 21, 2009, recorded as Document No. 2009-197258.

**Deed**

Grantor : Hawaiian Commercial and Sugar Company Limited, a Hawaii corporation

Grantee : Makawao Cemetery Association, a Hawaiian eleemosynary corporation

Dated : December 9, 1949

Recorded : in the Bureau of Conveyances of the State of Hawaii, in Liber 2283 Page 281

Said above deed was corrected by instrument dated August 23, 1996, recorded October 8, 1996, in the Bureau of Conveyances of the State of Hawaii, as Document No. 96-144198.

Confirmation of Boundary and Reciprocal Quitclaim Deed dated December 21, 2009, recorded as Document No. 2009-197258.

**SUBJECT, HOWEVER, TO:**

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions contained in Limited Warranty Deed dated November 28, 2008 recorded December 1, 2008 as Document No. 2008-181293.
3. Unilateral Agreement and Declaration for construction of a farm dwelling on lands zoned county agricultural district or designated state agricultural district

Dated : March 26, 2010

Recorded : April 15, 2010, in the Bureau of Conveyances of the State of Hawaii, Document No. 2010-051126

4. An Agreement for Allocation of Future Subdivision Potential, upon and subject to all of the provisions contained therein.

By and Between : Paul Turner, Makawao Cemetery Association, State of Hawaii, and County of Maui, through its Department of Public Works, a political subdivision of the State of Hawaii

Dated : September 23, 2013

Recorded : October 8, 2013 in the Bureau of Conveyances of the State of Hawaii, as Document No. A-50290027

5. Rights and claims of others under recorded and unrecorded instruments, including executory contracts, in and to any burial plots or sites.
6. Any and all existing roadways, trails, easements, rights-of-way, flumes and irrigation ditches.
7. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other

matters which a correct surveyor archaeological study would disclose.

9. Any unrecorded or unfiled leases, subleases or rental agreements and any liens, charges or exceptions against any lessees, sublessees or tenants named therein.
10. Any and all claims, damage or loss arising by reason to locate with certainty the existing 20 feet wide easement affecting Lot 4 of the "Paul Turner Subdivision" (Subdivision File No. 2.3186), as recorded in the Bureau of Conveyances, State of Hawaii, in Book 2283, Page 281, and having an area of 9,250 square feet more or less.

END OF EXHIBIT "1"  
Tax Map Key No. (2) 2-4-002-007