
MEMORANDUM OF AGREEMENT

Relating to Proposed Development at
Hulopo'e and Mānele Bays, Lāna'i



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This Memorandum of Agreement (MOA) is concluded to address the cultural and archaeological concerns related to the Shoreline Management Area permit and development at Hulopo'e and Mānele Bays on the island of Lāna'i.

The agreement reflects the commitment of all concurring parties to conserve the special and unique heritage of Lāna'i in this area. Sensitivity and resolve among governmental agencies, the developer, and the Lāna'i community guided the intent and contents of this MOA to preserve the cultural resources and assets of the past and to recognize their enrichment value to our present and future.

I. HISTORIC PRESERVATION MANAGEMENT COMMITTEE

A. THE COMMITTEE. An historic preservation management committee (The Committee) shall be formed and consist of representatives from the archaeological subcommittee of the Lanaians for Sensible Growth (LSG), the Hui Mālama Pono o Lāna'i (HUI), the Castle and Cooke Company (COMPANY), the Office of Hawaiian Affairs (OHA), and the State Historic Preservation Office (SHPO).

1. Each of the groups named shall formally appoint or elect one voting representative to the Committee. Each group shall make their best effort to select a representative of Hawaiian ancestry. Hawaiian is defined as an individual whose ancestors inhabited what is now the Hawaiian Islands prior to 1778.

2. International Archaeological Research Institute, Inc. will serve on the committee in an ex officio professional advisory capacity.

3. To assure consideration of the traditional culture and historical knowledge of Lāna'i, a kūpuna authority shall be hired by the Company at an annual salary of \$6,000 to assist The Committee in its deliberations. This kūpuna shall be selected by The Committee and will be a resident of Lāna'i.

The kūpuna authority shall serve on The Committee in an ex officio professional advisory capacity.

4. The Company shall provide necessary funding for all reasonable costs associated with the functioning of The Committee as described in an annual budget submitted by The Committee in an amount not to exceed \$6,000 per annum. This budget will address anticipated secretarial, clerical and operating costs associated with the responsibilities of The Committee. This budget will also include, consistent with existing governmental allowances and reporting practices, funds for the transportation and per diem expenses of Committee members who do not reside on Lāna'i.

5. The Committee shall convene its first meeting on December 5, 1987, on the island of Lāna'i. At this time, the Committee shall select a presiding officer from among the members who are residents of Lāna'i, and may select a new name for itself.

6. As appropriate, The Committee may consult with the anticipated Maui County Cultural Resource Management Commission.

7. Ten (10) copies of all reports shall be made available to the community at the Lāna'i Library. An additional ten copies shall be transmitted to each representative on The Committee for distribution to their organizations.

8. In the spirit of this agreement, all parties agree to seek consensus decisions reflecting the good faith fulfillment and implementation of responsibilities described in this document.

B. SCOPE OF AGREEMENT. All conditions detailed in this agreement are limited to the hotel and beach park development affected by the pending Shoreline Management Area (SMA) application submitted by the Company for the Hulopo'e-Mānele Bays area. Additional documents of agreement concluded in fulfillment of these conditions shall be formalized, ratified

by each participating organization, and submitted to the Maui Planning Commission for verification.

C. AMENDMENT PROCEDURE. As plans for further development proceed The Committee, as appropriate and with the consent of all parties, may amend this agreement or initiate additional formal understandings to address new aspects of the project.

II. HISTORIC PRESERVATION MANAGEMENT PLANS

PRELIMINARY GUIDELINES. To assure all parties that the SMA area development project will be carried out in a manner sensitive and responsive to the Hawaiian culture, the Lana'i community, and scientific interests, archaeological and cultural resource management plans and objectives shall be implemented. Such plans and objectives will be guided and achieved to benefit the people of Lana'i and of the State of Hawai'i.

The development of these plans shall be consistent with the following stages of archaeological and cultural investigation and reporting:

A. INVENTORY OF HISTORIC SITES AND SIGNIFICANCE ASSESSMENT. All project areas will undergo an adequate archaeological inventory survey and significance assessments of each site shall be finalized prior to any construction activities. The Committee shall review and approve the archaeological inventory survey and significance assessments of each site. The Committee shall review and approve the adequacy of survey and significance assessments.

1. Required archaeological reports shall consider and address anticipated direct and indirect impacts on all sites and recommend appropriate mitigation actions for sites in the hotel construction zone.

- a. Archaeological investigations undertaken to date include an inventory of a 422-acre parcel, instrument mapping of beach park features, data recovery of features in the hotel construction zone; and test excavations and mapping in the multi-family residential area;

b. The hotel expansion area has not yet been adequately surveyed. Anticipated future investigations shall include an instrument mapping and test excavations of sites in the hotel expansion area and possible test excavations of beach park features for evaluation and interpretation;

c. Reports resulting from these investigations shall include a clear map delineating all known sites in the project area with a clear description of each site indicating probable function, relationship to other sites, and significance assessment according to stated criteria;

d. Overlay maps of the known sites and the proposed project shall be up-dated and distributed to the Committee to reflect any changes in design and to clearly show the anticipated impact of the hotel and an identification of sites which will be destroyed by construction; and

e. Should any historic sites be found during construction, work shall stop in the immediate area. A professional archaeologist and the kūpuna authority shall then document the nature of the site and make significance recommendations to The Committee. Construction may resume with the concurrence of the archaeologist, kūpuna, and SHPO.

B. GENERAL MITIGATION PLAN. By December 31, 1987, general mitigation decisions for all significant historic sites shall be made. Some sites shall undergo data recovery and others shall be preserved.

1. In situ preservation to protect the character and future understanding of the Hulopo'e Habitation Complex, shall include, but not be limited to, the archaeological features in the beach park area identified as:

Site -85, Features A, B, C, D, E, F, G, H, I, J, K, L,
M, N, O, P, Q, R, S, T, U, W, X, Y.

Pending further evaluation, other features may be included.

2. The traditional trail associated with Site -85 shall be preserved as access and, as appropriate, may be incorporated into the design of the interpretative plan.

3. Adequate identification and protection of these sites prior to and during construction shall be provided by the Company. Conspicuous marking and fencing materials shall be used for this purpose. A pre-construction education program shall also be conducted to assure that contractors and work force personnel are sensitive to the significance of archaeological properties associated with the project.

4. Development of the beach park will require data recovery or preservation measures for Sites -1516 and -1517. Precautions shall be taken to assure that these sites are not unintentionally destroyed by increased human activity.

5. Conspicuous marking and adequate protection shall also be assured for Sites -1007, -1512, -1513, -1514, -1515, and -85 BB, CC, DD, YY, ZZ, AAA, BBB, CCC, and EEE, pending evaluation and significance assessments.

6. Any and all proposed ground disturbing activities -- including, but not limited to, landscaping, bulldozing, grading and construction -- in the beach park areas shall be subject to evaluation by a professional archaeologist for impacts to sites. The archaeologist shall then make recommendations to the Committee to minimize or avoid any adverse impact on such sites.

7. Camping and any other recreational activity shall not be permitted within the immediate vicinity of archaeological features in the beach park area. Signs to this effect will be posted at the boundary of the designated area.

C. ARCHAEOLOGICAL DATA RECOVERY PLAN. A detailed archaeological recovery plan shall be prepared to handle all significant sites to undergo data recovery.

1. Completed data recovery at sites within the hotel construction zone shall be reported within this plan to The Committee, and assessed for adequacy.

2. The Committee shall review and approve this plan. As appropriate, The Committee shall prepare a monitoring plan and will verify the successful completion of the data recovery plan.

D. BURIAL TREATMENT PLAN. The Committee shall be responsible for the development of a Burial Treatment Plan to prepare for the possibility that Hawaiian human remains and associated funerary objects are uncovered during archaeological or construction work which require removal and reinterment.

This plan shall be adopted in the following stages:

1. Disinterment standards and conditions are addressed in ATTACHMENT 1 of this agreement;
2. Reinterment standards and conditions shall be the result of a good faith effort to obtain the views of interested persons evincing cultural and traditional ties to the features or to the land in which the features are located;
3. Reburial standards shall include the selection and dedication of a suitable reburial area;
4. The complete Burial Treatment Plan shall be completed and submitted to the Maui Planning Commission within four (4) months of the first meeting of The Committee.

E. PRESERVATION AND INTERPRETATION PLAN. The Committee shall be responsible for developing a preservation and interpretation plan concerning the designation, long-term maintenance and management of preserved features. This plan shall provide for public access and security, on-site interpretation, and appropriate treatment of structural components.

1. This plan may include the development and designation of a curatorship agreement with a qualified agency or non-profit association.
2. The professional recommendations suggested by Kaschko and Athens in their report, "Archaeological inventory survey of Hulopoe Bay and Mānele Bay areas, Island of Lānai, Hawaii," (1987) shall be considered the baseline document for historic preservation considerations, subject to the review of The Committee along with kūpuna interpretations.

Specific projects to be included in this plan are:

1. An oral history component to enhance the archaeological and cultural interpretation of this area. This project may be a continuation of the University of Hawai'i project at Ko'ele on Lāna'i;
2. A video program incorporating cultural information about the area and the role of archaeology in historic preservation designed for a school-age audience;
3. Preparation of a guide book to be used in conjunction with a walking tour of the preserved sites and features of this area within a context of other known sites on Lāna'i. The purpose of this book will be to share the Hawaiian culture from a Hawaiian perspective and to provide a readable synthesis of recent scientific insights into the prehistory and early historic period experiences of Lāna'i;
4. Construction of a traditional-style hālau wa'a (canoe house) on the beach for use by the community and as a replication of function for a known feature;
5. Corporate sponsorship of presentations by professional archaeologists and kūpuna authorities in schools and public meeting places.
6. Additional archival research, as identified and determined by historical studies now in progress, shall be conducted by the project archaeologist and other pertinent researchers.
7. This plan shall be completed within one (1) year of the completion of the Burial Treatment Plan described in Section II.B. Identified components of this preservation and interpretation plan may be adopted and implemented in phases, as determined by The Committee.

F. CURATION PLAN. All parties agree that archaeological and cultural materials associated with this project properly shall be curated on the island of Lana'i. In keeping with this agreement and looking toward the establishment of a Lāna'i community museum:

1. The designation and remodeling of an existing facility or the construction of a new facility shall permit museum operation within 2 years of the first meeting of The Committee;

2. This facility shall be provided by the Company and shall meet professional standards for curation;
3. Curation shall be consistent with the Burial Treatment Plan.
4. Copies of plan maps and photos of all sites not in reports shall be deposited at the Lāna'i museum and with SHPO for public informational use and placement in the State's Inventory of Historic Places.
5. All reasonable costs associated with the implementation of the Preservation and Interpretation, and Curation Plans shall be borne by the Company in a total amount not to exceed \$500,000.

G. SAND DUNE CONCERNS. The sand dune area on the Mānele peninsula is recognized to be a possible Hawaiian burial area. The burial treatment plan developed for this agreement shall not apply to this area. Due to the sensitivity of this area:


1. The Company shall not allow any construction-related use of this area for storing or parking equipment or vehicles of any kind. Any recreational use of this area, including camping or terrain vehicles like motorcycles, shall also be prohibited to avoid possible denigration of the site and the exposure of human remains;
2. Any proposed development within any portion of this area shall be preceded by extensive sub-surface testing and evaluation by professional archaeologists;
3. Subsequent to sub-surface testing, archaeologist's recommendations regarding the extent and number of encountered burials shall be submitted to all members of The Committee. This area shall be preserved and protected if testing confirms the existence of a Hawaiian burial area.


III. DISPUTE RESOLUTION

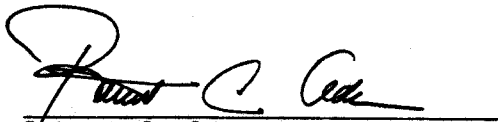
If an objection is raised by a party to this agreement at any time during the development or implementation of the measures stipulated, the full Committee and the Maui Planning Commission shall be notified of the nature or cause of disagreement in writing.

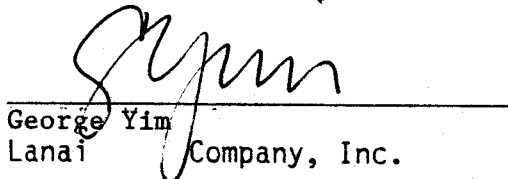
The Committee shall be convened within two weeks of the receipt of such notice and shall seek to resolve the objection by the Hawaiian practice of ho'oponopono. If The Committee determines that the objection cannot be resolved, then the issue shall be submitted to the Neighborhood Justice Center for settlement.

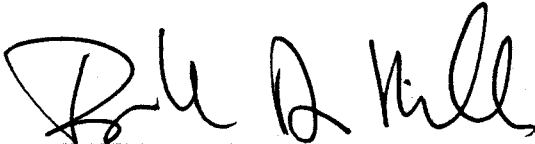
Any willful violation of the conditions or measures contained in this agreement shall be subject to redress in circuit court.

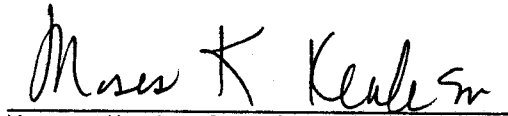

Roland A. Kaopuiki
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William W. Paty
State Historic
Preservation Officer

ATTACHMENT 1

Standards and Conditions Relating to the Disinterment of
Possible Graves at Hulopo'e

The possibility that human remains will be uncovered during construction at Hulopo'e Bay compels us to provide for culturally sensitive treatment if gravesites are found.

This attachment addresses standards and conditions regarding the possible discovery and disinterment of Hawaiian burials within the 22-acre area identified as the proposed hotel site. Additional standards and conditions regarding reburial shall be developed within the next four months, and will include the selection and dedication of a suitable reburial site.

Until the complete Burial Treatment Plan is developed, construction activities shall be limited to the hotel site area.

● GENERAL CONDITIONS

1. All reasonable costs associated with this disinterment agreement shall be borne by the Company.
2. A professional archaeologist and the kūpuna authority shall monitor all construction involving ground-disturbing activity. In the event that a burial is found, all construction work shall cease in the immediate vicinity of the grave.
3. Once a burial is known, a kahu designated by the Lāna'i community shall be called to offer a blessing before formal disinterment can begin. Community participation or presence at this blessing shall be determined by the kahu.