

MICHAEL P. VICTORINO
Mayor

ROWENA M. DAGDAG-ANDAYA
Director

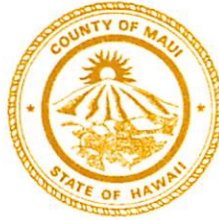
JORDAN MOLINA
Deputy Director

GLEN A. UENO, P.E., L.S.
Development Services Administration

RODRIGO "CHICO" RABARA, P.E.
Engineering Division

JOHN R. SMITH, P.E.
Highways Division

Telephone: (808) 270-7845
Fax: (808) 270-7955



RECEIVED
2020 JAN 27 PM 4:18
OFFICE OF THE MAYOR

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM 434
WAILUKU, MAUI, HAWAII 96793

January 27, 2020

RECEIVED
2020 JAN 29 PM 2:41
OFFICE OF THE
COUNTY CLERK

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 1/27/20
Mayor Date

For Transmittal to:

Honorable Alice L. Lee, Council Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Council Chair Lee and Members:

SUBJECT: A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII (DLNR), RELATED TO THE MAINTENANCE OF MAKENA-KEONEOIO ROAD AND THE AHIHI-KINA'U NATURAL AREA RESERVE

Pursuant to Maui County Code, Section 2.20.030, I am transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII (DLNR), RELATED TO THE MAINTENANCE OF MAKENA-KEONEOIO ROAD AND THE AHIHI-KINA'U NATURAL AREA RESERVE."

The aforementioned bill for an ordinance authorizes the Mayor to enter into an intergovernmental agreement with the Department of Land and Natural Resources, State

COUNTY COMMUNICATION NO. 20-121

Honorable Michael P. Victorino
For Transmittal to:
Honorable Alice L. Lee, Council Chair
and Members of the Maui County Council
January 27, 2020
Page 2

of Hawaii, to provide for surface maintenance of a portion of Makena-Keoneoio Road that runs through the Ahihi Kina'u Natural Area Reserve.

I respectfully request that this matter be referred to the appropriate Council committee for review, discussion and appropriate action.

Should you have any questions, please contact me at Ext. 7845.

Sincerely,



ROWENA M. DAGDAG-ANDAYA
Director of Public Works

RMDA:jso
Attachment

xc: Development Services Administration
Engineering Division
Highways Division
Office of Economic Development

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ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT
OF LAND AND NATURAL RESOURCES, STATE OF HAWAII (DLNR),
RELATED TO MAINTENANCE OF MAKENA-KEONEOIO ROAD
AND THE AHIHI-KINA'U NATURAL AREA RESERVE

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


SECTION 1. Purpose. The Department of Land and Natural Resources, State of Hawaii ("DLNR"), and the County of Maui ("County") wish to enter into a mutually-beneficial agreement to protect the natural environment within the Ahihi-Kina'u Natural Area Reserve ("NAR") and provide for the safety of the public traveling along that portion of Makena-Keoneoio Road that runs through the NAR, as more fully described in the Memorandum of Understanding (Makena Road and Ahihi-Kina'u Natural Area Reserve) between DLNR and the County ("MOU"), attached hereto as Exhibit "1" and incorporated herein by reference.

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

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the MOU, all other necessary documents relating to the MOU, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. All action heretofore taken, not inconsistent with the provisions of this ordinance, is hereby ratified, approved and affirmed.

APPROVED AS TO FORM
AND LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui
2010-1462
2020-01-24 Ordinance IGA MOU DLNR

MEMORANDUM OF UNDERSTANDING
Makena Road and Ahihi-Kina'u Natural Area Reserve

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between the Department of Land and Natural Resources, State of Hawaii ("DLNR") and the County of Maui ("COUNTY"), a political subdivision of the State of Hawaii.

WITNESSETH:

WHEREAS, pursuant to Executive Order No. 2668, dated June 29, 1973, the Ahihi-Kina'u Natural Areas Reserve ("NAR") was set aside by the governor of the State of Hawaii, to be under the exclusive control and management of DLNR; and

WHEREAS, pursuant to said Executive Order No. 2998, Makena-Keoneoio Government Road, as shown on the map attached hereto as Exhibit "A", and made a part hereof, was excluded from the NAR; and

WHEREAS, neither the State of Hawaii nor the COUNTY claims jurisdiction over that portion of Makena-Keoneoio Road that runs through the NAR; and

WHEREAS, COUNTY has the authority, pursuant to Chapter 12.50, Maui County Code, as amended, to provide surface maintenance of "old government roads" as the term is defined in section 12.50.030, Maui County Code, which includes that portion of Makena-Keoneoio Road that runs through the NAR; and

WHEREAS, DLNR and COUNTY desire to protect the natural environment within the NAR, and also provide for the safety of the public traveling along Makena-Keoneoio Road; and

WHEREAS, DLNR and COUNTY wish to enter into a mutually-beneficial agreement to accomplish both these purposes;

NOW THEREFORE, in consideration of the mutual benefits that will accrue to DLNR and COUNTY, the parties agree as follows:

A. DLNR agree:

1. DLNR shall be responsible for, and shall bear all the cost of maintaining roadside vegetation along that portion of Makena-Keoneoio Road that runs through the NAR, on both sides of the road, immediately adjacent to the roadway surface.
2. DLNR shall be responsible for access to the NAR from that portion of Makena-Keoneoio Road that runs through the NAR, and shall be responsible for any control of parking along the roadway or the area immediately adjacent to the roadway surface. DLNR shall install and maintain appropriate signs as necessary to carry out this function.

3. If, during the course of its normal and regular activities in and around the NAR, DLNR discovers a condition requiring correction which it believes to be within the scope and responsibility of COUNTY under this MOU, DLNR shall notify COUNTY as soon as practicable. If the condition is within COUNTY's scope of responsibilities under this MOU, COUNTY shall take reasonable steps to remedy such condition.

B. COUNTY agrees:

1. COUNTY shall provide surface maintenance to that portion of Makena-Keoneoio Road that runs through the NAR, including placement or removal of surface materials on the roadway and remedial patching, as necessary; provided, however, that the Council of the County of Maui has authorized funds for such work in the annual budget ordinance, or any amendments thereto, and then only to the extent such funds have been allocated.
2. If, during the course of its normal and regular activities in and around the NAR, COUNTY discovers a condition requiring correction which it believes to be within the scope and responsibility of DLNR under this MOU, COUNTY shall notify DLNR as soon as practicable. If the condition is within DLNR's scope of responsibilities under this MOU, DLNR shall take reasonable steps to remedy such condition.

C. DLNR and COUNTY jointly agree:

1. DLNR and COUNTY will jointly pursue enforcement of any laws, rules and regulations on and around that portion of Makena-Keoneoio Road that runs through the NAR, whether civil or criminal, or both, to the extent necessary to carry out the intent of this MOU.
2. DLNR and COUNTY expressly agree and affirm that no obligations to either party pursuant to this MOU shall be construed as an admission of ownership over that portion of Makena-Keoneoio Road that runs through the NAR by either party.
3. DLNR and COUNTY agree to use best efforts to jointly pursue available monies through capital improvement projects from their respective legislative bodies, in order to assist with the services to be rendered under this MOU.
4. DLNR and COUNTY agree to abide by all general terms and conditions included in Section D, as stated below.
5. This MOU shall be effective for five (5) years from the date of execution, provided that it may be canceled, amended or extended upon written agreement by both DLNR and COUNTY.

D. General Terms


DLNR and COUNTY also agree that the following provisions be made a part of this Agreement as general terms:

1. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Hawaii, and the courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this Agreement.
2. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of DLNR or COUNTY, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
3. Compliance With Laws. DLNR and COUNTY shall comply with all the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws now in force or which may be in force.
4. Assignments. Neither DLNR nor COUNTY shall transfer to, assign, or permit any other person to perform its respective duties, obligations, or interests under this Agreement, either voluntarily or by operation of law, without the prior written approval of the other party.
5. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provisions of this Agreement.
6. Partial Invalidity. If any term, provision, covenant or condition of this Agreement shall be held to be invalid, void or unenforceable, the reminder of this Agreement shall continue in full force and effect and shall in no way be effected impaired or invalidated thereby.
7. Waiver. No party to this Agreement shall be deemed to have waived the exercise of any right or any obligation hereunder, unless such a waiver is made expressly and in writing.
8. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements, or understandings.
9. No Partnership. COUNTY and DLNR agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.
10. No Party Deemed Drafter. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

This MOU may be executed in counterparts, each of which shall be deemed an original and said counterparts shall together constitute on and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this MOU, effective as of the date of the last signature hereto.

APPROVAL RECOMMEND:



ROWENA M. DAGDAG-ANDAYA
Director of Public Works

COUNTY:

COUNTY OF MAUI

By _____
MICHAEL P. VICTORINO
Its Mayor

Date: _____

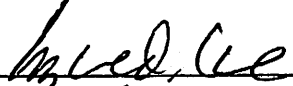
APPROVED AS TO FORM AND
LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui

DLNR:


DEPARTMENT OF LAND AND
NATURAL RESOURCES, STATE
OF HAWAII

By 

Name: Suzanne D. Case
Title: Chair

Date: 2/19/19

APPROVED AS TO FORM:



Linda L.W. Chow
Deputy Attorney General
State of Hawaii

EXHIBIT A: Map of Paved Road Through Makena

