

ORDINANCE NO. _____

BILL NO. 176 (2025)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES RELATED TO PI'HOLO, OLINDA AND ALA LUANA ROADS

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

SECTION 1. Purpose. The County of Maui ("County") and the State of Hawaii, Department of Land and Natural Resources ("DLNR") wish to enter into a memorandum of understanding ("MOU"), attached hereto as Exhibit "1". The MOU would set out State and County responsibilities with respect to Pi'iholo, Olinda and Ala Luana roads for a period of ten (10) years as described in the MOU.

Section 2.20.020, Maui County Code, provides, "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. Under Section 2.20.020, Maui County Code, the Council authorizes the Mayor or the Mayor's authorized representative to execute the Memorandum of Understanding and any amendments consistent with the purpose and scope of the Memorandum of Understanding that do not increase the County's financial obligation or the agreement's duration.

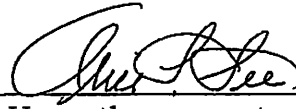
SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Michael J. Hopper

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Sheri Lee", is written over a horizontal line.

Upon the request of the Mayor.

EXHIBIT "1"

MEMORANDUM OF UNDERSTANDING Pi'iholo Road, Olinda Road, and Ala Luana Road

THIS MEMORANDUM OF UNDERTSANDING ("MOU") is made and entered into this _____ day of _____, 2025, by and between the State of Hawaii, Department of Land and Natural Resources ("DLNR") and the County of Maui ("COUNTY"), a political subdivision of the State of Hawaii.

WITNESSETH

WHEREAS, pursuant to Governor's Proclamation No. 1909, dated June 5, 1909, and Executive Order No. 1471, dated September 12, 1951, the Waihou Springs Forest Reserve ("FR") 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 Governor's Proclamation No. 1909 and Executive Order No. 1471, Pi'iholo, Olinda, and Ala Luana Government Roads, as shown on the map attached hereto as Exhibit "A", and made a part hereof, were excluded from the FR; 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 same is defined in section 12.50.030, Maui County Code, as amended, which includes that portion of Pi'iholo, Olinda, and Ala Luana Roads that run through or adjacent to the FR; and

WHEREAS, DLNR and COUNTY are desirous of protecting the natural resources within the FR, and also providing for the safety of the public traveling along Pi'iholo, Olinda, and Ala Luana Roads; and

WHEREAS, DLNR had previously proposed restricting access through gated control under DLNR management, which would limit continuous public access through access within the FR; and

WHEREAS, DLNR and COUNTY are desirous of protecting natural resources while upholding continuous public access within the FR, while also providing for the safety of the public traveling along Pi'iholo, Olinda, and Ala Luana Roads; and

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

A. DLNR agrees:

1. DLNR shall, to the extent appropriate, be responsible for, and shall bear all the cost of roadside vegetation control immediately adjacent to the paved roadway surface, for portions of Pi'iholo, Olinda, and Ala Luana Roads that run through and/or adjacent to the FR.

2. DLNR shall be responsible for administering the FR. DLNR shall install and maintain appropriate signs as necessary to carry out this function.
3. DLNR's financial obligation and commitment to make payments or reimbursements of any kind under this MOU shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Accounting and General Services to make such payment or reimbursement.
4. If, in the course of its normal and regular activities in and around the FR, 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 in writing 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 those portions of Pi'iholo, Olinda, and Ala Luana Roads that run through and/or adjacent to FR, including the placement of roadway sub base, placement or removal of surface materials on the roadway and remedial patching, as necessary; to the extent the Council of the County of Maui has authorized funds for such work in the annual budget ordinance, or any amendments thereto.
2. COUNTY shall be responsible for the maintenance of regulatory safety signs and guardrails along those portions of Pi'iholo, Olinda, and Ala Luana Roads that run through and/or adjacent to FR. COUNTY shall install and maintain appropriate signs and guardrails as necessary to carry out this function.
3. If, in the course of its normal and regular activities in and around the state forest reserve, 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 in writing 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 recognize and share jurisdiction of enforcement of any laws, rules and regulations within the FR, on and around the portions of Pi'iholo, Olinda, and Ala Luana Roads that run through and/or adjacent to FR, to the extent necessary to carry out the intent of this MOU, and to the extent appropriate.

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 those portions of Pi'iholo, Olinda, and Ala Luana Roads that run through and/or adjacent to the FR by either party.
3. DLNR and COUNTY agree to use best efforts to pursue available monies to the extent needed to carry out this MOU.
4. This MOU shall be effective for ten (10) years from the date of execution, provided that it may be canceled upon written notice by either party or amended or extended upon written agreement by both parties, though such amendment or extension may be subject to Maui County Council approval and Board of Land and Natural Resources approval.

D. General Terms

DLNR and COUNTY also agree to the following provisions 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 should be held to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, 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 Partnerships. The COUNTY and the 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 as of the day and year first mentioned.

APPROVAL RECOMMENDED:

Director of Public Works

APPROVED AS TO FORM AND
LEGALITY:

Deputy of Corporation Counsel
County of Maui

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

DLNR:

DEPARTMENT OF LAND AND
NATURAL RESOURCES, STATE
OF HAWAII

By _____
Chairperson
Board of Land and Natural
Resources

COUNTY:

COUNTY OF MAUI

By _____
Its Mayor

