

MICHAEL P. VICTORINO
Mayor

ROWENA M. DAGDAG-ANDAYA
Director

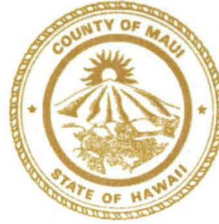
JORDAN MOLINA
Deputy Director

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

July 20, 2020

WIT-80



RECEIVED
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OFFICE OF THE
COUNTY COUNCIL

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

APPROVED FOR TRANSMITTAL

Michael P. Viti 7-22-20
Mayor Date

For Transmittal to:

Honorable Yuki Lei K. Sugimura, Chair
Water, Infrastructure, and Transportation
Committee
Maui County Council
200 South High Street
Wailuku, Maui, Hawai'i 96793

Dear Chair Sugimura:

SUBJECT: MAINTENANCE OF MAKENA-KEONEOIO ROAD AND 'ĀHIHI-KĪNA'U NATURAL AREA RESERVE (WIT-80)

Thank you for your letter dated June 8, 2020 regarding the subject matter. The Department of Public Works responds to the following questions:

1. *Please advise whether Makena-Keoneoio road is used as an evacuation route. If it is, please provide details on its use in this manner.*

The portion of Mākena-Keone'ō'io Road within the Natural Area Reserve (NAR) is within the safe zone or in the extreme tsunami evacuation zone. Please see **Attachment "A"**. This portion of Mākena-Keone'ō'io Road is not identified as an evacuation route, but provides vehicular access into and out of the NAR.

X

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2. *Please advise whether MAKENA-KEONEOIO ROAD is prone to use for emergency services or rescues.*

The Department of Public Works (DPW) consulted with the Maui Fire Department (MFD) and the Maui Police Department (MPD) for information regarding the number of calls for service and documented incidents in the area.

The MPD identified three (3) logged calls for service and 20 documented incidents in the area between June 10, 2019 and June 9, 2020. According to MPD, most of the incidents occurred in the area of Mākena Stables, outside of the NAR. Please see **Attachment "B"**.

The Maui Fire Department estimates that they received at least 32 calls in the NAR over the last five (5) years (2015-2020).

3. *Please advise whether the MAKENA-KEONEOIO ROAD has ample space for vehicles to turn around.*

According to staff from the DPW Highways Division and State Department of Land and Natural Resources (DLNR), there are several areas of Mākena-Keone'ō'io where the roadway is wide enough for passenger-type vehicles to turn around. Adequate space for larger vehicles to make turns is provided in the paved parking area at the beginning of the NAR and at the end of Mākena-Keone'ō'io next to the Mākena Stables.

The Maui Fire Department did indicate that one of their biggest challenges in the reserve area is having adequate space to maneuver their apparatus.

4. *Please advise whether the incorrect or missing Hawaiian diacritical markings and the incorrect Executive Order number in the proposed agreement can be corrected.*

Revisions have been made to the Memorandum of Understanding (MOU) to include correct Hawaiian diacritical marks. Corrections have been made to reference the appropriate Executive Order Number. The revised and partially-executed MOU is provided with this transmittal.

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Honorable Yuki Lei K. Sugimura, Chair
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Should you require additional information or clarification, please feel free to contact me at Ext. 7845.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rowena M. Dagdag-Andaya', with a long horizontal flourish extending to the right.

ROWENA M. DAGDAG-ANDAYA
Director of Public Works

RMDA:jso
Attachments

s:\rowena\transmittals\ysugimura_makena_keoneoio road wit-80 7.20.20



Source: State of Hawaii, Hawaii Emergency Management Agency
(<https://dod.hawaii.gov/hiema/public-resources/tsunami-evacuation-zone/>)

Attachment "A"

In the last twelve months, June 10, 2019 to June 9, 2020, there were three (3) calls for service and 20 documented incidents along Mākena Road between 'Āhihi Bay and Mākena Stables. The map below indicates the area referenced.



Source: Maui Police Department

MEMORANDUM OF UNDERSTANDING

Mākena-Keone‘ō‘io Road and ‘Āhihi-Kīna‘u Natural Area Reserve

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this _____ day of _____, 2020, 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 ‘Āhihi-Kīna‘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. 2668, Mākena-Keone‘ō‘io Government Road, as shown on the map attached hereto as Exhibit “A”, and made a part hereof, was excluded from 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 same is defined in section 12.50.030, Maui County Code, as amended, which includes that portion of Mākena-Keone‘ō‘io Road that runs through the NAR; and

WHEREAS, DLNR and COUNTY are desirous of protecting the natural environment within the NAR, and also providing for the safety of the public traveling along Mākena-Keone‘ō‘io 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 agrees:

1. DLNR shall be responsible for, and shall bear all the cost of maintaining roadside vegetation along that portion of Mākena- Keone‘ō‘io 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 Mākena-Keone‘ō‘io 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, in 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 Mākena-Keone'ō'io Road that runs through the NAR, including 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. If, in 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 Mākena-Keone'ō'io 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 Mākena-Keone'ō'io 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 the DLNR or COUNTY, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
3. Compliance With Laws. The 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 the DLNR nor the 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

COUNTY:

COUNTY OF MAUI

By _____
Its Mayor

APPROVED AS TO FORM AND
LEGALITY:



Deputy of Corporation Counsel
County of Maui


DLNR:

DEPARTMENT OF LAND AND
NATURAL RESOURCES, STATE
OF HAWAII *DES*

By *Syanna Q. Code*

Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:



Deputy Attorney General
State of Hawaii

EXHIBIT A: Map of Paved Road Through Makena

