

COUNCIL OF THE COUNTY OF MAUI

WATER, INFRASTRUCTURE, AND TRANSPORTATION COMMITTEE

August 18, 2020

Committee
Report No. 20-101

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

Chair and Members:

Your Water, Infrastructure, and Transportation Committee, having met on May 18, 2020, June 1, 2020, and August 4, 2020, makes reference to County Communication 20-121, from the Director of Public Works, 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 MAINTENANCE OF MAKENA-KEONEOIO ROAD AND THE AHIHI-KINA'U NATURAL AREA RESERVE."

The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the Department of Land and Natural Resources ("DLNR"), State of Hawaii, to provide for surface maintenance of a portion of Mākena-Keone'ō'io Road that runs through the 'Āhihi-Kīna'u Natural Area Reserve.

At the request of your Committee, the Department of the Corporation Counsel transmitted a revised 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 MAINTENANCE OF MĀKENA-KEONE'Ō'IO ROAD AND THE 'ĀHIHI-KĪNA'U NATURAL AREA RESERVE," approved as to form and legality, incorporating corrected diacritical markings and an updated executive order number.

The Director of Public Works informed your Committee the agreement will allow the County to continue maintenance of the road and

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DLNR will continue to maintain the access points, vegetation, clearing and signage. Your Committee notes this arrangement was commenced in accordance with Ordinance 3791, which took effect November 10, 2010, as recommended by Committee of the Whole Committee Report 10-116.

Your Committee discussed the costs to County and other negative impacts if the bill were not enacted and the County-DLNR partnership were discontinued.

The DLNR representative informed your Committee that DLNR is in the process of establishing and implementing a parking-fee system to provide sustainable revenue for management of the 'Āhihi-Kīna'u Natural Area Reserve.

Your Committee also discussed the importance of respect and care for natural area reserves and possible cultural preservation concerns in the 'Āhihi-Kīna'u Natural Area Reserve. The Chair of your Committee advised she will ask for the subject matter to be referred to your Environmental, Agricultural, and Cultural Preservation Committee.

Your Committee determined that it would like the Administration to proceed with the execution of the intergovernmental agreement and voted to recommend passage of the revised proposed bill.

Your Committee voted 9-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Sugimura, Vice-Chair Lee, and members Hokama, Kama, King, Molina, Paltin, Rawlins-Fernandez, and Sinenci voted "aye."

Your Water, Infrastructure, and Transportation Committee RECOMMENDS the following:

1. That Bill 84 (2020), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN

COUNCIL OF THE COUNTY OF MAUI

WATER, INFRASTRUCTURE, AND TRANSPORTATION COMMITTEE

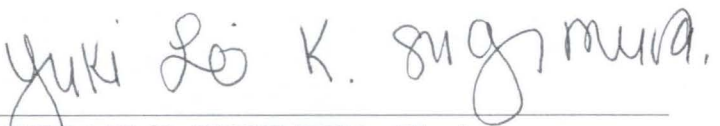
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INTERGOVERNMENTAL AGREEMENT WITH THE
DEPARTMENT OF LAND AND NATURAL RESOURCES,
STATE OF HAWAII (DLNR), RELATED TO MAINTENANCE OF
MĀKENA-KEONE'Ō'IO ROAD AND THE 'ĀHIHI-KĪNA'U
NATURAL AREA RESERVE" be PASSED ON FIRST READING
and be ORDERED TO PRINT; and

2. That County Communication 20-121 be FILED.

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



YUKI LEI K. SUGIMURA, Chair

wit:cr:20080aa:lma

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 MĀKENA-KEONE'Ō'IO ROAD
AND THE 'ĀHIHI-KĪNA'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 Hawai'i ("DLNR"), and the County of Maui ("County") wish to enter into a mutually-beneficial agreement to protect the natural environment within the 'Āhihi-Kīna'u Natural Area Reserve ("NAR") and provide for the safety of the public traveling along that portion of Mākena-Keone'ō'io Road that runs through the NAR, as more fully described in the Memorandum of Understanding (Mākena-Keone'ō'io Road and 'Āhihi-Kīna'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:



MICHAEL HOPPER
Deputy Corporation Counsel
County of Maui
w11 misc.080abill01

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.

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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

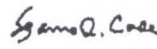
By
Its Mayor

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 
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

