

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 19, 2010

Committee
Report No. _____

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

Chair and Members:

Your Committee of the Whole, having met on September 30, 2010, makes reference to County Communication No. 10-128, from Mayor Charmaine Tavares, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT/MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, FOR MAINTENANCE OF MAKENA ROAD AND AHIHI-KINA'U NATURAL AREA RESERVE LOCATED AT MAKENA, MAUI, HAWAII".

The purpose of the proposed bill is to authorize the Mayor to enter into a five-year intergovernmental agreement with the State Department of Land and Natural Resources to protect the Ahihi-Kina'u Natural Area Reserve ("NAR") located at Makena, Maui, and to maintain the portion of Makena Road that runs through the NAR.

The Mayor's representative explained that the ownership of the portion of Makena Road that runs through the NAR is unclaimed by the State and the County. The road has only one lane, no shoulders, and is unimproved and undivided. Along some portions of the road, there is encroaching vegetation, creating safety concerns. There are approximately 750 to 1,000 people that visit the area daily. Because of the condition of the road, and the number of people and vehicles in the area, vehicular access is restricted, creating a problem especially for emergency responders.

The Mayor's representative said that the Mayor established a working group to formulate solutions to address maintenance and safety concerns relating to the portion of Makena Road that runs through the NAR. The working group developed the Memorandum of Understanding ("MOU"), which establishes responsibilities for both the State and the County, that include the control of parking, signage, control of vegetation, and roadway surface maintenance.

Your Committee expressed concerns about the increasing number of visitors to the area and the effects on the environment. Your Committee discussed ways to limit the

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 19, 2010
Page 2

Committee
Report No. _____

number of visitors to the NAR, the ability to charge fees to enter the NAR, and ways to educate visitors on the vulnerability of the NAR and how to avoid its destruction. Your Committee noted that the working group is still in place and is looking at the issues raised by your Committee.

Randy Awo, Maui County Branch Chief, Conservation and Resources Enforcement Division, Department of Land and Natural Resources, informed your Committee that although there are signs prohibiting parking along the road, there is no statutory authority to enforce a prohibition on parking. Mr. Awo, a member of the Administration's working group, indicated that the working group could propose legislation to establish parking regulations in the NAR and the authority to enforce those regulations.

Your Committee also expressed concerns about the lack of funding available to maintain the road. Your Committee noted that the MOU clearly states that the County is required to provide surface maintenance of the road only to the extent that the Council has authorized funds for the work. Therefore, if funding is not available, the County is not obligated to maintain the surface of the road.

Your Committee voted 6-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Molina, Vice-Chair Mateo, and members Medeiros, Nishiki, Pontanilla, and Victorino voted "aye". Committee members Baisa, Johnson, and Kaho'ohalahala were excused.

Your Committee of the Whole **RECOMMENDS** the following:

1. That Bill No. _____ (2010), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT/MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, FOR MAINTENANCE OF MAKENA ROAD AND AHIHI-KINA'U NATURAL AREA RESERVE LOCATED AT MAKENA, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 10-128 be FILED.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 19, 2010
Page 3

**Committee
Report No.** _____

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

cow:cr:10036aa:kmh

ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT/MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, FOR MAINTENANCE OF MAKENA ROAD AND AHIHI-KINA`U NATURAL AREA RESERVE LOCATED AT MAKENA, MAUI, HAWAII

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

SECTION 1. Purpose. The County of Maui ("County") and the Department of Land and Natural Resources, State of Hawaii, wish to enter into an Intergovernmental Agreement/Memorandum of Understanding to protect the natural environment within the Ahihi-Kina`u Natural Area Reserve, and provide for the safety of the public traveling along Makena Road. A copy of the proposed Memorandum of Understanding is attached hereto as Exhibit "1".

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

SECTION 2. Council Authorization. The Council hereby authorizes the Mayor to execute the Memorandum of Understanding, and all other necessary documents relating to the Memorandum of Understanding, including any amendments thereto.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui

S:\ALL\DAGIORDS\IntGovMakenaRdandAhihi-Kinau Reserve-V2.doc

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

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this _____ day of _____, 2010, 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. 2668, 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 COUNTY claim 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 same is defined in Section 12.50.030, Maui County Code, as amended, which includes that portion of Makena-Keoneoio 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 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 agrees:

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, 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 Makena-Keoneoio 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 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 as Exhibit "A" to this MOU, which is incorporated herein by reference.

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 of 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 provision 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 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. 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 one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first above mentioned.

COUNTY:

APPROVAL RECOMMENDED:

COUNTY OF MAUI

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

By _____
CHARMAINE TAVARES
Its Mayor

APPROVED AS TO FORM AND
LEGALITY:

DLNR:

DEPARTMENT OF LAND AND
NATURAL RESOURCES, STATE
OF HAWAII

DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui
S:\ALL\DAG\Mayor\Makena Rd MOU draft 5-26-10.doc

By _____
LAURA H. THIELEN
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

LINDA L. W. CHOW
Deputy Attorney General
State of Hawaii

EXHIBIT A: Map of Paved Road Through Makena

Makena State Park



Reserve Boundary



Paved Road

0 312.5 625 1,250 Meters

Ahihi Bay

Ahihi-Kinau
Natural Area Reserve

La Perouse Bay

