

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

September 30, 2010

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 9:02 a.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Danny A. Mateo, Vice-Chair  
Councilmember Gladys C. Baisa, Member (Out 11:35 a.m.)  
Councilmember Bill Kauakea Medeiros, Member  
Councilmember Wayne K. Nishiki, Member  
Councilmember Joseph Pontanilla, Member  
Councilmember Michael P. Victorino, Member (In 8:06 a.m.)

**EXCUSED:** Councilmember Jo Anne Johnson, Member  
Councilmember Sol P. Kaho‘ohalahala, Member

**STAFF:** Kirstin Hamman, Legislative Analyst  
Camille Sakamoto, Committee Secretary

**ADMIN.:** Darlene Endrina, Executive Assistant, Office of the Mayor (Item No. 2(29))  
Gary A. Yabuta, Chief, Department of Police (Item No. 1(33))  
Jody Singsank, Captain, Department of Police (Item No. 1(33))  
Kuhea Paracuelles, Executive Assistant, Office of the Mayor (Item No. 36)  
Brian Hashiro, Chief of Field Operations and Maintenance, Highways Division,  
Department of Public Works (Item No. 36)  
Allen Brown, Department of Police (Item No. 36)  
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation  
Counsel (Item No. 2(29) and 36)  
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation  
Counsel (Item No. 1(33))

**OTHERS:** Clarence “Sonny Vick” Tavares (Item No. 36)  
Pat Borge (Item No. 36)  
Bill Evinson, Natural Area Reserves Manager, Forestry and Wildlife Division,  
Department of Land and Natural Resources, State of Hawaii (Item No. 36)  
John Cumming, District Manager, Maui/Molokai Branch, Forestry and Wildlife  
Division, Department of Land and Natural Resources, State of Hawaii (Item  
No. 36)  
Randy Awo, Maui County Branch Chief, Division of Conservation and  
Resources Enforcement (DOCARE), Department of Land and Natural  
Resources, State of Hawaii (Item No. 36)

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Brooks Tamaye, Supervisor, Maui Division of Conservation and Resources Enforcement (DOCARE), Department of Land and Natural Resources, State of Hawaii (Item No. 36)

Michael Covich

**PRESS:** *Akaku: Maui Community Television, Inc.*

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CHAIR MOLINA: ...*(gavel)*... The Committee of the Whole meeting for Thursday, September 30, 2010, will now come to order. For the record, we have in attendance Committee Vice-Chair and Council Chair Danny Mateo...

VICE-CHAIR MATEO: Good morning, Chairman.

CHAIR MOLINA: Good morning. Committee Member Gladys Baisa...

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR MOLINA: Good morning. And Committee Member Bill Medeiros...

COUNCILMEMBER MEDEIROS: Aloha, and Good morning, Chair.

CHAIR MOLINA: Good morning. And along with, Mr. Medeiros, we have Committee Member Wayne Nishiki...

COUNCILMEMBER NISHIKI: Good morning.

CHAIR MOLINA: Good morning. And last, but not least, we have Committee Member Joe Pontanilla.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR MOLINA: Good morning. And excused this morning, we have Committee Members Johnson, Kaho'ohalahala, and Victorino. Members, you look very bright-eyed and bushy-tailed, all things considered with a very busy week we have had so the Chair certainly appreciates your attendance this morning. And speaking of wish, the Chair would like to recognize our wonderful Committee Staff. We have Committee Analyst, Kirstin Hamman, as well as Committee Secretary Camille Sakamoto. And joining us from the Corporation Counsel's Office we have Mr. David Galazin. Members, we have three items on our agenda today. We have our third item today which relates to the memorandum of agreement between the State of Hawaii and the County related to Makena Road. Just for the Members information, we do have a, we will have a presentation on it and if there's any members of the public that would like to wait and see the presentation first and then give testimony, the Chair will provide that option as well.

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However, if there are members of the public that because of whatever personal reasons you need to testify now, the Chair will permit that as well. So at this point we have had only two members from the public signed up to testify, so we'll start off with that first and both members have wanted to testify on the Makena Road item. So I will ask them if they still wanna testify now or if they would prefer to wait to see the presentation and then go from there. So with that set, Members, the Chair would like to go over a few ground rules related to public testimony. You'll have three minutes to testify and a minute to, up to a minute to conclude. And please state your full name and any organization that you may be representing. And please by all means, turn off all cell phones and pagers and other noise-making devices so as not to disrupt our proceedings this morning. So let's get down to it and we'll start first with Mr. Clarence Tavares to testify and he'll be followed by Pat Borge.

**...BEGIN PUBLIC TESTIMONY...**

MR. TAVARES: Good morning.

CHAIR MOLINA: Good morning.

MR. TAVARES: I'm Clarence Tavares, everybody know me by Sonny Vick so maybe I should address Sonny Vick...*(laughter)*...but anyway, about this Makena Road, I would like to know...what the intentions of...of going with the, the Makena deal. I'm a little bit hard hearing, but you can yell out so, but anyway, they are gonna do some maintaining, the County...or the State? The State wants the County to maintain. I wanted to know because way back in the fifties, the early fifties, I used to work on the road with the Makawao Road Department. And as far as I remember, it was a government easement road that maintained by the County. We also wanted to find out if there is still a budget only for maintaining Makena Road and only Piilani Highway? There was a budget for those two roads separate only for those roads. Okay next, we want to know why is the five-year period for, only for five years? I don't know, the State wants to take over after five years. Is there any...ideas that maybe the State have something that they want to take over the road after five years without, you know, no cost of explaining or else maybe if there is a budget that'd be captured by the State. I'm not sure, but so long as I remember, it was always a government easement and maintained by the State. I'd like to say that I hope we had more people about--

MS. HAMMAN: Three minutes.

MR. TAVARES: --the road, but anyway, that's the date...so anyway, I thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Tavares, and you bring up some good questions for the Committee to consider. Committee Members, any questions for Mr. Tavares? Seeing none, thank you for your testimony, Mr. Tavares. Thank you. Next to testify on Committee of the Whole Item 36, we have Pat Borge.

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MR. BORGE: Good morning, Council Mike. My name is Pat Borge. This Makena Road, you know, I've been out there for quite awhile now, and back in the eighties, I think early nineties, and first of all, I agree with this, you know, this agreement is something to look at because we need some relief out there on this road issue. I mean this has been going on for years. I sat on the advisory committee with the NARs, and this road issue has been brought up so many times over the years, and who's gonna take responsibility of this road. Roz Baker, at one time, sent a bill to the legislature to claim this road and somehow it didn't pass. It was just, in the meantime, the people are suffering. You know, we suffer out there on this road. It just guy says ah, well, you know, I know, I know I only have so much time, but back in the eighties or early nineties, there was a dirt road and I remember riding my horse on that road. Then one day the County came in there and they putted boulders along Ahihi Bay, they fixed up the whole road past Ahihi Bay. About quarter ways into the, to the lava flow and to the NARs. Then they oil based the road, the rest of the road, it's really nice paved all the way halfway and, and the County did this. So over the years well where they start, you know, we got a big storm, we got big potholes I mean huge, huge potholes. And, and it's dangerous, the road is very narrow in some areas and you get, you get over 700 vehicles a day according to our report that uses this road and it ends at La Perouse Bay. Right now, if we have an emergency vehicle come into that road, he cannot turn around, you get stuck halfway that's it, there's no turnarounds, there's none, it's a very unsafe road. But my concern is, is that when I call somebody, like I called the County a couple of months ago, we had a big cloud, cloudburst, big potholes. They, I called them up, they tell me oh, they're not responsible da da da da...you know, the same phone call here phone call there okay. Then one day I say Wayne, Wayne got some help. I guess I don't know he want to see the Public Works. They came out and they patched about, there were like a hundred potholes. They patched about 25, they left. I...(chuckle)...call'em up and say hey, what's up? Oh, we don't have enough asphalt, we gotta wait for the asphalt to come from Honolulu. Six months later, we get another downpour, back to square one again, you know. Then in *The Maui News*, you see a guy patching a curbsings alongside Makena Road, you gotta, I don't know if you guys saw that. But the potholes about another mile down the road that was it, they stopped it right there. I mean it's just a common sense thing. I mean this is a good chance for the State and the County to work together and get something done for the people 'cause government works for the people, and here's a chance, it's just about little issues that gotta be settled out even if it's for four years at least it's some kind of relief that we have out there because it's kind of ridiculous to pave--

MS. HAMMAN: Three minutes.

MR. BORGE: --halfway and then say oh, we don't claim the road we, we have nothing to do with this road. I mean to me, it's just a common sense issue. I mean you guys are worried that the County is gonna carry the burden on this or the State is gonna carry the burden. It's about working, getting a compromise to take care of the people out there. Anyways it's a dangerous road, I mean you got a, a lot of people use that road. You get

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cyclists, you got mopeds, you know, and we need some kind of help out there right now and I appreciate if you guys can work something out with the State on this issue. Thank you very much.

CHAIR MOLINA: Thank you, Mr. Borge. Mr. Borge, just, if I could ask you one question. You mentioned all the traffic and everything else that goes on there. Are there problems too with the I guess, roadside vendors as well on...

MR. BERGE: Well before you get to, when you pass the Maui Prince, they start, they starting to pop up. You know, I mean everybody's trying to make a living or whatever, but it's getting pretty dangerous around, I see a lot of them around blind corners, they putting up big signs. I mean, I mean everybody's talking about signs, but it, it's a pretty, it's getting pretty dangerous 'cause you got cyclists. 'Cause once you pass the Maui Prince Hotel, there's no sidewalks, there's no bicycle paths all the way to La Perouse Bay. And you got cyclists, and you got all these tourist moving out in that area and they're putting these big signs, you get kids hanging, you know, stop at my place for a coconut or whatever, and I think that before it gets even bigger, I think you guys should look into that. 'Cause it's a safety issue, it's a public safety, it's all, they have 'em all around the curves, and I've discussed it with the Maui Police Department down in Kihei and a couple of times they had to take, tell guys take down their signs because we cannot see the people, you know, and they just pull out. You know what I mean, they buy their stuff and they, or they just stop one time and they cut in to go buy something, you know, and it gets, it gets pretty dangerous. A lot of kids too, you know, and that's something I think the County should, should look into.

CHAIR MOLINA: Okay. Thank you.

MR. BERGE: I'm not stopping anybody from running a business, but what...public safety I think is very important.

CHAIR MOLINA: Okay.

MR. BERGE: Thank you very much.

CHAIR MOLINA: Thank you for that response. Mr. Borge, hang on, we have a--

COUNCILMEMBER MEDEIROS: Mr. Chair.

CHAIR MOLINA: --Mr. Borge, we have a question from Mr. Medeiros for you.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair. Hey, Mr. Borge, good morning. Thank you for--

MR. BERGE: Good morning.

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COUNCILMEMBER MEDEIROS: --being here.

MR. BERGE : Good morning.

COUNCILMEMBER MEDEIROS: You're, you're, you're the regular representative of that Makena area--

MR. BERGE: ...(chuckle)...

COUNCILMEMBER MEDEIROS: --so we thank you. And I'm glad Member Nishiki was able to help you at one time--

MR. BERGE: Yeah.

COUNCILMEMBER MEDEIROS: --but I agree with you. I, I think this is a good start, the Memorandum of Understanding that we're discussing. And my, my experience and knowledge of roads, having been in charge of the Hana district for several years and then the West Maui district, we have a lot of roads that are considered old government roads. And as you alluded to, the State Legislature did take it up one time to see if they could decide who had jurisdiction over all these old government roads. And they couldn't, they didn't take a vote on it. So even in other districts like Hana, we get a lot of problems because nobody wants to claim that they're the responsible government agency to patch it or correct it. So this will, at least, have the County take care of the road maintenance and the Department of Land and Natural Resources will take care of the brush along there. And also my understanding is the signage. So I, I think we still need to finally decide who this road is gonna be placed under so that government entity can take care of it. Is that your understanding of this memorandum of our agreement?

MR. BERGE: Yes, but...yeah, I agree with it, you know, where the County is gonna be part, but to me, it should be a partnership--

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. BERGE: --and, and that's how we get things done, you know compromising--

COUNCILMEMBER MEDEIROS: Yeah.

MR. BERGE: --you know, instead of saying oh, we're not gonna do it, we don't want the liability or the State, but the State and the County represent the people.

COUNCILMEMBER MEDEIROS: Right.

MR. BERGE: And, and, and if you guys can work together, it, it, it...I think if the County and the State work together on a lot of issues, I don't think we would have a lot of these problems that we have, you know, oh, it's the state or it's a county.

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COUNCILMEMBER MEDEIROS: Yeah.

MR. BORGE: But I think it's a good start, you know, it's not perfect, not, you know, it's not a perfect thing, but it's a good start. You know, and I think, I, I support it.

COUNCILMEMBER MEDEIROS: And I agree with you it's a--

MR. BORGE: Yeah.

COUNCILMEMBER MEDEIROS: --good start and we need to--

MR. BORGE: Yeah.

COUNCILMEMBER MEDEIROS: --move forward. We--

MR. BORGE: Yeah, you gotta move forward.

COUNCILMEMBER MEDEIROS: But these roads started off as walking paths, then they became horse paths, then they became buggy paths, and then, you know, cars came along, so that's why it's so narrow too and the Hawaiians built a wall--

MR. BORGE: Right, right--

COUNCILMEMBER MEDEIROS: --right along that trail--

MR. BORGE: --yeah.

COUNCILMEMBER MEDEIROS: --so it's very narrow, but yeah, we, we have to do something about...

MR. BORGE: I mean I, I, I don't expect to build a freeway through it--

COUNCILMEMBER MEDEIROS: Right.

MR. BORGE: --I just, its just about a maintenance thing...

COUNCILMEMBER MEDEIROS: Correct and...

MR. BORGE: ...and to make it safe.

COUNCILMEMBER MEDEIROS: Thank, thank you for your--

MR. BORGE: Thank, thank you very much.

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COUNCILMEMBER MEDEIROS: --testimony and for your history on that area.

MR. BORGE: Thank you.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. And the Chair would like to recognize Mr. Victorino at our proceedings this morning.

COUNCILMEMBER VICTORINO: Thank you.

CHAIR MOLINA: Members, questions? Hang on, Mr. Borge, we have--

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: --a question for you from Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you, Pat, for being here.

MR. BORGE: Good morning, Mike.

COUNCILMEMBER VICTORINO: Good morning. Pat, you know, all these, these issues with the pot holes and, and, and, and repairs and all that kind of stuff that you mentioned everytime you have big rain, bam. Do you see, and this is the question I, I've been graffling [*sic*] with 'cause I just got through with a meeting this morning. And this lady said no fix my road because, because of the potholes, everybody slow down.

MR. BORGE: Yeah.

COUNCILMEMBER VICTORINO: Once you fix the road, people fly through. And I, I you, you, you see her logic behind of it right I mean...

MR. BORGE: Yeah, yeah, I see that logic...

COUNCILMEMBER VICTORINO: ...I'm not agreeing with her, but I'm just saying--

MR. BORGE: Right.

COUNCILMEMBER VICTORINO: --but in your case, if this was to be, you know, repaired and, and these roads, would you agree that now maybe more traffic and more people going...

MR. BORGE: Oh, I don't think, I don't think, I, I, I don't--

COUNCILMEMBER VICTORINO: You don't think so?

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MR. BORGE: --I don't think so, I mean people come out there 'cause they want to come out there.

COUNCILMEMBER VICTORINO: Okay.

MR. BORGE: It's just increasing, and as far as maybe certain areas, they don't want to fix the potholes for the speeders. People still speed whether there's a pothole or not. You know what I mean? I thought...look just a couple of weeks ago we had a kid flying over the hill ended up on the boulders. You know, so it's not going to stop...

COUNCILMEMBER VICTORINO: Speeders.

MR. BORGE: ...the thing is the big potholes, especially us guys who use the road--

COUNCILMEMBER VICTORINO: Right.

MR. BORGE: --every day, you know, I had two front ends fixed in two, in two years, you know, what I mean it's ridiculous.

COUNCILMEMBER VICTORINO: Okay. And the other question I had for you was you know the width of the road and you're saying all these vendors are now starting to promulgate along the, the side. What do you think we can do as far as the vendors are concerned because we're gonna stop businesses is that what are you saying?

MR. BORGE: No, no, I'm not saying like I said earlier, I'm trying to stop a business, what I'm saying is a safety issue.

COUNCILMEMBER VICTORINO: Yeah.

MR. BORGE: It's a safety issue because if you drive through it, like I tell one incident, Mike, that I had.

COUNCILMEMBER VICTORINO: Yeah, okay.

MR. BORGE: The guy had a sign like this--

COUNCILMEMBER VICTORINO: Uh-huh.

MR. BORGE: --alright, stop here for softdrink, shave ice. And I'm coming down a blind hill okay, it's blind I'm coming down pulling a horse trailer. Okay. A little boy was standing behind the sign, I couldn't see that kid, but I'm watching all the people that's standing right there to, to order their shave ice or whatever. Now when you turn like this, there, there's a road and cars are coming, alright. That kid took a step on the road, the father had to grab that kid, pull 'em back in.

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COUNCILMEMBER VICTORINO: Uh-huh.

MR. BORGE: My trailer would've cleaned him out.

COUNCILMEMBER VICTORINO: Right.

MR. BORGE: So I would be, so I went straight to the Kihei Police Department--

COUNCILMEMBER VICTORINO: Right.

MR. BORGE: --to get that guy to remove that sign. But that's the kind of issues, see I'm gonna be responsible, I'm going to have to live the rest of my life 'cause I hit that kid.

COUNCILMEMBER VICTORINO: Right.

MR. BORGE: That guy had nothing to do with it.

COUNCILMEMBER VICTORINO: Uh-huh.

MR. BORGE: You know what I mean? So I asked the guy to take down the sign. Okay, he gave me all kind of lip whatever, you know what I mean?

COUNCILMEMBER VICTORINO: Uh-huh.

MR. BORGE: But at the same time, I'm not telling these guys, eh, I have friends that run, that sell food on the side of the road--

COUNCILMEMBER VICTORINO: Right.

MR. BORGE: --I'm not trying to stop him.

COUNCILMEMBER VICTORINO: Right.

MR. BORGE: But if you, if the County is gonna allow this, who is, you know, just like the road issue who is liable?

COUNCILMEMBER VICTORINO: Right.

MR. BORGE: Okay. Is the County liable? Then you guys should at least police these guys and tell 'em on the, don't go around, you, you go take a drive down there, Mike. In the last three, three months, there were three other vendors popped up, okay. One guy is already planting plumeria trees on the side of the road. You know what I mean?

(...Laughter...)

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MR. BORGE: Huh? I, I, you know what I mean, I'm not, eh, god bless them, you know what I mean, but it's a safety issue that's all I'm saying, you know.

COUNCILMEMBER VICTORINO: Okay. Next week I'm gonna come see you so you can show me all of these--

MR. BORGE: Yeah.

COUNCILMEMBER VICTORINO: --'cause I haven't been down there for a few months alright.

MR. BORGE: One day you come down. I, I, I can take...

COUNCILMEMBER VICTORINO: Yeah, okay, that's fair enough, that's fair enough. I, I, I haven't been down there for about four, five months, you know, was the last time I go run across him--

MR. BORGE: Yeah.

COUNCILMEMBER VICTORINO: --and the vendors wasn't an issue back then.

MR. BORGE: Why, there's a bunch of 'em just popped up recently.

COUNCILMEMBER VICTORINO: Okay. Okay. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Thank you, Mr. Borge. 'Cause I think this is something for us to seriously look into. Maybe a Member can generate a communication through the Chair's office and have it heard in the appropriate Committee. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: Question for Mr. Borge?

COUNCILMEMBER NISHIKI: And, and, and, and thank you, Pat, I, whoever brought you here I'm glad you came just because I use that road quite a bit, Mr. Chair, not as much as I used to when I used to take my kids surfing out there, but let me tell you this. A couple of awesome surf sites--

MR. BORGE: Yeah.

COUNCILMEMBER NISHIKI: --in that area and it was nice when there were just big holes because unless you had four-wheel, nobody would go and, and, and before that, rent-a-cars were told not to go beyond a certain area and so that was nice. Well times have changed now and I, I can remember one incident where I got stuck going over a

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boulder and hadn't it been for Pat to pull my four-wheel drive out, I'd be out there yet today--

...(Laughter)...

COUNCILMEMBER NISHIKI: --you know, you know, surfing out there. But where do you think the paving should end? Because, you know, when you hit La Perouse and go down towards the bay there--

MR. BORGE: Well...

COUNCILMEMBER NISHIKI: --that road is still rough. Do you, do you have any idea?

MR. BORGE: Well, for me, it's not as far as, you know, making a smooth road all the way in there. It's just maintaining the road, potholes, the brush alongside the road. It's not, I'm not asking...you know, you can leave the road the way it is, but at the same time when we get big potholes, you just send a crew out there and...(chuckle)...and patch it that's all I'm asking. I mean if the County don't have the money to pave that road all the way, you know, it doesn't, it doesn't...to make a freeway going through there, you know, what I mean? It, it's fine. They patched the holes, okay, a couple of days ago they patched the holes. Eh, it's okay, you know what I mean? But now there's bushes on the side of the road, you know, that kind of stuff, can touch it up a little bit. It's not as far as paving it all the way to La Perouse, the full pavement. All I'm...saying is that when I, when we have puddles, I'm having a hard time getting somebody down there to fix it that's why I'm here today. I mean it's just, you know, as far as all this legal stuff, you guys' liabilities and all of that is between you and the State. Hopefully, you guys can work it out and, and benefit everybody. But as far as I'm not here to say eh, pave the road all the way to La Perouse Bay, I'm not saying it. I'm just saying eh, maintain the road. What we got there just fix the patches, you know, patch, you know what I'm saying? It's fine the way it is, but just fix it. When it gets torn up, get in there and fix it, you know.

COUNCILMEMBER NISHIKI: Are you concerned about vehicles that are coming in and going out in regards to, you know, there's no center lines there. Is that necessary?

MR. BORGE: No, no, it's not, it's not about putting lines, it's a road that's going to a lava field, it's going to La Perouse Bay. Remember it was a dirt road right like how you said?

COUNCILMEMBER NISHIKI: Yeah.

MR. BORGE: Okay. The County came in and they went make one. I would rather have it been dirt road, it was better when it was a dirt road, we all know that, but times have changed. Okay the County came in and they paved halfway, beautiful pavement, okay. They went up the hill and it's all nicely paved and you come to the rough area eh, it's fine. You know what I mean? It's just, what I'm, all I'm asking is for you guys and the State to work together so when I say and I call and I say, you know, there's some potholes out

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here, could you guys come and patch these things? And I don't want an answer that said eh, it's not my jurisdiction. But somebody just when they paved that road, the menehunes never paved that road, somebody came out there and paved that road, you know, and it was the County, that's what I'm saying. You know, I'm not saying it's nice the way it is, okay. The only thing like Sonny Vick was saying, we need a place in the center of the road where people can turn around. Right now if you go straight down that road, you cannot turn around, you gotta turn around down at La Perouse Bay. Okay so there's a lot of people trying to turn around in the middle of the flow. Even the fire trucks, they have to come into my stables to turn around. They no more even, you know, we have a rescue, they gotta, if I'm not there, my gate is locked and they have a hard time turning that fire truck around. You know what I mean? So that's the kind of issues that I'm looking at. I'm not asking you guys to put lines and streetlights or whatever, just to make it nice...(chuckle)...you know, livable.

COUNCILMEMBER NISHIKI: Yeah, and you bring up a good point. Thank you so much about a turnaround area for vehicles.

MR. BORGE: Yeah, to turn around 'cause right now you get a lot of people trying to turn around. They'd be driving and they, like tourists, a lot of tourists, they look at these lava and they go on in no man's land and they go oh, where the hell I'm going and they start turning around in the middle of flow. They're causing big traffic jams and you got road rage and you got...I see it, I, I, I've been out there long time, I've seen just about every incident that you can, that you can imagine out there, you know. So I, I just agree with this agreement, and like I said earlier, this is a start, and just to help the residents out there have a nice road. You know, like I said I don't want it to be a freeway, I just want it maintained that's all.

COUNCILMEMBER NISHIKI: Let me, let me ask you about amenities being that now we're going to, and we know, like you said, there's what, 700 people coming out there?

MR. BORGE: Yeah.

COUNCILMEMBER NISHIKI: Amenities because people go, is there enough restrooms, whatever, you know?

MR. BORGE: Right now the State has one Porta Potty at La Perouse Bay, one at Ahihi Bay. At one time it was two and two, but 'cause of funding they took one out to cut funding. So they got only one Porta Potty at the end of La Perouse and one at the "Dumps" at Ahihi Bay, but as we see now on this advisory committee for the Ahihi Bay and stuff, I think there gonna be a lot more improvements further on down the road. It's just a matter of time and, and funding, and hopefully they can have more Porta Potties in there and, and like you said, you know, what I mean, but the State has some plans for Ahihi Bay. And when that's gonna materialize I don't know but they're still talking...'cause of funding probably, you know. But the way it is right now there's a lot, you, you'd be surprised how many people use that road, you know. Not just tourists, local families and

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everybody, you know, like surfers like now, we got a south swell there from six o'clock this morning, you know, just bang, bang, bang, you know.

COUNCILMEMBER NISHIKI: Okay, Pat, thank you so much.

MR. BORGE: Hey, thank you, guys. You guys have a good day.

CHAIR MOLINA: Thank you, Mr., Mr. Nishiki. Thank you, Mr. Borge. Is there anyone else that would like to testify on any of our agenda items this morning? Okay, I'm seeing none. Members, at this point, the Chair will close testimony for our first two items if there are no objections. And when we do get to Committee of the Whole Item 36, I'd like the presentation shown and if there's someone in the public that would like to testify on the proposal, I'd like to give the members of the public that opportunity. So if there are no objections, we will close public testimony just on the first two items at this point.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay, so ordered.

**...END OF PUBLIC TESTIMONY\*...**

CHAIR MOLINA: Alright Members, we'll go right into dealing with our first two items. The first is Committee of the Whole Item 2(29), related to the Commission on Naming Streets, Parks, and Facilities.

**ITEM NO. 2(29): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (COMMISSION ON NAMING STREETS, PARKS, AND FACILITIES) (C.C. No. 09-15)**

CHAIR MOLINA: The Committee is in receipt of a correspondence dated September 10, 2010, received on the same date from the Mayor transmitting a nomination of Iris Marie Peelua (replacing Sonia Isotov) to the Commission on Naming Streets, Parks, and Facilities, for a term expiring on March 31, 2015. The Council must approve or disapprove this nomination by November 9, 2010, or the nomination will be deemed approved. And we have from the Mayor's Office, we have Darlene Endrina to give us a brief overview on the nominee. Ms. Endrina...

MS. ENDRINA: Good morning, Committee Chair Molina, Members of the Council, and community in the gallery. As always, Mayor Tavares appreciates your time in reviewing the nominee before you today. The Mayor thanks all members who volunteer their time and services on Boards, Commissions, and Committees. These volunteers help service our community successfully. A special mahalo to Iris Peelua for accepting Mayor's nomination to the Commission on Naming Streets, Parks, and Facilities.

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\*For Items 2(29) and 1(33) only.

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CHAIR MOLINA: Alright, thank you, Ms. Endrina. Members, any questions related to the nominee for the Commission on Naming Streets, Parks, and Facilities for Ms. Edrina? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes, I, I'd like to ask you because I served on this Commission at one time--

MS. ENDRINA: Yes.

COUNCILMEMBER MEDEIROS: --and when naming parks, streets, and facilities, especially streets, there's a, a provision that we name the streets with Hawaiian names unless there's special recognition of an individual or, or a subdivision created by a family that wanted to name the street after their father or something. And so I had requested to interview her, but there weren't other requests for that, I mean for--

MS. ENDRINA: Yes.

COUNCILMEMBER MEDEIROS: --her to be present.

MS. ENDRINA: Yes.

COUNCILMEMBER MEDEIROS: So in, in the application, which we have in our binders, and she has a, you know, a resume in the back...it, it doesn't give me much information about her knowledge about Hawaiian place names and stuff. Do you folks interview the applicants for that as it is specific to this commission?

MS. ENDRINA: Yes, we do. We have one person on the committee already, Michelle Kapuiki Ugalino, and she does speak Hawaiian.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. ENDRINA: It is, it can be difficult to get people that speak it fluently.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. ENDRINA: They do have explanations at the Committee meetings, they have dictionaries and discussions.

COUNCILMEMBER MEDEIROS: Okay. Okay, I'm glad there's somebody there and it's not necessarily that you have to speak Hawaiian, but you understand the knowledge of--

MS. ENDRINA: Yes.

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COUNCILMEMBER MEDEIROS: --the names and what, what developers bring to you to review as far as names--

MS. ENDRINA: Exactly.

COUNCILMEMBER MEDEIROS: --and then places so yeah, I'd, I'd like to see, you know, people in there that have, have some background and knowledge in place names in Hawaii. Thank you very much.

MS. ENDRINA: You're welcome.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Members, any other questions for Ms. Endrina as it relates to the nominee? Mr., Mr. Mateo?

VICE-CHAIR MATEO: Mr. Chairman, thank you very much. And, you, Mr. Chairman, the question is not specifically about the nominee however, about the committee.

MS. ENDRINA: Yes.

VICE-CHAIR MATEO: And if Ms. Endrina can tell us whether or not this committee has, in fact, had opportunities to actually meet because of their quorum problems?

MS. ENDRINA: Yes, they have, and we did receive the transmittal from the Chair, and we are working on getting back the correspondence from all boards, commissions, and committees on the status of anyone's that have been cancelled. Sometimes we have found that meetings are cancelled for lack of agenda items.

VICE-CHAIR MATEO: Uh-huh. Okay, well interesting. Thank you very much. Mr. Chairman, I, I don't have a problem with the nominee, as a matter of fact, I'm very aware of Iris Marie. And for me, she has a direct contact to Molokai, she is part of the Peelua Ohana from Molokai so I am very comfortable with her being able to provide a service to the County in this capacity. Thank you, Mr. Chairman.

CHAIR MOLINA: And thank you, Mr. Mateo, that's good, good to know. And I also know Ms. Peelua on a personal basis from, on her, her mother's side. So very good family, very committed individual as it relates to the community. So I certainly support. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, just a follow-up, mahalo, Mr. Chairman. I, I, I'm glad, Council Chair Mateo spoke on her behalf knowing her so I, I'm glad about that that he's very comfortable and satisfied with her and so am I. The one I wanted to follow up is the question is for this particular commission, was there any idea of having somebody volunteer not so much as a commissioner, but as a consultant to the Hawaiian names?

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Because I know when I was on the commission, there came, came some names that were inappropriate to the area that the streets were gonna be named or inappropriate as far as names. So is there anybody that advises the commission like a consultant or an advisor do that has that capacity?

MS. ENDRINA: Well they discuss it as a whole on the committee. It's also staffed by County, and if there's concerns, they do look into that--

COUNCILMEMBER MEDEIROS: Okay.

MS. ENDRINA: --they're not just gonna, you know, pick a name and pass it without knowing if it's appropriate or proper for the area.

COUNCILMEMBER MEDEIROS: Okay. Thank you. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Alright Members, if there are no other questions, the Chair is gonna make a recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR MOLINA: Okay, recommendation is to approve the nomination of Iris Marie Peelua to the Commission on Naming of Streets, Parks, and Facilities for a term expiring on March 31, 2015.

VICE-CHAIR MATEO: Mr. Chairman, I move for the approval of Iris Marie Peelua to the Commission on Naming Streets, Parks, and Facilities for a term expiring March 31, 2015.

COUNCILMEMBER BAISA: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay, the motion has been made by Committee Vice-Chair Mateo and seconded by Committee Member Baisa to approve the nomination of Ms. Peelua. Members, any discussion? Seeing none, all those in favor signify by saying "aye", all those opposed. Thank you. The Chair market it seven ayes, two excusals, Members Johnson and Kaho'ohalahala.

**VOTE:       AYES:   Chair Molina, Vice-Chair Mateo, and Councilmembers Baisa, Medeiros, Nishiki, Pontanilla, and Victorino.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Johnson and Kaho'ohalahala.**

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**MOTION CARRIED.**

**ACTION:    Recommending APPROVAL of nominee and TRANSMITTAL of  
committee report to the Mayor.**

CHAIR MOLINA: Thank you very much, Ms. Endrina. Alright, Members, moving on to our next Committee item. It's a litigation matter Committee of the Whole Item No. 1(33), (SETTLEMENT AUTHORIZATION: JULIO RAMOS, ET AL. V. JOHN E. BOWKER, ET AL.

**ITEM NO. 1(33):    LITIGATION    MATTERS            (SETTLEMENT    AUTHORIZATION:  
JULIO RAMOS, ET AL. V. JOHN E. BOWKER, ET AL.; CIVIL NO. CV09-00145  
JMS LEK) (C.C. No. 09-14)**

CHAIR MOLINA: The Committee is in receipt of a correspondence dated September 9<sup>th</sup>, from the Corporation Counsel's Office requesting consideration of a proposed resolution entitled "AUTHORIZING SETTLEMENT OF JULIO RAMOS ET AL. V. JOHN E. BOWKER ET AL.; CIVIL NO. CV09-00145 JMS LEK" and transmitting a copy of the complaint. The complaint alleges that a police officer violated the constitutional rights of Julio Ramos and Tiare Lee during their arrest at Baldwin Beach Park in Paia, Maui, Hawaii on April 7, 2007. The purpose of the proposed resolution is to authorize settlement of the case. And joining us this morning from the Corporation Counsel's Office we have Ms. Moana Lutey--

MS. LUTEY: Good morning.

CHAIR MOLINA: --as well as Chief Yabuta and Captain Singsank, good morning. I'll recognize you first, Ms. Lutey, to give us a brief overview of the matter.

MS. LUTEY: Good morning and thank you. We are currently in active litigation with this matter, so we'll be able to discuss the facts and so forth in open session. However, anything involving case strategy and settlement discussions are going to need to take place in Executive Session. So I will be asking for that after giving you an outline of this case. On April 7, 2007, Officer John Bowker was assigned to patrol in the town of Paia. At approximately eight o'clock at night, Officer Bowker went to Baldwin Beach Park to lock the entrance gate. Before doing so, he pulled into the park to check and saw two parked vehicles. Officer Bowker pulled his vehicle behind those two and it was approached by plaintiff Tiare Lee. Officer Bowker told plaintiff Lee that the park was closed and that they needed to leave. Plaintiff Lee replied that they were fishing and were going to stay overnight. Officer Bowker Lee [*sic*] again told plaintiff Lee that they needed to leave the park and could not stay overnight. Plaintiff Lee became upset and stormed off. Plaintiff Lee then turned around and went back to Officer Bowker and said that they were not leaving. Officer Bowker told Lee that she would be arrested if she did not leave the park. There is actually criminal statute that addresses that. Plaintiff Lee told Officer Bowker that he had better not touch her, then ran towards her tent, and began

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calling for plaintiff Julio Ramos. There is no dispute over the fact that both plaintiffs were drinking that day. Officer Bowker heard plaintiff Lee tell plaintiff Ramos that the police were harassing her and threatening to arrest them all. And then suddenly Officer Bowker heard a male yelling from within the tent. The male was upset, came out of the tent, got into Officer Bowker's face, and when he was asked to step back out of Officer Bowker's safety area, Ramos said that he would not and was pushed backwards and fell onto the sand. He stood back up and charged at Officer Bowker. At that time he was tasered. According to Officer Bowker, plaintiff Ramos was tasered once. They, both plaintiffs were then placed under arrest. Plaintiff Lee was arrested for disorderly conduct while plaintiff Ramos was arrested for disorderly conduct and harassment. Neither plaintiff was convicted of, of the charges against them after trial in District Court. In their complaint, the plaintiff assert claims for unlawful arrest and excessive force for the use of taser on plaintiff Ramos. I have filed the motion for summary judgment solely on the issue of the unlawful arrest claims, and I am asking for settlement authority in this case in an amount to be disclosed in Executive Session.

CHAIR MOLINA: Okay, thank you, Ms. Lutey.

MS. LUTEY: Thank you.

CHAIR MOLINA: Would the Police Department provide any additional comments in open session at this point?

MR. YABUTA: No thanks.

CHAIR MOLINA: Okay, thank you. Alright, Members, you've heard Corporation Counsel and also the recommendation for Executive Session if the Members choose to get into additional details. Any questions in open session for Corporation Counsel or the Police Department? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. This is for Corp. Counsel. Can you give me a quick description...because the resolution cites civil rights under fourth, fifth, eighth, ninth, and fourteenth amendments. So can you tell me what each amendment is about.

MS. LUTEY: Actually, I don't believe most of those apply. The unlawful arrest and the excessive force claims are fourth amendment rights. It's typical for this plaintiff's attorney to add in everything and most of those are typically dismissed. This is really a fourth amendment case.

COUNCILMEMBER MEDEIROS: Okay it's a fourth amendment case. But the attorney is claiming civil rights, I guess, violations under the other amendments too so why wouldn't it be part of the case?

MS. LUTEY: It didn't apply, the eighth amendment applies if someone is imprisoned with us--

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COUNCILMEMBER MEDEIROS: Okay.

MS. LUTEY: --and so forth. It's just, this plaintiff's counsel is notorious for just cutting and pasting basically his complaints together and he leaves them all in, in all of his complaints.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Corp. Counsel, and Chief Yabuta, what is the policy and procedure for use of a Taser by an officer?

MR. YABUTA: Well, first of all, good morning. I'd like to point out that this is the first time that the department has heard about it by virtue of this lawsuit. The person involved, the party involved never filed a complaint with the Police Department or the Police Commission. One of the things that we're talking about in this particular incident is the situation which doesn't happen hardly and, and my, my knowledge of use of Tasers where we, we're unable to get the data from the Taser and I think we can talk about that in Executive Session. The policies and--

COUNCILMEMBER MEDEIROS: Yeah.

MR. YABUTA: --procedures is...that when we use a Taser, the data from the Taser is stored in a computer for later analysis if needed.

COUNCILMEMBER MEDEIROS: Uh-huh. So, so the use of a Taser by an officer is discretionary on his part as far as whether he feels his life might be, you know, in jeopardy or not?

MS. LUTEY: Actually, I'll answer that question. It's actually an issue based on the general order of active resistance.

COUNCILMEMBER MEDEIROS: Okay.

MS. LUTEY: And under the law, they're allowed to use force when they feel it's necessary. It just needs to be reasonable.

COUNCILMEMBER MEDEIROS: Oh, okay. Okay...I, I think my other questions will have to wait for the, the session then. Thank you, Mr. Chairman.

CHAIR MOLINA: Alright, thank you very much, Mr. Medeiros. Seeing no other questions and, for open session, the Chair is gonna make a recommendation for Executive Session. So at this point, the Chair will entertain a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Counsel, and the Committee.

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VICE-CHAIR MATEO: Mr. Chairman, I move for Executive Session.

COUNCILMEMBER BAISA: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay, motion to go into Executive Session has been made by Mr. Mateo, and seconded by Ms. Baisa. Members, any discussion? Seeing none, the Chair will call for the vote to go into Executive Session. All those in favor signify by saying "aye". All those opposed, thank you. The Chair mark it seven ayes, two excusals, Members Johnson and Kaho'ohalahala to go into Executive Session for Committee of the Whole Item 1(33).

**VOTE:       AYES:   Chair Molina, Vice-Chair Mateo, and Councilmembers Baisa, Medeiros, Nishiki, Pontanilla, and Victorino.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Johnson and Kaho'ohalahala.**

**MOTION CARRIED.**

**ACTION:    APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR MOLINA: Members, we're gonna take a brief recess to prepare the Chambers for Executive Session, and once we reconvene, we will discuss Committee of the Whole Item 1(33). This Committee of the Whole meeting for September 30, 2010 is now in recess. . . .(gavel). . .

**RECESS:     9:43 a.m.**

**RECONVENE:  10:29 a.m.**

CHAIR MOLINA: . . .(gavel). . . This Committee of the Whole Meeting for September 30, 2010 is now reconvened in open session. Members, the Chair is ready to offer a recommendation on Committee of the Whole Item 1(33).

COUNCIL MEMBERS: Recommendation.

CHAIR MOLINA: Thank you very much. Members, the Chair is gonna recommend the approval of a proposed resolution entitled "AUTHORIZING SETTLEMENT OF JULIO RAMOS ET AL VERSUS JOHN E. BOWKER ET AL CIVIL CASE NO. CV09-00145

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JMS LEK”, and also to include the transmitting a copy of the complaint, and this, of course, is to authorize settlement of the proposed case as recommended in Executive Session.

VICE-CHAIR MATEO: Mr. Chairman, I move for the adoption of the proposed resolution as you have so recognized.

COUNCILMEMBER BAISA: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. The motion has been made by Committee Vice-Chair Mateo and seconded by Committee Member Baisa for the approval of the proposed resolution and settlement. Members, any discussion? Seeing none, all those in favor signify by saying “aye”.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair mark it seven ayes, two excusals, Members Johnson and Kaho‘ohalahala.

**VOTE:       AYES:     Chair Molina, Vice-Chair Mateo, and Councilmembers Baisa, Medeiros, Nishiki, Pontanilla, and Victorino.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Johnson and Kaho‘ohalahala.**

**MOTION CARRIED.**

**ACTION:     Recommending ADOPTION of resolution.**

CHAIR MOLINA: Alright, thank you very much, Members, and thank you Ms. Lutey. Members, we’re gonna go ahead and take our morning recess and during this time period, we will have the Administration set up the projector for Committee of the Whole Item No. 36 when we come back. So Members, we will take a ten-minute recess, we shall return to the Chambers at 10:40. This Committee of the Whole item meeting for September 30, 2010, is now in recess. . . .(gavel). . .

**RECESS:     10:31 a.m.**

**RECONVENE:  10:44 a.m.**

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CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole Meeting for September 30, 2010 is now back in session.

**ITEM NO. 36: INTERGOVERNMENTAL AGREEMENT/MEMORANDUM OF UNDERSTANDING WITH STATE DEPARTMENT OF LAND AND NATURAL RESOURCES FOR MAINTENANCE OF MAKENA ROAD AND AHIHI-KINA‘U NATURAL AREA RESERVE (MAKENA) (C.C. No. 10-128)**

CHAIR MOLINA: Members, we’re on Committee of the Whole Item 36 which relates to an intergovernmental agreement/Memorandum of Understanding with the State Department of Land and Natural Resources for maintenance of Makena Road and Ahihi-Kina‘u Natural Area Reserve over in Makena. And to give us a presentation on this matter, we have from the Mayor’s Office, Kuhea Paracuelles, as well as Mr. Bill Evinson from the Department of Land and Natural Resources. So I’ll turn matters over to Mr. Evinson, and if we could lower the lights for our presentations. Mr. Evinson?

MR. EVINSON: Good morning. Thank you, Committee Chair and Council Members for having me here. I’m gonna provide you with a quick overview of the area that we’re talking about and the road and some of the facts and issues surrounding that. Ahihi-Kina‘u Natural Area Reserve is a reserve that was established back in 1973. It is the first reserve in the Statewide system that was created to protect unique biological and geological areas throughout the State. This is the only reserve in the system that has a marine component as well as a terrestrial or land component to it. Oop, excuse me...oop. Excuse me...

CHAIR MOLINA: Nothing like modern technology ...(*laughter*)...

UNIDENTIFIED SPEAKER: There we go.

MR. EVINSON: Excuse me. The reserve was set aside to preserve three main components. It was the geology and it was thought to be the last lava flow. Can you hear me alright without my microphone?

CHAIR MOLINA: Maybe you can use the mic a little...(*inaudible*)...

UNIDENTIFIED SPEAKER: Yeah, I think better you use the mic.

MR. EVINSON: Okay.

COUNCILMEMBER BAISA: We need it for the record.

MR. EVINSON: The reserve contains what was thought to be the last lava flow on Maui from its source to the sea. Kalua o Lapa is the source vent there as such as is the only area on State land that is protected, the lava flow is protected from the, the source to the sea. It

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has a marine component that I mentioned. The marine component is thought to be unique because it has a higher percentage and diversity of coral cover than in many other areas across the State. The third main reason why the reserve was established to protect rare anchialine ponds or brackish water ponds that exist out there and that are found only in a few places across the world. The area was closed. Ninety-eight percent of the area was closed on August 1<sup>st</sup> of 2008, at the recommendation of our advisory group and the Natural Area Reserve System Commission out of concerns about being able to preserve the area in as relatively and unmodified form as possible which is our mandate. Excuse. This is an aerial photo showing the reserve and the road through the reserve. This is the road, the road is actually an easement that runs through the reserve. That is an aerial photo of the road going from the "Dumps" area, the beginning part of the reserve, towards La Perouse Bay right here. Some of the facts and issues surrounding the road is that, you know, the ownership is unclaimed by either by the State or the County. There's a one lane unimproved and undivided road. And there are 750 to 1000 people a day that visit this area. Issues involving the road...the biggest concern surrounding the road has been primarily parking and/or obstructing of the roadway primarily by other vehicles and making it difficult for emergency response vehicles like EMS, MFD, MPD, DOCARE to come on down there when they're called. With that number of people down there, they're being called more frequently than less. The other issues you've heard about involve maintenance, encroaching vegetation, speeding is an issue down there, the roadway is ten miles an hour, but people tend to speed down there. The narrowness of the road, itself, is an issue because it's difficult in many parts for two cars travelling in opposite directions to negotiate the road as there is no shoulder for the most part. Picture of the road through the lava flow. It's width is, again, pretty narrow and you can't go very far before you gonna bust up your tires, your rims, et cetera. On a busy day, this is towards the beginning part of the reserve. This is an incident that occurred when the reserve was open down towards the La Perouse side that actually involved EMS, MFD people as you can see as well as MPD having to park at this area and wait to retrieve the person and have to deal with the traffic along the way. So there used to be before boulders and no parking signs and the area was closed that we would find cars like this parked off and along the roadway. People going out, venturing out onto the lava looking for unmarked trails following a highly publicized hikes by certain blue cover guidebook. Cars like this were parking without much regard to whether or not other vehicles might be able to pass safely. And then a vehicle might be able to pass safely, but a big fire truck not so easy. Oh, the State installed signs and boulders along the roadway to try and deal with the situation. Maintenance has been an issue forever and it's been an issue forever with every road there ever was and every trail there ever was. So this is a picture of where the asphalt actually ends that Pat was talking about and where it's not paved as well. I talked to former road supervisor Eddie Emoto when I first started working down here and that was September of '91. And he said, Bill, basically at the end of the year when we have money left over in our budget, we come down here and we try make the road nice as much as we can. Some years had more budget money left over than others. Maintenance is just generally an issue down there not just with the road, with signage as well like again many other roadways. Encroaching vegetation has become an issue more and more because of incidents like this where coconut trees loaded with nuts are hanging

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over roadway being walked on by people, and this is one of our more popular snorkeling areas in the reserve where they can be 75 to 100 people a day and no one claiming ownership of those coconut trees. This MOU will help more clearly define the responsibilities and duties for taking care of matters such as this. This is the end of the road at La Perouse Bay where you turn down to go to the 18 acre unencumbered State land site that's there that our personnel actively manages. Well our personnel are down there, we're calling them rangers. They're primarily the eyes and ears for the department, give information, and act as a liaison and call for help if necessary. That's the end of my talk. I'd be happy to answer any questions if you have any.

UNIDENTIFIED SPEAKER: Nothing.

CHAIR MOLINA: Thank you, Mr. Evinson. Members, at this point, we will take a brief recess, put the screen back up, and then we'll have DLNR and the Mayor's representative here to answer any questions you may have with regards to this MOU. This meeting is in recess. . . .(gavel). . .

**RECESS: 10:51 a.m.**

**RECONVENE: 10:52 a.m.**

CHAIR MOLINA: . . .(gavel). . . The meeting for September 30, 2010 is now back in session. Members, we're on Committee of the Whole Item 36 relating to an intergovernmental agreement and Memorandum of Understanding with the State DLNR for maintenance of Makena Road and Ahihi-Kina'u Natural Reserve Area over in Makena. The purpose of the bill here is the, to authorize the Mayor to enter into a five-year intergovernmental agreement with the State Department of Land and Natural Resources to protect Ahihi-Kina'u Natural Reserve Area reserve located in Makena, Maui, Hawaii, and to maintain the portion of Makena Road that runs through the natural area reserves. So with us right now we have Ms. Paracuelles from the Mayor's office as well as Mr. Cummings [sic] from the Department of Land and Natural Resources. If you could just give us a brief overview of what we have just seen, and after you are done, I will turn matters over to the Committee for questions. Ms. Paracuelles?

MS. PARACUELLES: Thank you, Chair Molina, and good morning to all the Members of the Committee. Thank you so much for bringing this item up for hearing today. Excuse the pun, but it's been a long road getting here. This proposed Makena Road MOU was drafted jointly by the State of Hawaii's Attorney General Linda Chow, and David Galazin from Corporation Counsel. The agreement was reached by a working group made up of both State and County officials from the Department of Public Works, Corporation Counsel, the Mayor's Office, Maui Police Department, State Division of Forestry and Wildlife, administrators from the Department of Land and Natural Resources, and the Attorney General's Office. Work began in 2007 to resolve key issues surrounding Makena Road which have plagued residents and government officials for at least three decades. The portion of Makena Road that is covered by this MOU extends

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only between the boundaries of the Ahihi-Kina'u Natural Area Reserve. In this agreement neither the State nor the County are claiming ownership of the road, but have agreed to take care of issues that affect public safety in the area including road maintenance, roadside weed management, access into the reserve, and enforcement. These issues have gone too long without resolution, and by this MOU, we are hoping to address key issues and minimize the risk of liability for both the State and the County. From the County's perspective, our stake in this MOU lies in the fact that our Police, Fire, and EMT personnel need to travel this road to do their job safely and efficiently, and a well maintained road is essential for that purpose. In addition, while the Ahihi-Kina'u Natural Area Reserve is under the State's jurisdiction, the County of Maui's support of the tourism industry helps to draw the numerous people who are attracted to the reserve every day. According to statistics, there can be as many as 1,000 people per day who visit the reserve creating a lot of vehicular traffic in the area and a need for County services. Bill Evinson, as you saw, gave the presentation this morning and also with us today, we have people who were involved in the working group as well as others who can, who are here to answer any questions you may have today. And I'd like to introduce them now: we have John Cumming, who is a district manager for the Division of Forestry and Wildlife, from the Department of Land and Natural Resources. Bill Evinson, who you met earlier. Also from the State Division of Conservation and Resources Enforcement is Maui DOCARE Chief Randy Awo in the back and Brooks Tamaye, who is one of his supervisors. For the Maui Police Department we have Officer Allen Brown, who was not a part of the working group but has been a part of the management planning process for the reserve as well as I have. And so he knows a lot about the area and some of the enforcement activities that have gone on in the area. And from the Department of Public Works, we have Brian Hashiro, who's in the back. Thank you, Chair.

CHAIR MOLINA: Alright. Thank you, Ms. Paracuelles. Before we continue, Members, just a housekeeping matter. Committee Secretary, have we had any additional request for testimony on this particular item?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay, so, Members, the Chair will close public testimony on this item. Any objections?

COUNCIL MEMBERS: No objections.

**...END OF PUBLIC TESTIMONY†...**

CHAIR MOLINA: Okay, so ordered by the Committee. Well, Members at this point, as Ms. Paracuelles pointed out, we do have additional resource personnel in the gallery, uniformed officials from the DLNR as well as Mr. Hashiro from Public Works and also

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†For Items 2(29) and 1(33) only.

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Mr. Brown, the officer from the Police Department to respond to any questions that, you know, you may have related to this particular matter. And we heard this morning in testimony, the matter of the vendors on the roadside. I would like as much as possible, Members, at this point, to focus first just on the Memorandum of Agreement, and I think it is certainly a pertinent issue and I would hope that there is a Member that would maybe do a communication to the Council Chair to have that particular matter and the matter discussed in a, in the appropriate Committee at a later point possibly this term or the next term. So anyway, just as an FYI. Members, so at this point, I will turn matters over the area representative for questions first and I know there may be other Members who may have questions so if we could at least for this round, maybe go two questions each and so that way everybody has a chance to ask any questions related to this matter. So the Chair will recognize Mr. Nishiki first to ask questions on this matter.

COUNCILMEMBER NISHIKI: Yeah. Being an ocean user and pretty well using that area a lot prior to kind of just slowing down and surfing, my concern is a little bit selfish. Much of the natural resources get exploited as soon as we open up roads, pave 'em smooth, and, and allow a lot of parking. And this is my concern, Mr. Chairman, in regards to this road and, you know, what the impact is, is gonna be on preserving this area because that this road is going to go to where people are going to go down to La Perouse and dive and scuba and whatever. Of course, you can't go into that reserve and take anything. Otherwise you'll bet busted. But to the Department, you know, as much as we wanna go and, you know, 1,000 people now are going down there--

COUNCILMEMBER MEDEIROS: Uh-huh.

COUNCILMEMBER NISHIKI: --visitors and locals, you know. What is the impact of the, the area because now we want to make the road real nice and, you know, I, I, I've been down to La Perouse and I know the parking and everything else. I hope that when we look at the long-term area of concern, that we're not going to create a Waikiki Beach scene because of, we, we, we create so much parking--

COUNCILMEMBER MEDEIROS: Uh-huh.

COUNCILMEMBER NISHIKI: --down when, when you go down by the "Dumps", I mean, you know, it just seems like, you know, when I go there now, its like there's a lot of people going down there. So as much as opening up a road, I think we need to be a little selfish in making sure that that amount that we allow there, because of the road, is going to now destroy the very reason why we created this natural reserve.

CHAIR MOLINA: Mr. Cummings, if you can go ahead and identify yourself for the record and your title before responding to Mr. Nishiki's question.

MR. CUMMING: Certainly. John Cumming, Branch Manager for the Maui District Division of Forestry and Wildlife. In response and we heard the same testimony shared by Mr. Borge this morning, that it's not seeking and through this MOU, the intent is not to

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create a freeway, a fully improved road. We all understand that the road is a substandard road. The issue is maintaining it or keeping it at least in a passable condition. If you look at the roads that, and I believe it's Piilani that goes in the backside of Haleakala. For the number of years it was oil saturation and slowly they would patch those holes and so slowly by slowly became a patched macadam road, and I believe this is what we already have it Ahihi-Kina'u, is a patched macadam road and the intent is as Pat was asking for this morning, basically the same thing fill the potholes. It's not to create a super smooth highway through there. It's, it's seeking for the, with the MOU, it's just seeking for the recognition of the maintenance aspect of it. Division of Forestry and Wildlife is not in the highway business. We, we have neither the equipment nor the funds for this type of work. We do have for the, the brush control, veg control, and this is what the, you know, the gist of the MOU at this point is to, you know, define the roles as far as the maintenance be it of the veg control or maintenance of the road not developing. The intent is not to develop a new highway.

CHAIR MOLINA: Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, I, I guess the, the concern has to be, I, I don't mind, I don't mind cleaning up that road, but I think that as we do this, we, because we got this plan, but you gotta look at the impacts also now that, that are going to occur. And the impacts are, probably Randy would probably be unless you know it also is that, you know, you get 1,000 people going over there because we make this road nice and, and, and maybe we should keep it as narrow as possible or whatever. Not make it so easy as you said because what is gonna occur is that these people are going to eventually, without any knowledge, they're innocent, but they're gonna step on coral, they going bust things, they going even feed fish or whatever. You know, and, and, and these are the concerns that I think that we gotta think about also. And so how do we, with that road now, keep it safe and yet, you know, put in boulders or whatever to make sure that, you know, the amount of where people can park and use is kept at a minimal.

CHAIR MOLINA: Mr. Cumming?

MR. CUMMING: Right. Well this is, and part of the MOU does call for DLNR, in this case Division of Forestry and Wildlife and the NARs section, to manage the access into the area. We do have rangers...posted as best as we can seven days a week down at the various sites. We have some doing road patrol as well, and they're not only, they're not an enforcement branch, they're more an I & E, information and educational source to advise the visitors of the, the different aspects and concerns that we share. And this is something that we're working on. We're working towards getting a satellite office placed in the parking area there so that they will have even a more definite presence, but as far as access into the area, this is something that we would be working on controlling through the control of the parking areas.

COUNCILMEMBER NISHIKI: Mr. Chairman. Because in here, you know, it talks about how DLNR and the County agrees to use best efforts to jointly pursue available monies to

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annual capital improvement projects. You know, the road, the road is one thing, but then, you know, sometimes, our, our, our best efforts to, to, to now clean up the road I think that somehow we need to address the fact that we don't want to see, you know, it become an area where within after you traverse this road, you know, in this area, it become a zoo for too many people to come and--well let me ask, ask you this question because I think this is a fair question to, for to ask you guys. Have you seen within this reserve the deterioration, because we see a lot of people now using the water and, and, and they may trample on coral or, you know, whatever that lives in the ocean environment. I think this is my concern.

MR. CUMMING: Okay.

COUNCILMEMBER NISHIKI: Homo sapiens going in there and, you know, through their zeal, destroying things because they're not knowledgeable. What are you doing in that end to tell people that are going in there be careful, don't step on coral?

MR. CUMMING: Okay.

CHAIR MOLINA: Mr. Cumming?

MR. CUMMING: Actually we have been monitoring during the, the period of time from the initial closure and then we just extended the closure again. And we have been doing monitoring and we are seeing recovery in the area of the corals and the places of ingress and egress, those areas of concern. The, the rangers have been working with the visitors, just what you're saying, the, the I & E, don't go here, don't go there. The people have been listening. The, the intent of the area is a NAR, it's a natural area reserve, so as far as capital improvement projects, I mean in one person's mind the capital improvement project could be a huge parking structure, you know, an area designated for restaurants or whatever it may be. This is not the intent of a NAR. The NAR and the goal of the NAR is to preserve not to exploit and so any, any references to capital improvements would essentially be for the, be it for the road to not even, you know, the, not even aware of there being any discussions to bring it up to a what they call a standard road.

COUNCILMEMBER NISHIKI: I'll allow other people to ask questions, Mr. Chairman. That, that was basically my concern. The road, you know, yeah go ahead and improve it, but then you've got all of these things mentioned in here and as, you know, a lot of times what we want here for Maui County gets trumped by the State so much. You know, they went in, and I'm not saying it's good or bad, but without any input from a lot of Maui residents went in and, and, and, and paved those parking lots in that area. Good or bad I don't know, but I think that we need to at least tell the State hey, don't go in here and abuse your power just because you think, you know, for whatever reason without coming and talking to the people of Maui County first. You know, that's my concern--

MR. CUMMING: Sure.

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COUNCILMEMBER NISHIKI: --you know, that we get trumped so often.

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: You know, with Randy and these people, you know, I, I, I, I know where their heart is, you know, but despite of that, Randy's not going to be here forever. You know, Mr. Cumming is not going to be here forever. So that's, that's my concern--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: --because I think that we want to keep this place forever in as virgin a place as it is. And what you say I think is a demonstration of eh, now we see the things coming back again, but obviously, you know, we need people like this to, to continue to, to, to, to **not** allow the degradation of our natural resources in Maui County that we hold so true not only for the visitors, but eh, you know, this is **our home**, this is **us** that we **live here**. People come and then they go--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: --but it's for **us** that live here that have said we're gonna stay here because we love this place and we, we decided that this is our home.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: I don't want my home, I, I, I, I, don't want my home when I get people visiting I don't want it to be dirty--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: --nor I want them to come over here and make it dirty--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: --you know, I want to make sure that they respect it and, and--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: --and my house, I don't want somebody coming and broken [*sic*] my toilet and then the water going all over the place and, and, then this is what--

MR. CUMMING: Yeah.

COUNCILMEMBER NISHIKI: --I, I look at when I, when I call Maui my home.

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CHAIR MOLINA: (*Inaudible*).

COUNCILMEMBER NISHIKI: Same thing.

CHAIR MOLINA: Your words are well taken, Mr. Nishiki.

COUNCILMEMBER NISHIKI: So, so that's it, you know, you're welcome, but, you know, respect, take care.

CHAIR MOLINA: Yeah. That message is certainly heard loud and clear. Before I recognize Mr. Pontanilla, you know, in the presentation, Mr. Cummings [*sic*], we saw the slide that showed the encroaching vegetation, so under this agreement as it relates to the coconut trees, because I can see something potentially happening, somebody walking under there, a coconut falls on their head so the State will be responsible for hiring or contracting out somebody to remove the coconuts or, you know, along with the vegetation?

MR. CUMMING: That's. . .(*inaudible*). . .

CHAIR MOLINA: Okay, so just so I get a clear understanding. Okay, Mr. Pontanilla followed by Mr. Medeiros.

COUNCILMEMBER PONTANILLA: Thank you. I'm not so passionate as my colleague here and I agree with Member Nishiki, but I also have a lot of faith in DLNR to ensure that, you know, our corals, the lava flow, and what's out there that need to be protected will be protected. I understand that this MOU basically tells us that the County will be responsible for the maintenance of the road, and I, I can see this road, you know, being patched for maybe five years and, of course, it's gonna really slow down traffic. I, I don't see, envision this road being a smooth road in the next five years and the DLNR, their responsibility, as you mentioned, would be basically roadside maintenance of the vegetation along that route. One of the things that was mentioned by a testifier this morning was that, and I agree with that person, is a turnaround area. You know, once you hit that road, basically you go from A to B and there's no place to turn around other than those areas that possibly, you know, could be used to, as a turnaround, but you know you destroy the lava flow. So as far as a turnaround, I, I don't know if something like that is being planned or even maybe DLNR collecting a fee of some kind just to enter the reserve area. I was wondering if any of you can answer that two questions?

CHAIR MOLINA: Mr. Cummings [*sic*] or Ms. Paracuelles...or do we need somebody from Public Works that might be, might have that answer?

MS. PARACUELLES: Okay. I'll just address it from the management planning process that we've been through over the last year, at least more than a year. By the way, there's gonna be on November 3<sup>rd</sup>, an open house for the public to come and learn about and comment on the management plan that is being put out by the DLNR for the preservation, future preservation, of Ahihi-Kina'u Reserve. And one of the things that always comes

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up is access and how detrimental access has been to the reserve and to the resources which led to the closure. And one of the ideas that have come up, one of many, was having DLNR or some entity, you know, charge some kind of toll for people to travel that road which would pay for things like maintenance and care of the reserve. So that is definitely been brought up before and is being considered and the public will have a chance to comment on that at the open house on November 3<sup>rd</sup>, which is probably gonna be at Kihei Community Center. So details are forthcoming.

MR. PONTANILLA: Okay. As, as far as a turnaround, you know, in between?

MR. CUMMING: Yeah, well, one of, one of the issues with establishing a turnaround in there again, and as Mr. Evinson explained this morning and I believe Mr. Borge also mentioned, the narrow easement which that road does cover. And adjoining that is already a natural area reserve. So there's a lot of different issues at hand as opposed to just saying okay, we're gonna designate this one area as a turnaround, because we could already start encroaching into it and damaging the NAR. So I mean this is some of the stuff that we are, we're trying to deal with and possibly, it's a, it's a great suggestion. Whether or not one of those areas that we blocked off in the past and designate it as a turnaround. However, you know, once you open it even as a turnaround somebody's gonna be--

COUNCILMEMBER PONTANILLA: Yeah, yeah.

MR. CUMMING: --parking there. So it's, it's a tight mix we're in--

COUNCILMEMBER PONTANILLA: Okay, thank you.

MR. CUMMING: --but it's something.

COUNCILMEMBER PONTANILLA: Thank you for that information because here I thought, you know, we could just do whatever, you know, just to create the turnaround, but when you mentioned the NAR and easement that then kind of put up the red flag yeah?

MR. CUMMING: Yeah.

COUNCILMEMBER PONTANILLA: So, okay. Thank you. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Pontanilla. And Mr. Medeiros, I have to apologize to you, I, I forgot that Mr. Mateo has waving his hand up before you did. And so you don't mind yielding to Chairman Mateo and then we'll go right to you.

COUNCILMEMBER MEDEIROS: I refuse to yield to...(laughter)...

CHAIR MOLINA: Whoa, okay, we're getting a little testy this morning. Okay, Mr. Medeiros, you have the floor.

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COUNCILMEMBER MEDEIROS: No, I, I'd like to have Chair Mateo have his opportunity. I know he's on the far end and his peripheral vision is kind of limited, you know, from up--

CHAIR MOLINA: Mr. Victorino is wearing that bright shirt...

COUNCILMEMBER MEDEIROS: Yes. So, Chair Mateo?

VICE-CHAIR MATEO: Thank you, Mr. Medeiros. I, I guess the concern at this point would be a question of liability yeah. Because the road goes through the NAR, with, with the creation of an MOU, what, what is our exposure in terms of--I don't know what it, I don't know what it is now--but now that there is an existing MOU, you know, does that become more, are we deeper in debt at this point?

CHAIR MOLINA: I think that's a good question for Mr. Galazin of Corporation Counsel to respond to.

MR. GALAZIN: Thank you, Council Chair. The way it stands now, of course, with any of these roads, you know, there's an issue all over the County between State and County. Who owns it, whose gonna do work on it? The Legislature at the State level has passed a few statutes in recent years to kind of make it easier for the counties to take on some of these maintenance issues recognizing that that's gonna be beneficial for the public in the long run without taking on ownership responsibilities. And with ownership and control, that's really the touchstone of determining liability. With the MOU as it's proposed, you know, Public Works has done some patchwork maintenance of this road in the past. Under the terms of the MOU, we will be doing more maintenance as funds are available and to the extent practicable. The liability would really hinge on how we perform that duty not necessarily if we don't have enough funds in a given year and we can't allocate something to that. You know, again with these situations, there's always the potential out there, but I don't see that this MOU really places us in any worse of a position than we already are given laws that are out there to kind of protect the County and encourage this kind of maintenance.

VICE-CHAIR MATEO: Okay. Well it just, it just seems that if we're gonna, if we're gonna patch and more access, you know, the access would seem more passable, our liability continues to increase because of the limited road capacity, you know, that exists today. And if the County's responsible for the maintenance and the state is responsible for, you know, the outskirts of, of the roadway including coconut trees, then it just seems that the deep pockets concept is gonna kick into play here because who do you sue? You sue the people who maintain the roads or you sue the people who maintains the coconut trees to keep the nuts from falling. So I just don't know, you know, how we are protected as a county because the MOU does not refer to liability at all.

MR. GALAZIN: Well said. To kind of get back to that point, I mean right now this is a road where the County and the State are more or less pointing fingers back at each other to say

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you own it, no we own it. Yeah, right now somebody has an issue on the road, they could come at either one of these entities be it the State, be it us as the County. The problem is, you know, if we are determined that we do own the road and that's possible in, in a court that might come out that way. It's, of course, it's possible it might come out the other way right now which is why we're sort of in this quandary to begin with. There's no really substantial evidence one way or the other. But it's possible right now if, if even if we're not doing maintenance out there that somebody has some kind of issue and they sue that that's somewhere the court could go with it. Now I realize the more that we do maintenance on it, the more people are gonna be travelling on it. And just from a practical standpoint not necessarily a legal standpoint, that might also increase our exposure as well. But I think the biggest thing is we can't, we can't really avoid liability no matter what we do. Doing more maintenance on entering this MOU, yes, on some level, may increase it slightly, but it's not putting us in a liability situation that we weren't already in.

VICE-CHAIR MATEO: Hm. Thank you. Can you tell me if there's existing MEOs, MEOs, MOUs...

...(Laughter)...

VICE-CHAIR MATEO: ...for...I'm too close to Gladys.

...(Laughter)...

VICE-CHAIR MATEO: If there's existing MOUs for other roadways in the, in the County?

...(Laughter)...

CHAIR MOLINA: Mr. Galazin?

MR. GALAZIN: Not that I'm aware of I, maybe Public Works has some knowledge of it, this would be the first that I've seen, but...

VICE-CHAIR MATEO: Would this not be setting a precedent for the, the multitude of old government roads that remain in limbo throughout this County?

MR. GALAZIN: You know, it's possible. I don't even know that the State would want to go there. I know a couple of years back during legislative session the state was trying to push through or somebody at the Legislature was trying to push through this idea of having this issue resolved, having the counties to take over some of these responsibilities and then having a special appeals process to sort of force the courts to decide ownership and, you know, I know from the state AG's side, I was told by a couple of attorneys that they weren't really in favor of that. I know that we weren't in favor of that so it did die, but I don't, I don't think that this would necessarily set us up for something specifically

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like this again for another road, but it's just, this is an ongoing thing. The Public Works has been talking about with State for, for years and may well be for years to come.

VICE-CHAIR MATEO: Thank you very much. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Mateo. Ms. Paracuelles, you want to add additional comment?

MS. PARACUELLES: I just wanted to add one comment. I think that's a very valid point that you brought up, Councilmember Mateo, and it may indeed be starting a precedent and of which, in which I hope it would be a good precedent. And the reason, to me, that this particular roads stands out from other roads is because of the high visitor traffic and the amount of County and State services that are required to take care of the people who go down there. And the fact that we have a role in and the State as well, why there are so many people down there so, to me, it's not quite like the other road issues that we have, but I think that's a very valid point.

CHAIR MOLINA: Okay, thank you, Ms. Paracuelles. Continuing on the line of Mr. Mateo's question because, you know, Public Works is gonna be the agency most affected by this Memorandum of Agreement, I'd like to call upon Mr. Hashiro. Please come up here, take a seat, and just get some comments from you on this agreement, and I, I think, you know, the issues of liability and the cost of maintaining at least on the part of the counties should be heard in terms of what resources we have in terms of patching road 'cause it seems like--

COUNCILMEMBER MEDEIROS: Mr. Chairman?

CHAIR MOLINA: --we wanna do something to the effect of, you know, we want to maintain the road, but at the same time how much do we wanna go, how far do we wanna go? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, also, you know, Mr. Awo is here, Randy Awo--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: --and I know he's very knowledgeable especially in the East Maui area, but in all jurisdictions because of, you know, his field experience, so if there's an opportunity also bring him down, I think that would be good for the Members.

CHAIR MOLINA: Of course, yeah. I would want, I was planning on giving him that opportunity as well to respond. At this point, Mr. Hashiro, if you could give comment on the agreement at least from the Public Works Department aspect.

MR. HASHIRO: First of all, let me address Mr., Councilman Mateo's question about another MOU the County has. Back in about 1968, thereabouts, the creation of the Federal

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Highway System, the State Highways Department came to the County of Maui and asked that the County of Maui maintain certain roadways for the State until the State could come about and get the resources to maintain the roads themselves. That was the thing about it in 1968. We still are maintaining some of these roads for the State. This includes Piilani Highway back in Kaupo side, Kahakuloa area, and there's some other roads that we currently maintain for State Highways.

Now as far as this agreement, you, you know, budgetarily wise, its from last fiscal year, our operation took a 20 percent cut in funding. So, you know, it, it's kind of difficult to say that, you know, we're gonna increase the maintenance when we actually have a cut in funding. So it's, it's kind of a difficult position to be put in. And I understand it's, it's a Mayor's proposal and the Department has some issues with it, but, you know, however it goes.

CHAIR MOLINA: Okay. So, so, Mr. Hashiro, now my understanding is basically that you're, you're, you have the Highways Division and your generation of funds is typically through like what the gasoline tax?

MR. HASHIRO: Fuel tax, weight tax, franchise fees.

CHAIR MOLINA: Okay, so under the terms of this agreement...I don't know, maybe Corporation Counsel can chime in on this. We maintain the road provided we have the funding, am I correct? So if we don't have the funding then we're not obligated to, not say obligated to pave the road, but again it's just contingent upon having the existing funding. Am I correct?

MR. GALAZIN: That is correct. I mean, it's still, it's recognizing and that that's the step that needs to be taken before actual work is done. Yeah.

CHAIR MOLINA: Okay 'cause I bring that up because, you know, maybe a future Council, if they choose to emphasize repaving this road, then I don't know what it will take, maybe providing restoring funding or maybe increasing things like the fuel tax of that nature as it relates to this and any other maintenance rules. So anyway, thank you, Mr. Hashiro, and Mr. Hashiro, you wanted to add anything?

MR. HASHIRO: If I could just another point. You saw in the first slide that first sign, from that site towards La Perouse, the County did pave about a mile of road. So about a mile is paved from the end of that pavement to about where the corrals are, is another mile of unpaved road. And I don't know exactly where the boundaries are and the start and end are, so, you know, that's something to consider.

CHAIR MOLINA: Okay. Thank you, Mr. Hashiro. Mr. Medeiros, thank you for waiting so patiently followed by Member Baisa.

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COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and since we have Mr. Hashiro here, I'll pose the questions to him at this point. And thank you for bringing him up, Mr. Chairman, because Mr. Hashiro has a wealth of institutional and historical knowledge on highways. He's been there for a long time. Being that one of the major parts of this Memorandum of Understanding is the maintenance of the road, which will fall on the Department of Public Works, Highways Division. I wanted to ask you, Mr. Hashiro, what input and involvement did Highways or Department of Public Works, Highways have in drafting this MOU?

CHAIR MOLINA: Mr. Hashiro?

MR. HASHIRO: I don't believe that our Highways Division ever participated in any of these meetings. I know early on we were called to sit in on some of the meetings, but for some reason the State just cancelled the meetings and the meetings were never held. So as far as our involvement, we've, we haven't been involved in this MOU.

COUNCILMEMBER MEDEIROS: Okay. And I'll think I'll ask the Administration representative why that is so when a major part of his MOU has to do with road maintenance. My next question is I'm sure you'll recall in Hana the old government road on Ulaino Road that there was a lot of disagreement on who was supposed to maintain it and Corp. Counsel did send out a letter saying that the County does not own it so don't maintain it. It, it, do you recall that?

MR. HASHIRO: I, I do recall it and it was kind of funny that our, our, the Public Works did go and do some work on the road to do some of the ford crossings--

COUNCILMEMBER MEDEIROS: Right.

MR. HASHIRO: --some of the streams.

COUNCILMEMBER MEDEIROS: Right. So and I'll be asking, you know, Corp. Counsel about that. How do we say do not maintain one old government road because we don't own it and then now we have an MOU saying that oh, we agree to maintain it. So finally, so that the other Members may have an opportunity to ask you questions, one of the questions I was gonna ask was about the budget, because I, I know you're stretched pretty thin now and taking care of, you know, Molokai and Lanai and the island of Maui. And so in, in doing this according to the MOU, it'll be that we'll put in our share of work where the funds are available and because you've been through three years of 10 percent cutbacks, how do you see that being a possibility of having anything left the way the budget is going to maintain that road?

CHAIR MOLINA: Mr. Hashiro?

MR. HASHIRO: It's gonna be very difficult.

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COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Hashiro. I'll, I'll have questions for other people after the Members are done with Mr. Hashiro. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Medeiros. Member Baisa?

COUNCILMEMBER BAISA: Oh, yes, thank you, Chair, and thank you, Mr. Hashiro, for being here. You know, I'm reading the agreement and first of all, I want to say I think this is a very good thing and it's good to have a formal understanding because right now it's kind of informal and it's always good to have something written down. However, the detail, the devils in the details as usual. And it's about the budget because the way this is written, it says that the County of Maui has authorized funds for such work in the annual budget ordinance or any amendments there to. To your knowledge, is there any funding in the budget that is identified for this specific reason?

MR. HASHIRO: None.

COUNCILMEMBER BAISA: So there is the problem. Maybe we should fix this and it would be a very simple correction to say subject to funding. Because otherwise we're committing to someone to something. First of all, we don't know how much it is, and secondly, we don't even know if we have money in the budget to do it. So there might be some wording in here that doesn't commit you to having to spend a portion of your budget to this and, you know, it takes away your discretion as a department person that has to take care of everything, but it, it's kind of scary when it says that the money is set aside and it really isn't. So thank you.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Mr. Nishiki followed by Mr. Pontanilla.

COUNCILMEMBER NISHIKI: Yeah. For, for Brian, just because in anticipation that we do agree to this. I, I, I think that this roadway is probably safer than Honoapiilani, I think it's safer than Piilani. I think it's even safer than Kaahumanu, to be honest with you. And the reason is, is because of it's narrowness and when people, mainly tourists, go there, they're gonna slow down because they're not familiar with this area, but I want to ensure that it becomes even more safer is, is the word if there is such a word, Mr. Victorino, do you know?

COUNCILMEMBER VICTORINO: Safer?

...(Laughter)...

COUNCILMEMBER VICTORINO: Okay. When did I become Webster?

COUNCILMEMBER NISHIKI: My, my English expert.

COUNCILMEMBER VICTORINO: Oh, thank you--

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COUNCILMEMBER NISHIKI: But, but, but the reason--

COUNCILMEMBER VICTORINO: --very much.

COUNCILMEMBER NISHIKI: --the reason is, is this, is we heard DLNR or someone said that there's speeding as, as, as a concern and naturally and if you get one bumpy road, people not going speed, seriously. You know, if, if it was the Old Makena Road that I used to know, actually only four-wheel drives could go and we, we, we watch out and we just go really slowly. Now we gonna slick it up a little bit. So now we've got things that perhaps can be done and I wanna ask you this. You know, we got what we call I guess traffic calming devices, we call it speed bumps whatever. You know, the most sophisticated language that we've all had to learn as we proceed in this and, and exist in this society today. What is the possibility and, and, do you think speed bumps or whatever would, would make it safer? Or, you know the road, have you been down there?

CHAIR MOLINA: Mr. Hashiro?

MR. HASHIRO: I, I was out there yesterday and...

COUNCILMEMBER NISHIKI: Oh, okay good, good, good, very good. So what do you think that this be implemented should we take care of this because...

MR. HASHIRO: Well just to comment, I was there yesterday and there was a Ford Mustang and even though the road was terrible, in terrible shape, he was speeding. I had to yell out my window to slow down and as I saw him pass, I saw his brake lights come on so I think he got the message. But yes, even in the bad condition it's in, they tear down that road. If you improve it, then try, if you pave it, certainly they'll go faster. If you want to put speed humps and so forth, sure we, that can be done as long as it's funded for.

COUNCILMEMBER NISHIKI: Yeah, and, and, and, and, and, and I think that, you know, just to address the, the concern for, for speeding, Mr. Hashiro, I mean we've not asked the Police Department as to how many injuries or emergencies that, that they've gone down there for. I would think that it would more or less be ocean-related rather than road-related, but I don't know so it's just my speculation. However, going down there and listening to what has been said today, you know, you get a Fire Department truck going down there for a rescue whatever, or, or, or an ambulance, I don't know where they're gonna turn. One place they can turn I think is where the "Dumps" is in there and then the next one would probably be, Mr. Cummings [*sic*], La Perouse yeah? If I can remember because you guys have blocked up plenty of the rock areas, but I remember being able to go and then walk across to go. So did you notice any other areas that we could look at as to turnarounds, because if somebody is dying, you going in and now you gotta figure out how you going turn around. How, have you looked at that situation...

MR. HASHIRO: I have...

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COUNCILMEMBER NISHIKI: ...in view of what, where they say that the turnaround areas now existing are?

MR. HASHIRO: I have not looked at the turnaround areas, worst come to worst, the fire always backs up the truck.

COUNCILMEMBER NISHIKI: Oh my god.

MR. HASHIRO: ...(Chuckles)...yes.

COUNCILMEMBER NISHIKI: That's not..it's not, it's not, somebody would--Mr. Chairman, that's, that's, that's the concern. You know, I think that this is--I'll say it on the record just because maybe attorneys are looking at it--but it, it's okay because it's gonna be brought out. Hey, somebody gets hurt, huh, and the guy dies, and because we took so long to go rescue the person and the road wasn't properly situated where people can, we can turn around and get our emergency vehicles out, that's gonna be the cause for somebody dying or whatever, losing a limb, whatever. And, and, and, and, and, and, and, and so as we plan to take it over, and I'm for taking it over, but there are a lot of important questions, Mr. Chairman, as we take this road over that we really need to address--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: --and it's because there is a, a bigger use of the road by visitors and residents here now, now that they have access. So as we improve these situations, question mark, so do we need to address the emergency situations and the consequences if we don't do it properly?

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER NISHIKI: And right now I say that fine that we do this, but we need to address these questions that I think mainly Members as well as the experts here that do the enforcement or protect the area, whatever, we also need to address these important issues, because we never, we never, we never experienced too much of this as we were growing up as kids...sue, but now--

CHAIR MOLINA: Uh-huh. Yeah.

COUNCILMEMBER NISHIKI: --this is a word that a lot of people have--

CHAIR MOLINA: Yeah.

COUNCILMEMBER NISHIKI: --become very used to using.

CHAIR MOLINA: Yeah. I think you bring up--

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COUNCILMEMBER NISHIKI: Touch me, I'll sue you.

CHAIR MOLINA: Yeah. Yeah.

COUNCILMEMBER NISHIKI: Come over here, I'll sue you. You know...

CHAIR MOLINA: Yeah. And it, it is certainly food for thought, Mr. Nishiki, 'cause I think that's, that's, along with the vendor issue, now maybe that's something should be explored in another Committee 'cause there is a cost, but now whose gonna bear all the cost of the turnaround, but, you know, it may be a case of pay me now or pay me later, yeah--

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: --so that, you I think you bring up some very valid points on that. If you don't mind, I'll recognize Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Oh, thank you. And, and, and, you know, my earlier questions about the turnaround is so important that I think, you know, you folks have a working committee that can, you know, also discuss this thing here. I, I know we haven't entered into an agreement yet and hopefully it can be looked at. I just want to address the money side. You know, Public Works tells us that they don't have any money to, to provide the type of services that is required maintaining of the road. You know, like filling potholes like that. I, I, I do understand that in our budget, we do have some monies in Public Works area for road repaving. And when you look at some of the things that we also include in the budget, is basically road maintenance. And if the Department feels that they don't have enough funding to do, do this type of work, then there's a process of budget amendment. So, you know, when we take over something, we want to make sure that it's safe. Don't use the excuse we don't have any money, that we can't fill in the potholes. That's, you know, I take safety very seriously. So, you know, if the Department has no monies to fix the potholes, come in for a budget amendment, explain. Thank you.

CHAIR MOLINA: Good point, Mr. Pontanilla. Yeah. Thank you. Alright, Members, as I mentioned earlier we do have some uniformed personnel. Members, I think Mr. Medeiros wanted Mr. Awo to come up. And also I'd like to ask Officer Brown if I could--before I recognize you, Mr. Awo, I'd like to get comments from Officer Brown related to testimony given. I think the Officer was compelled to at least clarify what was stated in testimony related to the vendors and the area that's, you know, under concern which relates to the vendors. And we just wanted to add a clarification, so Members, with no objections, I'd like to ask Officer Brown to just make a comment. Officer Brown?

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MR. BROWN: Good morning, Chair and Council. Earlier Mr. Borges [*sic*], during Borges [*sic*], during testimony brought up a valid issue about the vendors with the signs. I just wanted to let you know that where that issue is occurring and it has been, being addressed, that is not in anywhere near where this is going on. That is happening from the entrance of the Makena Beach Resort to just past the third entrance to Big Beach. So just, just to clarify that. It is an issue, he has a valid concern, we are addressing it, but it is in a different issue than what you're talking about right now. So I just wanted to let that.

CHAIR MOLINA: Okay, thank you, Officer Brown. Any quick questions for Officer Brown related to this? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Officer Brown, thank you. What jurisdiction does the Police Department have within the road we're talking about which goes through the Natural Area Reserve?

MR. BROWN: Well basically, I'm not, sorry, I can't quote the, the section number on it, but we're going on the grounds that the road's been open to the public access and so we're able to enforce whatever laws that are on the book on there.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. BROWN: So that's...

COUNCILMEMBER MEDEIROS: So because we have a unique partnership here between the County and the State, and the State DLNR according to the MOU, is responsible for the signage. Should the DLNR decide to put up signs saying no parking which is pretty difficult on that road, you know, because of the narrowness of the road and two-way traffic. Under what authority would the police have to cite people parking illegally?

MR. BROWN: It would be obstructing traffic. Randy Awo has the County Council, I mean the County ordinance section number. I'm sorry I, I don't have it with me, but basically if somebody parks on that road, no, you can't get around, you have to have ten feet of, of roadway clearance.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. BROWN: So that would basically because, because the road is open to the public even if it was a private road, it's open to public, we're allowed to enforce the ordinance on there. So because of that, there is not enough room to get around at the ten feet of clearance and that's where they would be cited. And I'm sorry I don't have the, the section number.

COUNCILMEMBER MEDEIROS: Alright. I know because for our County roads, when we decide to put up no parking signs, we also have to have an ordinance on that on each

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particular road that we say we're gonna put no parking signs then that becomes the authority for the police to enforce that.

MR. BROWN: Well there's yeah, there's, there is no parking, but there's also obstructing so...

COUNCILMEMBER MEDEIROS: Okay. So you would use--

MR. BROWN: ...*(Inaudible)*...

COUNCILMEMBER MEDEIROS: --the no obstruction.

MR. BROWN: Yeah, I would, I would go with obstructing traffic.

COUNCILMEMBER MEDEIROS: Okay. Do you know historically-wise, have you folks investigated or had to do reports on vehicle pedestrian accidents within this reserve area?

MR. BROWN: Vehicle pedestrian, that I don't know.

COUNCILMEMBER MEDEIROS: No. Okay. So then that information wouldn't be available either about speeding or illegal parking or, or blocking of traffic.

MR. BROWN: Since the NARs area really was closed off a couple years back, a lot of the, the no parking issues have, you know, decreased. And once in awhile there'd be a car that will be out there, but it's very rare now.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. BROWN: Especially with the Park Rangers out there now and of course, patrol, police patrol and the DOCARE officers going out there.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. BROWN: It really hasn't been any, any issues with it that I can recall. I go out there, you know, usually once a week at least--

COUNCILMEMBER MEDEIROS: Okay.

MR. BROWN: --to go out and check the area out and I haven't recalled of a problem--

COUNCILMEMBER MEDEIROS: Right.

MR. BROWN: --with it.

COUNCILMEMBER MEDEIROS: Right. And, and the Park Rangers you're talking about is the DLNR I & E Officers?

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MR. BROWN: Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Officer Brown. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. And before I recognize Mr. Nishiki for questions for Officer Brown, Members, I, sorry to spoil the fun, but, you know, we are getting, we may be losing quorum. We already lost one Member, we're down to six. We may lose another two by 12:00 or a little after. So please get to the point and also I want to give Mr. Awo a chance to, you know, from the DLNR to give his, his views. And at that point, the Chair would then like to offer a recommendation. Mr. Nishiki, questions for Officer Brown?

COUNCILMEMBER NISHIKI: Yeah, I just got two. Listening to what I concern myself with Brian Hashiro in regards to emergency vehicles despite that you said that they have very little access, vehicle, pedestrian accidents. Are you concerned about that issue, the lack of a emergency vehicle being able to turn around or whatever?

MR. BROWN: Regarding turnaround, you know, that, you know, you guys were talking about, there's a few places in there I have been able to turn the police car around and I'm sure an ambulance can be turned around--

COUNCILMEMBER NISHIKI: Okay.

MR. BROWN: --inside of that area. A fire truck there's no way. If you open up one of those areas further down usually if it looks like it's more on the South side that they put up the boulders where you probably could turn a fire engine around, then you're gonna have an issue with people trying to park their cars in there. But access in and out of there, you know, it is kind of, it is something we need for the police, the vehicles to get and out, the fire. Usually if the fire's coming down there for a, a rescue, they're coming down in a suburban unless, you know, they're on, they're either split up and doing something else, but usually if they're coming down to do a rescue type of incident, they're coming down with that suburban which, you know, with that, with their ground clearance, they should probably be able to turn around in the middle of the flow somewhere. They should be able to find a spot where they can turn around without having to go all the way down. Now, of course, the engine, there's no way the engine can turn around...

COUNCILMEMBER NISHIKI: Right.

MR. BROWN: ...without coming into something with the State NAR area.

COUNCILMEMBER NISHIKI: Right. And then maybe this is not your expertise, but should we create some sort of turnaround with the assistance of you people and maybe fire, is there or do you know of situations where if it's being used for emergency that, that could be stated so therefore, anybody that parks there by abusing it could be ticketed? You

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know, if there's those kinds of laws on the book. I, I, I, I, I, I, I, you know, we got loading, we got I don't know what else the laws, but is there anything like emergency?

MR. BROWN: I know there's areas that have fire lanes listed and I, and I've tried to get with the Fire Department to try to determine what, what the ordinance is, if there is an ordinance on it and I haven't been able to locate it personally. It may be in existence, I just personally haven't been able to locate anything on that.

COUNCILMEMBER NISHIKI: Okay, I'm done. Thank you.

CHAIR MOLINA: Alright, thank you, Chair. Thank you, Mr. Brown. At this point I'd like to call upon Mr. Awo, there was a request for your input on this. And again, Members, also, I needed to also mention we do have a Recessed Planning Committee Meeting at 1:30 p.m. as well so not to rush you guys, but please keep that in mind so get direct to the point. And thank you, Mr. Awo and also Mr. Tamaye for being here to show your mana'o on this matter. 'Cause this is certainly a real interesting matter. We could go on, for on and on to talk about these issues related to the road and history. So, this way. Mr. Awo?

MR. AWO: Howzit, good morning, everybody. I don't have a whole lot more to add. I think some really good questions have come up this morning and I guess I want to start by saying that I support the MOU. And as Councilmember Baisa pointed out, though the devils are the details are, you know, have to be worked out. And for us, from an enforcement point of view, when we look at the MOU, the, the one thing that jumped out for us was the section that talks about DLNR being responsible for managing parking through the posting of signs. The problem that we see with the posting of signs is that there are signs up there now as, as was shown in the video this morning. The problem though is there's no legal authority for us to provide any kind of enforcement, because the signs do not come from a place where Ahihi-Kina'u has rules that prohibits parking off on the side of the road. So we looked, we spent some time looking at if there was any kind of County ordinance that would address that, that would give a sign that prohibits parking the proper authority for us to issue citations, and it, it was kind of difficult, but we found something that might work. And it's a County ordinance that prohibits parking as long as it meets one of 18 conditions, and this one ordinance, it meets one of the conditions in that you can put up a sign if stopping is prohibited in, in this area. And that would kind of crack the door open for us to gain some kind of legal authority to issue citations, but currently the signs that are there now, we don't have that kind of authority. And I, in speaking with Corp. Counsel this morning, it sounds like there's a willingness to look at some way to resolve that issue. It doesn't sound like at this point it's an insurmountable thing to achieve and so we're hoping that we can get there. And also, of course, they would have to work it out with our Attorney General's Office as well. And I guess the third part to this is we would look to the County Council to see if they would be willing to create a new ordinance to make this happen and that, that for us was the main issue remaining on the table.

CHAIR MOLINA: Okay.

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MR. AWO: Other than that, we have no objections to what's being proposed here.

CHAIR MOLINA: Okay. Thank you, Mr. Awo. I think certainly food for thought for either this Council or the next Council to look into to provide you the opportunity to enforce as well. I think Member Medeiros had a question for you, Mr. Awo. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, Mr. Awo, thank you for being here and for your comments. And, and you did allude to the signs in the presentation, and I'm looking at one of them. I, I'm not sure who erected it, but it does have a sign under the "no parking at any time" sign which is, describes the area as an area reserve. Do you know if the State put that up or the County because I'm trying to read it, but it's too small. Normally when there's no parking signs there's the authority to post that, and I'm not sure if this was put up by the State or by the County. Do you know?

MR. AWO: It was put up by the State I believe by DLNR personnel.

COUNCILMEMBER MEDEIROS: Okay. And but there's no authority on, on, on enforcing the no parking on that sign?

MR. AWO: No, there's no legal authority for us to.

COUNCILMEMBER MEDEIROS: Because the other sign that was shown was the one that was badly damaged from vandalism--

MR. AWO: Uh-huh.

COUNCILMEMBER MEDEIROS: --and the part of the sign you can see it says no parking anytime, but you can see there's no authority to enforce it so thank you for that clarification. And so I, I know it would be difficult for you folks to put up that kind of signs without authority to enforce it, and the police would have a hard time to enforce it except that they said the obstruction part ordinance might be able to be applied. But thank you for being here and thank you for your information.

MR. AWO: Yeah, and the obstruction would work if the vehicle was parked on the roadway.

COUNCILMEMBER MEDEIROS: Right.

MR. AWO: And we're trying to address vehicles parking off to the side of the road so, yeah, our, our manao has been that even though the signs went up, we have instructed our officers not to take any kind of legal enforcement action.

COUNCILMEMBER MEDEIROS: Right. Right. And just finally, I'm, I'm concerned that the road being, you know, very far away from most...have you had a problem with people dropping off derelict cars?

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MR. AWO: Yes, we have.

COUNCILMEMBER MEDEIROS: Yeah, and so that becomes a problem too as far as, you know, authority to cite those vehicles, but thank you for the information.

MR. AWO: Okay.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. A quick question for Corp. Counsel and thank you, Mr. Awo.

COUNCILMEMBER NISHIKI: I got a question for him.

CHAIR MOLINA: Okay, hang on. Mr. Awo, hang on. Before I recognize Mr. Nishiki, you know, a Member mentioned about possibly amending the agreement related to the, the funding issue for Public Works. Any issue seen if we try to amend it now here without formal, because we're involving negotiations between the State and the County and if we here on the Council try to amend it without, you know, any formal negotiation, do you see a problem with that?

MR. GALAZIN: Well there could be an issue if you as a body were trying to make suggestions or recommendations to the body of the MOU itself. However, you know, it's not been executed by any of the parties yet, it's, it's still in a draft stage where everybody sort of agreed that we're all on the same page, certainly suggestions I think would be taken appropriately. I did want to say though as far as the issue of the funding, the way that it's written now in Section B1, which is the County's responsibilities, the County is only obligated to provide maintenance to the extent that the Council has authorized funds for such work in any annual budget ordinance. So it's, I think it's pretty clear how it's written now that the County's not obligated to do anything unless and until during budget session or any, you know, any budget amendment, specific funds are allocated for this specific roadway.

CHAIR MOLINA: Okay.

MR. GALAZIN: So I don't see a need to amend it right now, but then that's still a possibility, it's not been finalized by any side yet so I think they're still open to comments from you folks.

CHAIR MOLINA: Okay, thank, thank you for that clarification from the legal aspects because a Member did bring it up about the possibility of maybe specifying the language better or making more clarification so there you don't see any need, and as long as it meets that concern then maybe we, we can kind of let it go as it is for the time being so. Anyway, Mr. Nishiki, question for Mr. Awo?

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COUNCILMEMBER NISHIKI: Yeah, Randy, under Page 2C, DLNR and County jointly agree. Number one, DLNR and County will jointly pursue enforcement of any laws, rules, and regulations on and around that portion of Makena-Kenolio [*sic*] Road that runs through the, the reserve whether it's civil or criminal or both to the extent necessary to carry out the intent of the MOU. In the area that you said your, you stop your people from enforcement, is that an area near the ocean near La Perouse that people park or is that orderly?

MR. AWO: That's the roadway that, that runs through the lava field that gets to Keoneoio.

COUNCILMEMBER NISHIKI: Okay. And as we come into the, the bumpy part just past the horse stables--

MR. AWO: Uh-huh.

COUNCILMEMBER NISHIKI: --that area is not considered the roadway, but something that you people control or does the County get involved in that area?

MR. AWO: I think the MOU is specific to the road that goes just right up and it terminates, and I, you can correct me if I'm wrong, Kuhea, but I think it terminates just as you enter into Keoneoio.

CHAIR MOLINA: Ms. Paracuelles?

MS. PARACUELLES: That's correct, it's the boundaries of the reserve. It's where the MOU begins and ends.

COUNCILMEMBER NISHIKI: Okay, right where the plaque is or somewhere?

MS. PARACUELLES: I'm not sure that, Randy will tell you.

MR. AWO: It would be right about in that area it would terminate nearby.

COUNCILMEMBER NISHIKI: Okay. Now is there any concerns that have been left unturned in regards to whatever you so stated earlier about is not giving tickets because of the ordinance or lack of an ordinance.

MR. AWO: In addressing that issue, there is an ongoing concern that we have no legal authority to manage roadside parking. Even though signs have been posted, that has to be addressed. It has to be properly addressed because you, in essence, the sign is an advisory to the public they can't park there, but that's all it is. So if they choose to ignore the sign, we have no legal recourse to take any kind of action. So I, I think again if Corp. Counsel, our AGs, and the County Council are willing to look at ways to fix that then I think we're on our way to addressing that concern.

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COUNCILMEMBER NISHIKI: Okay. You know, I'm, I'm curious, is there any kind of speed limit sign there? I don't remember any?

MR. AWO: No I don't think there is, yeah? No...no.

COUNCILMEMBER NISHIKI: Yeah, I know. People don't know so how do we say that there's speeding?

MR. AWO: Good point.

COUNCILMEMBER NISHIKI: You know, unless we put something out, they don't know that they're speeding. No more sign how you going tag somebody? Anyway, that's a, that's a concern.

CHAIR MOLINA: Yeah, food for thought maybe for a future for Mr. Medeiros's Committee or whatever the appropriate Committee is so a number of things have surfaced here. Thank you very much, Mr. Awo. Members, I'm gonna end the line of questioning here today at this point. One, one last question, you know, Mr. Awo, sorry, I'd like to ask you one quick question. You know, in the presentation, it mentioned 750 to 1,000 people a day coming through here--

MR. AWO: Uh-huh.

CHAIR MOLINA: --and just from, you know, your department's eyeball estimates maybe even the police, how much would you say are visitors versus locals? I mean, you know, rent-a-cars have a tendency to stand out, yeah, in your guesstimation and, and the reason I ask this is because of what was mentioned by Ms. Paracuelles about a future public hearing about the possibility of a toll or a fee. How much would you say are visitors versus local residents?

MR. AWO: I can't give you a specific number or percentage, but I, I would say the majority of people entering into that area are visitors.

CHAIR MOLINA: Are visitors?

MR. AWO: Yes.

CHAIR MOLINA: Because I would like to seek other ways of funding to maintain the area, maybe the road because of the concerns Public Works had. So that's something for us to consider as well so makes that proposal to institute a fee maybe a realistic possibility. Look at the national parks for Haleakala--

MR. AWO: Uh-huh.

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CHAIR MOLINA: --you know, we get charged to go to Haleakala. Maybe with this area and maybe contributions from the visitor industry as well if it is the majority of people are the visitors. So maybe have a kamaaina fee and a visitor fee and so forth. But anyway just a--

COUNCILMEMBER NISHIKI: Except on a good surf day.

MR. AWO: Right, right. Yeah. It changes a little bit, yeah.

CHAIR MOLINA: Good, good input, Mr. Nishiki, on that.

COUNCILMEMBER VICTORINO: On a good surf day.

CHAIR MOLINA: Go ahead. Mr. Galazin would like to make a comment on that and then we'll close it off.

MR. GALAZIN: Thank you, Chair. I just wanted to, to give one point of clarification for the Members to consider before we close out. Going back to something Member Medeiros had said, back a few years ago, I guess Corp. Counsel had written a letter saying that there was a road that the County was in dispute so that we shouldn't maintain it. There is a clear section in the County Code in Chapter 12 which does make sure that we can go and maintain without any ownership being imputed to the County or any liability. However, I think possibly there was some concern that at the State level that wouldn't be recognized. However in 2008, there was a revision to Chapter 46 in the Hawaii Revised Statutes which delegates certain powers to the County, as you know. And 46-15.9 deals with traffic regulation, repair, and maintenance, and public use of those roads that where the ownership is in dispute and specifically allow the County to enforce traffic laws of Chapter 286 and 291c on these roads where ownership is in dispute and allows the County to maintain, do maintenance without any presumption that the County owns it as a result of these activities. So I think there was some concern that maybe we wouldn't be able to enforce these laws or do any kind of maintenance or, or whatever, but there has been some attempt at the State level to resolve that and there was some legislation that backs up our ability to do that.

CHAIR MOLINA: Okay, thank you for that final comments, Mr. Galazin. Members, at this point, the Chair is gonna make a recommendation.

COUNCILMEMBER VICTORINO: Recommendation.

CHAIR MOLINA: Okay, the Chair will entertain a motion to approve "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

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AND AHIHI-KINA'U NATURAL AREA RESERVE LOCATED AT MAKENA, MAUI, HAWAII".

VICE-CHAIR MATEO: Mr. Chairman, I move for the adoption of the bill as you just read and this does include the filing of the communication as well.

CHAIR MOLINA: Thank you, Mr. Mateo.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay the motion has been made by Chairman Mateo, seconded by Member Victorino to include the filing of the communication. Members, brief discussion on the matter? Seeing none, the Chair will call for the vote. All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair mark it six ayes with three excusals, Members Baisa, Johnson, and Kaho'ohalahala.

**VOTE:       AYES:     Chair Molina, Vice-Chair Mateo, and Councilmembers Medeiros, Nishiki, Pontanilla, and Victorino.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:     None.**

**EXC.:       Councilmembers Baisa, Johnson, and Kaho'ohalahala.**

**MOTION CARRIED.**

**ACTION:     Recommending FIRST READING of bill and FILING of communication.**

CHAIR MOLINA: Well, Members, I believe this concludes our business for today. I want to thank all of you for hanging out here for a very long day, but productive. And our friends from the DLNR, and the Police Department, Corporation Counsel, and the Mayor's Office. I want to thank Ms. Paracuelles and also the Mayor for getting this agreement going. And also our wonderful Committee Staff, thank you all for your very hard work. It is three minutes after the hour of 12 o'clock. And Members, don't forget we do have a 1:30 Planning Committee Recessed meeting coming up today. So with that being said, Members, have a good day and don't forget the County Fair Parade starts today. This Committee of the Whole Meeting for September 30, 2010 is now adjourned . . .(gavel). . .

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**ADJOURN:** 12:04 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair  
Committee of the Whole

cow:min:100930

Transcribed by: Sandra J. Roman

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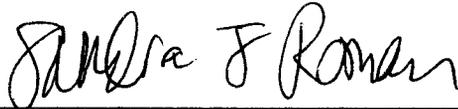
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CERTIFICATE

I, Sandra J. Roman, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 21st day of October 2010, in Wailuku, Hawaii.



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SANDRA J. ROMAN