

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

May 26, 2017

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST APPROVAL TO AUTHORIZE THE CHAIRPERSON TO
NEGOTIATE AND ENTER INTO A MEMORANDUM OF AGREEMENT
WITH MVI, LLC. FOR PUBLIC ACCESS THROUGH TAX MAP KEY: (2) 3-
6-001: PORTION 018 TO THE LAHAINA PALI TRAIL, MAUI.

SUMMARY

The Lahaina Pali Trail is one of Maui's most popular public trails in the Na Ala Hele Trails and Access program (Exhibit 1). Preferred access to the trail head on the Ma'alaea side of the trail is provided by a road that crosses through Tax Map Key (2) 3-6-001:018, owned by MVI, LLC (Exhibit 2). This submittal requests authorization to enter into a Memorandum of Agreement (MOA) with the land owner for the public use of that access road (Exhibit 3). The objective of the MOA is to identify the respective roles and responsibilities of the parties with regard to use, maintenance, and liability. Establishment of an MOA for access using this road serves the public interest by enabling the public to drive up to the trail head where the department maintains a parking area, thereby providing parking well away from the busy highway where parking would create safety and vehicular management concerns, and because use of the existing road eliminates the need to survey and construct an alternative road for that purpose.

BACKGROUND

The Lahaina Pali trail is a historic overland route that connects leeward West Maui to the central valley, crossing the pali to connect the Wailuku and Lahaina districts on the southern slopes of the West Maui mountains. From its eastern side, the trail begins near sea level at Ma'alaea, ascends to approximately 1,600 feet elevation where it crosses Kealaholoa Ridge and continues down to the west where it terminates near the shoreline at Ukumehame. The 5.5 mile trail offers spectacular vistas of Maui Nui, from Haleakala to the east, across the Kealaikahiki Channel to Kahoolawe and beyond, and westward to Lana'i. It is one of Maui's most popular trails with visitors and residents.

The trail was constructed in the 1800's and closely followed the historic Ala Loa that existed

before it. In the early 1900's, a new route was constructed that wound around the pali closer to the shoreline, and in the 1950's, the highway was built along the shoreline route. The new routes provided better passage for carriages and automobiles, and thus the pali trail fell into disuse and disrepair. The trail was incorporated into the state Na Ala Hele trail system, pursuant to chapter 13-130-13, Hawaii Administrative Rules, by the Board on August 1989, and has been repaired and maintained for public use since then.

At its eastern side, historic maps show the trail crossing through lands now identified as Tax Map Key (2) 3-6-001:018, owned by MVI, LLC., crossing what is now the Honoapi'ilani Highway, and continuing to Pu'u Hele. Following its designation as a program trail by the Board in 1989, the trail was surveyed and has been maintained by the Division since then. However, the portions of the trail crossing through Tax Map Key (2) 3-6-001:018 were not surveyed and have not been maintained as part of the trail system. Rather, a road crossing through another part of that parcel was used, and agreements with prior landowners have served to establish that use.

Chapter 198D, Hawaii Revised Statutes, authorizes the department to enter into agreements with landowners to further the purposes of the Hawaii Statewide Trail and Access System. In order to provide public access across the subject private land holdings to the trail head, the department has entered into agreements with the previous owners of tax map key parcel no. (2) 3-6-001:018 to provide for that access. Rather than survey or delineate the historic trail through the parcel, those agreements designated existing roads through the parcel to serve as the public access routes. The current owner of the parcel is MVI, LLC. Prior agreements with landowners for public access to the Lahaina Pali trail through these lands were not transferred to MVI, LLC. when they assumed ownership of the parcel.

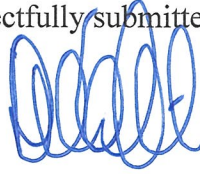
MVI, LLC. has requested to enter into a MOA with the department for public access across the subject parcel. The purpose of the MOA is to establish the respective roles and responsibilities of the parties with regard to the public use of the subject parcel for the purpose of accessing the Lahaina Pali Trail. In particular, the MOA provides for public vehicular access to the Lahaina Pali Trail across the subject parcel using the private road under the ownership of MVI, LLC. Use of this road serves the public benefit for two reasons: it enables the public to drive up to the trail head where the department maintains a parking area, thereby providing parking well away from the busy highway where parking would create safety and vehicular management concerns, and because use of the existing road eliminates the need to survey and construct a road at the location of the historic trail.

RECOMMENDATIONS

That the Board of Land and Natural Resources:

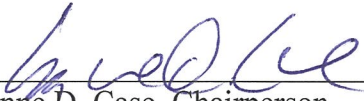
Authorize the Chairperson to negotiate and enter into a Memorandum of Agreement, with MVI, LLC. for public access through TMK: (2)3-6-001: Portion 018 to the Lahaina Pali trail, Maui, subject to review and approval by the Department of the Attorney General.

Respectfully submitted,



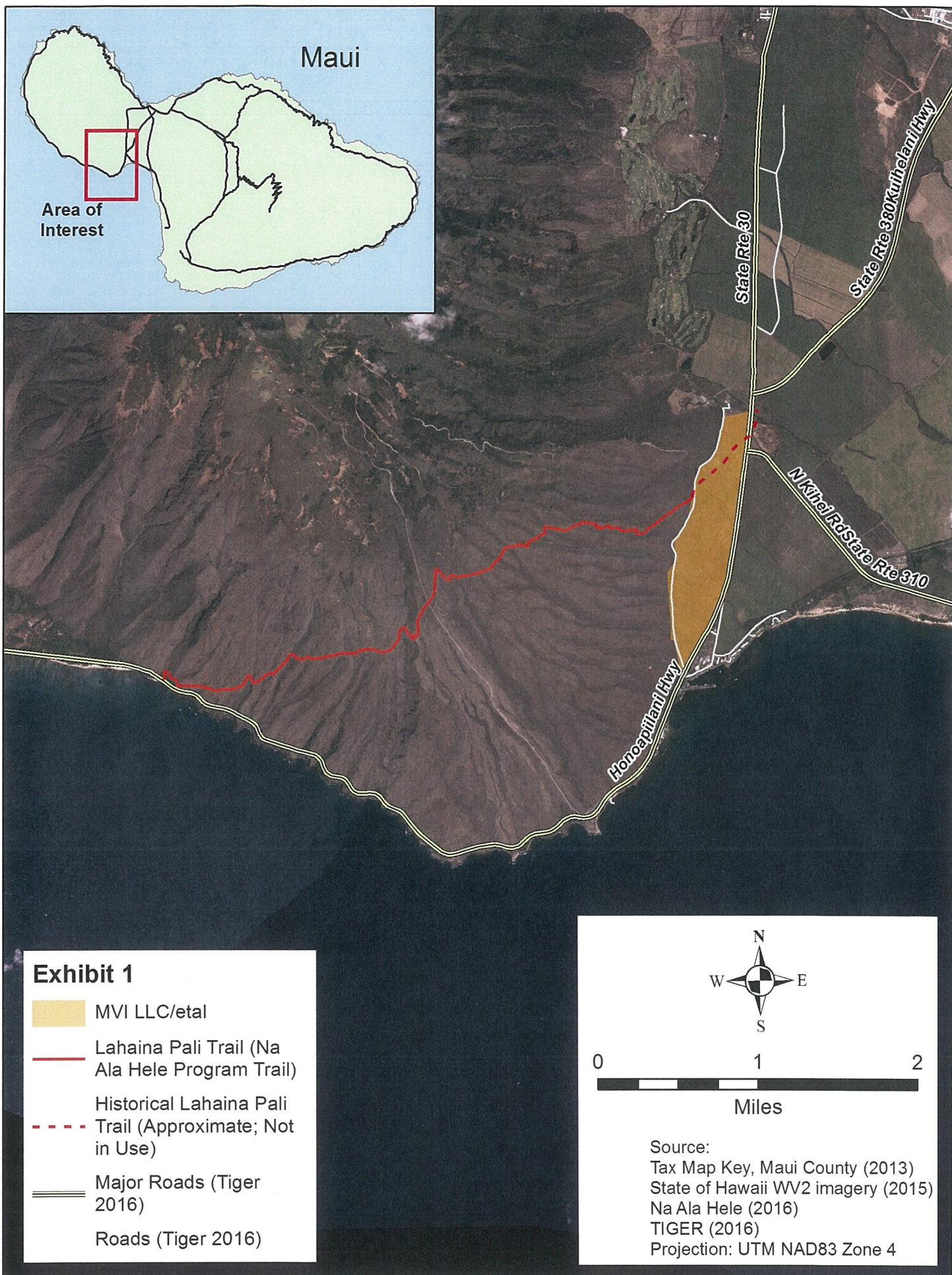
David G. Smith, Administrator
Division of Forestry and Wildlife

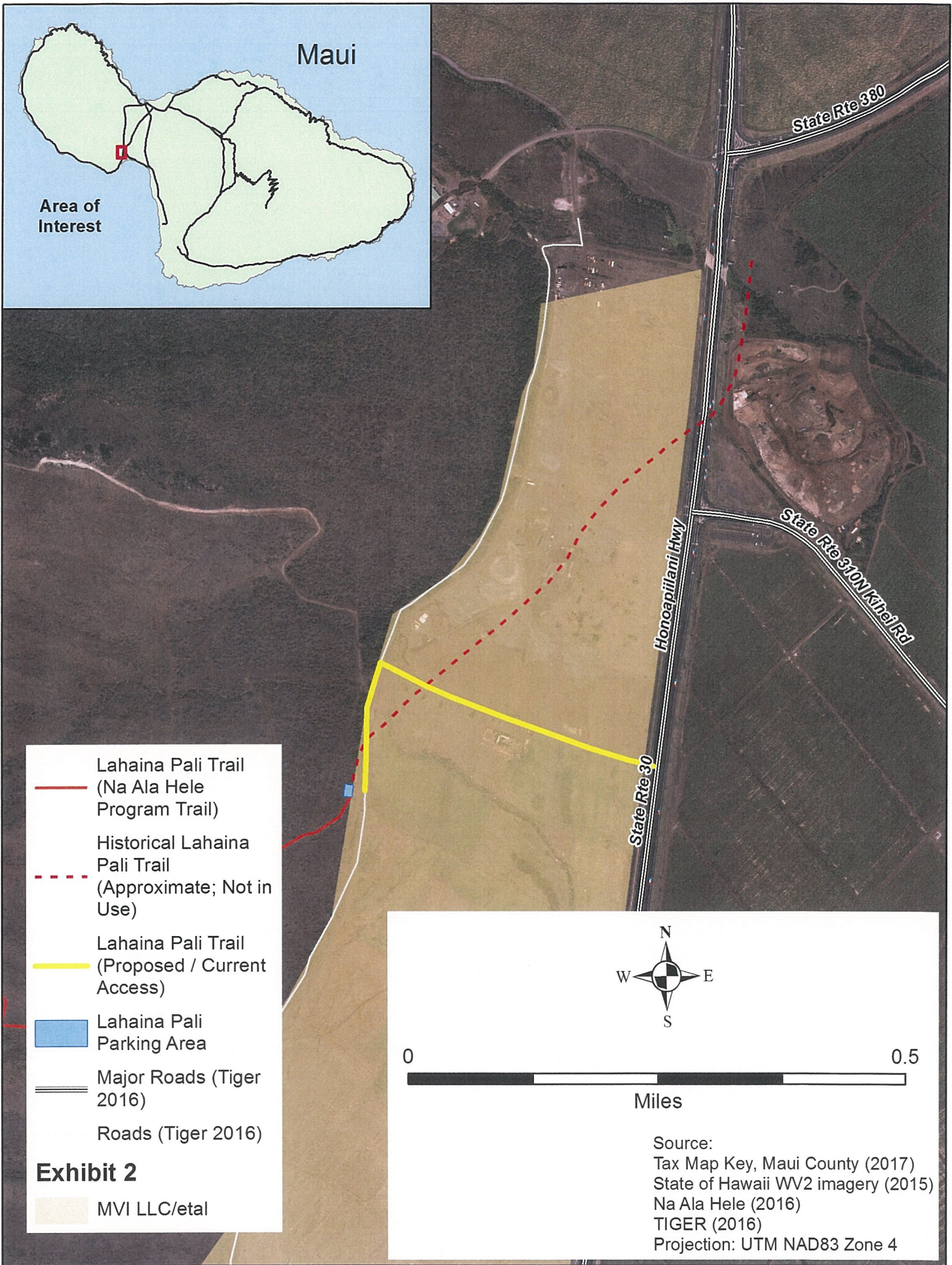
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Attachment





MEMORANDUM OF AGREEMENT
BETWEEN
MVI, LLC
AND THE
STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
NA ALA HELE TRAILS AND ACCESS PROGRAM
FOR
A PUBLIC ACCESS TO THE LAHAINA PALI TRAIL

This Memorandum of Agreement made and entered into on this _____ day of _____, 2017, by and between MVI, LLC, and the State of Hawaii, by its Board of Land and Natural Resources, Division of Forestry and Wildlife, Na Ala Hele Trails and Access Program hereinafter referred to as "DLNR."

WITNESSETH:

WHEREAS, pursuant to section 198D-2, Hawaii Revised Statutes (HRS), the Na Ala Hele Trails and Access System (Na Ala Hele) within the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DLNR) is charged with the responsibility of managing and regulating trails and accesses in the State; and

WHEREAS, Na Ala Hele is charged with the responsibility to plan, develop, acquire land or rights for public use of land, construct, and engage in coordination activities to implement the statewide trail and access program; and

WHEREAS, pursuant to section 183-1.5, Hawaii Revised Statutes (HRS), DLNR is charged with the responsibility of managing and regulating all forest reserves; and

WHEREAS, DLNR is charged with the responsibility to provide for public access and recreational use of forest lands; and

WHEREAS, public access to forest lands for recreational use is provided for in section 198D-2, HRS, through the Na Ala Hele Trails and Access Program; and

WHEREAS, the Lahaina Pali Trail is under the management and authority of DLNR; and is of significant importance for public recreational activities:

WHEREAS, the Lahaina Pali Trail is regulated and managed by the NAH

Program and is located within TMK: (2) 3-6-001-014, which is accessible via an unpaved agricultural road (hereinafter referred to as "Access Road"), that traverses private land owned by MVI, LLC; and

WHEREAS, DLNR desires to have vehicular management and public vehicular access to Lahaina Pali Trail through use of this trail; and

WHEREAS, the Lahaina Pali Trail is of critical importance for public recreation; and

WHEREAS, the MVI, LLC is the owner of certain real property centrally located between the Lahaina Pali Trail and the Honoapiilani Highway on the Island of Maui, Tax Map Key Number (2) 3-6-001-018, as shown on the map attached hereto as Exhibit "A", which property is referred to as the "MVI LLC property"; and

WHEREAS, DLNR through its Na Ala Hele Trails and Access Program, may enter into agreements to defend and indemnify owners of private lands to establish public access over the Access Road as provided for in section 198D-7.5, HRS; and

WHEREAS, DLNR and MVI, LLC have a mutual interest in management, maintenance, and regulated control of the Access Road for both public and private use; and

WHEREAS, DLNR agrees to maintain, manage, and enforce against illegal activities and unpermitted use associated with public use of the Access Road; and

WHEREAS, DLNR shall conduct scheduled periodic inspections of the Access Road at DLNR's expense, but in coordination and cooperation with MVI, LLC, to assess surface conditions, monitor public access, and address any environmental or enforcement issues; and

NOW, THEREFORE, it is mutually agreed that both parties hereto shall adhere to the following duties and obligations:

DLNR shall:

Maintain and manage a mutually approved gate at the entrance to the Access Road. The gate will have a sign that says to "KEEP GATE CLOSED". DLNR will be solely responsible for removal of mud, dust, and debris tracked on to Honoapiilani Highway, unless this debris is attributable to agricultural operations or the lessees, individuals, or agents of MVI, LLC.

Install and maintain signage along the Access Road to provide directions and inform users, as necessary, about access requirements, applicable rules, and potential hazards.

Remove all trash and debris resulting from the public use of the Access Road.

Provide all needed maintenance along the Access Road to provide safe public access suitable for vehicles.

MVI, LLC shall:

Allow the public to access the Lahaina Pali Trail parking area and trail head via the Access Road. Access will be strictly for thoroughfare to access the Lahaina Pali Trail parking area and trail head.

Advise DLNR within 48 hours whenever its management or personnel responsible for overseeing related MVI, LLC property are actually aware of unsafe conditions or hazards, as a result of being encountered or reported to MVI, LLC by the public or MVI, LLC representatives.

Have the ability to close the Access Road with 48 hours' notice (or shorter, if due to exigent circumstances as reasonably determined by MVI, LLC) for a specific period of time due to agricultural or other related uses that would conflict with or jeopardize public access.

Notify DLNR within 48 upon discovering any MVI, LLC property damaged, stolen, or vandalized on the Access Road, including but not limited to signs and equipment. MVI, LLC shall provide documentation relating to the actual cost of the loss incurred and the cost associated with responding to the issues.

Allow passage of emergency vehicles and equipment necessary for wildfire suppression, search and rescue, and other management-related access. This includes the passage of State or County vehicle and-or equipment involved in active management or, or enforcement of rules on the Lahaina Pali Trail or parking area.

Allow DLNR to place mutually approved signage on the MVI, LLC property adjacent to the Access Road.

Allow DLNR to close access to the public along the Access Road upon DLNR assessment that the Access Road conditions are too hazardous or dangerous for continued public access for any other reason as determined by DLNR, provided, however, the access by MVI, LLC, its lessees, and its invitees shall not be

impeded.

Provide DLNR with a contact list of all lessees and other individuals and agents associated with MVI, LLC operations that require habitual and frequent use of the Access Road, and ensure that these lessees, individuals, and agents are aware of this MOA and the terms herein.

DLNR and MVI LLC shall jointly:

Collaborate, as necessary, on determining the potential improvements to and maintenance of the Access Road to ensure the safety of the users, a standard suitable for public vehicles, and MVI, LLC's interest in preserving the agricultural uses of the MVI, LLC property. Notwithstanding the foregoing collaboration, DLNR shall be ultimately responsible for implementing all measures necessary to ensure safety for the public's use of the Access Road as described herein.

INDEMNIFICATION

DLNR shall fully defend and indemnify MVI, LLC, its affiliates, and their respective heirs, executors, administrators, representative, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners ("Indemnified Parties"), against any losses, demands, claims, fines, penalties, expenses, damages, and costs (including reasonable attorneys' fees), sustained by or made against Indemnified Parties from or arising out of the public's use of the Access Road pursuant to the Memorandum of Agreement, to the extent allowed and provided by the law and Chapter 198D, as amended, and subject to the provision of said chapter of the Hawai'i Revised Statutes. The provisions of this paragraph shall survive termination for the Memorandum of Agreement but shall be effective only for losses, demands, claims, fines, penalties, expenses, damages, and costs that arise during, or that are attributable to occurrences during, the period in which this Memorandum of Agreement is or was in effect.

NONSUBSTANTIVE AMENDMENTS AND AMENDMENTS FOR MANAGEMENT EFFICIENCIES

Nonsubstantive amendments or amendments for management efficiencies may be made by mutual agreement of the parties and be executed by a written supplement approved by the DLNR Chairperson and MVI, LLC and attached hereto.

TERMS AND TERMINATION CLAUSES

Term. The term of this MOA shall be ten (10) years, subject to (a) early termination as provided herein, and (b) extension on terms and conditions as are

mutually agreeable to the parties in their sole discretion.

Termination. This MOA may be terminated prior to the expiration of the term then in effect by either party, for any reason, upon receipt of ninety (90) days written notification. MVI, LLC desires to further the public interest in providing and facilitating public access to the Lahaina Pali Trail and parking area during the term, recognizing also the necessity of effective management, maintenance, and control of public access through or near private agricultural lands in cultivation for the public health, safety, and welfare, and the potential for changes in circumstances; accordingly, it is MVI, LLC's intent to exercise such early termination right only for just cause, including without limitation, (a) vandalism, theft, destruction of property, or other unreasonable burdens on MVI, LLC resulting from this MOA which DLNR has failed to adequately cure or address in a reasonable and timely manner; (b) changes in circumstances which cause this MOA to interfere with or adversely impact MVI, LLC's operations or use of its property, and (c) sale of any part of the Access Road to an independent third party. The Department shall have the right, for a period of twelve (12) months upon termination of the Memorandum of Agreement, to remove signs and other improvements established pursuant to the Memorandum of Agreement, except as may be necessary or advisable for health and safety reasons, and thereafter, all such signs and improvements remaining on the MVI, LLC property shall be deemed abandoned, and may be removed and disposed of by MVI, LLC, in its discretion, the reasonable costs of which shall be borne by DLNR and reimbursed on demand.

IN WITNESS WHEREOF, MVI LLC, and the State of Hawai'i, Department of Land and Natural Resources have executed this Memorandum of Agreement as of the date first above written.

MVI, LLC
A Hawai'i Corporation

By_____

Title_____

By_____

Title_____

AND

STATE OF HAWAII, DEPARTMENT OF LAND
NATURAL RESOURCES

By_____

Chairperson

APPROVED AS TO FORM:

Deputy Attorney General