

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 24, 2022

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF: 11MD-192

Maui

After-the-Fact Amendment of Revocable Permit (RP) S-7382 to Maui Pineapple Company, Ltd. ; and Issuance of Revocable Permit to Maui Land and Pineapple Company, Inc. Effective January 1, 2017 with After-the-Fact Renewals for the years 2018 through 2022, Mahinahina, Lahaina, Maui, Tax Map Key: (2) 4-4-004: portions of 009, 011 & 019.

The amendments to RP S-7382 are to change the character of use provision from agricultural purposes to access purposes, decrease the area of use from 153.39 acres to 0.8 acre, and reduce the rent from \$1,096/month to \$40/month for the period January 01, 2009 to December 31, 2016.

TENANT:

Maui Land & Pineapple Company, Inc. (ML&P) and Maui Pineapple Company, Ltd; a subsidiary of ML&P, a Domestic Profit Corporation.

LEGAL REFERENCE:

Sections 171-6, -13 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Mahinahina situated at Lahaina, Maui identified by Tax Map Key: (2) 4-4-004: portions of 009, 011 and 019, as shown on the attached map labeled Exhibit A and B.

ZONING:

| | |
|--------------------------|-------------|
| State Land Use District: | Agriculture |
| County of Maui, CZO: | Agriculture |

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

ORIGINAL CHARACTER OF USE UNDER RP S-7382 from July 15, 2004 to December 31, 2008:

Agricultural Purposes

ORIGINAL AREA of USE UNDER RP S-7382 from July 15, 2004 to December 31, 2008:

Parcel 009: 148.39 acres, more or less.
Parcel 011: 3.00 acres, more or less
Parcel 019: 2.00 acres, more or less

Total: 153.39 acres, more or less

ORIGINAL RENT UNDER RP S-7382 from July 15, 2004 to December 31, 2008

\$1,196 per month.

MODIFIED CHARACTER OF USE for January 01, 2009 to December 31, 2016:

Access purposes.

MODIFIED AREA of USE for January 01, 2009 to December 31, 2016:

0.8 acre (36,000 sf) more or less. Dirt track = 12' x 3,000' (more or less).

MODIFIED RENT for January 01, 2009 to December 31, 2016:

\$40 per month

Rent Modification is pursuant to Board approved minimum rent policy dated May 13, 2005, Item D-19. Rent Modification is fair under the circumstances whereby access was for intermittent use of a dirt track over government lands in collaboration with the West Maui Watershed Partnership and the DLNR Division of Forestry and Wildlife for watershed management purposes.

Past Modified Rent Due from January 01, 2009 to December 31, 2016 = \$3,360.
(\$40 x 12 months) x 7 years = \$3,360

COMMENCEMENT DATE for ISSUANCE of REVOCABLE PERMIT to ML&P:

The first day of the month to be determined by the Chairperson.

CHARACTER OF USE:

Access and ancillary purposes.

AREA:

0.8 acre (36,000 sf) more or less. Dirt track = 12' x 3,000' (more or less).

MONTHLY RENTAL:

\$40 per month pursuant to Board approved minimum rent policy dated May 13, 2005, Item D-19. Rent is fair under the circumstances whereby access is for continued intermittent use of a dirt track over government lands in collaboration with the West Maui Watershed Partnership and the DLNR Division of Forestry and Wildlife for watershed management purposes.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features , involving negligible or no expansion or change of use beyond that previously existing," and Part 1, Item 23 that states, "maintenance of existing boardwalks, trails and unpaved roads;" Item 24 that states, "maintenance of rights-of-way other than public rights-of-way;" and Item 40 that states "leases of state land involving negligible or no expansion or change of use beyond that previously existing." The subject request will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

DCCA VERIFICATION:

Maui Land and Pineapple Company, Inc.

Place of business registration confirmed: YES X NO ___
Registered business name confirmed: YES X NO ___
Applicant in good standing confirmed: YES X NO ___

Maui Pineapple Company, Ltd.

Place of business registration confirmed : YES X NO ___
Registered business name confirmed: YES X NO ___
Applicant in good standing confirmed: YES X NO ___

TENANT REQUIREMENT:

1. Develop a Conservation Plan for the development and maintenance of best management practices related to dirt track maintenance and soil erosion control.
2. Pay \$3,360 for Modified Rent Due from January 01, 2009 to December 31, 2016.
3. Upon Issuance of Revocable Permit to ML&P for access and ancillary purposes pay retroactive rent due from January 1, 2017 at the rate of \$40 per month.

REMARKS:

On July 15, 2004, Maui Pineapple Company, Ltd. (MPC) was issued Revocable Permit (RP) S-7382 for agricultural purposes.

On November 19, 2008, the Department of Land and Natural Resources (DLNR) Maui District Land Office (MDLO) received written notice from MPC to terminate RP S-7382. However, the tenant stated that despite the requested cancellation, Maui Land & Pineapple Company (ML&P) wanted to “continue to require certain access and waterline easements” over government lands. MPC is a subsidiary of ML&P and ML&P is the abutting landowner of (2) 4-3-001:017 located north of parcel 009 and (2) 4-4-004:008 located south of parcel 011 and 019. A map of the proposed utility and access easement areas were attached to the written request to terminate RP S-7382 (see Exhibit C).

It is our understanding that ML&P proposed a utility easement to transmit water from parcel 017, over parcel 009 and 011, to irrigate parcel 008 to the south. DLNR staff suggested to ML&P to develop a more detailed map and estimated size of the proposed

access and utility easement areas so that a term easement for both purposes could be presented to the Board for review and approval.

In July of 2009, MPC completed a Phase 1 investigation of the subject premises pursuant to condition No. 14 of RP S-7382. A Phase 1 investigation is an environmental site assessment that determines if any necessary abatement and disposal is needed pursuant to the standards required by the Federal Environmental Protection Agency, the Department of Health and the DLNR. Malama Environmental, LLC on behalf of MPC conducted and compiled the site assessment report for the subject premises and found that: “no evidence of recognized environmental conditions in connection with the property” existed.

Although the tenant discontinued agricultural use in December 2008, DLNR staff did not terminate RP S-7382 because of ongoing use of parcel 009 for access purposes and the proposed utility easement. Staff continued to approve the annual renewal of RP S-7382 until its last approval on December 11, 2015, under agenda item D-14. This approval allowed for the continuation of RP S-7382 until December 31, 2016.

RP S-7382 was not renewed by the Board for calendar year 2017 and by this time changing staff and loss of institutional memory at ML&P resulted in succeeding managers not being able to clearly illustrate the size and location of requested access and utility easements.

Furthermore, over time, accrual of existing rent at \$1,196 per month was significant. By December of 2016, rent due was \$114,816. DLNR administration determined that past rent due at the rate of \$1,196 per month for agricultural purposes was inappropriate since written request to terminate RP S-7382 was received by the MDLO on November 19 2008 and lands were not being used for agriculture purposes by ML&P. Ongoing primary use after 2008 was for access to the Pu‘u Kukui Watershed Preserve (PKW) which was established in 1988 to protect watershed forests and associated native plants and animals on over 8,600 acres of private property.

Rent Modification of RP S-7382 for the term between January 1, 2009 and December 31, 2016 is fair under the circumstances whereby access was for intermittent use of a dirt track over government lands in collaboration with the West Maui Watershed Partnership and the DLNR Division of Forestry and Wildlife for watershed management purposes. Minimum rent is being recommended since use of dirt track also provides access to a private cabin located on private property in the conservation district. According to research by the DLNR Office of Conservation and Coastal Lands, it is our understanding that the cabin may have been built in the early 1900’s and is considered a non-conforming use. Minimum rent is being proposed pursuant to Board approved minimum rent policy dated May 13, 2005, Item D-19.

MPC, a subsidiary of ML&P, began management programs within the PKW in August 1988 under a management agreement with The Nature Conservancy of Hawaii. For many years, the Nature Conservancy assisted MPC’s PKW preserve manager to implement

management programs and has continued to act as a consultant to the project on an ad hoc basis. PKW is one of the largest privately-owned nature preserves in the state. A 2,749 acre portion of the preserve identified as TMK (2) 4-2-001:001, exists above and is accessed thru parcel 009, 011 and 019.

In July of 1992, ML&P entered into a six-year contract with the State of Hawai'i as the first private landowner participant in the Department of Land & Natural Resources' (DLNR) Natural Area Partnership (NAP) program. On May 26, 2017, under agenda item C-4, the Board approved the FY 18-24 Long-Range Management Plan for the PKW and contract with MLP. MLP transitioned from employing conservation staff that manage the preserve to subcontracting those duties to the Living Pono Project (LPP). LPP is a private non-profit organization on Maui. MLP has created a Memorandum of Agreement and Managing Contract with LPP to authorize the non-profit to manage the Preserve and use MLP facilities. MLP has requested the authority to subcontract the Natural Area Partnership contract work to LPP, which requires Board approval pursuant to Special Condition #3 of the contract. On January 14, 2022, under agenda item C-1, the Board approved the assignment to LPP as the subcontractor for implementing the PKW Natural Area Partnership Agreement with ML&P.

In order to allow for authorized access to the watershed for purposes as prescribed by contract related to the Natural Area Partnership, staff recommends that a new revocable permit be issued to ML&P for access purposes.

It is prudent to note that in addition to access over portions of parcel 009, 011 and 019, for watershed management purposes, the Board also approved, on December 13, 2019, under agenda item D-9, an access and utility easement in favor of the County of Maui Department of Water Supply's (DWS) to use a portion of the same dirt track to be used by ML&P. Therefore, staff recommends that the ML&P work with the DWS to develop a Conservation Plan for best management practices related to dirt track maintenance and soil erosion control.

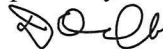
Finally, please be advised that staff will be recommending to the Board, under a separate agenda item, the set aside of parcels 009, 011 and 019 to the DLNR Division of Forestry and Wildlife (DOFAW) for Natural Resource and Wildlife protection purposes and that DOFAW has no objections to the issuance of a new RP to ML&P for access and ancillary purposes.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the modification of rent and character of use will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

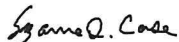
2. Subject to the tenant fulfilling the requirements listed above, authorize the amendment of revocable RP S-7382 to Maui Pineapple Company, Inc., under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current amendment of revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Subject to the tenant fulfilling the requirements listed above, authorize the issuance of a revocable permit to Maui Land and Pineapple Company, Inc. covering a portion of the subject area for access and ancillary purposes retroactive to January 1, 2017 together with after-the-fact annual renewals for the years 2018 through 2022 at a rent of \$40/month under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case
Chairperson

for

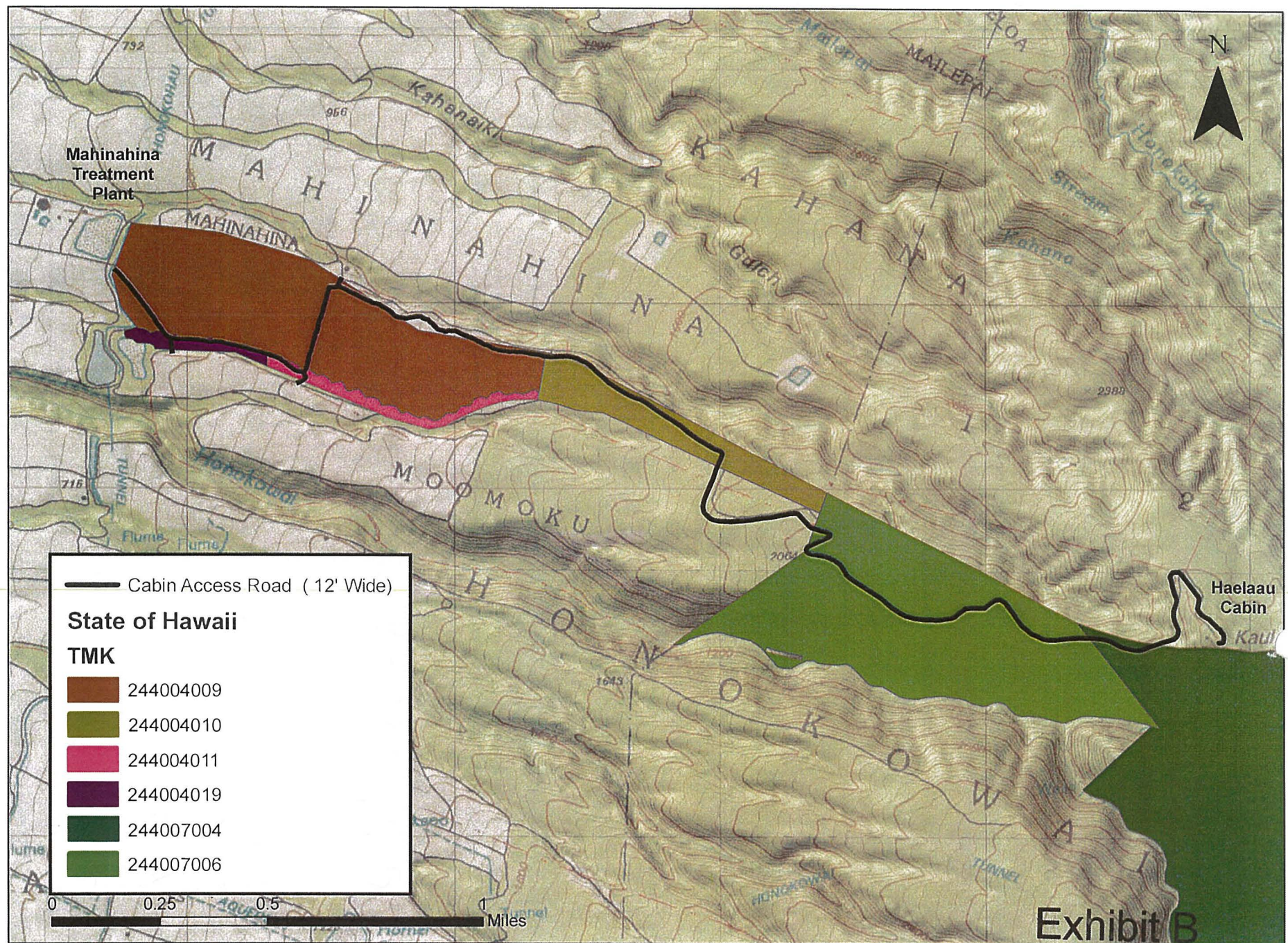
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Haelaau Cabin Access





RECEIVED
MAUI DISTRICT
LAND DIVISION

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Maui Pineapple Company, Ltd.

Haliimaile Division

November 19, 2008

Mr. Daniel Ornellas
Maui District Land Agent
State of Hawaii DLNR
54 South High Street
Wailuku, HI 96793

Subject: Cancellation of Revocable Permit S-7382

Dear Mr. Ornellas:

Maui Pineapple Company has stopped plantings of pineapple in West Maui. As a result, Revocable Permit # S-7382 is no longer needed for pineapple production.

By way of this letter I am officially requesting (30 days notice) cancellation of Revocable Permit # S-7382.

Although we are requesting cancellation of this lease, Maui Land & Pineapple Company (ML&P) will continue to require certain access and waterline easements through your land. Thus we are requesting that an access and waterline easement be granted to ML&P through State parcels allowing ML&P to access our properties located mauka and for Honokohau Ditch maintenance. I've enclosed a map showing the access and waterline easements requested.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me at [REDACTED].

Sincerely,

Wes Nohara
General Manager
Maui Pineapple Company, Ltd.

proposed water
easement

proposed access
easement

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 24, 2022

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title: After-the-Fact Amendment of Revocable Permit (RP) S-7382 to Maui Pineapple Company, Ltd. ; and Issuance of Revocable Permit to Maui Land and Pineapple Company, Inc. Effective January 1, 2017 with After-the-Fact Renewals for the years 2018 through 2022, Mahinahina, Lahaina, Maui, Tax Map Key: (2) 4-4-004: portions of 009, 011 & 019.

The amendments to RP S-7382 are to change the character of use provision from agricultural purposes to access purposes, decrease the area of use from 153.39 acres to 0.8 acre, and reduce the rent from \$1,096/month to \$40/month for the period January 01, 2009 to December 31, 2016.

Project / Reference No.: PSF 11MD-192

Project Location; Mahinahina, Lahaina, Maui; Tax Map Key: (2) 4-4-004: portions of 009, 011 & 019.

Project Description: Motor vehicle access and ancillary purposes over existing dirt track. Intermittent access of dirt track will be in collaboration with the West Maui Watershed Partnership and the DLNR Division of Forestry and Wildlife for watershed management purposes.

Applicant also intends to use the road to access a private cabin located on private property located in a remote portion of TMK (2) 4-2-001:001.

Applicant will also develop a Conservation Plan to develop best management practices related to dirt track maintenance and soil erosion control.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.
and Description:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features , involving negligible or no expansion or change of use beyond that previously existing," and Part 1, Item 23 that states, "maintenance of existing boardwalks, trails and unpaved roads;" Item 24 that states, "maintenance of rights-of-way other than public rights-of-way;" and Item 40 that states "leases of state land involving negligible or no expansion or change of use beyond that previously existing."

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant:

Applicant shall prevent / mitigate any cumulative impacts that may be caused by ongoing use of existing dirt track for access purposes in light of climate change and episodic rainfall events by developing and implementing best management practices related to road maintenance and soil erosion control pursuant to a Conservation Plan to be reviewed and approved by the USDA, Natural Resource Conservation Service, West Maui Soil and Water Conservation District.

Action May Have
Significant Impact on
Particularly Sensitive
Environment:

The subject request will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

Agencies Consulted:

DLNR: Division of Forestry and Wildlife, State Department of Hawaiian Home Lands; County of Maui, Department of water Supply; USDA, NRCS-SWCD.

Analysis:

The proposed action is of a similar type and scope of use that occurred on this and other government lands across the State. Such activities have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.