

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

March 10, 2023

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

Land Board Members:

SUBJECT: REQUEST APPROVAL TO AUTHORIZE THE CHAIRPERSON TO NEGOTIATE AND ENTER INTO A MEMORANDUM OF AGREEMENT WITH HOPE BUILDERS, INC AND WEST MAUI CONSTRUCTION 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 Nā Ala Hele Trail and Access program (Exhibit 1). Preferred access to the trailhead 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 Hope Builders Inc and West Maui Construction, LLC (Exhibit 2). This submittal requests authorization to enter into a Memorandum of Agreement (MOA) with the landowner 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.

BACKGROUND

The Lahaina Pali trail is a portion of 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 Mauna Kahalawai (Exhibit 1). From its eastern side, the trail begins near sea level at Mā'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 Haleakalā to the east, across the Kealaikahiki Channel to Kaho'olawe and beyond, and westward to Lāna'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 Nā Ala Hele trail system, pursuant to chapter 13-130-13, Hawai'i 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 Hope Builders Inc and West Maui Construction, LLC, crossing what is now the Honoapi'ilani Highway, and continuing to Pu'u Hele and beyond (Exhibit 2). 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 apparently destroyed by agricultural land use practices on that parcel and were not surveyed or designated as part of the trail system. Rather, a road crossing through another part of that parcel was used for public access to the eastern terminus of the designated Nā Ala Hele trail and agreements with prior landowners have served to establish that use. The last such agreement was approved by the Board on May 26, 2017 and remained in effect as a Memorandum of Agreement with the previous landowner, MVI, LLC until it was sold to the current owners in May 2022. The purpose of this request is to authorize the Chairperson to enter into a similar agreement with the new owners (Exhibit 3).

ANALYSIS

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. While the state may survey and designate the historic route of the trail through the subject parcel at some time in the future, continuation of an agreement with the landowner to enable public vehicular access through the private lands is in the public interest because it allows users to drive up to a safe and adequate parking area well away from the highway. Parking where the historic trail meets the highway is limited to the roadside shoulder and is not safe or appropriate for trail users. Hope Builders Inc. and West Maui Construction, LLC have requested to enter into an 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 Hope Builders Inc and West Maui Construction, LLC.

RECOMMENDATIONS

That the Board of Land and Natural Resources:

1. Authorize the Chairperson to negotiate, enter into, and amend a Memorandum of Agreement with Hope Builders Inc. and West Maui Construction, LLC for public access through TMK: (2) 3-6-001: Portion 18 to the Lahaina Pali Trail, subject to review and approval by the Department of the Attorney General.

Respectfully submitted

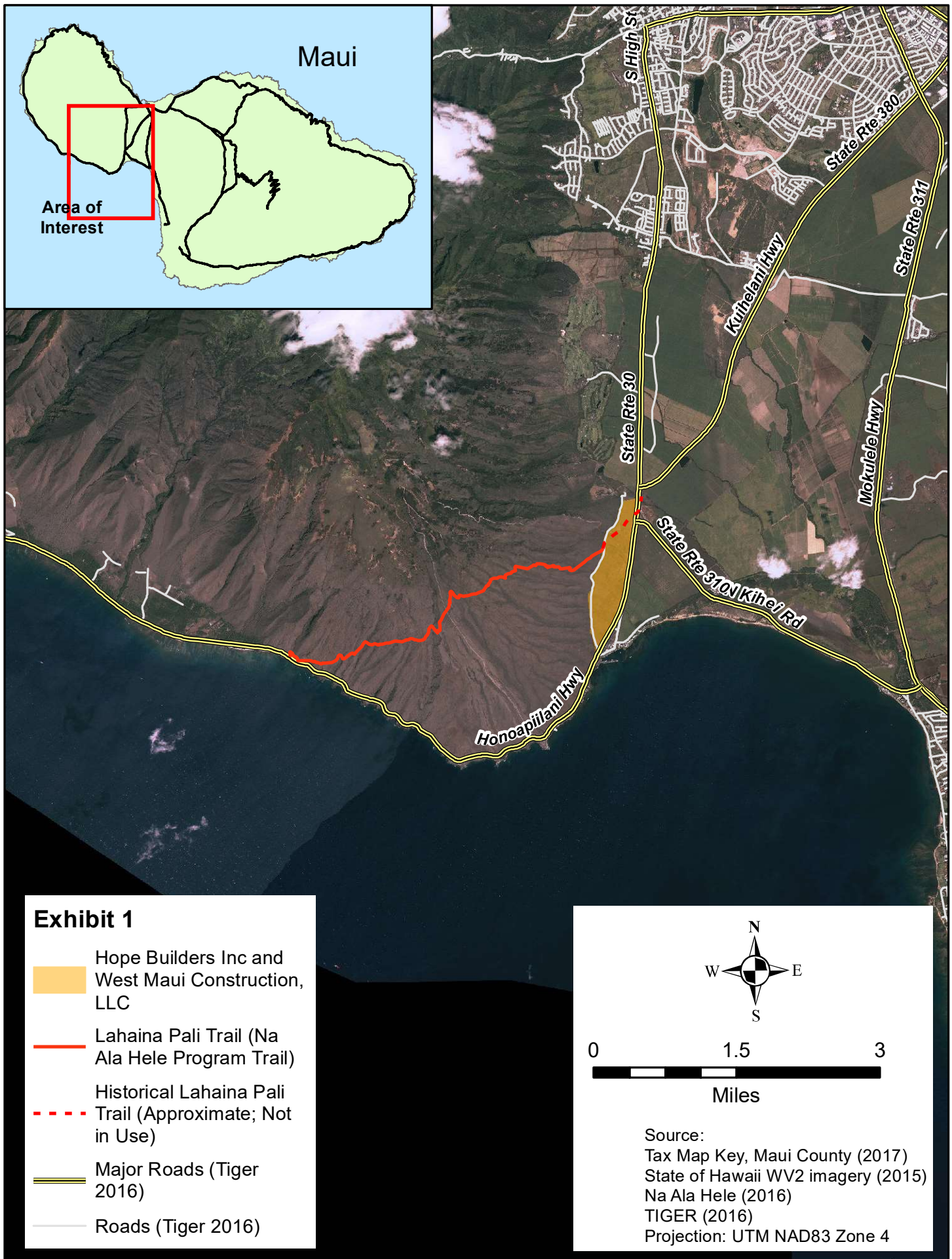


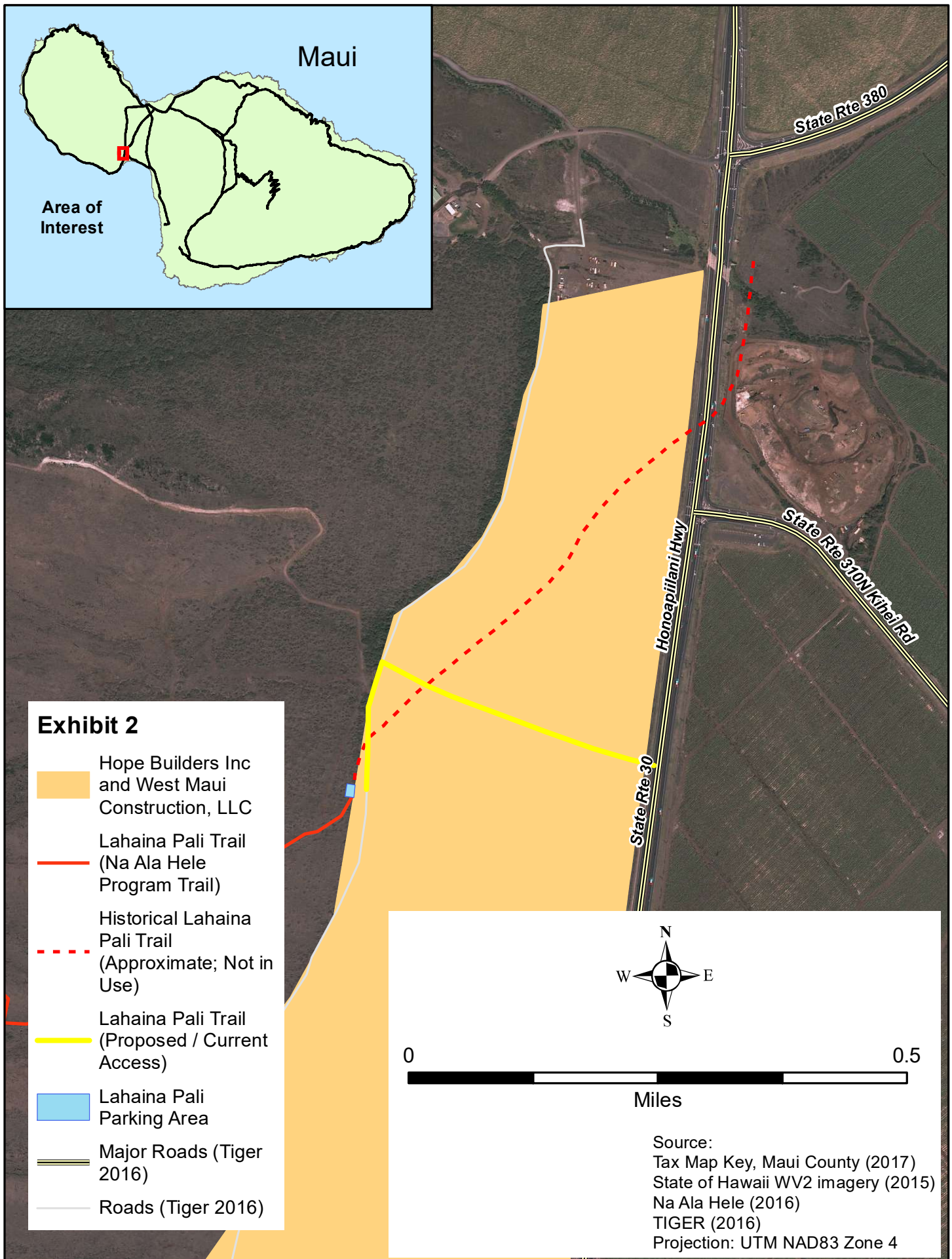
David G. Smith, Administrator

APPROVAL FOR SUBMITTAL



Dawn N.S. Chang, Chairperson
Board of Land and Natural Resources





**MEMORANDUM OF AGREEMENT
BETWEEN
HOPE BUILDERS INC.
WMC HOLDINGS LLC AND THE
STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
NĀ ALA HELE TRAIL AND ACCESS PROGRAM
FOR
A PUBLIC ACCESS TO THE LAHAINA PALI TRAIL**

This Memorandum of Agreement made and entered into on this ____th ____day of _____, 2023, by and between HOPE BUILDERS INC. WMC HOLDINGS LLC, and the State of Hawai'i, by its Board of Land and Natural Resources, Division of Forestry and Wildlife, Nā Ala Hele Trail and Access Program hereinafter referred to as "DLNR."

WITNESSETH:

WHEREAS, pursuant to section 198D-2, Hawai'i Revised Statutes (HRS), the Nā Ala Hele Trail and Access System (Nā 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, Nā 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, Hawai'i 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 Nā Ala Hele Trail 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 Nā Ala Hele Program and is located within TMK: (2) 3-6-001-14, which is accessible via an unpaved agricultural road

(hereinafter referred to as “Access Road”), that traverses private land owned by HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS LLC is the owner of certain real property centrally located between the Lahaina Pali Trail and Honoapiʻilani 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 “HOPE BUILDERS INC. WMC HOLDINGS LLC.”; and

WHEREAS, DLNR through its Nā Ala Hele Trail 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS LLC, 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 “KEEP GATE CLOSED”. DLNR will be solely responsible for removal of mud, dust, and debris tracked onto Honoapiʻilani Highway, unless this debris is attributed to agricultural operations or the lessees, individuals, or agents of HOPE BUILDERS INC. WMC HOLDINGS 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.

HOPE BUILDERS INC. WMC HOLDINGS LLC shall:

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

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

Have the ability to close the Access Road with 48 hour's notice (or shorter, if due to exigent circumstances as reasonably determined by HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS LLC property damaged, stolen, or vandalized on the Access Road, including but not limited to signs and equipment. HOPE BUILDERS INC. WMC HOLDINGS 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 wildlife 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS LLC's interest in preserving the agricultural uses of the HOPE BUILDERS INC. WMC HOLDINGS 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 described herein.

INDEMNIFICATION

DLNR shall fully defend and indemnify HOPE BUILDERS INC. WMC HOLDINGS LLC, its affiliates, and their respective heirs, executors, administrators, representatives, 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.

NON-SUBSTANTIVE AMENDMENTS AND AMENDMENTS FOR MANAGEMENT EFFICIENCIES

Non-substantive 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 HOPE BUILDERS INC. WMC HOLDINGS 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. HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS 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 HOPE BUILDERS INC. WMC HOLDINGS LLC property shall be deemed abandoned, and may be removed and disposed of by HOPE BUILDERS INC. WMC HOLDINGS LLC, in its discretion, the reasonable costs of which shall be borne by DLNR and reimbursed on demand.

IN THE WITNESS WHEREOF, HOPE BUILDERS INC. WMC HOLDINGS 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.

HOPE BUILDERS INC.

WMC HOLDINGS LLC

By _____

Title _____

AND

STATE OF HAWAI'I, DEPARTMENT OF LAND

NATURAL RESOURCES

By _____
Chairperson

APPROVED AS TO FORM:

Deputy Attorney General

DRAFT