

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF
CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

July 13, 2012

CDUP: KA-3509

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

REGARDING: Time Extension Request (*KA-12-10*) for Conservation District Use Permit (**CDUP**) **KA-3509** regarding the initiation of construction and completion of construction deadlines for the Malerich Single Family Residence (SFR)

**PERMITTEE/
LANDOWNER:** Matt and Judy Malerich

LOCATION: 7834 Kuhio Hwy, Haena, County of Kaua'i, Hawaii

TMK: (4) 5-9-005:025

**AREA OF PARCEL/
USE:** 14,513 ft²
3268 ft²

SUBZONE: Limited

BACKGROUND:

On *October 23, 2009*, the Board of Land and Natural Resources (BLNR) approved the Conservation District Use Application (CDUA) **KA-3509** for the construction of a single family residence (SFR) on the subject parcel. A Conservation District Use Permit (CDUP) was issued and was subject to twenty (21) terms and conditions. Condition six (6) provides that, *any work to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the department; further, all work and construction must be completed within three (3) years of the approval.* Under this CDUP condition the applicant had until *October 23, 2010* to initiate construction and until *October 23, 2012* to complete construction of the SFR. On *November 15, 2010* the BLNR approved a two (2) year extension request for both the initiation of construction and completion of construction deadlines which provided the applicant until *October 23, 2012* to initiate construction and until *October 23, 2014* to complete construction of the SFR.

TIME EXTENSION REQUEST:

On *April 24, 2012*, the Office of Conservation and Coastal Lands (OCCL) received a correspondence for a second time extension request in which to initiate and complete construction of the previously approved SFR. At this time the applicant is requesting a one (1) year time extension to initiate and complete construction of the SFR giving until *October 23, 2013* to initiate construction and until *October 23, 2015* to complete construction of the previously approved SFR. The applicant have initiated the time extension request as they are still in the process of obtaining the appropriate Kaua'i County permits and have indicated that the process of has taken longer than expected. While the applicants may be able to commence construction prior to *October 23, 2012* they have decided to be prudent and apply for the time extension prior to the deadline.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Hawaii Administrative Rules (HAR), §13-5-43, which allows for a permittee to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, pursuant to HAR §13-5-43:

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant;

(c) Time extensions may be granted by the board upon the second or subsequent request for time extension on a board permit, based on supportive documentation from the applicant; and

(d) Unless otherwise authorized, all time extensions shall be submitted to the Department prior to the expiration deadline.

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a permittee demonstrates some sort of hardship or delay in initiating work on a particular project or if more time is required to complete the project as proposed. Moreover, the permittee should be able to demonstrate to the BLNR and Department that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project under the approved conditions.

DISCUSSION:

In the present case, none of these factors suggest any reason to deny the requested time extension. In the previously approved time extension request (**KA-11-32**), the applicant

requested an extension due to a pending determination by the Department on a contested case concerning the subject parcel shoreline certification. At this time the applicant is working to obtain the appropriate Kaua'i County permits and is therefore requesting a second time extension. Approval of the time extension request shall provide the additional time needed to complete the county permitting process and to allow adequate time to initiate and complete construction of the SFR. Should the Board choose to approve this request; the applicant will have had four (4) years to initiate construction and six (6) years to complete construction.

Staff, therefore, has the following:

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** an extension to **October 23, 2013** to initiate construction and an extension to **October 23, 2015**, to complete construction of the Matt and Judy Malerich's Single Family Residence (SFR) located at 7834 Kuhio Hwy, Haena, County of Kaua'i, Hawaii, *TMK (4) 5-9-005:025*, subject to the following conditions:

1. That condition six (6) of CDUP KA-3509 is amended to provide that Matt and Judy Malerich will have until **October 23, 2013** to initiate construction of the approved SFR and must complete construction by **October 23, 2015**;
2. That all other conditions imposed by the Board under **CDUP KA-3509**, as amended, shall remain in effect; and
3. That no further extensions be given to initiate construction.

Respectfully submitted,



Alex J. Roy, M.Sc., Planner
Office of Conservation and Coastal Lands

Approved for submittal:



WILLIAM J. AILA, Jr., Chairperson
Board of Land and Natural Resources