

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF
CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii
May 11, 2012

CDUP: OA-3068

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

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP) OA-3068 for Kawainui Marsh Improvements

APPLICANT: Division of Forestry & Wildlife

LANDOWNER: State of Hawaii
Department of Land and Natural Resource
Division of Forestry and Wildlife

LOCATION: Kailua, Koolaupoko, Oahu
Tax Map Key:
(1) 4-2-013:005 & 022
(1) 4-2-016

AREA OF USE: Approximately (\approx) 680 Acres

SUBZONE: Protective

BACKGROUND:

On January 25, 2002, the Board of Land and Natural Resources (Board) approved CDUP OA-3068 for Kawainui Marsh Improvements and Subdivision of the Model Airplane Field subject to 15 conditions (**Exhibit 1**). Since then, efforts to manage Kawainui have been progressing: the State has acquired the property from the City and Executive Orders 4128 in 2005, 4201 in 2007 and 4258 in 2009 set aside over 700 acres to the Division of Forestry and Wildlife for their management as a wildlife sanctuary.

Restorative and improvement efforts conducted include: a test well and test pond; road repairs; gate installation; land boundary surveys; archeological mitigation plan with field verification and flagging; wetland designation by the Natural Resource Conservation Service; preparation of a Best Management Practices Plan, Water Quality Monitoring Plan; preparation of the Section 401 Water Quality Certification package and clearing of non-native species (on-going).

In addition, the Corps of Engineers is currently implementing the Kawainui Marsh Environmental Restoration Project that consists of 11 terraced shallow ponds, an earthen berm system accessible to maintenance vehicles, and a water supply system to the ponds (solar-powered well pumps and water level control structures). The majority of the work will take place this summer during the dry season.

Further, DOFAW has recently received State funding and started work in 2011 to update the master plan for the entire Kawainui-Hamakua Marsh complex and to implement further restoration improvements.

TIME EXTENSION REQUEST:

Condition #5 of CDUP OA-3068 states that all work and construction must be completed within ten years of the approval. By correspondence dated April 10, 2012, the Division of Forestry and Wildlife is requesting a time extension of 10-years to CDUP OA-3068. As noted, "*There is considerable community interest associated with Kawainui Marsh needing to be properly addressed, and there is compliance with several layers of Federal, State, and City environmental and permitting regulations. Completing compliance with environmental and permitting regulations has subsequently taken a substantial amount of time contributing to delays in completing improvements within the initial 10-year timeframe*" (**Exhibit 2**).

AUTHORITY FOR GRANTING TIME EXTENSIONS:

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

Additionally, HAR, §13-5-43(e) states: "If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review."

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. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

In the present case, none of these factors suggest any reason to deny the requested time extension. Overall compliance with permit conditions has been achieved. Condition #4 that states, "*The Kawai Nui Marsh Advisory Council shall be reestablished within six months of the Board's approval of the use to ensure ongoing input from the community,*"

has been modified as ***Hoolaulima Ia Kawainui***, a coalition of community groups who have been involved in issues and actions for Kawainui Marsh has been assisting with planning, restoration and stewardship.

Staff notes the primary objectives of CDUP OA-3068 were 1) to provide a comprehensive and coordinated management plan for existing and future land and water uses; 2) to protect, maintain and enhance wildlife species, their habitats and related ecological systems; and 3) Protect, preserve and enhance cultural, educational and recreational values. CDUP OA-3068 also allows for plans for the future of the marsh to be developed, changed and implemented pursuant to plan goals and objectives.

In regards to carrying out these objectives, it appears that environmental compliance, land use regulations and availability of funds is a determining factor for the timeline of implementation. Much progress has been made, on-going activities and proposed improvements are ready to be implemented and the draft Environmental Assessment for the Kawainui Marsh Wetland Restoration and Habitat Enhancement has been recently published. Staff believes that a ten year time extension to implement Kawainui Marsh improvements is a reasonable request. However staff would like to remind project managers that periodical reports of progress made on all phases of the project should be reported back to the Board in accordance with condition # 12.

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** an extension to January 22, 2022 to complete implementation of improvements to Kawainui Marsh, subject to the following conditions:

1. That condition 5 of CDUA OA-3068 is amended to provide that the Permittee has until January 22, 2022 to complete any work or constriction to be done on the land; and
2. That all other conditions imposed by the Board under CDUP OA-3068, as amended, shall remain in effect.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



William J. Aila, Jr., Chairperson
Board of Land and Natural Resources



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

REF. PB: TC

P.O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

FILE No. CDUA: HA-3068B

MEMORANDUM

FEB 25 2002

TO: Harry Yada, Acting Administrator
Land Division

FROM: Gilbert S. Coloma-Agaran, Chairperson *Gilbert S. Coloma-Agaran*

SUBJECT: Conservation District Use Application (CDUA) OA-3068B by the Department of Land and Natural Resources for the Kawai Nui Marsh Improvements, Kailua, Oahu

I am pleased to inform you that the Board of Land and Natural Resources on January 25, 2002, APPROVED the application for Kawai Nui Marsh Improvements and Subdivision of the Model Airplane Field, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant shall comply with all applicable Department of Health administrative rules;
3. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
4. The Kawai Nui Marsh Advisory Council shall be reestablished within six (6) months of the Board's approval of the use to ensure ongoing input from the community;
5. Any work or construction to be done on the land shall be initiated within three years 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 ten years of the approval;
6. The applicant shall notify the Land Division in writing prior to the initiation, and upon completion, of the project;

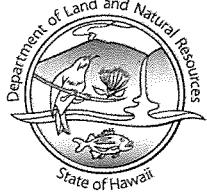
EXHIBIT 1

7. All mitigation measures set forth in the application materials, in the Final Environmental Assessment, and conditions to the SMA Permit for this project are hereby incorporated as conditions of the permit;
8. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
9. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
10. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
11. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
12. The applicant or Project Manager shall, in two years and periodically there-after, report back to the Board on the progress made on all phases of the project. The Kawai Nui Marsh Advisory Council shall be invited to participate in the presentations;
13. Other terms and conditions as may be prescribed by the Chairperson; and
14. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.
15. Any projects that the Department wishes to implement that are beyond or outside the scope of the approved County Special Management Area Use Permit for the project shall be presented before the Board of Land and Natural Resources in a briefing.

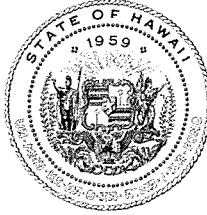
Please contact Traver Carroll of our Planning Branch at 587-0439 should you have any questions.

c: Board Members
DAR/SP/DOFAW/NAH/DOCARE/HPD/CWRM/LD(ODLO,EB)
DOH/OHA/DBEDT(OP)
City and County of Honolulu, Department of Planning and Permitting
City and County of Honolulu, Department of Parks and Recreation
Kailua Neighborhood Board
Army Corps of Engineers, Honolulu District
Lani-Kailua Outdoor Circle, P.O. Box 261, Kailua, HI 96734
Hawaii's 1000 Friends, 305 Hahani St., Suite 282, Kailua, HI 96734

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



5281
OK-LWT



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RECEIVED
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES
STATE OF HAWAII

GUY H. KAULUKUKI
FIRST DEPUTY
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

2012 APR 13 Ahi 12

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CONSERVATION AND COASTAL LANDS
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MOLDAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 10, 2012

Mr. William J. Aila, Jr., Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

Subject: Conservation District Use Application OA-3068B for Kawainui Marsh Improvements, Kailua, O'ahu, Hawai'i

Dear Mr. Aila, Jr.:

The State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW) is requesting a time extension to Conservation District Use Permit (CDUP) OA-3068B for Kawainui Marsh Improvements. This CDUP was approved by the Board of Land and Natural Resources (BLNR) on January 25, 2002, and Condition No. 5 required all construction work to be completed within 10 years of approval (January 25, 2012).

The Applicant under the CDUP application was the State DLNR, Land Division. However, jurisdiction over much of this marsh area has since been designated to the DOFAW for its management as a wildlife sanctuary and implementation of improvements. After coordinating with the Land Division, DOFAW is the more appropriate agency to take over responsibility for compliance with this CDUA OA-3068B, and is thus requesting a time extension.

Efforts to restore and improve Kawainui Marsh as authorized under OA-3068B have been progressing since 2002 and are continuing. Therefore, this is the first request for a time extension of the Board permit. Under the DLNR's §13-5-43(b), Hawai'i Administrative Rules, a time extension can be granted of up to two years. However, the DOFAW is requesting the BLNR's consideration in granting a time extension of 10 years instead of just 2 years.

This request is due to the unique circumstances associated with Kawainui Marsh, the level of restoration and other improvements planned for implementation, compliance with environmental

EXHIBIT 2

and land use regulations, and availability of funds to implement improvements. Further details and information justifying this time extension request is provided.

Justification for Time Extension

Kawainui Marsh is a unique natural and cultural resource that is part of the larger Kawainui-Hāmākua Marsh Complex, which was designated a Ramsar Convention Wetland of International Importance in 2005. There is considerable community interest associated with Kawainui Marsh needing to be properly addressed, and there is compliance with several layers of Federal, State, and City environmental and permitting regulations. Completing compliance with environmental and permitting regulations has subsequently taken a substantial amount of time contributing to delays in completing improvements within the initial 10-year timeframe.

The U.S. Corps of Engineers (COE) and State DOFAW needed to prepare a Supplemental Environmental Assessment for the Kawainui Marsh Ecosystem Restoration Project that was initiated in 2007 and completed in January 2009. This was required because the original project, based upon an Environmental Assessment completed in 2000, needed to be decreased in scope to meet Federal funding constraints. Other permits have since been obtained, and a project partnership agreement signing ceremony between the COE and DOFAW was held in June 2011. Construction work is now planned to start in June 2012.

Most of the approximately 680-acre area was owned by the City under the CDUP approved in 2002. Since then, it has taken time for the State DLNR to acquire the property and to designate jurisdiction and management of the property. Most of this marsh property was recently set aside to the DOFAW for their management along with establishing it as a Wildlife Sanctuary as summarized below:

1. Executive Order 4128 set aside about 9 acres of the marsh to the DOFAW for their management in October 2005.
2. Executive Order 4201 set aside about 97 acres of the marsh to the DOFAW for their management as a wildlife sanctuary in October 2007.
3. Executive Order 4258 set aside about 693 acres of the marsh to the DOFAW for their management as a wildlife sanctuary in January 2009.

Obtaining funding to implement improvements has also taken time given the State's economic situation over the past several years. DOFAW initiated efforts to obtain alternative sources of funding, and they were awarded a coastal grant in January 2006 from the U.S. Fish and Wildlife Service (FWS) for restoration improvements, which included considerable participation from private partners. DOFAW has recently received State funding and started work in 2011 to update the master plan for the entire Kawainui-Hāmākua Marsh Complex and implement further restoration improvements. DOFAW is actively working with the Administration and Legislature to obtain future funding to continue implementing improvements to this marsh complex.

Therefore, DOFAW would like to request a time extension of 10 years making the new completion date January 25, 2022, and believes this request is justified. There are several improvement plans underway or starting construction that will extend beyond two years (January

2014). The COE's pond restoration project starting this year should be completed in 2013. However, restoration improvements implemented under the FWS grant will likely start by the end of 2012 and continue for several years (>4 years). Finally, DOFAW's most recent project updating the master plan, environmental documentation, and permitting would occur in 2013. DOFAW would then pursue implementing further restoration efforts and other improvements from that plan that would occur over several years.

It would also not be an efficient or prudent use of DOFAW personnel time to have to request another inevitable time extension within only two years. Consequently, DOFAW would appreciate the BLNR's consideration of this longer time extension request at this time.

If you have any questions, please contact Mr. David Smith of the State DLNR, Division of Forestry and Wildlife at 973-9787.

Sincerely,



Paul J. Conry
Administrator
Division of Forestry and Wildlife