

STATE OF HAWAI`I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai`i

April 26, 2013

Extension Request KA-13-04

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawai`i**

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP) KA-3240 Regarding Navigation Improvements and Beach Nourishment at Kikiaola Small Boat Harbor

PERMITTEE: Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) and US Army Corps of Engineers.

LANDOWNER State of Hawai`i, Unencumbered Land

LOCATION: Kikiaola Small Boat Harbor, Waimea, Kaua`i

SUBZONE: Limited, Resource (submerged lands)

BACKGROUND:

Kikiaola Light Draft Harbor was constructed by the State of Hawai`i in 1959, and modified in 1961 and 1964. The harbor impeded the natural long shore transport of sand, leading to extensive erosion along the coast to the west of the breakwater. A 2008 study by the U.S. Army Corps of Engineers found that the water line had eroded 75 feet landward of the west breakwater root, and estimated that there was a deficit of 80,000 cubic yards of sand.

Appendix A shows an aerial photo of the harbor, with areas of sand accumulation and sand deficit marked.

On January 26, 2001, the Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) KA-3003 for the Phase I harbor improvements at Kikiaola Small Boat Harbor. The permit authorized the bypassing of 20,000 cubic yards of sand that was to be undertaken in conjunction with the improvements, and an additional 10,000 cubic yards per year for the three following years.

On August 12, 2005, the Board approved CDUP KA-3240 for the Phase II harbor improvements at the Harbor. The permit authorized the bypassing of 60,000 cubic yards

of sand that were to be undertaken in conjunction with the improvements, with subsequent bypassing to be coordinated with the DLNR chairperson and OCCL staff.

On August 30, 2010 OCCL staff found that a proposal by a private landowner to bypass a total of 80,000 cubic yards, in four increments over a two-year period, was consistent with the intent and purpose of the previous CDUPs (Correspondence KA-11-121).

None of the above sand bypassing projects were carried out.

TIME EXTENSION REQUEST:

Condition 23 of CDUP KA-3240 reads: *Project-related work on the land shall be initiated within two (2) years from the date of this approval, and all construction, except perpetual maintenance, must be completed within five (5) years of the approval. All future sand bypassing efforts shall be reviewed by the Land Division, Coastal Lands Program and approved by the Chairperson of the Board of Land and Natural Resources.* The permit is attached as **Exhibit B**.

The deadline for completion was August 2010. On May 24, 2007 the Chairperson approved a two-year extension, setting the new deadline as August 12, 2012.

The Division of Boating and Ocean Recreation (DOBOR) is requesting a second extension of the deadlines to complete the project. The request is attached as **Exhibit C**.

Based upon our discussion with DOBOR, OCCL understands that the harbor improvements have been completed, but that the sand bypassing was not carried out due to difficulties with the appropriations and procurement process.

The current scope of the project calls for an initial transport of 80,000 cubic yards of sand, an annual scheme to nourish the downdrift beach with 5000 cubic yards of sand, and the repair of the western breakwater root. This is summarized in a memo from Oceanit, the consultant under contract to DOBOR, attached as **Exhibit D**.

DOBOR has targeted July 2013 as the start of the bypassing project, and have requested a four year extension of the deadlines, until July 2016.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in §13-5-43, Hawaii Administrative Rules (HAR), 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.

Pursuant to HAR §13-5-43 (c): *Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based upon supportive documentation from the applicant, and*

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

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. The permittee should be able to demonstrate that the hardship or delay was not self-imposed and that a good faith effort had been made to undertake the project.

DISCUSSION:

OCCL feels that the sand bypassing is an important project. There has been significant downdrift erosion on the west side of the harbor, and the breakwater has become extensively flanked.

An Environmental Impact Statement was conducted in 1980 for the harbor improvements and sand bypassing, and a Finding of No Significant Impact (FONSI) for the associated Environmental Assessment was published on July 23, 1998. OCCL feels that these two documents, along with the Army Corps' 2008 study, satisfy the environmental review requirements outlined in Hawai'i Revised Statutes (HRS) Chapter 343, and that the sand bypassing can commence without the need for further review.

While the current proposal differs slightly from that originally proposed in KA-3240, it is similar in size and scope to proposals covered by the above document and approved by the Department.

Given the importance of the project, OCCL recommends that the Board approve this extension request.

RECOMMENDATION:

That the Board of Land and Natural Resources approve the Division of Boating and Ocean Recreation's request for an extension of the deadlines of CDUP KA-3240 in order to complete the sand bypassing project associated with the Kikiaola Small Boat Harbor Improvements in Waimea, Kaua'i, TMKs (4) 1-2-006:003, 017, 041; 1-2-013:001, 031-035, 039-041, subject to the following conditions:

1. That Condition 23 of KA-3240 be amended to read: *The project, with the exception of perpetual maintenance, shall be completed by July 1, 2016. All future sand bypassing efforts shall be reviewed by the Land Division and the Office of Conservation and Coastal Lands, and be approved by the Chairperson of the Board of Land and Natural Resources;*

2. The project scope of KA-3240 be amended to include 1) an initial transport of 80,000 cubic yards of sand, 2) the repair of the west breakwater root, and 3) the annual maintenance transport of 5000 cubic yards of sand; and
3. That all other conditions imposed by the Board under CDUP KA-3240 shall remain in effect.

Respectfully submitted,

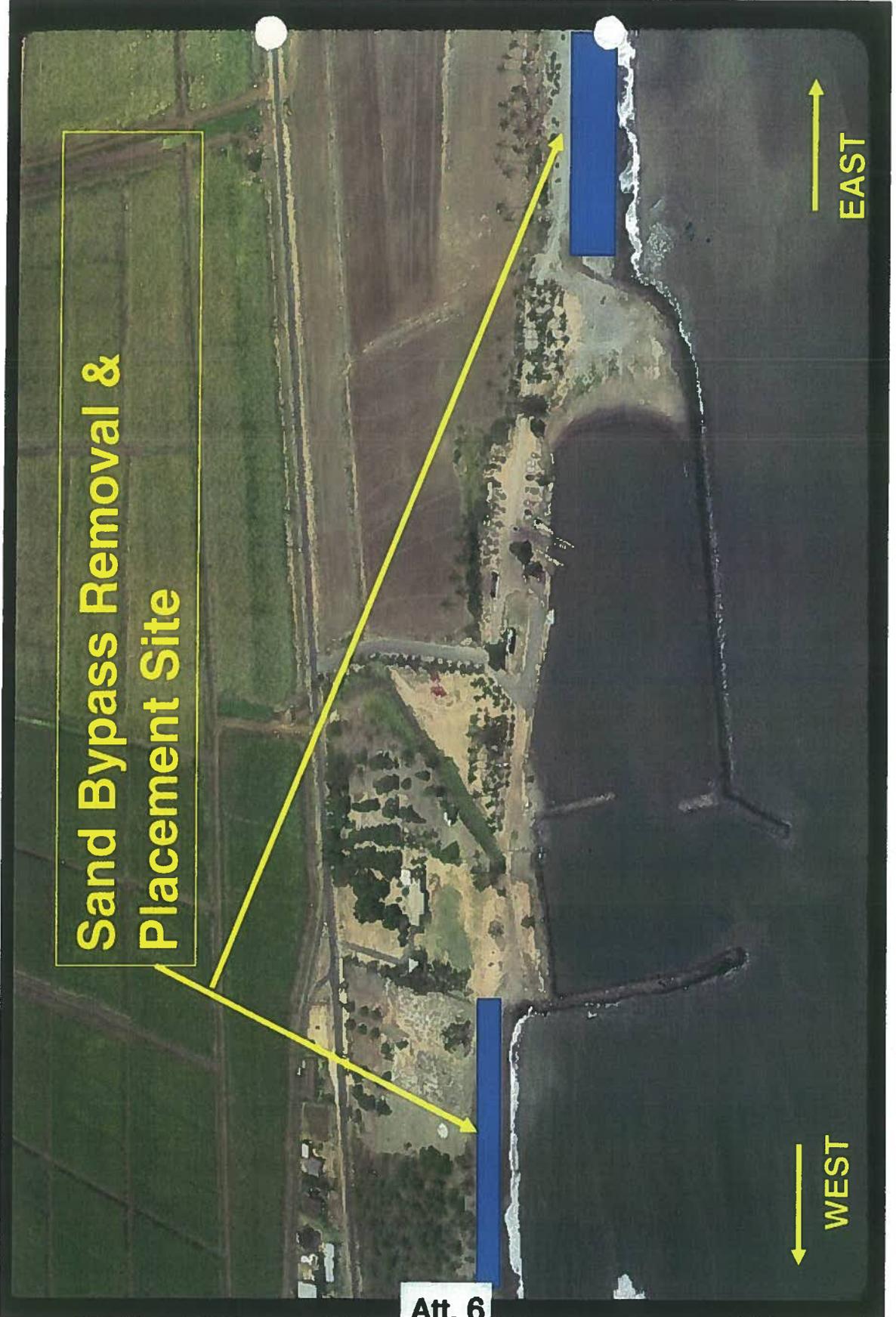


Michael Cain
Office of Conservation and Coastal Lands

Approved for submittal:



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



WEST ← East

Att. 6

LINDA LINGLE
GOVERNOR OF HAWAII



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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER ON WATER RESOURCES MANAGEMENT

ROBERT E. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

FILE NO.: KA-3240

Richard Rice, Administrator
Division of Boating and Ocean Recreation
Department of Land and Natural Resources
333 Queen Street, Suite 300
Honolulu, Hawaii 96813

AUG 12 2005

Dear Mr. Rice:

SUBJECT: Conservation District Use Permit KA-3240, Kikiaola Small Boat Harbor Project, Waimea, Island of Kauai, Subject Parcel TMK's: (4) 1-2-006:003, and 017

This letter is to inform you that CDUA KA-3240 to make improvements to Kikiaola Small Boat Harbor Project, Waimea, Island of Kauai, Subject Parcel TMK's: (4) 1-2-006:003, and 017, has been approved by the Board of Land and Natural Resources on August 12, 2005, and was subject to the following terms and conditions:

1. For projects authorized under this permit, the permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this permit;
2. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for projects authorized under this permit;
3. That in issuing this permit, the Department and Board has relied on the information and data that the permittee 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;
4. That all mitigation measures set forth in the application and final environmental assessment for this project (including the deployment and monitoring of Best Management Practices to assure compliance with Class A Marine Water Quality Standards) are hereby incorporated as enforceable conditions of approval;
5. The applicant shall initially and in concert with Phase II, bypass 60,000 cubic yards of sand from East Kikiaola to West Kikiaola Beach. DOBOR, in concert with the Coastal Lands Program, shall investigate beach stability at both East Kikiaola and West Kikiaola Beaches,

to determine future sand bypassing needs and timing. All future sand bypassing shall be coordinated and approved by the Coastal Lands Program staff and the Chairperson of the Board of Land and Natural Resources.

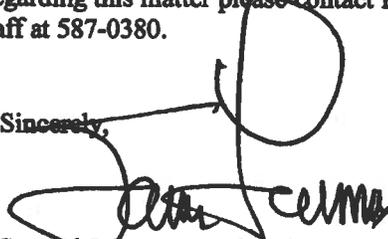
6. The applicant shall work with the appropriate experts to develop a beach profiling protocol at both East and West Kikiaola Beaches within one year to be implemented prior to and after sand bypassing efforts, to help evaluate sand volume changes and requirements, to maintain healthy beach systems of both sides of the Harbor. The Coastal Lands Program, shall approve the protocol;
7. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this permit;
8. No motorized construction equipment is to be operated in the water at any time;
9. In the event there is any petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
10. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at 692-8015;
11. The permittee shall ensure that excessive siltation and turbidity is contained or otherwise minimized through the use silt containment devices or barriers, high sand quality and selective sand placement;
12. The applicant shall develop a water quality monitoring protocol for harbor improvements and sand bypassing, in concert with the 401, Water Quality Certification;
13. The applicant shall comply with all applicable Department of Health policies, recommendations, and administrative rules regarding the National Pollutant Discharge Elimination System (NPDES) permit requirements, water quality anti-degradation, and sand quality criteria specific to sand beaches;
14. The applicant shall submit at least three (3) sets of the construction plans and specifications to the Chairperson or the Chairperson's authorized agent for approval with the declarations set forth in the permit application. One (1) copy will be retained by the Department, and the rest will be returned to the applicant. Plan approval by the Chairperson does not infer approval required by other agencies. Compliance with Conditions 5 and 6 remain the responsibility of the applicant;
15. The applicant shall notify the Department in writing when construction is initiated and when construction is completed;
16. The applicant shall take measures to ensure that the public is adequately informed of the project work once it is initiated and need to avoid the project area during construction;
17. The applicant must submit a written compliance report to the Coastal Lands Program within two months of completion of the initial sand bypassing effort. The compliance report must

- include, as appropriate, descriptions of the construction activities, discussion(s) of any deviations from the proposed project design and the cause of these deviations, results of environmental monitoring (primarily sand movement and turbidity readings), discussion(s) of any necessary corrective action(s), and photographs documenting the progress of the permitted work;
18. The activity shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
 19. The project shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
 20. Abutting landowners affected by the sand bypassing shall not be permitted to claim areas artificially nourished with sand under the State's accretion laws;
 21. To avoid encroachments upon the areas nourished with sand, affected property owners realize that the State may claim that the added sand under existing laws may prevent them from moving the certified shoreline seaward of the present vegetation line until there is substantive evidence that the sand has moved on to other areas. During sand placement, care shall be taken to protect existing dune vegetation and any other existing vegetation along the shoreline. To facilitate any later applications for shoreline certifications, the affected property owners are encouraged to document their present shorelines with photographs or surveys;
 22. The applicant shall notify all abutting property owners and community organizations that may be affected by the proposed action;
 23. Project-related work on the land shall be initiated within two (2) year from the date of this approval, and all construction, except perpetual maintenance, must be completed within five (5) years of the approval. All future sand bypassing efforts shall be reviewed by the Land Division, Coastal Lands Program and approved by the Chairperson of the Board of Land and Natural Resources;
 24. That site work shall be scheduled for periods of minimal expected rainfall and surf;
 25. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take appropriate corrective measures to minimize or eliminate the interference, nuisance, harm, or hazard;
 26. The applicant shall conduct surveys for sea turtles prior to the start of construction. Additional surveys will be conducted during and after construction. To the extent possible, construction activities will be concentrated during the period through June to November, to reduce any possible effects form noise or turbidity on humpback whales. A turtle survey protocol shall be reviewed and approved by the OCCL, prior to approval of construction plans for the project;
 27. That failure to comply with any of these conditions may render this Conservation District Use Application null and void; and

28. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the Office of Conservation and Coastal Lands within thirty (30) days. If you have any questions regarding this matter please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:



Date:

8/30/05

- c: Kauai District Land Agent
Kauai County Department of Planning
Department of Health
Army Corps of Engineers

April 8, 2013

To: Samuel J Lemmo, Administrator
Office of Conservation and Coastal Lands

From: Edward R. Underwood, Administrator
Division of Boating and Ocean Recreation

Subject: Request for Extension of CDUP KA-3240, Kikiaola Small Boat Harbor Sand Bypass
Project, Kekaha, Kauai, Hawaii

The Board of Land and Natural Resources has approved previous Conservation District Use Permits (CDUPs) for sand bypassing programs to nourish West Kikiaola Beach. These included:

- CDUP KA-289 (1972) - Expansion of Kikiaola Harbor.
- CDUP KA-3003 (2001) - Phase I Harbor Improvements and associated sand bypassing. An EA was done in support of this CDUP, June 1998.
- CDUP KA-3240 (2005) - Phase II Harbor Improvements and associated sand bypassing. The EA from 1998 was applied to this one. Deadlines were to initiate work by August 2007 and complete work by August 2010. An extension of CDUP KA-3240 was requested on May 24, 2007 and approved due to delays in the procurement process, and because bids were higher than the funds that were allocated. The new deadlines were to initiate work by August 12, 2009 and complete work by August 12, 2012.

The Phase II inner harbor maintenance dredging began in September 2009, and was completed in February 2010, however, the sand bypassing was not completed due to conflicting Federal requirements and funding issues. Approximately \$1.4 million in State funding was provided to the Army Corps of Engineers for the planning, design and implementation of the initial sand bypassing and the West Breakwater root repair. A sand bypassing and root repair study dated September 2008 was prepared by the Army Corps of Engineers, however the sand bypassing was never implemented because it was later determined that there was no federal interest to justify their participation in the sand bypassing. Accordingly, we requested to terminate the Support Agreements and the Army Corps of Engineers returned checks for \$1,257,884.24 and \$171,424.56, respectively on August 15, 2011 and February 2012.

Since the original appropriation lapsed in 2004, a new legislative appropriation was needed to receive and expend the federal funding that was returned to DOBOR. The new legislative appropriation to implement the sand bypassing was obtained in SLH 2011. Oceanit was selected on November 21, 2011, to plan and design a sand bypass program in the vicinity of Kikiaola Small Boat Harbor. The program involves an initial transport of up to 80,000 cubic yards of sand from the up drift beach east of the harbor to nourish the eroded West Kikiaola down drift beach. An annual sand bypassing scheme to nourish the down drift beach with 5,000 cubic yards of sand, repairs to the erosion damaged west breakwater root and a wave penetration report documenting wave conditions at the harbor dock are also included in this project.

After lengthy delays in processing the contract, DOBOR issued the fully executed contractor and notice to proceed to Oceanit on August 7, 2012 for the sand bypassing and root repair. A public information meeting was held on Kauai on August 15, 2012. The sand bypassing design is nearly complete and we are targeting July 2013 for the start of initial sand bypassing construction, with the completion in approximately four (4) months. The annual sand bypassing will be performed thereafter every 2 to 3 years.

In order for us to complete the Phase II project, including the initial sand bypassing and future sand bypassing maintenance projects we are requesting another extension of CDUP KA-3240. The new proposed CDUP deadlines would be July 2013 to initiate work and July 2016 to complete work.

Should you have any questions, please call Mr. Eric Yuasa at 808 587-0122 or email him at eric.t.yuasa@hawaii.gov.

cc: Mr. Cris Takushi (Oceanit)

me

14-13-137



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 OFFICE OF CONSERVATION
 AND COASTAL LANDS

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DEPT. OF LAND &
 NATURAL RESOURCES
 STATE OF HAWAII

March 28, 2013

Mr. Samuel J. Lemmo, Administrator
 State Department of Land and Natural Resources
 Office of Conservation and Coastal Lands (OCCL)
 P.O. Box 621
 Honolulu, HI 96809

Subject: Department of Land and Natural Resources
 Division of Boating and Ocean Recreation (DLNR-DOBOR)
 Kikiaola Small Boat Harbor Sand Bypass Project
 TMK: (4) 1-02-006:3, 17, 41, (4) 1-02-013: 1, 31-35, 39-41
Preconsultation for Environmental Assessment (EA)

The Department of Land and Natural Resources - Division of Boating and Ocean Recreation (DLNR-DOBOR) has contracted Oceanit to plan and design the sand bypass program in the vicinity of Kikiaola Small Boat Harbor. The project involves 1) Preparation and approval of plans, specifications, an Environmental Assessment and permits for a program to transport sand from the beach west (up drift) of Kikiaola Harbor to the beach west (down drift) of the harbor. This includes an initial transport of 80,000 cubic yards of sand to nourish the eroded down drift beach and an annual sand bypassing scheme to nourish the down drift beach with 5,000 cubic yards of sand. 2) Preparation and approval of plans, specifications and permits to repair the erosion damaged west breakwater root. 3) Preparation of a wave penetration report to investigate the wave conditions at the dock within the harbor.

We would appreciate any comments or concerns you may have regarding this project and assistance in identifying any permits, approvals or notifications required for this project. Please submit your comments to us no later than April 28, 2013.

Sincerely,

Cris Takushi

Cris Takushi
 Project Manager

cc: Mr. Eric Yuasa
 DLNR-DOBOR

attachments