

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

December 13, 2013

Extension Request OA-14-03

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

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP)
OA-3610 Regarding the Kewalo Basin Repair Project

PERMITTEE: Hawaii Community Development Corporation

AGENT: Gail Renard, Helber Hastert & Fee

LOCATION: Kaka'ako, Kona District, O'ahu

TMK: (1) 2-1-058: pors. 002, 035, 095, 128

AREA OF USE: 75.800 ft² of pier in 22 acres of harbor area

SUBZONE: Resource (submerged lands)

BACKGROUND:

The Hawaii Community Development Corporation (HCDA) regulates planning and zoning for Kewalo Basin as part of the 600-acre Kaka'ako Community Development District. The harbor was previously administered by the State of Hawaii Harbors Division; the basin and surrounding fastlands were transferred to HCDA by Act 86 in 1990, and management was transferred in March 1, 2009. The harbor is currently managed by Almar Management under contract to HCDA.

Kewalo Basin consists of 143 boat slips, ranging from 30 feet to 100 feet, on four piers (A, B, C, and "Herringbone Pier) and three wharves (Mauka Wharf, a.k.a. Front Row; Makai Wharf; and 'Ewa Loading Dock, a.k.a. Fisherman's Wharf). Kewalo is a mixed-use harbor with commercial fishing craft, charter tours, pleasure craft, and research vessel operators. The commercial fishing fleet includes holders of annual permits and transient vessels on 90-day permits. Occupancy as of June 2011 was 137 vessels, or 96% of capacity. Prior to the current management regime occupancy had dropped to 60 vessels in 2009, or ~40% of capacity.

On February 10, 2012, the Board of Land and Natural Resources (Board) approved Conservation District Use Permit (CDUP) OA- 3610 for a project to increase the number of boat slips, and to conduct infrastructure repair, within 22 acres of harbor area at Kewalo Basin. The project would increase the number of slips from 143 to 250 at full build-out, modernize the harbor's potable water and electric systems, and provide a new fire suppression system and a new sewage pump-out.

TIME EXTENSION REQUEST:

Condition 6 of CDUP OA-3610 reads: *Unless otherwise authorized, any work or construction 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 signed by the chairperson, and shall be completed within fifteen years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed.* The permit is attached as **Exhibit A**.

The deadline for beginning construction was February 10, 2013.

On October 23, 2013 the permittee reported that, due to funding and contracting issues, HCDA had been unable to initiate the project within the one year deadline. They are now requesting a two year extension of the deadlines. This will result in a new initiation deadline of February 10, 2015, and a new completion deadline of February 10, 2029.

This request is attached as **Exhibit B**.

BASIS AND AUTHORITY FOR GRANTING 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.

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.

The relevant sections are §13-5-43 (a) *Permittees may request time extensions for the purposes of extending the period of time to comply with the conditions of the permit,*

(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 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.*

DISCUSSION:

In our original assessment to the BLNR, OCCL concluded that the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region. Although it represents a potential increase in use of an already urbanized coast line, mitigation measures and best management practices are in place to minimize the risk of environmental harm during demolition and construction, and the finished harbor should be more “sustainable” than the current decaying harbor.

We concluded that the redevelopment of Kewalo Basin would benefit the public health, safety, and welfare through the removal of decaying infrastructure, allowing for the increased economic use of the area, and providing needed sewage pump-out facilities for vessels in the harbor.

OCCL stands by this analysis. 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 Hawai'i Community Development Corporation's request for an extension of the deadlines of CDUP OA-3610 for the Kewalo Basin Repair Project in Kaka'ako, Kona District, O'ahu, TMKs (1) 2-1-058: pors. 002, 035, 095, 128, subject to the following conditions:

1. That Condition 6 of OA-3610 be amended to read: *Unless otherwise authorized, any work or construction to be done on the land shall be initiated by February 10, 2015, in accordance with construction plans that have been signed by the chairperson, and shall be completed by February 10, 2029. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;* and
2. That all other conditions imposed by the Board under CDUP OA-3610 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

NEIL ABERCROMBIE
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

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
GUY H. KAULUKUKUI
FIRST DEPUTY
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref.:OCCL:MC

CDUP OA-3610

Gail Renard
Helber Hastert & Fee
733 Bishop Street, Suite 2590
Honolulu, HI 96813

Dear Ms. Renard,

SUBJECT: Conservation District Use Permit (CDUA) OA-3610
Kewalo Basin Repair Project
Kaka'ako, Kona District, O'ahu
TMK: (1) 2-1-058: pors. 002, 035, 095, and 128 (submerged lands)

This is to inform you that on February 10, 2012, the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) OA-3610 for the Kewalo Basin Repair Project at Kaka'ako, Kona District, O'ahu, TMK (1) 2-1-058: pors. 002, 035, 095, and 128 (submerged lands), subject to the following terms and conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. 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 this permit or relating to or connected with the granting of this permit;
3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
4. The permittee shall comply with all applicable department of health administrative rules;
5. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
6. Unless otherwise authorized, any work or construction 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 signed by the chairperson, and shall be completed within fifteen years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
7. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

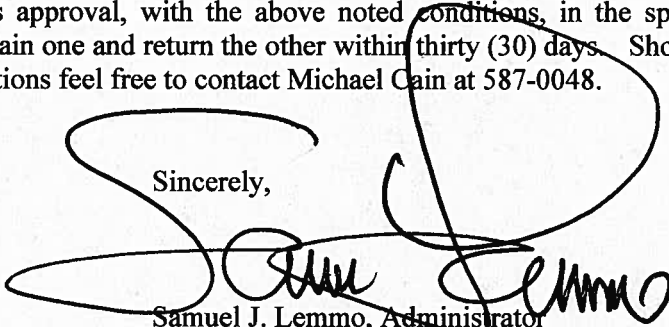
EXHIBIT A

8. The conditions of the project's Special Management Area Use Permit are incorporated as conditions of the permit, including but not limited to:
 - a. The permittee shall implement site-specific best management practices with a water quality monitoring program, and apply containment devices, including silt curtains, booms, tarpaulins, and floats, as appropriate, to prevent any potential pollutant(s) discharge and polluted runoff associated with the proposed demolition and construction, and staging area from adversely impacting the State waters as specified in HAR Chapter 11-54.
 - b. The permittee shall enforce the Kewalo Basin Rules, HAR Chapter 15-212, to limit the transit speed of all vessels through the channel of Kewalo Basin Harbor to a slow-no-wake speed, in order to minimize the impacts of vessel traffic on ocean recreation activities;
 - c. The permittee shall minimize potential traffic impacts generated from the proposed pier demolition and construction activities on the existing public access to the coastal recreation areas. Construction-related activities for the proposed project shall not affect park users' parking;
 - d. The operation of the proposed project shall not interfere or restrict public access, including park users' parking, to the ocean and adjacent parks;
 - e. The permittee shall constrain the proposed staging area within one acre, and shall return the staging area to its original condition at minimum, upon completion of the use of the staging area or upon expiration of this SMA Use Approval, whichever occurs first; and
 - f. The permittee and its authorized users shall properly position or shield lights to minimize adverse impacts of artificial light of the harbor facilities on the shoreline and ocean waters, and provide the needed shielding to lessen possible seabird strikes.
9. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
10. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the 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 the department may, in addition, institute appropriate legal proceedings;
11. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
12. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
13. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
14. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
15. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
16. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

17. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and
18. Other terms and conditions as prescribed by the chairperson.
19. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions feel free to contact Michael Cain at 587-0048.

Sincerely,



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

Receipt acknowledged:

Applicant's Signature

Date

EXHIBIT
OA-14-3
Helber Hastert & Fee
Planners, Inc.

October 21, 2013

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

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII



**CONSERVATION DISTRICT USE PERMIT (CDUP) OA-3610
TIME EXTENSION REQUEST
Kewalo Basin Repairs Project
Environmental Impact Statement
Honolulu, O'ahu, Hawai'i
TMK (1) 2-1-058: pors. 001, 002, 035, 095**

Dear Mr. Lemmo,

On behalf of the permittee, Hawai'i Community Development Authority, and acting as its agent, we respectfully request a time extension for initiating and completing CDUP OA-3610.

CDUP OA-3610 was approved by the Board of Land and Natural Resources on February 10, 2012. Condition #6 requires initiation of the project within of one year of approval and completion within fifteen years of approval. Due to funding and contracting issues, HCDA was unable to initiate the permitted project within the expiration deadline.

We request a two-year extension of the deadline to initiate the project, resulting in a new initiation deadline of February 10, 2015. We further request a two-year extension of the deadline to complete the project, with a proposed deadline of February 10, 2029.

Please call me or Gail Renard at 545-2055 if you need additional information. We appreciate your kind consideration.

Sincerely,

HELBER, HASTERT AND FEE, PLANNERS

Scott Ezer
Vice President

cc: Anthony Ching, HCDA
Deepak Neupane, HCDA (via email)
Neal Imada, HCDA (via email)
Victor Szabo, Moffatt & Nichol (via email)
Dean Kokubun, Moffatt & Nichol (via email)