

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

July 8, 2016

CDUP: KA-3625

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

REGARDING: Time Extension Request (TE: KA-16-13) for Conservation District Use Permit (CDUP) KA-3625 regarding the initiation of construction and completion of construction deadlines for the County of Kaua'i Kekaha Landfill Phase II Expansion

**PERMITTEE/
LANDOWNER:** County of Kaua'i – Department of Public Works

LOCATION: Kekaha, Waimea District, Island of Kaua'i

TMKs: (4) 1-2-002:009 & (4) 1-2-002:001

AREA OF PARCEL(s): 93 acres

AREA OF USE: 93 acres

SUBZONE: Limited

BACKGROUND:

On August 24, 2012, the Board of Land and Natural Resources (BLNR) approved the Conservation District Use Application (CDUA) KA-3625 for the *County of Kaua'i Kekaha Landfill (KLF) Phase II Expansion Project* on the subject parcels. A Conservation District Use Permit (CDUP) was issued and was subject to nineteen (19) conditions.

According to Condition #5: Unless otherwise authorized, any work or construction to be done on the land shall be initiated within two (2) years of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the infrastructure must be completed within six (6) years of the approval. The permittee shall notify the Department in writing when construction activity is initiated and when it is completed.

Under this CDUP condition the applicant was permitted until August 24, 2014 to initiate construction, and until August 24, 2018 to complete construction of the KLF Phase II expansion project.

FIRST TIME EXTENSION REQUEST:

On April 30, 2014 the Chairperson of the BLNR approved a two (2) year time extension request for both the initiation of construction and the completion of construction deadlines. Based on the approved time extension, the applicant was provided a new initiation of construction deadline of August 24, 2016 and a new completion of construction deadline of August 24, 2020 to complete the KLF Phase II Expansion project.

SECOND TIME EXTENSION REQUEST:

On May 25, 2016, the Office of Conservation and Coastal Lands (OCCL) received a written request for a *second* time extension for the initiation of construction and completion of construction deadlines. At this time the applicant is requesting a *second* two (2) year time extension to initiate and complete construction of the KLF Phase II Expansion project approved under CDUP: KA-3625.

The applicant requests that the initiation of construction deadline be set to **August 24, 2018**, and the completion of construction deadline be set to **August 24, 2022**.

In April 2014, the County of Kaua'i requested and received approval from the Department for a 2-year time extension due to delays in obtaining the Department of Health (DOH) – Solid Waste Permit. Although it was anticipated that the final permitting would be completed in mid-2014, the County of Kaua'i has still not obtained the required Solid Waste Permit at this time. Additionally, at the request of DOH – Solid and Hazardous Waste Branch, the County of Kaua'i and their consultants have further evaluated potential alternative landfill designs; however the final selected design is still the same basic concept as was approved in 2012. There is a slight change to the groundwater monitoring well design, although it will not require new approvals or any changes to the existing CDUP. The applicant would like to note that the anticipated timing of the DOH permit review was not sufficient and took longer than expected.

The applicant has initiated the time extension request as they are still in the process of obtaining the appropriate DOH - Solid Waste Permit, and have indicated that the process of has taken longer than expected; therefore the project will be unable to begin construction prior to August 24, 2016.

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 first approved time extension, the applicant requested an extension due to delays in obtaining the DOH – Solid Waste Permit.

At this time the applicant is continuing to work with the *DOH – Solid and Hazardous Waste Branch* to obtain the appropriate permits and is therefore requesting a *second* time extension to complete the permitting process. Approval of the time extension request will provide the additional time needed to complete the DOH permitting process, and to allow adequate time to initiate and complete construction of the KLF Phase II Expansion. Should the BLNR choose to approve this request; the applicant will have been provided six (6) years to initiate construction and ten (10) years to complete construction from the original approval date.

Staff, therefore, has the following:

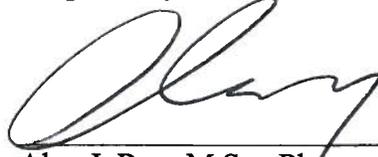
RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** the time extension request to provide the applicant until **August 24, 2018** to initiate construction and until **August 24, 2022** to complete construction of the Kekaha Landfill Phase II Expansion project, located at Kaunuali'i Highway, Kekaha, Waimea District, Island of Kaua'i on *TMKs (4) 1-2-002:009 & (4) 1-2-002:001*, subject to the following conditions:

1. That condition five (5) of CDUP KA-3625 is amended to provide that the applicant (*County of Kaua'i – Department of Public Works*) will have until **August 24, 2018** to initiate construction of the KLF Phase II Expansion project, and until **August 24, 2022** to complete construction;
2. That all other conditions imposed by the Board under **CDUP KA-3625**, as amended, shall remain in effect; and

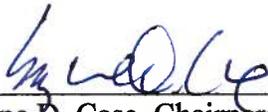
3. That no further extensions be given to initiate construction.

Respectfully submitted,



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

Approved for submittal:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources