

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

February 10, 2017

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

REGARDING: Time Extension Request OA-17-06 for Conservation District Use Permit (CDUP) OA-3719 for a Mariculture Facility

PERMITTEE: Randy Cates, Māmala Bay Seafood, LLC

LOCATION: Reef Runway Borrow Pit, Ke'ehi Lagoon, Honolulu, O'ahu

TMK: (1) 1-1-003:005 (submerged lands)

LEASE AREA: 75 acres

SUBZONE: Resource

BACKGROUND

On December 12, 2014 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) OA-3719 for Māmala Bay Seafood (MBS), LLC to develop and operate a mariculture facility in the Reef Runway Borrow Pit at Ke'ehi Lagoon, Honolulu, O'ahu, TMK (1) 1-1-003:005.

The permit allows MBS to cultivate moi (*Polydactylus sexfilis*) in ten cages in a 75-acre area adjacent to the Honolulu International Airport. The site is on submerged lands in the Resource Subzone of the State Land Use Conservation District. Sixty acres of the area are under control of the State Department of Transportation, while fifteen acres are under the control of the Department of Land and Natural Resources.

The lease for the mariculture site is subject to Board approval and requires the concurrence of the Director of the State Department of Transportation (DOT) pursuant to Hawai'i Revised Statutes (HRS) §190D-21 LEASING OF STATE MARINE WATERS AND SUBMERGED LANDS FOR PRIVATE USES (a) *The board may lease state marine waters for marine activities upon compliance with §171-53 and with the concurrence of the director of transportation.*

The permit is attached as Exhibit 1. OCCL would like to call the Board's attention to Condition 7, which 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 three 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.

Per this condition, Māmala Bay Seafood was required to initiate construction by December 12, 2015.

FIRST TIME EXTENSION REQUEST

On November 9, 2015 the permittee submitted a time extension request in order to address concerns raised by the DOT and the Federal Aviation Agency (FAA) regarding the siting of the facility.

The Chair of the Board and Land and Natural Resources approved the time extension, amending the permit to provide that the permittee must initiate construction by December 12, 2016 and complete construction by December 12, 2018.

SECOND EXTENSION REQUEST

On November 9, 2016 the permittee submitted a second request for a one-year time extension, attached as Exhibit 2. The permittee reports that talks with the FAA are on-going. At issue is language contained in the FAA Advisory Circular No: 150/5200-33B, Subject: HAZARDOUS WILDLIFE ATTRACTANTS ON OR NEAR AIRPORTS, which advises airport operators to oppose the establishment of new aquaculture facilities/activities within five statute miles of the airport's air operations area (AOA).

The permittee anticipates that the FAA will amend the language in the circular in way that will allow him to secure the needed concurrence of the state Director of Transportation on the lease. As such, he is requesting an additional one-year extension of the deadlines contained in CDUP OA-3719.

AUTHORITY FOR GRANTING TIME EXTENSIONS

The authority for the granting of time extensions is provided in Hawai'i 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. Pursuant to §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 a 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.

OCCL notes that the time extension request was submitted in November, 2016, prior to the expiration deadline and in compliance with §13-5-43 (d). As this is the second time extension request, we are forwarding it to the Board for review.

DISCUSSION

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.

OCCL notes that major projects often experience delays in securing other federal and state permits after a CDUP has been issued, and has been supportive of extension requests when the permittee can show that they have been diligent in pursuing the necessary permits.

During the pre-consultation phase of the environmental assessment the State DOT Airports Division raised concerns regarding the mariculture facility's siting, and they asked whether the cages would be covered as a mitigation measure aimed at reducing their potential to be a wildlife attractant. The applicant revised the initial submission, replacing the surface cages that would be at the surface during stocking, feeding, and harvesting, and submerged the remainder of the time.

In its initial presentation to the Board OCCL concluded that Māmala Bay LLC had met the conservation criteria outlined in HAR §13-5-42, though we noted at the time that there were still unresolved issues regarding future DOT concurrence with the state lease of marine waters at the site. Accordingly, the Board approved the permit, adding the following condition:

26. That the applicant's lease shall be subject to HRS §171-53, and to the concurrence of the Director of Transportation;

OCCL notes that major projects often experience delays in securing other federal and state permits after a CDUP has been issued, and has been supportive of extension requests when the permittee can show that they have been diligent in pursuing the necessary permits. We understand that the owner of Māmala Bay Seafoods, LLC has been in active discussions with both the State DOT and the FAA over the past year. We thus have no objections to the current time extension request.

RECOMMENDATION

OCCL recommends that the Board of Land and Natural Resources approve Māmala Bay Seafood, LLC's request for an extension of the deadlines of CDUP OA-3719 for a mariculture facility Reef Runway Borrow Pit, Ke'ehi Lagoon, Honolulu, O'ahu, TMK: (1) 1-1-003:005 (submerged lands), subject to the following conditions:

1. That condition 7 of CDUP OA-3719 is amended to provide that the permittee will have until December 12, 2017 to initiate construction and must complete construction by December 12, 2019;
2. That all other conditions imposed by the Board under CDUP OA-3719, as amended, shall remain in effect.

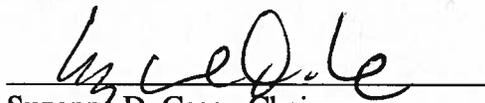
Respectfully submitted,



Michael Cain

Office of Conservation and Coastal Lands

Approved for submittal:



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

DAVID Y. IGE
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
JESSE K. SOUICI
FIELD DIRECTOR
WILLIAM J. TAM
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCE ENFORCEMENT
ENFORCEMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAWAOLA, ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref.:OCCL:MC

Randy Cates
Mamala Bay Seafood LLC
24 Sand Island Access Road, Box 27
Honolulu, HI 96819

CDUP OA-3719

DEC 17 2014

Dear Mr. Cates,

SUBJECT: Conservation District Use Permit (CDUA) OA-3719
Māmala Bay Seafood Mariculture Facility
Reef Runway Borrow Pit, Ke`ehi Lagoon, Honolulu, O`ahu
TMK (1) 1-1-003:005 (submerged lands)

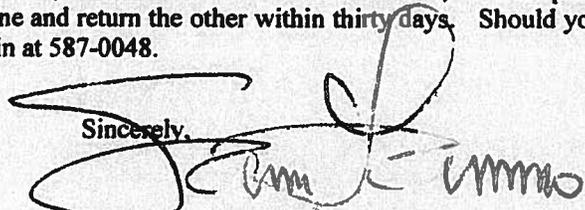
This is to inform you that on December 12, 2014 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) OA-3719 for Māmala Bay Seafood to develop and operate a mariculture facility located in the Reef Runway Borrow Pit, Ke`ehi Lagoon, Honolulu, O`ahu, TMK (1) 1-1-003:005 (submerged lands), subject to the following 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. The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. 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;
7. 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 three 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;

8. 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;
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. 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;
12. 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;
13. 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;
14. The maximum growing volume of the facility will not surpass 60,520 m³, and the maximum number of pens will be ten;
15. The use of feeds containing supplemental hormones shall not be allowed;
16. The approved specie for the facility is moi (Pacific threadfin, *Polydactylus sexifilis*). No other species is approved. Any further culture of fish species must be approved by the Chairperson of the Department of Land and Natural Resources;
17. Signs or other markings of the site shall be regulated by site plan approval. The applicant shall immediately report any ocean use conflicts, such as entanglement of fishing nets on the farm facility, to both the boating and land divisions. Buoys, signs or other markings shall be provided on the ocean surface when required by the Chairperson;
18. The permittee shall forward details of all monitoring efforts to the DLNR and water quality results to the Department of Health in accordance with the existing NPDES permit. The department shall be immediately notified of the failure of the mooring system, a disease outbreak, theft or vandalism;
19. The permittee shall monitor the condition of the submerged fish farm on a daily basis. When weather and surf conditions do not permit physical monitoring, visual monitoring shall be conducted;
20. The lease shall be in compliance with Chapter 190D, HRS. The permittee shall implement mitigative measures approved by the Chairperson to alleviate environmental or use concerns, when the need is apparent or when required by the Chairperson. Such mitigative measures may include the partial or complete removal of the fish farm facility;
21. Cages, anchors, lines and other fish farm facilities shall be removed at the conclusion of the use;
22. Any nets or other debris that foul on the cages or other part of the farm facility shall be disposed of as required by federal, state and city and county regulations and shall not be set free in the marine environment;

- 23. Dead fish shall not be disposed of in the surrounding waters but shall be removed from the site and disposed of at a County approved site;
- 24. The permittee will comply with the Reporting Requirements of the Management Plan for the duration of the lease or until amended;
- 25. The applicant will comply with any restrictions imposed by the Department of Homeland Security when the Airport Security Zone is activated and enforced;
- 26. That the applicant's lease shall be subject to HRS §171-53, and to the concurrence of the Director of Transportation;
- 27. The applicant's lease is for commercial purposes;
- 28. The applicant's lease is clearly in the public interest upon consideration of the overall economic, social and environmental impacts and is consistent with other State policy goals and objectives;
- 29. The applicant has complied with all applicable Federal, State, and County statutes, ordinances, and rules;
- 30. Other terms and conditions as prescribed by the Chairperson; and
- 31. Failure to comply with any of these conditions shall render the permit 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 days. Should you have any questions feel free to contact Michael Cain at 587-0048.

Sincerely,

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

Receipt acknowledged:

 Permittee's Signature

 Date

copy: John Corbin, Aquaculture Planning and Advocacy, 47-215 Iuiu Street, Kaneohe, HI 96744
 DLNR – Chair, Land Division, DAR, DOBOR
 USACE, DOT, DOA - Aquaculture



EXT.
OA 17-6

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2016 NOV 14 A 11: 25

November 9, 2016

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Sam Lemo
Office of Conservation and Coastal Lands
Kalanimoku Building, Room 131
1151 Punchbowl
Honolulu HI 96809

Subject: Request for extension on (CDUA) OA 3719

Dear Sam,

I would like to request an extension for implementation of our CDUA for Mammala Bay Seafood Aquaculture Farm. We have spent the past 12 months in discussions with the FAA Headquarters on the issue of their Circular Advisor 5200 – B which states no Aquaculture within five miles of an Airport. The FAA now recognizes that the language in their Circular must change as many existing Aquaculture facilities currently exist within the five mile as well as new ones. Here in Hawaii this Advisory has significant impact on many existing facilities since nearly all of Hawaii's Aquaculture operations are within five miles of an Airport.

I have made four trips to Washington D.C. to meet with Agencies on this matter, also Senator Schatz staff has agreed to set up a meeting with FAA as well, this meeting has been delayed due to the expansion of the Monument and time constraints. I received word that FAA (HQ) anticipates the new language being developed by the first of this next year.

I am still very much interested and plan to pursue our Aquaculture Venture and would like to request another one year extension for our project. Please let me know if you have any questions.

Sincerely,

Randy Cates
Mammala Bay Seafood, LLC