

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

March 24, 2017

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

REGARDING: Extension Request OA-17-07, Time Extension Request for Conservation District Use Permit (CDUP) OA-3610 regarding the Kewalo Basin Repair Project

PERMITTEE: Hawaii'i Community Development Corporation

LESSEE: Kewalo Harbor LLC, a subsidiary of Howard Hughes Corporation

AGENT: Cord Anderson, Development Manager, Howard Hughes Corporation

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'i 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'i Harbors Division; the basin and surrounding fastlands were transferred to HCDA by Act 86 in 1990, and management was transferred in March 1, 2009.

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.

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 permittee would have needed to initiate construction by February 10, 2013, and complete construction by February 10, 2027.

FIRST TIME EXTENSION REQUEST

On October 23, 2013 the permittee reported that, due to funding and contracting issues, HCDA had been unable to initiate the project within with in the set deadlines, and requested a two-year extension. On December 13, 2013, the Board of Land and Natural Resources approved the request, resulting in a new initiation deadline of February 10, 2015, and a new completion deadline of February 10, 2029.

SECOND TIME EXTENSION REQUEST

On December 26, 2014 the permittee reported that they began pursuing a public/private partnership for the completion of the project and the operation of the harbor. The process ended with Kewalo Harbor, LLC (KH) being awarded the lease. KH subsequently assumed the obligation to undertake the project.

The permittee is currently requesting an additional two-year extension of the deadlines to allow KH to finalize its diligence, design documents, and final approvals from HCDA.

KH anticipated beginning physical work on or before January 1, 2016, and completing the project on or before January 1, 2021. On February 13, 2015, the Board of Land and Natural Resources approved the extension, resulting in a new initiation deadline of February 10, 2017. The completion deadline was not amended.

THIRD TIME EXTENSION REQUEST

In September 2016 agents for Howard Hughes Corporation met with OCCL staff regarding the potential need for an additional extension of the deadlines. At the time the permittee believed they could initiate construction by the February 2017 deadline, but recognized that there was a possibility of a short delay. In January 2017 the permittee notified OCCL that they would not make the deadline, and followed this up with a written request for an additional one-year extension of the initiation deadline. The permittee is not requesting an extension of the completion deadline.

The permittee anticipates that a construction agreement will be executed in March, 2017.

The initial phase of the project will require that several vessels seek temporary moorage outside of Kewalo Basin. The Ala Wai Small Boat Harbor has available slips, but the majority are reserved for vessels participating in the Transpacific Yachting Race in July 2017. The permittee would like to delay construction until after the race, which would allow the dislocated vessel owners to seek temporary mooring permits at the Ala Wai Harbor from the Division of Boating and Ocean Recreation.

During the latter phases of the project it is anticipated that the majority of vessels will be able to find temporary relocation within Kewalo Basin.

The permit is attached as **Exhibit A**.

The current request for an extension is attached as **Exhibit B**.

Maps, site photographs, and site plans are attached as **Exhibits C, D, and E**, respectively.

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.

OCCL notes that the permittee notified our office of the potential need for a time extension in September 2016. They submitted their written request for an extension on February 8, 2016, prior to the expiration deadline and in compliance with §13-5-43 (d). As this is the third time extension request, we are forwarding it to the Board for review.

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 initiation deadline 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:

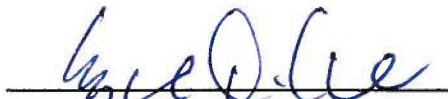
1. That Condition 6 of OA-3610 be amended to read: *Unless otherwise authorized, any work or construction to be done on the land shall be initiated by February 10, 2018, in accordance with construction plans that have been signed by the chairperson, and shall be completed by February 10, 2029. The permittee 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:



Suzanne D. Case, 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

FEB 10 2012

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:

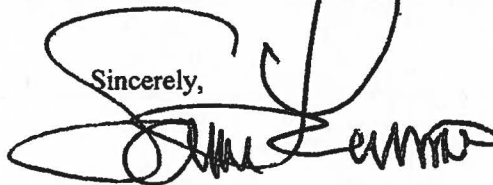
1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any 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;

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.

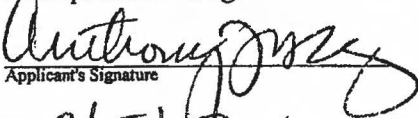
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions feel free to contact Michael Cain at 587-0048.

Sincerely,



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

Receipt acknowledged:


Applicant's Signature

2/15/12
Date



RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2017 FEB -8 A 10:16

February 7, 2017

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

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

**RE: CONSERVATION DISTRICT USE PERMIT (CDUP) OA-3610
EXTENSION REQUEST**
Kewalo Basin Repairs Project
Honolulu, O'ahu, Hawai'i
TMK (1) 2-1-058: por. 131

Dear Mr. Lemmo,

On behalf of the permittee, Hawaii Community Development Authority ("HCDA") and the lessee, Kewalo Harbor, LLC ("KH"), a wholly-owned subsidiary of the Howard Hughes Corporation, we respectfully request a time extension for initiating and completing CDUP OA-3610.

This represents the third request for time extension for this project. CDUP-OA-3610 was approved by the Board of Land and Natural Resources on February 10, 2012. Condition #6 requires the initiation of the project within 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, and requested a two-year extension of Condition #6 until February 10, 2015. This request for an extension was granted by the Board of Land and Natural Resources, extending the deadline related to project initiation to February 10, 2015.

After the first extension HCDA decided to seek a private partner for the improvement project and issued an RFP accordingly. Due to the RFP, public hearings, selection process, and lease negotiations of Kewalo Harbor, KH was unable to initiate the permitted project within the expiration deadline, and requested a two-year extension of Condition #6 until February 10, 2017. This request for an extension was granted by the Board of Land and Natural Resources, extending the deadline related to project initiation to February 10, 2017.

At this time, it is necessary to ask for an additional one-year extension of the deadline to initiate construction. The reasons for this request are explained in the following paragraphs.

KH was issued a Development Permit by board approval from the HCDA on August 3, 2016, leaving itself roughly six months to complete the construction drawings, update the construction costs, negotiate and execute a construction agreement, and receive an approved building permit from the Department of Planning and Permitting. The aforementioned items were completed on time with the exception of an executed construction agreement. It is anticipated a construction agreement will be executed in March, 2017.

Kewalo Basin Repair Project (CDUP-OA-3610)
Extension Request

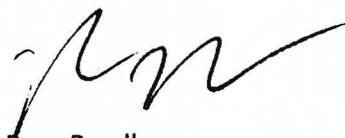
The initial phase of construction will include Piers C & D. This action requires that several vessels will be required to seek temporary moorage locations not within Kewalo Harbor. Although the Ala Wai Small Boat Harbor has available slips, the majority are reserved for vessels participating in the Transpacific Yachting Race in July, 2017. DOBOR also has a term limit of four months for temporary mooring permits per year. By allowing the Kewalo Harbor boat owners to seek temporary mooring permits in September, they will be provided the opportunity to obtain back-to-back temporary mooring permits, subject to DOBOR approval, for eight consecutive months. Once Pier C is completed and additional slips are created within Kewalo Harbor, it is anticipated that the vast majority of vessels will find temporary relocation within Kewalo Harbor during the remainder of the construction effort.

The extension is necessary to provide KH adequate time to finalize its construction agreement and allow current Kewalo Harbor boat owners additional time to seek temporary moorage during the initial phase of construction. This initial phase is estimated to be completed within seven months. KH intends to proceed with the Project as quickly as possible thereafter with an anticipated construction commencement in August, 2017 with a completion date on or before January 1st 2021, depending on phasing and movement of harbor tenants. We therefore request a 1-year extension of the CDUP-OA-3610 in order to accommodate this timeline, until February 10, 2018.

Attached is a copy of a memo sent to you from HCDA providing their concurrence for this request.

Should you have any comments or questions relating to the above material or the submittal of the Extension Request to OCCL, please feel free to contact Race Randle at (808) 791-2998.

Sincerely,



Race Randle
Vice President
The Howard Hughes Corporation



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



David Y. Ige
Governor


John Whalen
Chairperson

Jesse K. Souki
Executive Director

February 6, 2017

MEMORANDUM

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

FROM: Jesse K. Souki, Executive Director
Hawaii Community Development Authority 

SUBJECT: CDUP OA-3610 Kewalo Basin Repair Project

The Hawaii Community Development Authority ("HCDA") authorizes the Howard Hughes Corporation ("HHC") to request a time extension for Conservation District Use Permit (CDUP) OA-3610 Kewalo Basin Repair Project in Kaka'ako, Kona District, Oahu, TMK: (1) 2-1-058: por. 131 (submerged lands), expiring on February 10, 2017. On September 1, 2014, the HCDA and the HHC had entered into a thirty-five (35) year General Lease No. 14-1 for the Kewalo Basin Harbor, including the submerged lands and certain surrounding fast lands. As required by General Lease No. 14-1, the HHC will be completing the Kewalo Basin Repair Project.

If you have any questions or comments, please contact Lindsey Doi Leaverton, Asset Manager, at (808) 594-0300.

c: Mr. Cord Anderson, Development Manager
The Howard Hughes Corporation

547 Queen Street
Honolulu, Hawaii
96813

Telephone
(808) 594-0300

Facsimile
(808) 587-0299

E-Mail
contact@hcdaweb.org

Website
www.hcdaweb.org



Kewalo Basin Repairs Project Conservation District Use Application

Location Map

Hawai'i Community Development Authority



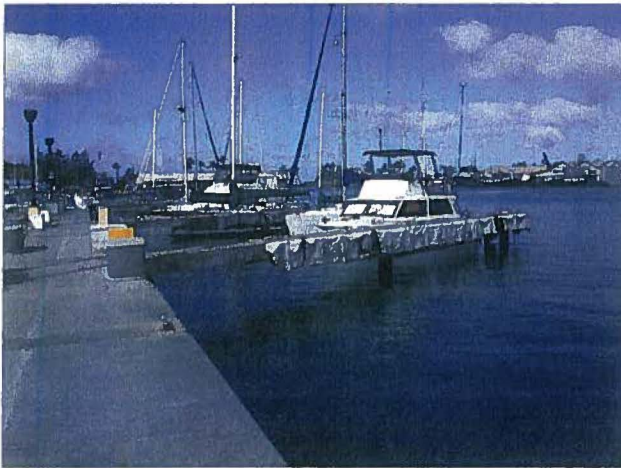
Kewalo Basin Repairs Project Conservation District Use Application
Project Area and Vicinity
 Hawai'i Community Development Authority



1 'Ewa Loading Dock and former Fisherman's Wharf restaurant.



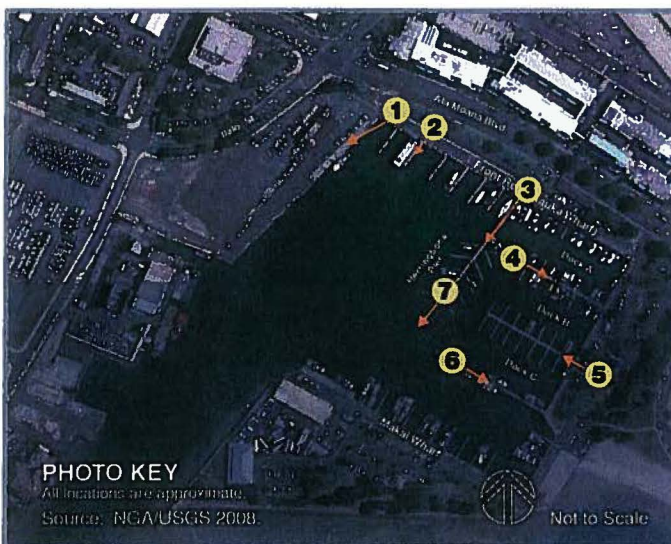
2 Front Row catwalk.



3 Herringbone Pier looking makai.



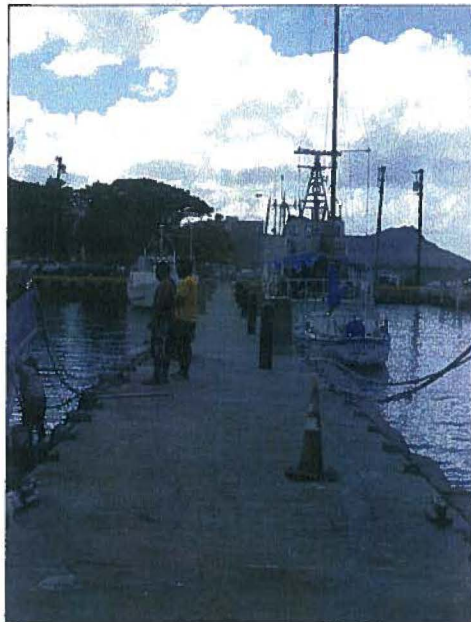
4 Pier A looking east.



Source: Date of Photos, July 2011.



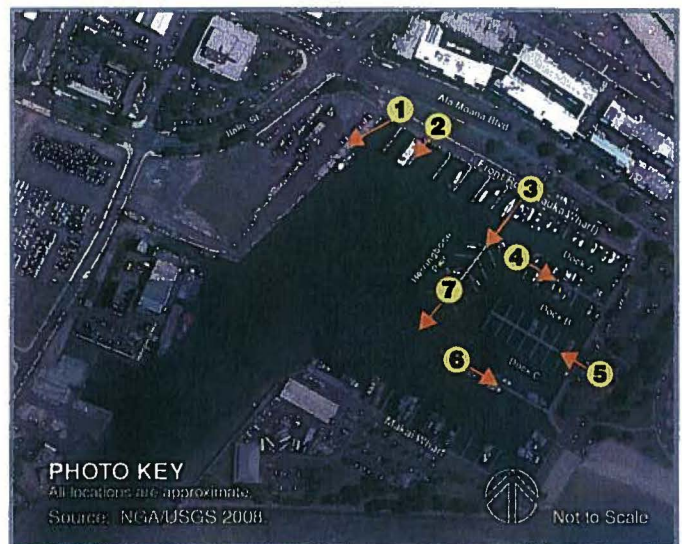
5 Pier B looking west.



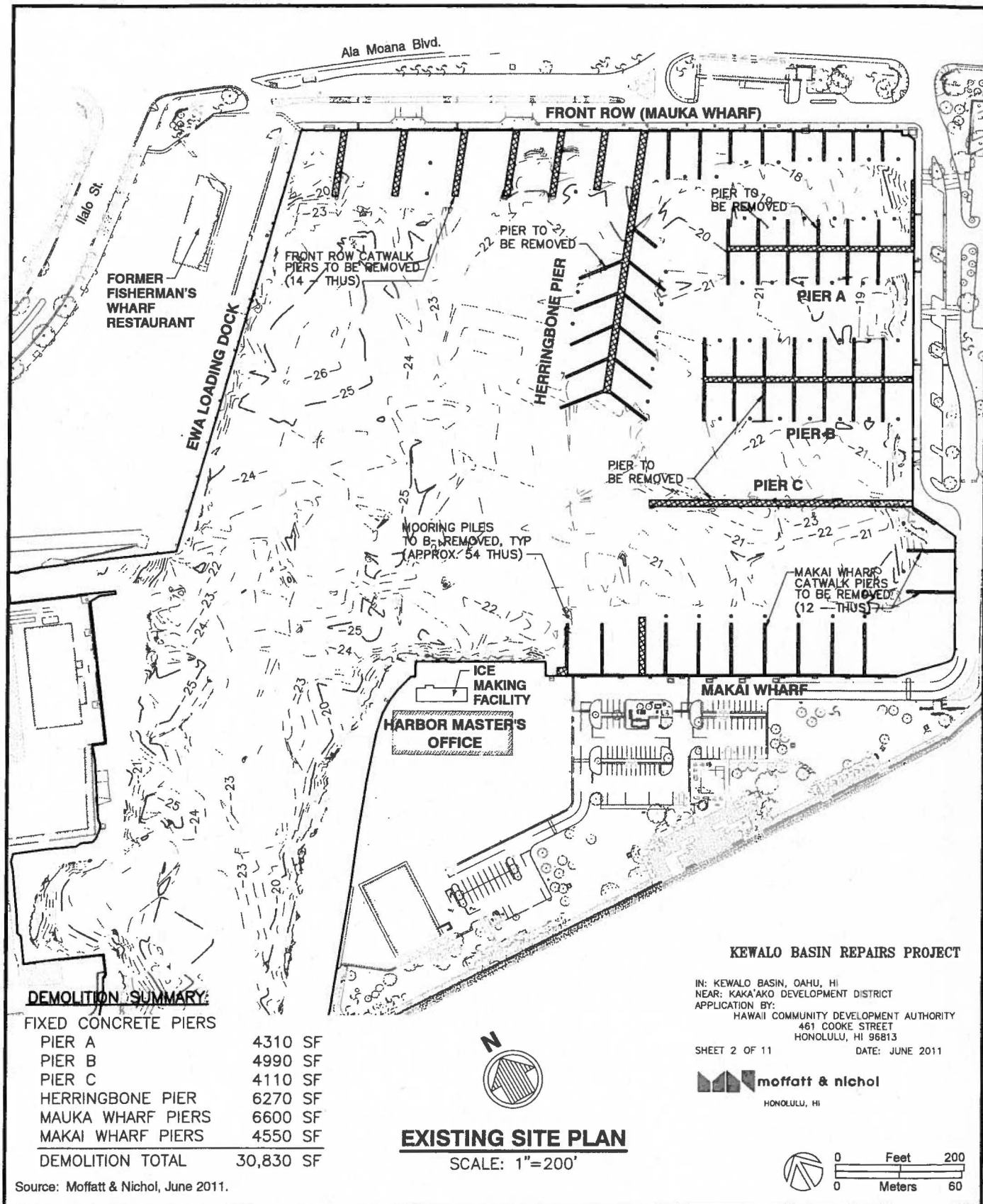
6 Pier C looking east.



7 Makai Wharf from Herringbone Pier. Harbor master building and ice-making facility also visible.



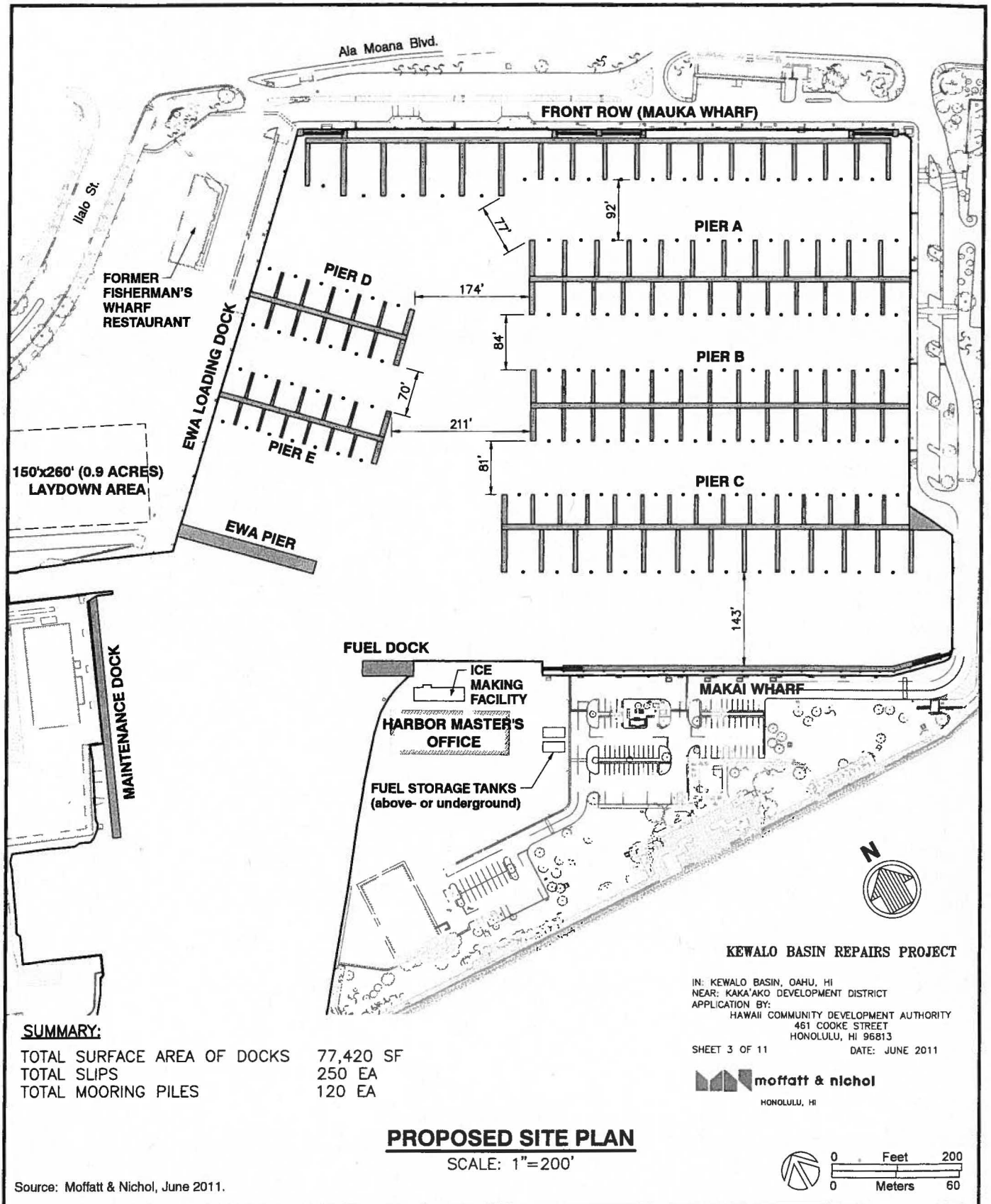
Source: Date of Photos, July 2011.



Kewalo Basin Repairs Project Conservation District Use Application

Existing Site Plan

Hawai'i Community Development Authority



Kewalo Basin Repairs Project Conservation District Use Application

Proposed Site Plan

Hawai'i Community Development Authority