

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

January 12, 2018

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

REGARDING: Time Extension Request OA-18-10 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 anticipated that the FAA would amend the language in the circular in way that would allow him to secure the needed concurrence of the state Director of Transportation on the lease. As such, he requested an additional one-year extension of the deadlines contained in CDUP OA-3719.

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, 2017 and complete construction by December 12, 2019.

All other conditions imposed by the Board under CDUP OA-3719 remained in effect for both time extensions.

THIRD EXTENSION REQUEST

On November 21, 2017 the permittee submitted a request for a third one-year time extension. According to the information he presented, the previous issue regarding the facility being a potential hazardous wildlife attractant has been resolved. However, he reports the State Department of Transportation has raised two new concerns regarding homeland security and site access.

The permittee has been in contact with Homeland Security, and is confident that these issues can be resolved in a timely manner.

The extension request has been included as **Exhibit 1** with this submittal.

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.

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;

We understand that the owner of Māmala Bay Seafoods, LLC participated in discussions with both the State DOT and the FAA to resolve prior concerns. The permittee appears to be actively working with the State and Homeland Security to resolve the current set of issues. 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:

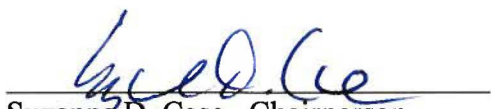
1. That condition 7 of CDUP OA-3719 is amended to provide that the permittee will have until December 12, 2018 to initiate construction and must complete construction by December 12, 2020;
2. That all other conditions imposed by the Board under CDUP OA-3719, as amended, shall remain in effect.

Respectfully submitted,



Michael Cain
Office of Conservation and Coastal Lands

Approved for submittal:



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



Time Extension Req.

OA 18-10

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2017 NOV 21 A 8 34

November 14, 2017

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 year dealing with the FAA on this matter, I made several more trips to D.C. with mixed results as the election year had a major impact on our ability to move this matter forward with the FAA. However, the FAA did finally come out and state that they now will allow Aquaculture to occur within five miles of an Airport, this was a major breakthrough for our industry.

With this new position, I have reached out to HDOT and requested to meet with them to address any issues relating to our CDUA, for several months I did not get a response to my requests. Recently I once again made the request and HDOT has agreed to meet on this matter.

Currently there are only two issues that are stated as concerns, both issues are new and the bird issues are no longer mentioned in writing. The two issues listed are Homeland Security and Access issues. I have been in contact with Homeland Security and spoke with Lt. John Bannon, he is willing to meet with HDOT and I, he stated that he has read all of the past correspondence and agreed that as long as I agreed to abide by all of their rules during security closed zones, and then they have no issues with our project.

The access issues have already been addressed in the past with HDOT, the area is open to the general public and our operations do not hamper any access issues for HDOT as our operation will be submerged.

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

For these reasons I am more hopeful of being able to navigate through all concerns, I respectfully request an extension and am fully committed to this project. If you have any questions please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Cates", followed by a stylized flourish.

Randy Cates
Mammala Bay Seafood, LLC