

**STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF
CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

March 23, 2018

CDUP: MA-3663

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

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP) MA-3663 for Shoreline Erosion Control

APPLICANT: Hololani Resort Condominiums

LANDOWNER: Hololani Resort Condominiums /State of Hawai'i

LOCATION: 4401 Lower HonoaPi'ilani Road, Lahaina, Maui

Tax Map Key: (2) 4-3-010:009 and adjacent submerged land

SUBZONE: Resource

BACKGROUND (Exhibit A & B)

CDUP MA-3663 was approved by the Board of Land and Natural Resources on May 9, 2014 for the Hololani Resort Condominiums (HRC) Shore Protection Project subject to thirty-one (31) terms and conditions.

TIME EXTENSION REQUEST (Exhibit C)

The Office of Conservation and Coastal Lands (OCCL) received a request from HRC via their consultant Sea Engineering, to extend the time to initiate construction. Further discussion with HRC's counsel indicated that an extension to complete construction would also be necessary.

According to Sea Engineering, since the CDUP was authorized, during the initial 2-year period, additional requirements requested by the Maui County Planning Department were completed, the Special Management Area Permit and Shoreline Setback Variance was issued in July, 2016 and the first time extension for the CDUP was granted in April, 2016. The projects final plans were completed in August 2017 with minor changes occurring in the ensuing months. Construction plans have been forwarded to the Department for approval and as the construction plan reviewer, the OCCL awaits the completion of the land disposition prior to signing off on the plans.

As part of the final design, in coordination with the Maui County Department of Public Works, an agreement was reached to design and construct a new storm drain outlet at the north end of the property. This design incorporates a permanent shoreline access stairway and will protect a section of Lower HonoaPi'ilani Road that is threatened by coastal erosion. The project went to bid in November 2017 and a contractor was selected in December.

The Right of Entry and Easement request was presented to and approved by the Board on January 12, 2018. The entry and easement are subject to approval by the Governor and concurrence from the Legislature. The completion of the Legislative action may not be possible until late May or early June. Further, if the conditions for the ROE and easement are not completed by early May, the project will likely have to be postponed until Spring 2019 due to weather and seasonal conditions.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in the Hawai'i Administrative Rules (HAR), §13-5-43, that allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally HAR, §13-5-43(c), states: "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.

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. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

In the present case, none of these factors suggest any reason to deny the request. The Permittee has endeavored to obtain all permits and approvals prior to initiating the project. Approval of the time extension request shall hopefully provide the time needed to complete the project.

RECOMENDATION:

That the Board of Land and Natural Resources APPROVE a two year time extension to initiate and complete the Shoreline Erosion Control structure located at 4401 HonoaPi'ilani Road, Lahaina, Maui, Tax May Key: (2) 4-3-010:009 and adjacent submerged land subject to the following conditions:


1. That condition #7 of CDUP MA-3663 is amended to provide that the Permittee has until May 9, 2020 to initiate construction and until May 9, 2021 to complete construction; and
2. That all other conditions imposed by the Board under CDUP MA-3663, as amended, shall remain in effect.

Respectfully submitted,



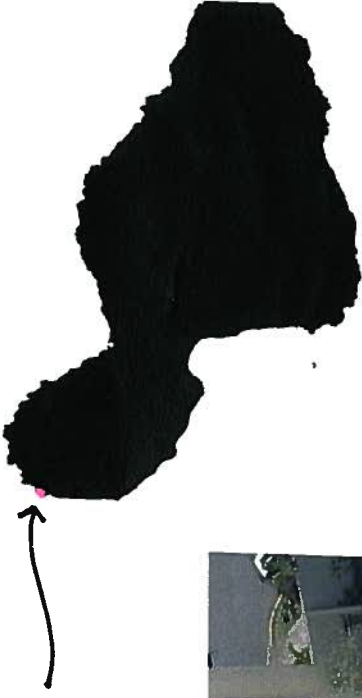
K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



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

2015 Maui County Pictometry



EXHIBIT

A

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
JESSE K. SOUKI
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
ENGINEERS
FORESTRY AND WILDLIFE
HERITAGE PRESERVATION
KAOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

CDUP: MA-3663
MAY 13 2014

Jim Barry
Sea Engineering Inc.
Makai Research Pier
Waimanalo, HI 96795

Dear Mr. Barry:

This letter is to inform you that on May 9 2014, the Board of Land and Natural Resources (BLNR) approved Conservation District Use Application (CDUA) MA-3663 for the Hololani Resort Condominiums shore protection project, located at Kahana, Lahaina, Island of Maui - TMK: (2) 4-3-010:009, subject to the following conditions:

1. The permittee shall redesign a shoreline protection structure that is located substantially landward of the May 2, 2013 certified shoreline;
2. 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;
3. 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;
4. The permittee shall obtain a land disposition from the department for any remaining portion of the shoreline protection structure on state lands;
5. The permittee shall comply with all applicable department of health administrative rules;
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;

EXHIBIT B

CDUP MA-3663

7. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within two years 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 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. 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;
13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
14. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
15. 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;
16. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The Historic Preservation Division shall be contacted (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
17. Monitoring of the nearshore water quality shall be conducted in accordance with best management practices;

CDUP MA-3663

18. Work shall be conducted during calm weather periods to the most practical extent possible and no work shall occur if there is high surf or ocean conditions that will create unsafe work or beach conditions;
19. The permittee shall implement the proposed Best Management Practices (BMPs) and monitoring and assessment plan to maintain BMPs to minimize dirt and silt from entering the ocean and the ability to contain and clean up fuel, fluid, or oil spills immediately under this authorization and immediately report any spills or other contamination(s) that occurs at the project site to the Department of Health and other appropriate agencies;
20. The permittee shall ensure that excessive siltation and turbidity is contained or otherwise minimized to the satisfaction of all appropriate agencies, through silt containment devices or barriers, or other requirements as necessary;
21. Appropriate safety and notification procedures shall be implemented. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project;
22. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
23. The activities shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
24. When the Department is notified that an individual activity deviates from the scope of work approved by this authorization or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the permittee to undertake corrective measures to address the condition affecting these resources. The permittee must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
25. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this permit;
26. The Office of Conservation and Coastal Lands shall be notified (587-0377) in advance of the anticipated construction dates and shall be notified immediately if any changes to the scope or schedule are anticipated;
27. The permittee shall maintain safe lateral beach access for the life time of the structure;
28. If flanking or end effects are detected on the Royal Kahana property and can be attributed to the Hololani shoreline protection structure, the permittee shall place beach grade sand in the area to mitigate such effects;
29. The permittee shall provide, maintain, and properly add signage for a public access through the property to the shoreline;

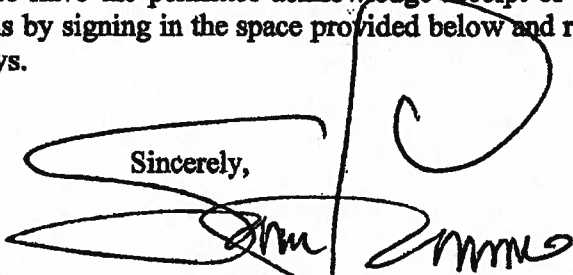
CDUP MA-3663

30. Other terms and conditions as may be prescribed by the Chairperson; and
31. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Finally, we ask that you comply with the recommendation of our State Historic Preservation Division (SHPD) in regards to the need to prepare an archaeological monitoring plan, and that a draft archaeological monitoring plan be provided to SHPD for approval prior to project initiation (letter attached).

Should you have any questions, please contact Sam Lemmo of the Office of Conservation and Coastal Lands at 587-0377. Please have the permittee acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

Sincerely,


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

Hololani AOKO

by Stuart Allen, its President

Receipt acknowledged:

12-13-17

Date:

Attachment

c: Chairperson
MDLO
County of Maui Planning Department, Public Works



Sea Engineering, Inc.

Makai Research Pier • Waimanalo, Hawaii 96795-1820 • E-mail: sei@seaengineering.com
Phone: (808) 259-7966 / FAX (808) 259-8143 • Website: www.seaengineering.com

March 1, 2018

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

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2018 MAR - 1 P 12:40
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Lemmo,

Subject: Permanent Shore Protection of the Hololani Resort Condominiums: Extension for CDUP MA3663

The Hololani Resort Condominiums (the Hololani) are located at 4401 Lower Honoapiilani Road in the Kahana area of Maui (TMK (2) 4-3-010:009) and have had an on-going coastal erosion problem since approximately 1988. The Hololani Shore Protection Project (the project) has been working to acquire the necessary permits to proceed with construction of shore protection since 2011. On May 13, 2014, the Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL), approved a Conservation District Use Permit (CDUP MA3663) for the project. The approval specified that construction should be initiated within two years of approval, and that it be completed within three years. During the initial two-year period, the project completed additional requirements requested by the County of Maui Planning Department, and was issued a Maui Special Management Area Permit and Shoreline Setback Variance in July, 2016. The project requested an extension of the CDUP in April, 2016, and 2-year extension was granted in May with construction mandated to begin by May, 2018 and completed by May, 2019.

The project final plans were completed in August, 2017, with minor changes occurring in ensuing months. As part of the final design, the project agreed to design and construct a new storm drain outlet at the north end of the Hololani property in coordination with the Maui Department of Public Works. The final design also incorporates a permanent shoreline access stairway, and will protect a section of Lower Honoapiilani Road that is threatened by coastal erosion. The project went to bid by invitation in November, 2017, and a contractor (Kiewit Pacific, Inc.) was selected in December. Start of work was to be April 2, 2018.

An application for both a Right-of Entry (ROE), and an easement and lease for the use of State lands was submitted to the Maui office of the DLNR Land Division on September 18, 2017.

The ROE and Easement request was presented to the Board of Land and Natural Resources on January 12, 2018. The request was granted and, based on the staff report, the ROE was subject

EXHIBIT C



to :

A. The standard terms and conditions of the most current right-of-entry permit document form, as may be amended from time to time; and

B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

On February 6, 2018, the project was notified of the Board action, and that the ROE would be contingent of issuance of the easement and lease for use of State land.

Since that notification, the project has drafted a concurrent resolution for legislative action, and are pursuing the easement and lease with all possible speed. However, we have been notified that completion of the legislative action will not be possible until late May or early June, at best. That timeline pushes the construction schedule into the winter wave regime and out of the weather window necessary for construction.

The project is still hopeful that the DLNR Land Division will work with the project to find a way to issue a ROE in time to meet the project schedule. However, if no ROE is received by early May, the project will likely have to postpone start of construction until the next favorable weather window in the Spring of 2019.

Due to all considerations noted above, the project requests a three-year extension for CDUP MA-3663 as a contingency in case postponement of construction is required.

Thank you for your assistance with this project.

James H. Barry, P.E.
Coastal Engineer
Sea Engineering, Inc.