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

180-Day Exp. Date: June 13, 2018

April 27, 2018

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

REGARDING:	Conservation District Use Application (CDUA) OA-3809 *Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project; Right of Entry to State Lands for Staging Area*
APPLICANT:	Doris Duke Foundation for Islamic Art
AGENT:	Ronald A. Saito, HHF Planners, Honolulu
LOCATION:	Kūpikipiki'ō (Black Point), Waikīkī Ahupua'a, Kona District, O'ahu
OWNERSHIP:	Breakwater: Owned by Doris Duke Foundation Staging Area: State-owned submerged lands
TMK:	(1) 3-1-041:005
AREA OF PARCEL:	4.921 acres
AREA OF USE:	0.608 acres
SUBZONE:	Protective

PROJECT SUMMARY

The 4.921-acre subject parcel, known as the Shangri La property, is comprised of both fast and submerged lands. The submerged lands, totaling 0.608 acres, were conveyed to the property owner by way of an Exchange Deed in 1938. At the same time the landowner established a perpetual easement for the Territory of Hawai'i consisting of a four-foot wide pedestrian right-of-way along the shoreline.

Two breakwaters were constructed in 1938 to create a private boat basin on the parcel. The Diamond Head Breakwater was constructed over a natural lava dike, while the Koko Head

Breakwater was placed directly on the substrate. A public walkway was created following the easement along the shoreline between the basin and the Shangri La estate.

Exhibit 1 shows the project location. **Exhibit 2** shows the project site in relation to the property boundaries.

Figure 1 below shows the current built environment.

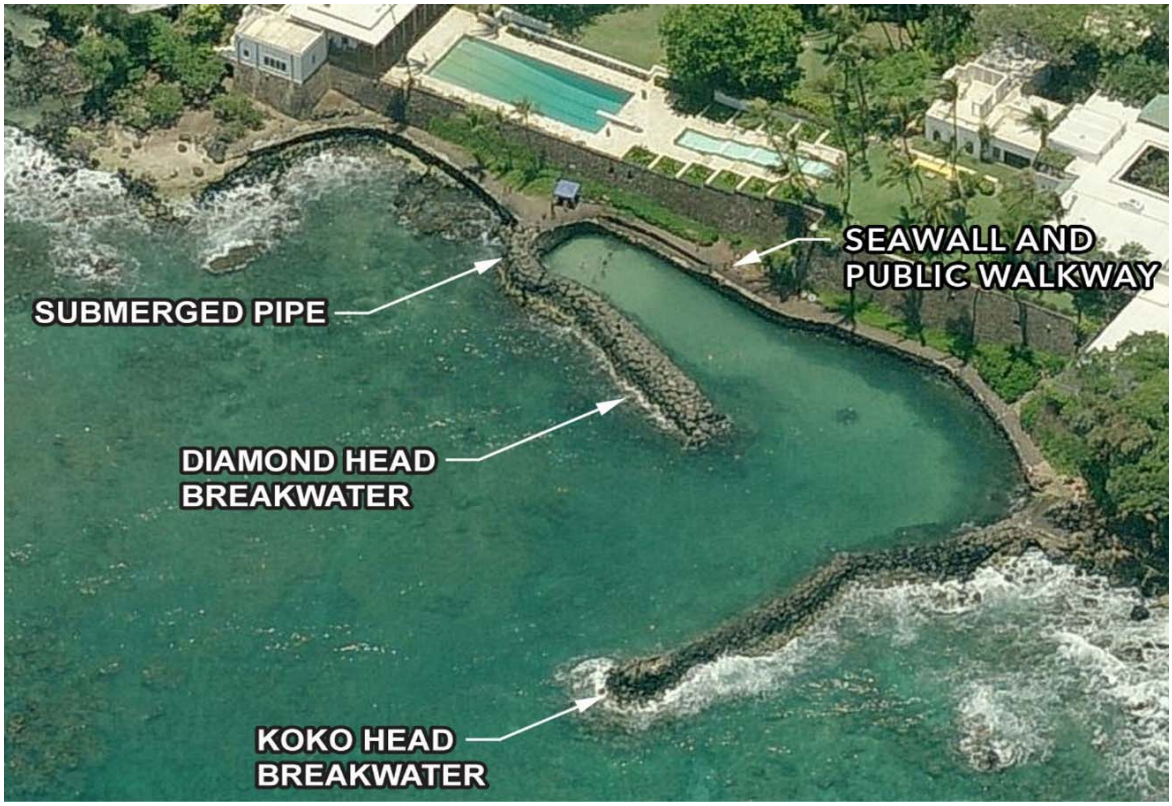


Figure 1: Built Environment (from CDUA OA-3809)

Exhibit 3 contains a site plan with more detailed designations of the man-made structures.

This current proposal consists of two main components: 1) dismantling the Diamond Head Breakwater to the last row of boulders situated on the ocean floor, and leave the remnants of the structurally stable natural volcanic dike that underlies the breakwater; and 2) reinforcing the seawall using boulders removed from the breakwater along with imported large rocks. The stated purpose is to address public safety issues while maintaining public access and reinforcing the shoreline through a natural setting.

Cranes and excavators will be positioned on barges makai of the breakwater, and held in place using a combination of spuds, anchors, and other working vessels. Small vessels will accompany the barges, and be used to transport workers to the site. The staging area will be less than 250 square feet. The proposed makai staging area is on State-owned submerged lands, and will require a Right of Entry from DLNR.

HISTORY OF THE AREA

The project area is a former boat basin that was constructed in 1936 on privately-owned submerged lands makai of the Doris Duke Foundation for Islamic Art, a.k.a. Shangri La. The basin is on the southwestern facing side of Kūpikipiki‘ō[1], a cape formed by a lava flow from the southeast side of Pu‘u Le‘ahi (Diamond Head). The near shore area is composed of lava rock, submerged remnants of volcanic dikes, and exposed outcroppings of limestone reef. There is a fringing reef outside of the project area.

The existing historical records do not indicate what pre-contact land uses existed at Kūpikipiki‘ō, though it is referenced as a place name in a number of traditional chants. The earliest historical reference is from 1895, when royalists seeking to restore the Hawaiian monarchy cached 300 rifles on the cape in support of a failed insurrection against the government of Sanford Dole.

A newspaper article from 1908 describes the point as having the best fishing in the vicinity of Honolulu when the surf was calm, noting that large ulua, and smaller po‘opa‘a, moana, hinalea luawahine, mamama, and humuhumu were plentiful[2].

The U.S. Army placed a small balloon battery on the cape in 1910. In the early 1920s the cape was developed as an upscale residential neighborhood composed of large estates. The Shangri La estate was developed in the 1930s.

The submerged lands off shore of the estate were conveyed by way of an Exchange Deed dated December 8, 1938 between the Territorial Land Board of Hawai‘i and Mrs. Doris Duke Cromwell, the estate owner. Under the Exchange Deed Cromwell transferred a shoreline parcel in Kailua to the territory for use as a park, and in return became one of the few private owners of submerged land in Hawai‘i. At the same time Cromwell established a perpetual easement for the Territory consisting of a four-foot right-of-way that serves as a pedestrian walkway along the coastline.

In 1937 Cromwell used a portion of a natural volcanic dike that ran from the eastern end (Diamond Head side) as one of the walls of a salt water swimming pool. The pool floor was later dredged to create a basin for vessel berthing. A rubble mound breakwater was built over the dike to protect the site from Kona storm waves. It was completed in 1938, and is approximately 140-feet long and six to eight feet wide at its crest. The base extends another six to eight feet within the basin, and eight to ten feet outside. It stands between 7.5 to 8.7 feet above sea level.

Figure 3 shows the conditions of the area in 1937, prior to the construction of the breakwater.

[1] Hawaiian, *to rage, as the sea when wind and current are opposite (A dictionary of the Hawaiian language*, Rev. H. H. Parker, 1922).

[2] *Along the Reef With a Bamboo*, by T.O.P Joynt. Honolulu Advertiser, 1908

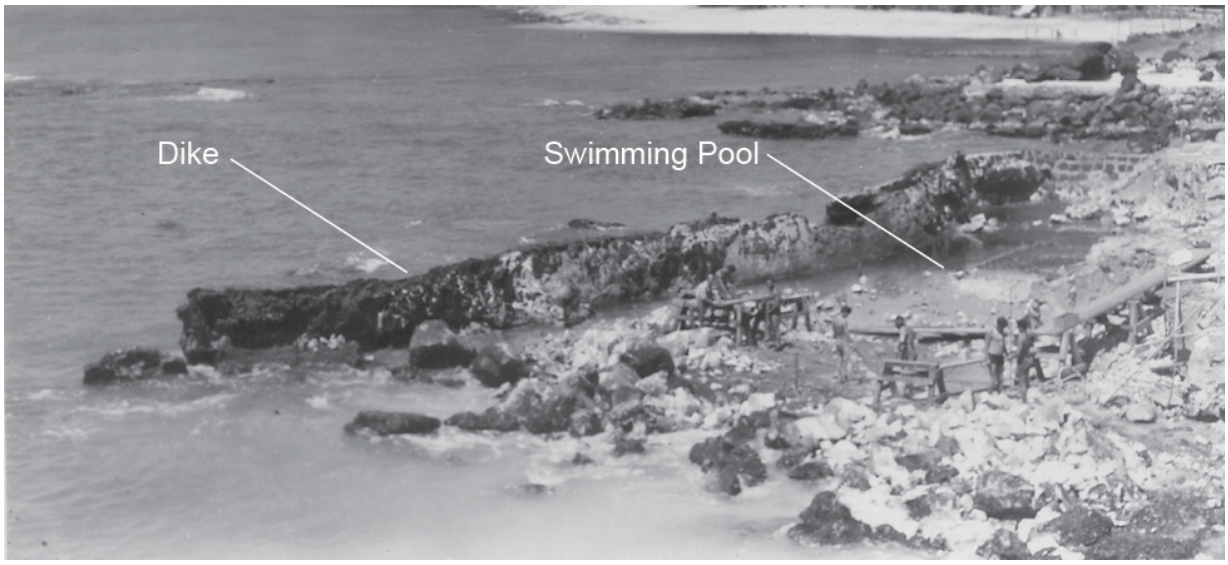


Figure 3: The site in 1937

A second breakwater was built on the eastern end (Koko Head side) of the property to protect the site from south swells. No work is being proposed on the Koko Head Breakwater.

CURRENT CONDITIONS

The near shore area along Kūpikipiki'ō is composed of lava rock, submerged remnants of volcanic dikes, and exposed outcroppings of limestone reef. There is a fringing reef outside of the project area.

The boat basin is about 0.32 acres in size; this figure includes the waters inland of the Diamond Head Breakwater and up to the channel entrance bounded by the Koko Head Breakwater where the submerged dike once extended. The interior consists of a basaltic substratum covered with a layer of sand.

A 48-inch drainage pipe is located beneath the Diamond Head Breakwater.

A tall concrete retaining wall with lava rock veneer defines the limit of the developed portion of the Shangri La property. This retaining wall increases in height as it nears Shangri La's main house, and ranges from approximately 13 feet to 40 feet tall.

Figure 4 shows the swimming basin, with the breakwater on the left and the retaining wall on the right. Figure 5 shows the seawall and the pedestrian walkway (behind the fence).



Figure 4: Swim basin



Figure 5: Detail of seawall and easement

Public access along the shoreline is provided on the walkway along the basin's seawall, and there are concrete stairs leading down to the water on the southern end of the basin near the Koko Head Breakwater. A 6-foot-high aluminum fence was installed in May 2014 along the public shoreline walkway at the edge of the seawall. The fence and the walkway are outside of the Conservation District.

The basin is no longer used as a boat harbor. It has become a popular recreation area, used for swimming and snorkeling. The public access is used by surfers and fishermen to access nearby waters.

The landowner reports that there has been an increase over the past couple years of higher risk behavior, including jumping from the wall, breakwater and fence; underage drinking; drug use; and tight-rope walking over the basin.

PROPOSED USE

In order to address the unsafe behavior, the applicant proposes to dismantle the Diamond Head Breakwater and to relocate the boulders along the base of the seawall.

Breakwater Dismantling

The breakwater dismantling will involve removing the boulders that were used for construction in 1937. The lowest row of boulders will be left in place. The state of the original volcanic dike is unknown. The applicant will remove any broken or lose pieces of the dike, but any structurally sound portions will be left intact. The existing drainage pipe will also be removed.

The height of the current revetment is nine feet above mean sea level. Upon completion of the project the estimated height of the remnant dike will be between zero and three feet above mean sea level. There will be no above sea level connection between the pedestrian walkway and the remnant dyke upon the completion of the project.

Shoreline Protection

Boulders from the seawall will be placed along the face of the existing seawall along the entire length of the basin. The design will incorporate both an engineered revetment with a clearly defined geometry and the placement of boulders to imitate a more natural-appearing shoreline.

The base of the revetment will extend six to ten feet from the seawall, and will remain below mean sea level. A second layer of boulders will be placed to create an area that is continuously exposed at low tide, surrounded by boulders that will only be exposed at high tide. The applicant states that the design is intended to match the intertidal conditions of the nearby shoreline.

The project will require approximately 850 cubic yards of boulders to create the seawall revetment. An estimated 500 cubic yards of material will be available from the dismantled breakwater; the applicant proposes to import an additional 350 cubic yards of new rock.

Exhibit 4 contains the conceptual site plan for the project. **Exhibit 5** details the proposed placement of boulders along the seawall. **Exhibit 6** contains the preliminary construction plan. **Exhibit 7** contains simulated views of the project site after the work is completed.

Timeline

The work will commence once the applicant has secured a Conservation District Use Permit (CDUP) and any applicable land use entitlements, including a Department of Army Permit from the U.S. Army Corps of Engineers. The entitlement process is anticipated to be

completed in 2018. The construction period will take six to nine months. Implementation might be postponed during summer months due to south shore swells on O`ahu.

ANALYSIS

On December 19, 2017 the Department notified the applicant that:

1. The proposed use was an identified land use in the Protective subzone of the Conservation District, pursuant to Hawai`i Administrative Rules (HAR) §13-5-24, P-8 STRUCTURES AND LAND USES, EXISTING, (D-1) *Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original use or different from what was allowed under the original permit. When county permit(s) are required for the associated plan(s), the department's approval shall also be required*, and that this use required a permit from the Board of Land and Natural Resources, who have the final authority to grant, modify, or deny any permit.

2. A public hearing would be required pursuant to HAR § 13-5-40 *Hearings,* (a) *Public hearings shall be held on* (I) *All applications for a proposed use of land for commercial purposes.*

3. Pursuant to HAR §13-5-31 *Permit applications,* the permit required that an environmental assessment be carried out.

   The Draft Environmental Assessment was published in the November 8, 2016 *Environmental Notice.*

   In June 2017 the applicant submitted their Final Environmental Assessment (FEA) for the project. The FEA contained written responses to all the comments that had been received. In addition, the applicant included additional information regarding recreational activities in the area, and clarification on how the boulders will be placed within the basin.

   After reviewing the FEA DLNR determined that the proposal did not trigger the Significance Criteria outlined in Hawai'i Administrative Rules Title 11 Chapter 200, ENVIRONMENTAL IMPACT STATEMENT RULES, and published a Finding of No Significant Impact (FONSI) on June 23, 2017.

SUMMARY OF COMMENTS

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: DLNR – Land Division, Historic Preservation, Division of Aquatic Resources, Division of Conservation and Resource Enforcement, Division of Boating and Ocean Recreation; US Army Corps of Engineers; US Fish and Wildlife Service; Office of Hawaiian Affairs; State Office of Planning; County Department of Planning and Permitting; Wai'alae-Kahala Neighborhood Board No. 3; Surfrider Foundation; and the Historic Hawai'i Foundation.

A notice of the application was placed in the December 23, 2017 edition of the Office of Environmental Quality Control's *Environmental Notice*.

Copies of the application were available for review at the Hawaii State Library and the Kaimukī Public Library. They were also available on OCCL's website.

OCCL held a public hearing on February 7, 2018 at the Wesley United Church in Honolulu, with OCCL Administrator Sam Lemmo serving as Hearing Officer. Representatives from HHF and the Doris Duke Foundation presented a summary of the project, and were available to answer questions. Two members of the public attended, one of who made a presentation opposed to the project. This will be summarized below.

Written comments were received from the following individuals and agencies:

DLNR Division of Aquatic Resources (DAR)

DAR agrees with the need to minimize unsafe behaviors, but would like to encourage safe public access to the ocean to the greatest extent possible.

DAR would like to review the barge spudding plan prior to implementation, and requests that the plan identifies how the outside barge will be secured so as to avoid impacts to coral and live rock.

DAR would also like to conduct a final site survey before work commences to identify and remove any endemic coral species within the impact area.

Finally, DAR is concerned about the introduction or enhancement of invasive species in the project area, and requests that all barges and in-water equipment be inspected prior to deployment.

Applicant's response

The applicant will work with DAR to develop barge anchoring locations. The final plan will identify how the outside barge will be secured.

The applicant or contractor will meet with DAR staff to coordinate a final round of live rock and coral inspection and translocation prior to commencing work.

All barges and in-water equipment will be inspected for the presence of invasive species prior to deployment, and will coordinate with DAR to develop a monitoring and action plan to address the possible colonization of invasives on construction equipment.

DLNR Land Division

The Land Division notes that applicant is requesting the use of state submerged lands as a temporary staging area during construction, and that a Right of Entry will be needed for the duration of the construction period.

U.S. Army Corps of Engineers

The Corps has completed their review of the submittal pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. In accordance with Section 404, a Department of the Army (DA) permit may be required for any activity resulting in the discharge and/or placement of dredged of fill material into the Pacific Ocean and in accordance with Section 10, a Department of the Army (DA) permit may be required for any structures or activities occurring in, over, under, and affecting the Pacific Ocean.

Applicant's response

The applicant understands that Department of the Army permits may be required for the project, and will continue coordinating with the Corps as the project progresses.

State Office of Planning (OP)

The Office confirms that the project is located outside the boundaries of the special management area (SMA), and not subject to SMA permitting requirements.

OP concurs that swimming, fishing, sunbathing, and access to nearby surfing spots should be available to the public. The existing shoreline walkway and concrete steps at the Koko Head Breakwater should be maintained to ensure that the ocean is accessible to the public.

OP notes that approximately six vehicles would be parking along residential streets, and requests that the applicant and contractors shall mitigate potential traffic impacts. Construction-related activities for the proposed project shall not affect public parking accessible to ocean recreational users.

OP concurs that project construction-related materials should not be stockpiled in, or in close proximity to, aquatic habitats, and all construction activities should be confined with implementation of best management practices, including installation of silt curtains and debris booms, to prevent potential erosion and polluted runoff from adversely impacting State waters.

OP reminds the applicant that no artificial light from the proposed project, except as provided in HRS §§ 205A-30.5 (b)(2) and 205A-71(b)(2), shall be directed to travel across property boundaries toward the shoreline and ocean waters.

OP requests that the applicant consult with the them for more information on the CZM federal consistency review for the subject project.

Applicant's response

Ocean recreation activities will continue, with the exception of potentially unsafe activities such as jumping from the breakwater. The stairs will remain and continue to be maintained by the applicant. The applicant intends to continue to allow ocean recreation activities within the basin.

The applicant states that the placement of the revetment at the base of the seawall will help mitigate overtopping of waves during high surf events.

The applicant believes that the potential addition of six vehicles parked in the residential area will have a minimal impact on accessibility, as there are many available parking spaces within the nearby neighborhoods. Access to the basin will be restricted during construction activities for safety reasons.

Boulders from the breakwater will be stockpiled on a barge, and not within the aquatic habitat. In addition, the contractor will be required to finalize a Best Management Practices plan prior to work beginning.

The project does not involve any exterior lighting.

The applicant will coordinate with OP to address CZM federal consistency review at the appropriate time.

County Department of Planning and Permitting

The Department has no objections to the proposed work.

Historic Hawai'i Foundation (HHF)

HHF notes that the Shangri La Boat Harbor site is a recognized historic property designated as the *Shangri La Boat Harbor* SIHP #50-80-14-7839. It was recommended to be significant under three criteria: its association with the lives of persons significant in our past; its embodiment of the distinctive characteristics of a type, period, or method of construction; and the likelihood that it could yield information important in prehistory or history.

HHF disagrees with the applicant's statement that the structure lacks artistic merit. They note that the applicant assessed the basin and breakwater as a minor component of the Shangri La estate, rather than as a historic structure in its own right.

HHF also states that it is necessary to complete the Section 106 prior to any Conservation District Use Permit being issued. HHF has notified the State Historic Preservation Division that they wish to be part of the consultation process, and note that SHPD has not notified them of any such opportunities.

HHF is not opposed to adding new materials such as rocks to the basin to deter jumpers, but concludes that this should not happen through the destruction of a historic feature.

HHF recommends that the Board deny the permit until the issues they raise have been addressed.

Applicant's response

The applicant acknowledges that the project will require a permit from the Corps of Engineers, which will trigger Section 106 consultations pursuant to the National Historic Preservation Act. HHF will be included in the consultations.

The applicant notes that, contrary to HHF's letter, it is not necessary that Section 106 consultations be completed prior to the issuance of a CDUP. One is a federal process, one is a state process, and the issuance of a CDUP does not foreclose options being considered under the COE process.

The applicant also notes that HHF participated in a site visit to Shangri La on February 22, 2017, at which time many of their concerns were discussed.

The applicant also wishes to clarify that this historic resource survey determined that the breakwater was a 'contributing feature' to the Shangri La historic property, but of secondary significance to the overall site. Thus, they concluded that removal of the breakwater would result in a minor loss of historic character associated with the property.

The applicant is willing to continue to explore alternative mitigation measures. However, they determined that filling the basin with rocks would have a significant impact on recreational use of the basin, and so this option was not chosen.

Richard Turbin, Chair, Waiʻalae-Kahala Neighborhood Board No. 3

Mr. Turbin states that the Neighborhood Board adopted a resolution opposing the dismantling of the breakwater at their regular meeting of June 15, 2017 for the following reasons:

- It will deprive the public of a valuable resource by removing the protection of the basin from large waves;
- It will destroy a historic site; and
- It will have a potentially significant negative impact on the fragile coastal and marine ecosystem.

Applicant's response

The applicant presented the project to the Board at its April 20, 2017 meeting. No Resolution was undertaken at that meeting. The project was discussed at the Board's May 18, 2017 meeting, and no Resolution was undertaken. Neither HHF nor the applicant were notified that a resolution against the project would be considered a third time, and as such were unaware of the June 15 meeting.

The applicant notes the public generally does not swim in the basin during periods of high surf. Remnants of the original dike will remain, which will provide protection to swimmers in the basin during normal conditions.

Current models indicate that the pedestrian walkway has an overtopping rate of 15 gal/min/ft under high surf conditions. The same models conclude that removing the breakwater and creating a boulder revetment will reduce this by 93%, to 1 gal/min/ft.

The applicant notes that the only recreational activity that will be reduced by the removal of the breakwater will be jumping; all other near shore uses (ocean access for swimming, surfing, and fishing) will remain.

The applicant notes that the boat basin was determined to not be 'individually eligible' for the historic register, and that it should be evaluated as part of the larger Shangri La historic property. Altering the boat basin by removing the breakwater will not affect Shangri La's historic status, or make it ineligible for inclusion on the historic register.

The applicant disagrees that dismantling the breakwater will have a negative effect on the coastal and marine ecosystem. Reef surveys show that the marine biotic communities in the basin are limited. No rare or unusual biotic features were found. The corals that were found consisted of remnant fragments from pre-existing larger colonies and flat encrustations. Staff from the Division of Aquatic Resources have already removed the few corals that were growing within the basin.

The reef fish in the area are typical of shallow reef habitats. Dismantling of the breakwater will not significantly change the habitat.

Green sea turtles have been observed in the area. However, the applicant notes that they forage along the entire shoreline. The project will result in more submerged rocks along the shoreline, and thus a potential increase in limu habitat and foraging opportunities for the turtles.

Fred Fong

Mr. Fong notes that community opposition to the project has been expressed in public hearings, letters to the editor, and by a motion passed unanimously by the Wai'alae-Kahala Neighborhood Board.

Mr. Fong states that jumping and diving from the wall and breakwater can be deterred through scientific observation and deductive implementation.

Mr. Fong states that the studies by HHF show that the 2014 fence has reduced jumping by 89%, and that jumping can be further reduced through three actions:

- Beveling the flat standing ledges on the wall to 45 degrees, making it impossible to stand and jump from the top;

- Adding a top to the fence and then a shorter vertical bar between the existing bars, which would make it impossible to stand on the fence to jump from it; and
- Grouting the cracks in the wall to make it impossible to climb.

Mr. Fong concluded by writing that (sic) "concerns for a Shoreline Management Permit, affected ocean habitat, resulting currents due to new daily wave action capping the dismantled breakwater down to mean sea level, a fire department ocean rescue training site, criteria for maintaining Historic Places, Statute mandating REPLACEMENT for any loss or diminished ocean recreational use, and liability protection Statute already in place for recreational use -all can be discussed later."
He opposes the proposal, and recommends that the other safety options be implemented before committing to the irrevocable dismantling of the breakwater.

Applicant's response

The applicant wishes to clarify that Mr. Fong was publicly opposed to the project at the community hearings, but that other members of the community were either supportive or neutral. The applicant also notes that the only letter to the editor they are aware of came from Mr. Fong himself.

The applicant also notes that the Neighborhood Board declined to make a resolution twice, and that neither HHF nor the applicant were notified of or invited to the meeting where the final resolution was introduced and voted on.

The applicant notes that jumping was reduced in the year following the installation of the fence. However, there has been an increase in visitors over the past two years, and jumping has shifted to the Diamond Head breakwater.

The applicant appreciates the suggested alternatives, but after exploring them has concluded that they will neither be practical nor effective. The fence modification has the potential to increase risky behavior, and the height cannot be raised due to a six-foot height restriction. They also do not address the jumping from the breakwater, which is the primary concern at the moment.

The Fire Department has concluded that the project will not impact their services.

The applicant prefers to keep the basin open for recreational use, and prefers not to restrict all access to the basin. Statutes that limit liability for public use of recreational sites do not protect the landowner from liability in this case.

Public Hearing

Neighborhood resident Fred Fong gave a presentation at the public hearing in opposition to the project. His concerns were as follows:

- The removal of the breakwater will deprive the public of a valuable resource

- The removal of the breakwater will destroy a historic site that is in the registry of historic places,
- The project will negatively impact sea turtle habitat makai of the breakwater,
- That a rise in sea level will result in waves overtopping the remnant dike and crashing into the shoreline easement during high surf events, creating a public hazard, and
- That removal of the breakwater and drainage pipe will create a 'toilet bowl' situation in the basin, making it dangerous for swimmers.

Mr. Fong further noted that the application relies on skewed statistics, that jumping has actually decreased since the erection of the fence in 2014 that the Waiʻalae-Kāhala Neighborhood Board unanimously opposes the project, and that the Board's concerns were not included in the Final Environmental Assessment.

Mr. Fong asked that the landowner consider other alternatives to dismantling the breakwater, such as beveling the seawall, putting spikes on the fence to prevent jumpers, and adding grouting to prevent people from climbing the seawall.

The written comments that OCCL received are attached as **Exhibit 8**. The applicant's responses are attached as **Exhibit 9.**

HAR §13-5-30 CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

There are no significant coral colonies in the project area. Staff from the Division of Aquatic Resources have transplanted coral that were growing in the basin, and will conduct a final survey of the area prior to any construction activities.

It will be important for the contractors to follow strict best management practices during construction activities in the marine environment in order to minimize the impact of the project on corals. OCCL will be recommending that the Department review the final best management practices plans, including the Barge Spudding Plan, prior to the start of construction.

Sea turtles have been observed foraging in the area, in concentrations similar to other areas along the nearby shoreline. The removal of the breakwater will not affect turtle habitat, while the re-introduction of rocks in the basin has the potential to increase the habitat for limu.

The placement of the rocks also has the potential to increase the habitat for small reef fishes.

The applicant has modeled waves and currents in the project area, and has included anticipated conditions with sea level rise. The models suggest that water quality will improve with increased mixing of water in the basin, which will dissipate existing nutrient concentrations. The removal of the breakwater is not anticipated to impact shoreline processes.

Based on this, OCCL concludes that the removal of the breakwater will not significantly change the natural environment of Kūpikipiki'ō.

2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

Pursuant to HAR §13-5-11, the objective of the Protective Subzone *is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historical, archaeological, geological, and volcanological features.*

The proposed use is an Identified Land Uses in this subzone pursuant to HAR §13-5, P-8 STRUCTURES AND LAND USES, EXISTING. The application is being processed as a major modification to an existing structure.

The project will involve removing one of the two breakwaters that help define the boat basin, and will partially recreate a more naturally-looking shoreline. The environmental studies indicate that there will be little impact to the area's natural resources, provided that best management practices are followed during construction.

There is significant disagreement or whether the breakwater in itself qualifies as a significant historical feature, or a cultural resource. The applicant argues that the breakwater is one element of the Shangri La historic property rather than a historic property in its own right, and that removing the breakwater will have a negligible impact on the overall site's historic significance. Member of the community argue that the breakwater itself is a historic site.

OCCL notes that neither the breakwater nor the basin were eligible to be designated as individual historic properties.

3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The application is consistent with the following objectives of Chapter 205A:

Recreational resources. The proposed use should have a neutral effect on public access to recreational resources. The project will not affect surfers or fisherman. A man-

made swimming area will be impacted due to the loss of the breakwater and the placement of boulders along the seawall. However, we note that the swimming basin is on privately-owned submerged land.

Historical resources. Cultural Surveys Hawai‘i completed the archaeological inventory survey (AIS) fieldwork under archaeological permit number 15-03, issued by the Hawai‘i State Historic Preservation Division (SHPD) per Hawai‘i Administrative Rules (HAR) §13-13-282. The Shangri La Estate has been identified as a significant historic resource, but not the breakwater itself.

Scenic and open space resources. The removal of the breakwater will eliminate a man-made element from the near shore waters.

Coastal ecosystems. Best management practices will need to be followed to protect the coastal ecosystem during construction. The project is not anticipated to have any impact on coral species, and the placement of the boulders near the seawall will mimic the natural habitat found in undeveloped areas along the shoreline.

Economic uses. The project will result in small increase in employment during the construction phase.

Coastal hazards. The proposed use will remove an ‘attractive nuisance’ from the coastal waters. There is disagreement between community members and the applicant on whether the project will result in increased over wash of large waves on the pedestrian easement during high surf events. The models contained in the project’s environmental assessment indicate that there will be less over wash once the revetment is built.

Public participation. The public was invited to comment on the proposal during the environmental review process and the application process. Presentations were given to the Palolo, Diamond Head / Kapahulu / St. Louis Heights, Kaimukī, and Wai‘alae-Kahala Neighborhood Boards, and meetings were held on-site with stakeholders. A public hearing was held in February 2018 on the proposal. The applicant has provided OCCL with written responses to all public comments that were received. The written comments and applicant’s responses are attached as Exhibits 8 and 9 to this report.

Beach protection. There are no sandy beaches adjacent to the breakwater.

Marine resources. Control measures will be in place to mitigate the potential effects on marine resources. The Division of Aquatic Resources has surveyed the site and removed coral colonies from the project area for transplanting, and has requested that they be allowed to conduct a final survey, and review best management plans, prior to construction. OCCL will be recommending that the Board make this a condition of any permit that is issued.

The boat basin itself is not a habitat for reef fishes or turtles. The placement of boulders along the seawall has the potential to increase habitat for reef fish and limu, and to improve foraging opportunities for sea turtles.

The State Office of Planning has confirmed that the site is outside the Special Management Area, and not subject to SMA permitting requirements.

The applicant will be working with the Army Corps of Engineers to comply with any federal Coastal Zone Management requirements.

4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

As discussed above, OCCL feels that the applicant has taken suitable caution to ensure that the project does not adversely impact the existing natural resources of the region. The basin itself currently has a sandy substrate with poor water quality; it is not a habitat for reef fish, limu, sea turtles, or significant corals. The project, if approved, will create greater circulation, improving the water quality. The boulders places along the substrate, which will be partially exposed at low tide, will provide potential habitat for small fish and for limu.

Best management practices, which will be covered more in depth in the discussion section of this report, will need to be strictly adhered to minimize the risk of sedimentation or contamination of near shore waters, as well as to reduce the risk of introducing potentially harmful invasive species to the area.

5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

OCCL concurs with the applicant that the partially restored site will be compatible with the surrounding locality. The finished project will partially mimic the rocky natural shoreline found on neighboring properties. The remnant volcanic dike will be uncovered, and will offer some continued protection to swimmers in the basin. It is unclear at this time how much of the dike remains, and how much was damaged during construction of the breakwater.

The original cliff was composed of large boulders. These have been replaced by a large retaining wall between the main property and the pedestrian easement, and a seawall between the easement and the basin. These walls will remain in place.

6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The removal of the breakwater will expose the remnants of the original volcanic dike, though it is anticipated that the dike was weakened during construction. The

placement of boulders near the existing seawall, will in some ways mimic the appearance of the nearby natural (undeveloped) shoreline along Kūpikipiki'ō.

The removal of the breakwater will help to restore natural water flow in the basin, which will lead to an improvement in water quality.

While the area has been too heavily modified to return it to a completely natural state,

7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action is proposed as a health and safety initiative. The applicant wishes to dismantle an existing breakwater in order to deter jumping into shallow waters, and notes that there are cases of severe injury, including permanent paraplegia and quadriplegia from those who've jumped from the property walls and breakwater.

Concerns have been raised that removing the breakwater will make it more dangerous to swim in the basin during periods of high surf.

KA PA'AKAI ANALYSIS

Cultural and recreational practices that occur in the project area and nearby waters include fishing, surfing, snorkeling, diving, and swimming.

There is a public pedestrian easement that runs along the shore, and a set of concrete stairs that leads from the easement to the ocean on the southern end of the basin.

The boat basin itself is used for swimming, while the breakwater and seawall have been used for diving and jumping into the water. The other ocean recreation activities discussed occur further from the site.

The project will not impede public access to the ocean. The project will not impact known fishing areas, limu gathering spots, or surf spots.

The basin will still be open to swimmers, although the placement of rocks along the shoreline will reduce the open area for swimming.

The project is designed to eliminate jumping and diving from the seawall and the breakwater. While jumping and diving can be seen as recreational activities, OCCL notes that they are high-risk activities, and that the landowner is proposing the project as a safety initiative.

The Office of Hawaiian Affairs was consulted during the preparation of the Environmental Assessment; the office offered no comments or objections in a letter dated August 17, 2015.

As such, OCCL concludes that the project will not hinder traditional native Hawaiian cultural practices or resources.

DISCUSSION

The project involves removing a breakwater, and placing the rocks along the base of an existing seawall to create a revetment. The breakwater and the seawall form a small boat basin that is currently used by the public for swimming.

The proposal is unique in that the project will occur on privately-owned submerged lands. The Territorial Government of Hawai'i executed a deed that transferred a private coastal property in Kailua to the government (the future Kailua Beach Park), in exchange for ownership of the subject submerged parcel.

The landowner has not restricted access to the submerged lands to the public, and it has become a popular swimming and picnicking area for both the local community and for tourists.

The breakwater was built over a volcanic dike that extended out from the shoreline. It is unknown how much of the dike is intact, and how much was damaged during construction of the breakwater. The project plan calls for any remnants of the dike to remain. They estimate that it might extend up to three feet above mean sea level.

The finished design of the project will result in a shoreline that is partially restored to its pre-construction state.

The main argument in favor of the proposal is that it is designed to eliminate unsafe activity in the area such as jumping and diving from the breakwater and seawall into shallow waters. The Environmental Assessment states that there have been numerous calls to City Emergency Medical Services (EMS) to treat injuries, and there is one person who has suffered permanent quadriplegia and two persons who have suffered permanent paraplegia from jumping into the basin.

Secondary arguments in favor of the project are that it will improve water quality by improving water circulation in the area, that it will increase habitat for reef fish and limu by placing rocks along the base of the seawall, and that the revetment will reduce the amount of over splash on the pedestrian easement during high surf events.

The main arguments against the proposal are that the project will deprive the public of a recreational resource, that it will have a negative environmental impact, that it will destroy an important historic resource, and that other options to reduce unsafe activities are still available.

OCCL notes that the breakwater and basin are private property, and that the landowner has concerns about their liability for accidents that occur on their property. As such, OCCL is sympathetic to their desire to remove an 'attractive nuisance' on their property where severe injuries have occurred.

The area is exposed to high surf during large south swells. The current basin offers a somewhat protected swimming area during these events, though over wash of both the breakwater and the seawall do occur. The environmental assessment contains models that show that the revetment will act to reduce the amount of over wash on the easement even with the removal of the breakwater.

OCCL notes that it is unclear how much of the original volcanic dike remains, and so concludes that it is difficult to predict or model how much protection the site will have during large swells. We concur with the community that it is possible that removal of the breakwater might lead to an increase of high waves impacting the pedestrian easement, even with the boulder revetment in place to disperse wave energy. However, we note that there is no pedestrian easement on neighboring properties; access *to* the site during high surf events is and would remain dangerous regardless of conditions on the project site itself.

From an environmental perspective, OCCL concurs with the applicant that the finished project has the potential to improve the near-shore habitat, as water circulation will improve and there will be more sheltered spaces among the rocks for reef fish and for limu.

We note that there is always a risk to the marine environment during construction activities. The applicant has developed a number of best management practices in consultation with DLNR's Division of Aquatic Resources and the U.S. Fish and Wildlife Service. These include using turbidity curtains during construction, having divers on-site to monitor for protected species, having contingency plans for the removal or securing of equipment in the event of approaching storms, inspecting equipment for and leaks.

The complete list of potential Best Management Practices (BMP) submitted by the applicant in their Conservation District Use Application is contained in **Exhibit 10**. The contractor will be required to submit a finalized BMP plan prior to construction.

DAR has requested that the BMPs also include provisions for inspecting equipment for potentially invasive species, that DAR personnel be allowed to conduct a final survey of the site for corals prior to construction, and that DAR be allowed to review the barge spudding plan.

If a permit is granted by the Board OCCL would recommend the following conditions be added:

1. That the final Best Management Plan be submitted for review and approval by OCCL and DAR prior to construction;

2. That the applicant work with DAR to develop a monitoring and action plan to address the possible colonization of invasives on construction equipment;

3. That the barge spudding plan be submitted for review and approval by OCCL and DAR prior to construction; and

4. That DAR personnel be given the opportunity to conduct a final survey of the site to identify and remove any endemic species of coral within the impact area.

If proper BMPs are followed then OCCL has concluded that the project will not have a significant negative impact on the marine environment.

The final area of disagreement between the applicant and some members of the community concerns whether removing the breakwater will impact an important historical and cultural resource. The applicant's position is that the breakwater and basin are minor elements of the overall Shangri La Estate, while the community members' position is that the breakwater and basin are important resources in their own right.

The archaeological survey conducted concluded that the alteration of the Diamond Head Breakwater would result in a minor loss of character associated with the Shangri La property, and recommended that archaeological recordation for the boat basin and breakwater serve as mitigation for the project. The State Historic Preservation Division (SHPD) has not offered any additional mitigative measures.

OCCL notes that the public can only visit the Estate proper during special events and paid tours, while they enjoy free and open access to the basin. We thus are sympathetic to the view that the basin can be viewed independently of the Estate, and understand the nostalgic value of the basin to those who have picnicked and swam there.

However, we also recognize that the basin remains privately-owned land. The Exchange Deed requires that the property owner maintain a pedestrian easement along the shoreline, and allow the public to access to the ocean. The landowner has also allowed the public to freely use the boat basin, but they are not mandated to do so. Thus, OCCL does not consider the basin to be a public resource per se.

We also note that, while the character of the basin will change with the removal of the breakwater, it will remain open to the public for swimming.

After carefully reviewing the proposal, OCCL concurs that the removal of the breakwater and the use of the boulders as a revetment will improve public safety in the area, and that the environmental concerns will be addressed through compliance with the State's recommended best management practices. We also note that an outcome of the project is that the area will be partially re-naturalized, and will come closer to approximating conditions before the basin was constructed.

As discussed above, the proposal meets the conservation criteria outlined in HAR §13-5-30.

RECOMMENDATION (1)

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for *Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project at* Kūpikipiki'ō (Black Point), Waikīkī Ahupua'a, Kona District, O'ahu, TMK: (1) 3-1-041:005, 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. 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. Animal husbandry activities shall be limited to sustainable levels in accordance with good soil conservation and vegetation management practices;

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 contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

17. That the final Best Management Plan be submitted for review and approval by OCCL and DAR prior to construction;

18. That the applicant work with DAR to develop a monitoring and action plan to address the possible colonization of invasives on construction equipment;

19. That the barge spudding plan be submitted for review and approval by OCCL and DAR prior to construction;

20. That DAR personnel be given the opportunity to conduct a final survey of the site to identify and remove any endemic species of coral within the impact area;

21. Other terms and conditions as prescribed by the chairperson; and

22. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

RECOMMENDATION (2)

Staff recommends that the Board of Land and Natural Resources issue a Right of Entry for the use of State submerged lands as a construction staging area for Conservation District Use Permit (CDUP) OA-3809 for the *Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project at* Kūpikipiki'ō (Black Point), Waikīkī Ahupua'a, Kona District, O'ahu, makai of TMK: (1) 3-1-041:005, subject to the following conditions:

1. This right-of-entry permit shall commence upon acceptance of the terms and conditions herein and provision of liability insurance mentioned in paragraph 2, and will run concurrently with CDUP OA-3809.

2. Applicant, its consultants, contractors and/or persons acting for or on its behalf shall procure, at their own cost and expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, a policy or policies of general liability insurance or its equivalent, in an amount of at least $1,000,000 for each occurrence and $2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of Applicant and its consultants, contractors and/or persons acting for or on its behalf. Applicant, its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require Applicant, its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify Applicant in writing of changes in the insurance requirements and Applicant, its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof,

with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit Applicant, its consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve the Applicant, its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, Applicant, its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by Applicant's consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this right-of-entry.

3. At all times herein, Applicant, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.

4. Applicant, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for cleaning and restoring the area or premises to its original condition or a condition satisfactory to the Department of Land and Natural Resources upon termination of the right-of-entry permit. All trash shall be removed from the area or premises.

5. Applicant, its consultants, contractors and/or persons acting for or on its behalf comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.

6. Applicant, its consultants, contractors and/or persons acting for or on its behalf indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of Applicant, its consultants, contractors and/or persons acting for or on its behalf relating to Applicant, its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of Applicant, its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in Applicant, its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of Applicant, its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of Applicant, its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or

the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

7. Applicant, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Applicant, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of Applicant, its consultants, contractors and/or persons acting for or on its behalf business, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Applicant, its consultants, contractors and/or persons acting for or on its behalf, then the Applicant, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, Applicant, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning Applicant, its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by Applicant, its consultants, contractors and/or persons acting for or on its behalf.

8. Applicant, its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while Applicant, its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by Applicant, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

   For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. Applicant, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to

minimize inconveniences to surrounding residents, landowners, and the public in general.

10. Applicant, its consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings in the right-of-entry area or premises during the effective period of this right-of-entry

11. All costs associated with the construction within the right-of-entry area or premises shall be the sole responsibility of Applicant, its consultants, contractors and/or persons acting for or on its behalf

12. Applicant, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from Applicant, its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at Applicant, its consultants, contractors and/or persons acting for or on its behalf own cost and expense.

13. Excavated material (sand) shall be placed on the shoreline and not removed from the shoreline.

14. Best management practices shall be employed to avoid having silt or dirt enter the ocean.

15. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered Applicant, its consultants, contractors, and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.

16. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.

17. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.

18. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry permit is in force.

19. Applicant, its consultants, contractors and/or persons acting for, or on its behalf, shall follow all terms and conditions listed in this CDUP OA-3809.

20. Applicant shall provide an additional signed copy of CDUP OA-3809 to the Honolulu County district land office:

Respectfully submitted,

Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

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



Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Figure 1.1 - Location Map

Honolulu, Hawai'i

SHANGRI LA CENTER FOR ISLAMIC ARTS AND CULTURES

HHF PLANNERS places for people

Exhibit 1: Project location



Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Figure 1.5 - TMK Map

Honolulu, Hawai'i

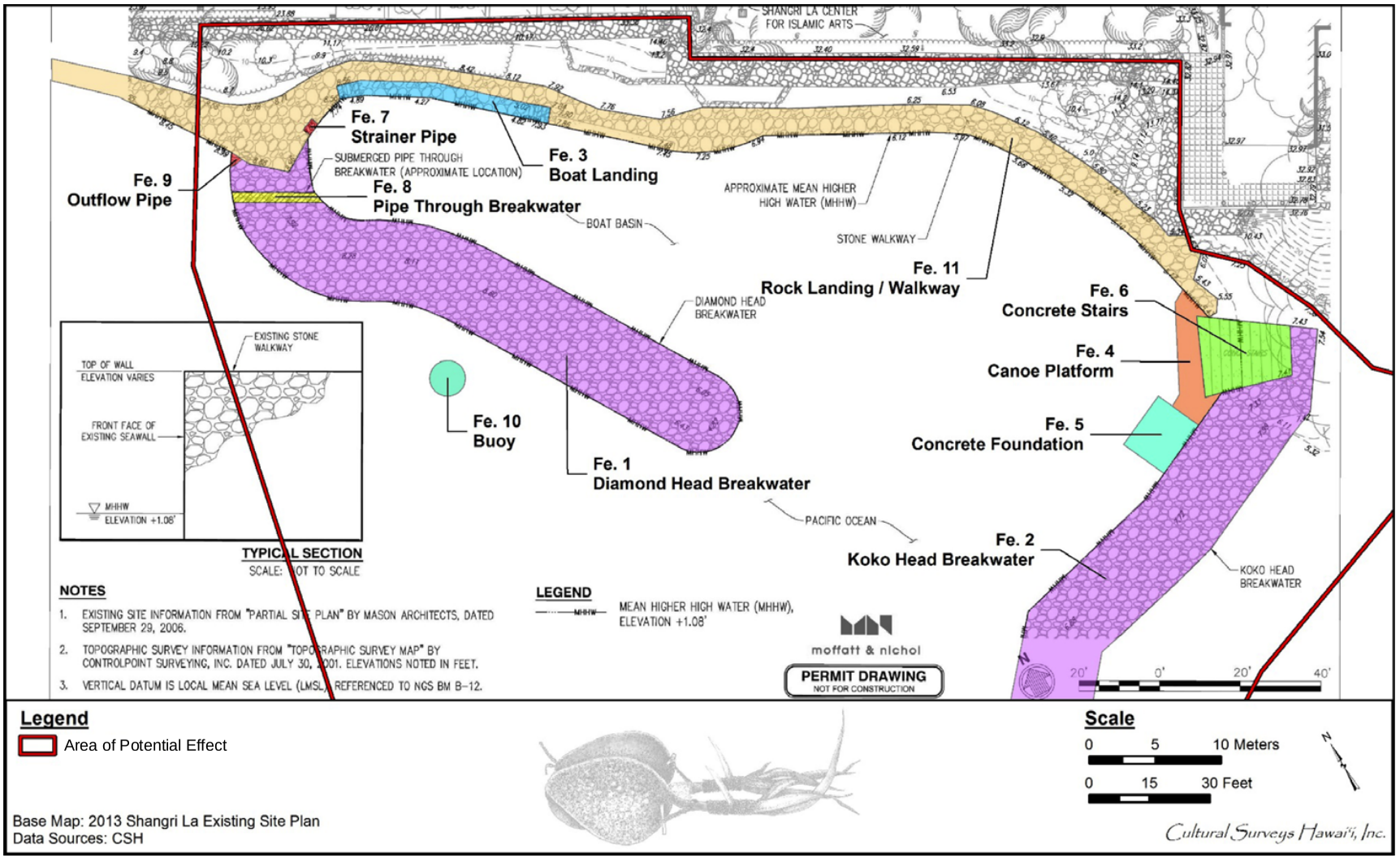
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SHANGRI LA
CENTER FOR ISLAMIC ARTS AND CULTURES

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places for people



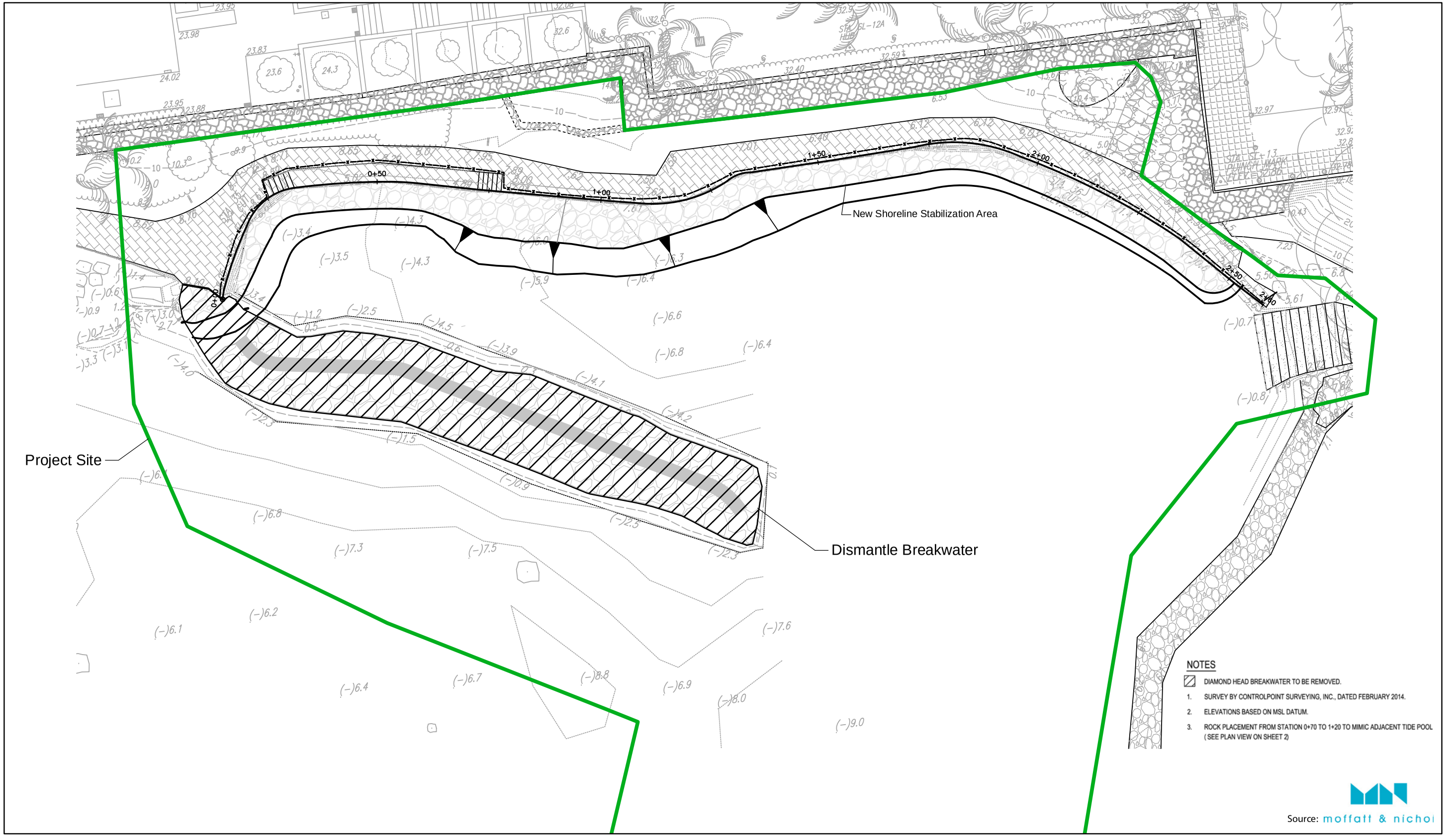
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Figure 3.4 - Designation of Features of SHIP #7839

Honolulu, Hawai'i

SHANGRI LA CENTER FOR ISLAMIC ARTS AND CULTURES

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Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Figure 2.1 - Preliminary Conceptual Site Plan

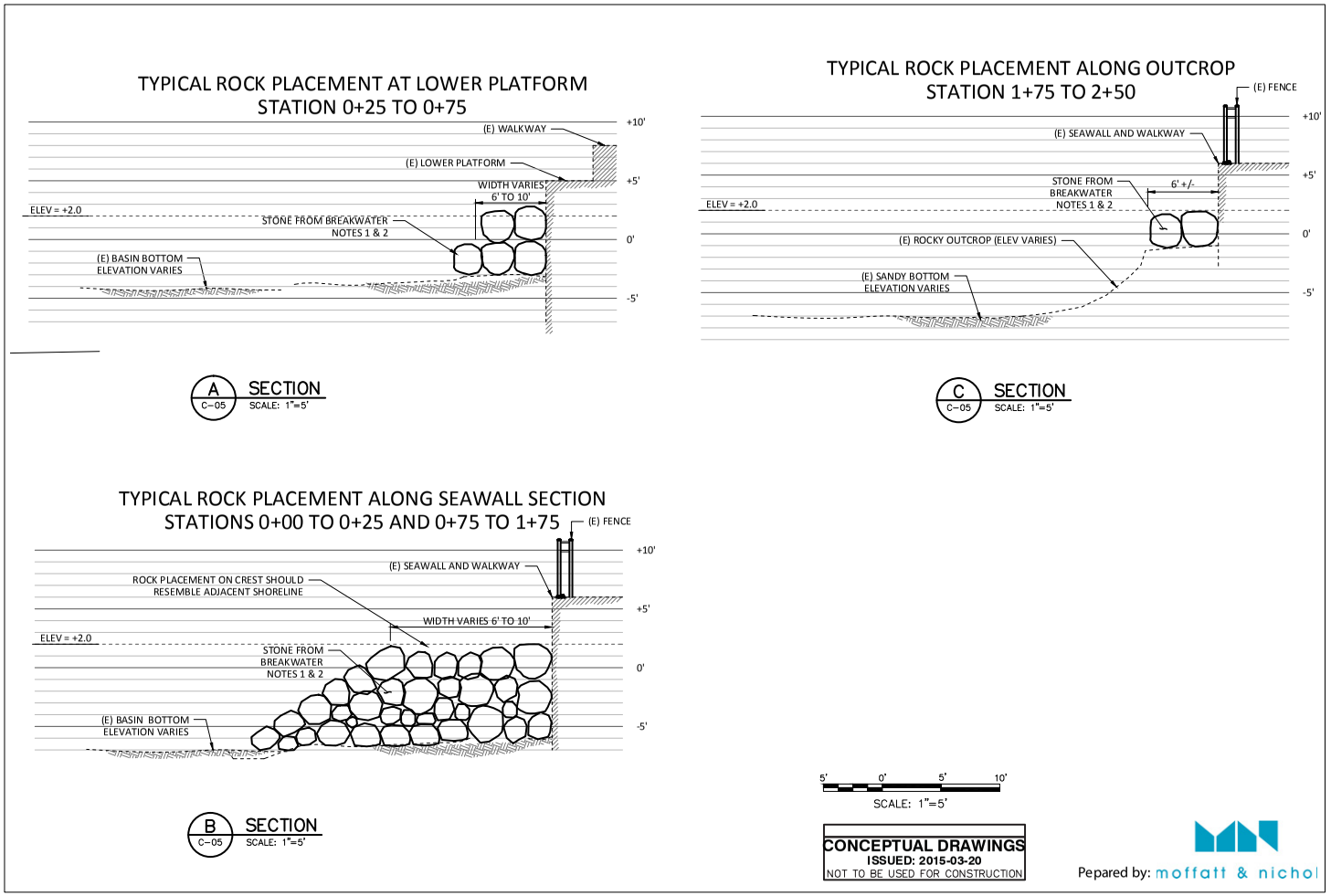
Honolulu, Hawai'i

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SHANGRI LA CENTER FOR ISLAMIC ARTS AND CULTURES

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Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Figure 2.5 - Typical Sectional Views of Revetment

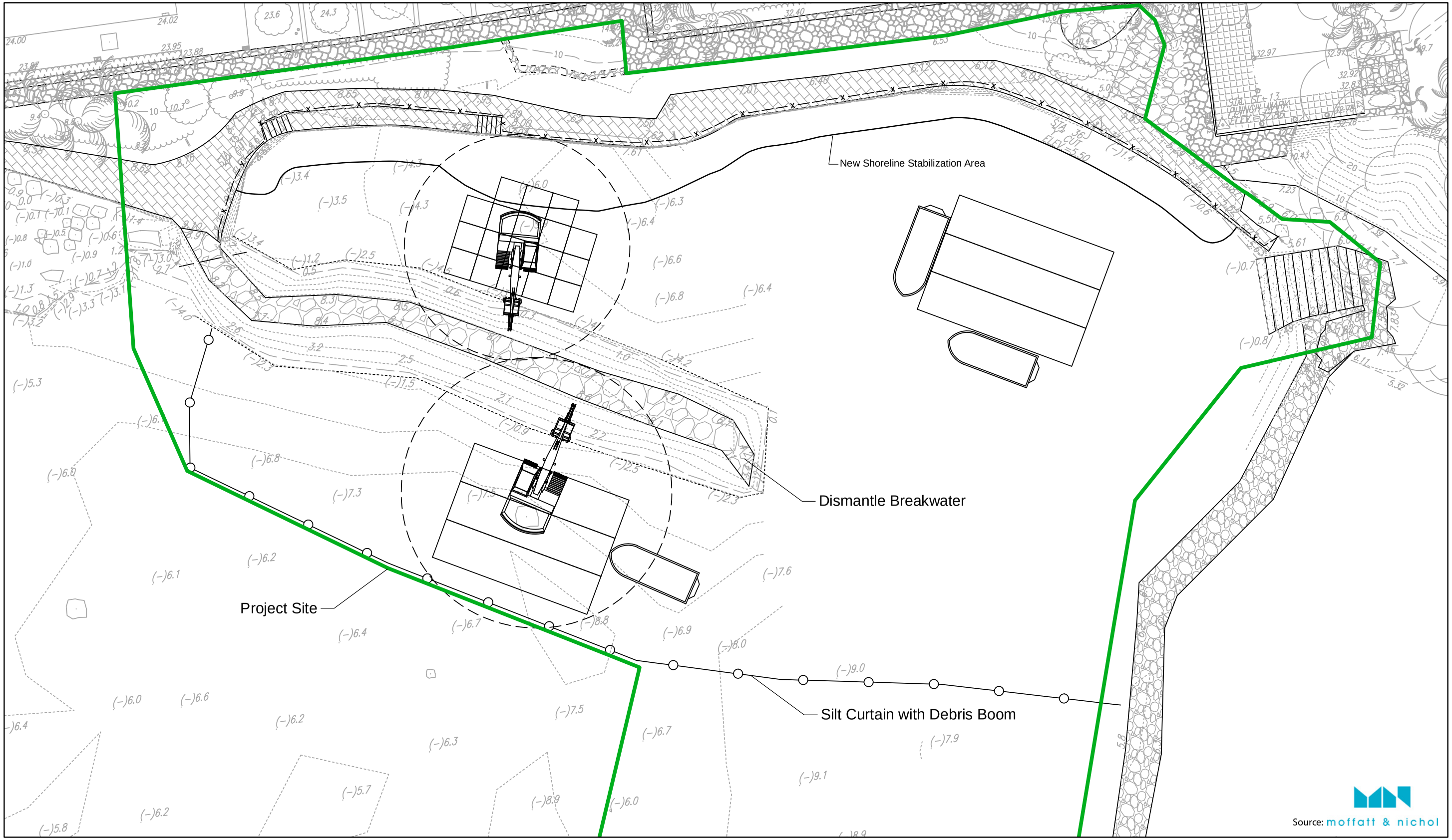
Honolulu, Hawai'i

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Exhibit 6: Construction plan



Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Figure 2.4 - Preliminary Construction Methods Plan

Honolulu, Hawai'i

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Current View of Diamond Head Breakwater from Balcony



Simulated View After Breakwater Dismantling



Current View of Breakwater and Basin



Simulated View After Breakwater Dismantling

Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Figure 2.3 - Visual Simulations of Project Improvements

Honolulu, Hawai'i

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DAVID Y. IGE
GOVERNOR OF
HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2018 JAN 23 P 12:03
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

Date: 1/18/18
DAR # 5662

MEMORANDUM

TO: Bruce S. Anderson, PhD
DAR Administrator

FROM: Ryan Okano, PhD, Aquatic Biologist

SUBJECT: Request for Comments - CDUA OA-3809, Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Request Submitted by: Samuel J. Lemmo, Administrator, OCCL

Location of Project: Kahala, Honolulu, Hawaii

Brief Description of Project:

The current proposal consist of two main components: 1) dismantling the Diamond Head Breakwater to the last row of boulders situated on the ocean floor, and leave the remnants of the structurally stable natural volcanic dikes that underlies the breakwater; and 2) reinforcing the seawall using boulders removed from the breakwater along with imported large rocks. The stated purpose is to address public safety issues while maintaining public access and reinforcing shoreline through a natural setting.

Comments:

☐ No Comments ☒ Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: Bruce S. Anderson Date: 1/22/18
Bruce S. Anderson, PhD
DAR Administrator

DAR# 5662

Comments

While the Division of Aquatic Resources (DAR) agrees with the project's proponents regarding the need to minimize unsafe behaviors currently on-going at the site by the public, DAR would like to encourage safe public access to the greatest extent possible for those using the site for safe entry and exit from the ocean.

We would appreciate the opportunity to review the barge spudding plan prior to implementation. DAR would also be interested in reviewing proposed anchoring locations. In the proposed barge spudding plan please identify how the outside barge will be secured in such a way as to avoid coral and live rock impacts.

DAR is still interested in the trans-location of coral and live rock. Please contact Mr. David Gulko at DAR well in advance to coordinate these activities. We request to conduct a final survey prior to construction to identify and remove any Porites hawaiiensis (an endemic coral) within the area of impact.

DAR is concerned with introduction or enhancement of introduced invasive species which may occur throughout the course of this project. We request the development of monitoring activities and action plans for invasive species control should newly exposed substrate become colonized by these nuisance species. Additionally DAR request that all barges and in-water equipment be inspected for the presence and removal of invasive species prior to use in the vicinity of Kupikipikio.

Feel free to contact DAR for guidance in developing Best Management Practices, plans, and activities that address the preservation of aquatic resources in relation to the environmental concerns of this project.

DEPARTMENT OF THE ARMY
HONOLULU DISTRICT, U.S. ARMY CORPS OF ENGINEERS
FORT SHAFTER, HAWAII 96858-5440

January 31, 2018

SUBJECT: Request for Comments for Shangri La Breakwater Safety and Shoreline Stabilization, Kahala, Island of Oahu, Hawaii, DA File No. POH-2018-00037

Konrad Ng, Executive Director
Doris Duke Foundation for Islamic Art at Shangri La
4055 Papu Circle
Honolulu, HI 96816

Dear Mr. Ng:

The U.S. Army Corps of Engineers, Honolulu District (Corps), is in receipt of your letter dated December 19, 2017 for the Request for Comments for the proposed Shangri La Breakwater Safety and Shoreline Stabilization located in Kahala, Island of Oahu, Hawaii. Your project has been assigned Department of the Army (DA) file number POH-2018-00037. Please reference this number in all future correspondence concerning this determination. The project area reviewed by the Corps and addressed in this letter and accompanying documentation is shown in Enclosure 1.

We have completed review of your submittal pursuant to Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Section 404 requires authorization prior to the discharge and/or placement of dredged or fill material into waters of the U.S., including adjacent wetlands. Section 10 requires authorization prior to installing structures or conducting work in, over, under, and affecting navigable waters.

Based on our review of your submittal, we have preliminarily determined that your project is located within the Pacific Ocean, which is a navigable water of the U.S. under the regulatory jurisdiction of the Corps. In accordance with Section 404, a Department of the Army (DA) permit may be required for any activity resulting in the discharge and/or placement of dredged of fill material into the Pacific Ocean and in accordance with Section 10, a Department of the Army (DA) permit may be required for any structures or activities occurring in, over, under, and affecting the Pacific Ocean.

Although this letter provides an indication of the need for a permit and of the presence of waters of the U.S., this letter does not finalize the water boundary. In the event an application is submitted for work within jurisdictional areas, a delineation of the High Tide Line (HTL) may need to be indicated for any Section 404 permits which are required for any activity resulting in the discharge and/or placement of dredged of fill material into the Pacific Ocean. A delineation of the Mean High Water Mark (MHWM)

may be required for any Section 10 permits which are required for any structures or activities occurring in, over, under, and affecting the Pacific Ocean.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to these comments, please contact me at 808-835-4307 or via e-mail at Rebecca.M.Frager@usace.army.mil. You are encouraged to provide comments on your experience with the Honolulu District Regulatory Office by accessing our web-based customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0.

Sincerely,

FRAGER.REBECCA.MABLE.1508149111

Digitally signed by FRAGER.REBECCA.MABLE.1508149111
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA, cn=FRAGER.REBECCA.MABLE.1508149111
Date: 2018.01.31 12:20:59 -10'00'

Becca Frager
Biologist, Regulatory Specialist
Regulatory Branch

Enclosure

Cc:
Ronald A. Saito, AICP (HHF Planners)

OFFICE OF PLANNING
STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: http://planning.hawaii.gov/

DTS201801091158NA

January 10, 2018

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2018 JAN 10 A 11:19
DEPT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

TO: Sam Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources

FROM: Leo R. Asuncion, Director
Office of Planning

SUBJECT: Request for Comments on Conservation District Use Application OA-3809
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project,
Kahala, Honolulu, Oahu; TMK: (1) 3-1-041: 005

Thank you for the opportunity to provide comments on the subject Conservation District Use Application (CDUA) OA-3809 at Kahala, Oahu, transmitted via memorandum received December 21, 2017.

In accordance with the subject CDUA, the Doris Duke Foundation for Islamic Art is proposing the Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project to address public safety issues, including jumping from the ledges of the seawall, the fence and the breakwater, while maintaining public access to the shoreline and reinforcing the shoreline through a natural setting.

The proposed project consists of two main components: 1) dismantling the Diamond Head Breakwater to the last row of boulders situated on the ocean floor, and keeping the remnants of the structurally stable natural volcanic dike that underlines the breakwater; and 2) reinforcing the seawall by using boulders removed from the breakwater along with imported rocks.

The project will require approximately 850 cubic yards of boulders, with 500 cubic yards of them from the dismantled breakwater, to build the seawall revetment. The base of the revetment will extend six to ten feet from the seawall, and remain below mean sea level.

The project area is on privately-owned submerged lands in the Protective Subzone of the State Land Use Conservation District. The applicant proposes using State-owned submerged lands makai (seaward) of the project area as a staging area.

The Department of Planning and Permitting, City and County of Honolulu, via letter dated August 24, 2015, confirmed that the project site is located beyond the boundaries of the

county special management area (SMA), and therefore is not subject to the SMA permitting requirements.

The preliminary estimated project cost is $2.5 million. The proposed construction will commence once the required permits and approvals are obtained, and take six to nine months to complete.

The Office of Planning (OP) has reviewed the subject Application and has the following comments to offer.

1. One of the objectives and policies under the Hawaii Coastal Zone Management (CZM) law, Hawaii Revised Statutes (HRS) Chapter 205A, is to provide coastal recreational opportunities accessible to the public. The OP concurs that ocean recreational activities at the project area such as swimming, fishing, sunbathing, and access to nearby surfing spots should be available to the public. The existing shoreline walkway and concrete steps at the Koko Head Breakwater should be maintained to ensure ocean recreational opportunities accessible to the public.

2. The subject Application states that approximately six vehicles from the proposed project construction would be parking along residential streets in the vicinity. The applicant and contractors shall mitigate potential traffic impacts, including ingress and egress effects of vehicle traffic, generated from the proposed construction activities on public access to the coastal recreation areas. Construction-related activities for the proposed project shall not affect public parking accessible to ocean recreational users.

3. The OP concurs that project construction-related materials should not be stockpiled in, or in close proximity to aquatic habitats, and all construction activities should be confined with implementation of best management practices, including installation of silt curtains and debris booms, to prevent potential erosion and polluted runoff from adversely impacting the State waters as specified in Hawaii Administrative Rules Chapter 11-54.

4. No artificial light from the proposed project, except as provided in HRS §§ 205A-30.5 (b)(2) and 205A-71(b)(2), shall be directed to travel across property boundaries toward the shoreline and ocean waters.

5. The applicant should consult with the OP for more information on the CZM federal consistency review for the subject project.

If you have any questions about this comment letter, please contact Shichao Li of our CZM Program at (808) at (808) 587-2841.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluludpp.org • CITY WEB SITE: www.honolulu.gov

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AND COASTAL LANDS
2018 JAN 12 A 11: 20
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

KIRK CALDWELL
MAYOR

KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

2017/ELOG-2611(MT)

January 11, 2018

MEMORANDUM

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

FROM: FOR Kathy K. Sokugawa, Acting Director
Department of Planning and Permitting

SUBJECT: Comments on Conservation District Use Application OA—3809
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Submerged lands seaward of Tax Map Key: 3-1-041: 005

We have no objections to the Conservation District Use Application to dismantle the Diamond Head Breakwater and reinforce the seawall using boulders removed from the breakwater along with imported large rocks. The proposed work on the Diamond Head Breakwater and seawall is located makai of the certified shoreline, as depicted on the December 23, 2013 Certified Shoreline Survey; therefore, the proposed work is located outside the Special Management Area and Shoreline Setback.

Should you have any questions, please contact Mark Taylor of our Urban Design Branch, at 768-8020

Doc 1549418

HISTORIC HAWAI'I FOUNDATION

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AND COASTAL LANDS
2018 JAN 22 P 12:00
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

January 19, 2018

Mr. Samuel J. Lemmo, Administrator
State of Hawai'i, Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, HI 96813

Email: Sam.J.Lemmo@hawaii.gov

Re: Comments on Conservation District Use Application OA-3809
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Honolulu (Kona) District, Waikīkī Ahupua'a, Island of O'ahu
TMK: [1] 3-1-041:005 por.

Dear Mr. Lemmo:

Historic Hawai'i Foundation (HHF) is providing comments on the Conservation District Use Application (CDUA) for the proposed partial demolition of the Diamond Head Breakwater at the Doris Duke Foundation for Islamic Art (DDFIA) whose property is known as "Shangri La."

Interests of Historic Hawai'i Foundation

Historic Hawai'i Foundation is a statewide organization established in 1974 to encourage the preservation of sites, buildings, structures, objects and districts that are significant to the history of Hawai'i.

Coordination with Section 106 and Federal Permit

The CDUA notes that the project requires a permit from the Army Corps of Engineers (ACOE), which is an undertaking that requires compliance with Section 106 of the National Historic Preservation Act (NHPA).

By letter to the Office of Conservation and Coastal Lands (OCCL) and ACOE on December 8, 2016, HHF previously requested to be included as consulting party pursuant to the implementing regulations of the NHPA at 36 Part 800.2(c)(5) as an organization with a demonstrated interest in the undertaking and a concern for the effects on historic properties.

Exhibit 8: Written comments

HHF notes it is necessary to comply with Section 106 ***before*** final approval of other permits in order to avoid foreclosure of options as described in 36 CFR §800.02(c) & 800.16(j). HHF believes that the CDU permit approval sequence may be out of order, as the ACOE is prohibited from taking "an action that effectively precludes the [Advisory Council on Historic Preservation] from providing comments which the agency official can ***meaningfully consider*** prior to the approval of the undertaking" (emphasis added).

In other words, ACOE must consider a full range of options to avoid the adverse effect on a historic property prior to issuing a permit. If the Conservation District Use Permit (CDUP) is issued before that process is complete, it forecloses options. Either the ACOE would not be in compliance with Section 106, or the eventual resolution reached through the Section 106 process would necessarily result in a new application for a Conservation District permit and repetition of the current permit review process.

HHF's previous letter of December 8, 2016 also provided notification that HHF would participate in the historic preservation consultation pursuant to HRS 6E and its implementing rules. Hawai'i Administrative Rules 13-275 and 13-274 provide for participation of interested persons in the historic preservation review process. Despite that notice, the State Historic Preservation Division (SHPD) has not notified HHF of any such opportunities for participation and consultation.

Undertaking: The project proposes to dismantle most of the Diamond Head Breakwater in the ocean fronting Shangri La, constructed in 1936-1938 as part of the original construction. The stated purpose is to decrease high risk activities "such as diving and jumping from the top of the shoreline walkway and the Diamond Head Breakwater into shallow water, particularly during low tide – result[ing] in serious injuries"[1].

APE: The Area of Potential Effect (APE) includes the entire Boat Harbor historic site, as well as some submerged portions beyond the breakwater.

Identification of Historic Resources: The Shangri La Boat Harbor site is a recognized historic property designated as the Shangri La Boat Harbor SIHP #50-80-14-7839, and identified in Appendix A, page A-54 and Figure 19 of the CDUA.

- **Evaluation of Significance:** The "Intensive Level Resource Inventory Survey and Report" (contained in Appendix C of the Final EA) indicates that the Boat Harbor has significance in the development of the property and its context in Local and National history.

[1] Final EA Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project, June 2017, p.2-1.

The breakwater and harbor is recommended to be significant under the following criteria[2]:

- Under Criterion "B" (associated with the lives of persons significant in our past),
- Under Criterion "C" (embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value), and
- Under Criterion "D" (have yielded, or may be likely to yield, information important in prehistory or history)

Please note that HHF does not agree with the applicant's conclusion that the boat harbor lacks historic significance due to a lack of "artistic merit," which was asserted in the CDUA and supplemental materials.

"Artistic merit" is only one of several components that comprise criterion C. While the boat harbor is not of the same high artistic value as the main property, it still embodies distinctive characteristics that contribute to the overall historic significance.

- **Integrity:** The historic assessment notes that, "the boat basin and breakwaters were constructed during the initial 1936-1938 development of the property and although subject to minor repairs and alterations, they retain their historic integrity."

- **Determination of Eligibility:** The entire Shangri La property was determined to be eligible for the National Register of Historic Places (NRHP) in 2008[3]. The Boat Harbor is individually assessed as SHIP #50-80-14-7839.

Description of Historic Properties

Character-Defining Features: SIHP # 50-80-14-7839 consists of the boat basin and breakwaters at the Shangri La estate on Black Point. The harbor consists of:

Feature 1: Diamond Head Breakwater

Feature 2: Koko Head Breakwater

Feature 3: Boat loading platform

Feature 4: Concrete slab for outrigger canoes

Feature 5: Concrete foundation for unknown building

Feature 6: Concrete steps to the outrigger platform

[2] Breakwater Final EA, Appendix C: Draft AIS, Section 8, p. 69.
[3] *Historic Structure report for Shangri La,* Historic Resources Group, 2008

Feature 7: Strainer pit and associated pipe for strainer pit

Feature 8: Drainage culvert in Diamond Head Breakwater

Feature 9: Outflow pipes

Feature 10: Buoy

Feature 11: Rock landing and walkway around harbor basin

All features listed above are mapped in the Final EA, Chapter 3 (pages 3-24 through 3-29, including figure 3.4). Features affected by the proposed undertaking are emphasized in ***bold*** and described in Appendix A of the CDUA (pages A-54 & A-57).

Determination of Effect: The Final EA was published with a Finding of No Significant Impact (FONSI) on June 23, 2017 further described as:

> "Dismantling the breakwater would result in only a *minor loss of historic character* associated with the entire Shangri La property based upon the archaeological study conducted.[4]" (emphasis added).

Historic Hawai'i Foundation disagrees with this characterization and finds the proposed undertaking would result in an adverse effect to the identified historic resource.

The removal of a historic feature is an "adverse effect" on a historic property. As described in 36 CFR 800.5 & 11 adverse effects on historic properties include:

- Demolition [(1) physical destruction]
- Alteration of character-defining features [(iv) Change of the… physical features… that contribute to its historic significance]

While the CDUA asserts a "minor loss of character [relative to] the Shangri La property", HHF maintains that the proposed undertaking constitutes a major adverse effect on the Boat Harbor site, which is a historic property in its own right and not just a portion of the overall site of Shangri La.

Measures to Avoid Adverse Effects

HHF recognizes the need to provide safety measures and supports reasonable modifications to improve safety.

However, HHF believes that there may be alternatives that address safety concerns while minimizing the adverse effect and without removing the historic features.

[4] Breakwater Final EA, Section 7.2.1

The applicant proposes adding materials to the swim basin to deter jumping. HHF does not oppose adding new materials, but recommends that they come from another source and not by destruction of a historic feature. This alternative would consist of:

- Adding imported rocks within the basin as proposed to create a deterrence to high-risk diving and for repairs to the existing seawall as required.
- Keep the Diamond Head Breakwater intact
- Block the opening to the culvert to prevent swimming through the opening.

Measures to Mitigate Adverse Effects

If the above recommendation is not incorporated and the project proceeds, the adverse effect to the historic property needs to be mitigated.

Although the documentation contained in Appendix C: Draft AIS, sub-appendices B & C by Mason Architects (Intensive Level Historic Resource Inventory Survey Form and Report) provides an excellent resource and documentation, documentation of the historic property is not the only mitigation measure that should be considered.

On its own, documentation does not sufficiently mitigate the loss of historic properties and features. Additional measures to avoid, minimize and mitigate the effect on the historic resources are necessary to address the destruction of a unique historic resource.

Until these issues are resolved, HHF recommends that the CDU permit should not be issued.

Historic Hawai'i Foundation looks forward to resolving the outstanding issues and adverse effects on the Shangri La Boat Harbor.

Very truly yours,

Kiersten Faulkner

Kiersten Faulkner, AICP
Executive Director

Exhibit 8: Written comments

TURBIN • CHU • HEIDT
ATTORNEYS AT LAW

A LAW CORPORATION

RICHARD TURBIN
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RAI SAINT CHU
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Suite 2730, Mauka Tower
Pacific Guardian Center
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Phone: (808) 528-4000
Fax: (808) 599-1984

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

January 22, 2018

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
State of Hawaii, Dept. of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Rm. 131
Honolulu, HI 96813

VIA HAND DELIVERY
& FAX: (808) 587-0322

2018 JAN 22 PM 12: 08

Re: RESPONSE TO REQUEST FOR COMMENTS
Conservation District Use Application OA-3809
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Dear Mr. Lemmo:

Thank you for your memorandum dated December 19, 2017 requesting comment from the Waialae-Kahala Neighborhood Board No. 3 on the CDU application for the referenced project.

Please be advised that at its regular meeting on June 15, 2017, the Waialae-Kahala Neighborhood Board No. 3, of which I am the chair, adopted the following resolution opposing the CDU application as reflected in the minutes of the meeting:

> **"Boardmember Francis moved, and Vice Chair Pyles seconded, that the Waialae-Kahala Neighborhood Board No. 3 vote on a resolution titled – 'MOTION FOR A VOTE BY THE KAHALA NEIGHBORHOOD BOARD TO OPPOSE THE DORIS DUKE FOUNDATION'S PROPOSED BREAKWATER DEMOLITON AT SHANGRI-LA ESTATE'. Boardmember Francis read the proposed resolution:**
>
> On behalf of myself and a large number of other Kahala residents, I hereby move that the Waialae Kahala Neighborhood Board No.3 vote to express its opposition to the proposal by the Doris Duke Foundation to dismantle the breakwater located offshore of the Shangri-La Estate near Ka'alawai, O'ahu on the grounds that it will:

1. Deprive the public of a valuable recreational ocean resource by making the Shangri-La swimming area less protected from waves and currents, especially at a time when Honolulu sea levels are at record highs and increasing,

2. Destroy an important historical site, and,
3. Have a potentially significant negative environmental impact on the fragile coastal and marine ecosystem.

The motion was ADOPTED by UNANIMOUS CONSENT by HAND VOTE, 7-0-0; (**AYE**: Turbin, Au, Brady, Chang, Francis, Himeda, Pyles; **NAY**: None; **ABSTAIN**: None)"

The Waialae-Kahala Neighborhhod Board No. 3 remains opposed to the CDU application for the reasons set out above.

Thank you for your attention to this matter. If you have any questions, please feel free to call me at 528-4000.

Sincerely,

Richard Turbin

Fred Fong

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AND COASTAL LANDS
2018 JAN 22 P 1:03
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

From: Fred Fong <fongf001@hawaii.rr.com>
Sent: Monday, January 22, 2018 11:48 AM
To: FRED FONG (FONGF001@hawaii.rr.com)
Subject: FW: DNLR REQUEST FOR COMMENTS- Conservation District Use Application OA-3809, Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Attachments: DLNR Memo & Acceptance Letter.pdf; June 2017 WKNB 3 Resolution.pdf

January 22, 2018

RE: DNLR REQUEST FOR COMMENTS- Conservation District Use Application OA-3809, Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands, DLNR
1151 Punchbowl St., Room 131
Post Office Box 621
Honolulu, Hawaii 967809
(Hand delivered 1/22/18)

Dear Mr. Lemmo,

Kahala Neighborhood Board Chairman Richard Turbin has forwarded to me a missive he just received stamped Dec. 19, 2017 requesting any comments on the proposed dismantling of the Doris Duke breakwater be submitted to DNLR by January 22, 2018.

1. During the last year community opposition to dismantling the breakwater has been presented at a meeting of neighbors hosted by the Doris Duke Estate, in newspaper letters to the editor, and discussed in Kahala Neighborhood Board meetings with representatives from the Doris Duke Estate outlining their intended plans.
2. The Kahala Neighborhood Board in a unanimous motion on 6/15/2017 voted, "TO OPPOSE THE DORIS DUKE FOUNDATION'S PROPOSED BREAKWATER DEMOLITION AT SHANGRI-LA ESTATE" based on the grounds that it will:
    A. Deplete the public of a valuable recreational ocean resource by making the Shangri-La swimming area less protected from waves and currents, especially at a time when Honolulu sea levels are at record highs and increasing.
    B. Destroy an important historical site, and,
    C. Have a potentially significant negative environmental impact on the fragile coastal and marine ecosystem.

Copies of this motion were forwarded to 1.) Ms. Natalie Farinholt, DLNR, Office of Conservation and Coastal Lands; 2.) Mr. Ronal Sato, HFF Planers, Senior Associate; 3.) Ms. Lea Majors, Deputy Director, Shangri-La

3. DNLR Chair, Suzanne Case, in a letter to Ronald Sato of HHF Planners time stamped Dec. 19, 2017, appropriately notes that, "After reviewing the application (submitted by the Doris Duke Estate's agent, HFF Planers), OCCL finds that:
    A. ...Hawaii Administrative Rules (HAR) 13-5-24, P-8 STRUCTURES AND LAND USES, EXISTING, (D-1) Major alteration of existing structures, facilities, uses, and equipment, or topographical features which are different from the original use or different from what was allowed under the original permit. When county permit(s) are required for the associated plan(s), the department's approval shall be required.
    B. Pursuant to HAR 13-5-40, HEARINGS, the proposed use will require a public hearing."

4. If the Doris Duke Estate's true intent in acquiring a permit to build a barrier fence in 2014 was to "deter jumping and diving from the wall", such an objective can still be simply achieved through scientific observation and deductive implementation.

DD Estate's new Executive Director, Konrad Ng stated at the April 20, 2017 Neighborhood Board meeting, that this fence was not an effective deterrent and that jumping and diving from the wall had increased. However, to the contrary, HHF Planners' own 1,000 pages of reports and analysis showed that the fence was effective in a surprising 89% reduction in jumping, which can still be further improved on by implementing the following simple deductions.
Three reasonable proposals were made by community members to achieve the initial safety intent of the fence and still save the Breakwater:

1. Bevel the flat standing ledges on the wall to 45 degrees, thus making standing there to jump from impossible. (On 4/20/17, Doris Duke's HHF Planners' rep, Mr. Scott Ezer said no to this suggestion.)
2. Mr. Ezer also said they would not put a deterrent cap on the fence top because of safety concerns. **Solution** - simply add to the top of the fence another shorter vertical bar in between the existing bars, which would thus make standing on the uneven fence top impossible to jump from.
3. HHF Planners' rep, Mr. Ronald Sato said that grouting in the wall cracks to prevent climbing up the wall would interfere with the minimalist absorption of the wave energy and also contribute to ocean contamination. Solution – simply grout in the cracks above the high water line.

Objective achieved: no standing climbing or jumping from the fence or ledge.

(Concerns for a Shoreline Management Permit, affected ocean habitat, resulting currents due to new daily wave action capping the dismantled breakwater down to mean sea level, a fire department ocean rescue training site, criteria for maintaining Historic Places, Statute mandating REPLACEMENT for any loss or diminished ocean recreational use, and liability protection Statute already in place for recreational use -all can be discussed later.)

Members of the neighboring community have asked the DD Estate, and its new Executive Director Konrad Ng, to undertake an effort to save the Breakwater and Harbor Basin, both which are a beautiful and enjoyable legacy for our city. If the Breakwater is dismantled without first implementing the additional recommended wall and fence deterrents, the problem of an *attractive nuisance* is not fully addressed. Why not first implement the recommended additional safety features before deciding on spending nine months of demolition to irrevocably dismantling the Breakwater and beautiful Swimming Basin?
Once the Breakwater and sandy harbor are dismantled, it will be a loss to the community and never be restored.

Respectfully,

Fred Fong
Community member
1380 Lusitana St., suite 514
Honolulu, Hawaii 96813
Email Fongf001@hawaii.rr.com
Cell (808) 277-6786

CC: Mr. Richard Turbin, Chair, Kahala Neighborhood Board
Mr. Michael Cain, Office of Conservation and Coastal Lands, DLNR, Phone 587-0048, hand delivered 1/22/2018
Ms. Susan Case, Chair, Board of Land and Natural Resources

From: Rich Turbin [mailto:richturbin@turbin.net]
Sent: Saturday, January 20, 2018 2:52 PM
To: fongf001@hawaii.rr.com
Cc: richturbin@turbin.net
Subject: Shangri La Breakwater

Dear Dr. Fong,
I have scanned and attached in PDF format the DLNR Memo, Letter of Acceptance, and June 2017 Waialae-Kahala Neighborhood Board Resolution regarding the Doris Duke Foundation's proposed breakwater demolition at the Shangri-La Estate.
Sincerely,

David Robyak,
On behalf of
Richard Turbin
Turbin Chu Heidt, Attorneys at Law
737 Bishop Street, Suite 2730
Honolulu, Hawaii 96813
(808) 528-4000 (office)
(808) 599-1984 (fax)

DAVID Y. IGE
GOVERNOR OF HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

ref:OCCL:MC

CDUA OA-3809
180 Day Deadline: June 13, 2018
DEC 19 2017

MEMORANDUM

TO: DLNR
- ___ Division of Boating and Ocean Recreation
- ___ Division of Aquatic Resources
- ___ Land Division
- ___ Historic Preservation Division
- ___ Division of Conservation and Resource Enforcement
- ___ Office of Hawaiian Affairs
- _√_ Wai'alae Kāhala Neighborhood Board No. 3
- ___ US Army Corps of Engineers
- ___ US Fish and Wildlife Service
- ___ State Office of Planning
- ___ County Department of Planning and Permitting
- ___ Surfrider Foundation
- ___ Historic Hawai`i Foundation

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

SUBJECT: REQUEST FOR COMMENTS – CONSERVATION DISTRICT USE APPLICATION OA-3809
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project

LOCATION: Kāhala, Honolulu, O`ahu

TMK: (1) 3-1-041:005

Please find Conservation District Use Application (CDUA) OA-3809 for the proposed *Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project* on the above subject parcel. We would appreciate any comments your agency or office has on the application. The application and supporting documens can also be found on our website at dlnr.hawaii.gov/occl/current-applications.

A public hearing on the application will be on O'ahu on a date to be determined. The time and location will be posted on OCCL's website.

If no response is received by the suspense date of January 22, 2018 we will assume there are no comments.

Please contact Michael Cain at 587-0048, should you have any questions on this matter.

(√) Comments Attached

( ) No Comments

1/22/2018
Signature

FREDERICK FONG, M.D. INC.
Internal Medicine
The Queen's Physicians' Office Building
1380 Lusitana Street, Suite 514
Honolulu, Hawaii 96813

attachment: CDUA (disc); Acceptance Letter

Exhibit 8: Written comments

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 13, 2018

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

Dear Mr. Lemmo:

Subject: Doris Duke Foundation for Islamic Art
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Permit Application (OA-3809)
Honolulu, Hawai'i 96816
TMK (1) 3-1-041: portion of 005

This letter, with attachments, is being submitted for the Doris Duke Foundation for Islamic Art's (DDFIA) Conservation District Use Permit (CDUP) application (OA-3809) for the Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project. We received comment letters on from the State Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) as part of the agency and public review period of the CDUP application, which ended on January 22, 2018. A listing of the letters received is provided below, and our responses to them are attached to this letter for your information. DDFIA also received a letter directly from the U.S. Department of Army, Corps of Engineers, which is included.

1. State Office of Planning, January 10, 2018;
2. State Department of Land and Natural Resources (DLNR), Division of Aquatic Resources, January 22, 2018;
3. City Department of Planning and Permitting, January 1, 2018;
4. Mr. Richard Turbin, January 22, 2018;
5. Dr. Fred Fong, January 22, 2018;
6. Historic Hawai'i Foundation, January 19, 2018; and
7. U.S. Department of Army, Corps of Engineers, Regulatory Branch, January 31, 2018.

A summary is provided regarding our responses to the comments received, which also includes testimony presented at your department's public hearing for the CDUP application held on February 7, 2018.

1. We appreciate the comments and suggestions on alternatives provided by the community during the environmental review process, CDUP public review, and OCCL public hearing. However, those suggestions do not adequately address the purpose and need for this project, which is public safety. The project purpose is to eliminate or substantially minimize opportunities for the public to engage in dangerous behavior

Pacific Guardian Center | 733 Bishop Street, Suite 2590 | Honolulu, Hawaii 96813
Telephone: 808.545.2055 | Facsimile: 808.545.2050 | www.hhf.com | email: info@hhf.com

within the basin that predominantly consists of jumping from the Diamond Head Breakwater and seawall. The Applicant has evaluated many alternatives, which included restricting all public access within the basin to filling the basin with boulders. However, the Applicant wants to continue to allow public recreational use of this basin, but needs to curtail unsafe behavior. Even though some residents who currently use the basin oppose the character of the basin being changed, the proposed project effectively addresses the purpose and need while continuing to allow the public to conduct ocean recreational activities.

2. As documented in the project's Final Environmental Assessment, the improvements would not have a significant impact on the ocean and marine environment, the basin's use for recreational activity, nor deprive the public of this recreational resource.
   a. Some recreational swimming does occur within the basin, but at a relatively low and infrequent level. As one person testified at OCCL's public hearing, during his visits to the basin, there is typically only one to three people swimming in the basin 70% of the time, and no one present the remaining 30% of the time.
   b. The remaining volcanic dike underlying the breakwater will provide some protection of the basin for activities. People do not normally swim in the basin during periods of high surf, and this would not change with the project.
3. We want to address perceived "community opposition" to this project that has been cited by an opponent along with the circumstances surrounding the position taken by the Waiʻalae-Kāhala Neighborhood Board (NB) on this project.
   a. The Applicant presented this project to several other neighborhood boards in the area, in addition to the Waiʻalae-Kāhala NB, on multiple occasions between 2014 and 2015 due to the broader public interest associated with the basin. This included the Kaimukī, Pālolo, and Diamond Head/Kapahulu/St. Louis Heights NBs. These other NBs were supportive of the project, understood its purpose and need to address safety, and did not require further updates from the Applicant.
   b. Regarding the Waiʻalae-Kāhala NB, it was unfortunate that the NB acted on a resolution without first seeking more information about the project or notifying the Applicant that a resolution was under consideration by the NB. This prevented the Applicant from having another opportunity to speak about the project and its contribution to public safety, and to address questions from the NB. We note this action occurred even after the Waiʻalae-Kāhala NB twice previously declined a resolution for consideration, and that the resolution passed does not address the safety issues, which is the purpose of this project. We also want to note this NB declined to submit comments during the review process for the Environmental Assessment prepared for this project. This included a July 27, 2015 pre-assessment consultation letter, and the Draft Environmental Assessment (November 2016) transmitted to the NB.
4. The project would require a permit from the U.S. Department of Army, Corps of Engineers (COE), which subsequently triggers consultation efforts under Section 106 of the National Historic Preservation Act (NHPA). We have been in contact and continue to coordinate with the COE on this project, since its early planning stages in 2013. This included several meetings with the COE, and a site visit initiated by the COE with federal and state resource agencies held on August 27, 2014 to discuss the project, which included attendance by OCCL staff.

a. It is not necessary for Section 106 consultations to be completed before approval of other permits under the NHPA regulations. Processing of the CDUP application is a State of Hawai'i process that has its own set of requirements and procedures separate from the federal consultation procedures under Section 106. Consequently, this CDUA process is not "out of order" in relation to the COE's permit process.

b. The Section 106 consultation process and COE permit review process would consider the range of reasonable and practicable alternatives to meet the purpose and need for the project. Several alternatives have already been identified and addressed under the State's environmental review process. Unfortunately, the range of alternatives considered would not meet the project's purpose and need. Avoiding demolition of the breakwater would not prevent the public from continuing to participate in dangerous activities jumping from the breakwater.

c. A meeting and site visit with the Historic Hawai'i Foundation (HHFnd) at Shangri La was held on February 22, 2017 to discuss HHFnd's comments and concerns. We believe that meeting was productive in addressing their concerns. Alternatives were discussed, and we believe sufficient information was shared to justify why the alternatives would not adequately address the purpose and need for the project. Our discussion included identifying possible mitigative measures that could be implemented with regard to historic properties. The HHFnd preferred seeing "creative mitigation" that may incorporate documentation created (e.g. HABS) within Shangri La's educational programs to tell the story of the basin site. The Applicant indicated this type of creative mitigation could be explored.

We believe our responses adequately address the CDUP application comment letters received. If you have any further questions concerning this, please contact me at 457-3172 or by email at rsato@hhf.com. Thanks.

Sincerely,

Ronald A. Sato, AICP
Senior Associate

cc: Michael Cain – OCCL (via email)
Konrad Ng - DDFIA

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March 13, 2018

Dr. Bruce S. Anderson, Administrator
Division of Aquatic Resources
Department of Land and Natural Resources
State of Hawai'i
1151 Punchbowl Street, Room 330
Honolulu, Hawai'i 96813

Dear Dr. Anderson:

Subject: **Doris Duke Foundation for Islamic Art**
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Application OA-3809

Thank you for your letter dated January 22, 2018 to the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) providing comments on Conservation District Use Application OA-3809 for the subject project. We have the following responses to your comments (DAR# 5662).

We appreciate your division's understanding of the project's purpose for minimizing unsafe behavior, and the Applicant intends to continue to allow safe public access to this basin. The concrete stairs at the Koko Head Breakwater would continue to provide the public with safe access into and out of the basin and ocean for recreational activities.

The barge spudding plan that includes proposed anchoring locations will be coordinated with your division for review and comments. This spudding plan will also identify how the outside barge will be secured to avoid and minimize impacts to coral.

The Applicant, or their designated contractor, will contact Mr. Gulko of your division to coordinate any need for the trans-location of coral and live rock prior to construction activities. This includes allowing your division to conduct a survey prior to construction activities.

The Applicant will coordinate with your division to develop an action plan with monitoring activities to address potential invasive species that may become colonized on the remaining dike and constructed revetment. All barges and in-water equipment used for construction activities will be inspected for the presence, and removal if necessary, of invasive species prior to use in the vicinity of the project area.

If you need additional information, please contact me by phone at 457-3172, or by email at rsato@hhf.com.

Sincerely,

HHF Planners

Ronald A. Sato, AICP
Senior Associate

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March 13, 2018

Ms. Rebecca M. Frager, Biologist, Regulatory Specialist
Regulatory Branch
Honolulu District
U.S. Army Corps of Engineers
Department of the Army
Fort Shafter, Hawai'i 96858-5440

Dear Ms. Frager:

Subject: **Doris Duke Foundation for Islamic Art**
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Application OA-3809
DA File No. POH-2018-00037

Thank you for your letter dated January 31, 2018 to Mr. Konrad Ng, Executive Director of Shangri La. We are including your letter and this response to the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) as part of comments on Conservation District Use Application OA-3809 for the subject project. We have the following responses corresponding to your comments.

We confirm that the project is located within the Pacific Ocean, which is a navigable water of the U.S. under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Honolulu District (Corps), and that Section 404 and Section 10 Department of Army permits may be required for this project. We have already been coordinating with your branch on this project since its early planning stages in 2013, and the Corps has already assigned file number POH-2013-00213 to this project. We will continue to coordinate with the Corps as work on this project progresses. This will include providing delineations of the high tide line and mean high water mark to better determine the water boundary for your review.

If you need additional information, please contact me by phone at 457-3172, or by email at rsato@hhf.com.

Sincerely,

HHF Planners

Ronald A. Sato, AICP
Senior Associate

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March 13, 2018

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Leo R. Asuncion, Director
Office of Planning
State of Hawai'i
P.O. Box 2359
Honolulu, Hawai'i 96804

Dear Mr. Asuncion:

Subject: **Doris Duke Foundation for Islamic Art**
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Application OA-3809

Thank you for your letter dated January 10, 2018 to the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) providing comments on Conservation District Use Application OA-3809 for the subject project. We have the following responses corresponding to your numbered comments.

1. We confirm that ocean recreational activities within the project area would continue to occur with the project, and improvements would address unsafe and dangerous recreational behavior (e.g. jumping from Diamond Head Breakwater). The Applicant would like to continue allowing ocean recreational activities within this basin, and the project supports pertinent objectives and policies of the Hawai'i Coastal Zone Management Act. Construction of the revetment along the seawall would also result in lower overtopping rates along the public shoreline walkway due to the energy dissipation provided by the armor stones from the breakwater placed along the seawall. The concrete steps at the Koko Head Breakwater would continue to be maintained by the Applicant.
2. The construction contractor will be required to manage employee vehicle parking, and the potentially six additional vehicles parked within the adjacent residential neighborhood should have no effect on public access. Access to the basin would be temporarily restricted for safety reasons during construction activities, so vehicular public parking within the subdivision to access the basin would be reduced anyway. There are many available parking areas along nearby residential streets to accommodate short-term construction activities. Most people that traverse the shoreline in the vicinity of the property enter from Kulamanu Place located about 600 feet to the west.
3. Boulders removed from the breakwater would be stockpiled using a barge, and would not impact aquatic habitat. The contractor would be required to finalize a Best Management Plan outlining their methods and approach meeting requirements of federal and state permits and conditions.

4. The project does not include any permanent lighting or artificial lighting. Construction work would only occur during daylight hours.
5. Coordination with the State Office of Planning will be conducted at the appropriate time to address CZM federal consistency review of the project.

If you need additional information, please contact me by phone at 457-3172, or by email at rsato@hhf.com.

Sincerely,

HHF Planners

Ronald A. Sato, AICP
Senior Associate

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March 13, 2018

Ms. Kathy Sokugawa, Acting Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawai'i 96813

Dear Ms. Sokugawa:

Subject: **Doris Duke Foundation for Islamic Art**
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Application OA-3809

Thank you for your letter dated January 1, 2018 to the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) providing comments on Conservation District Use Application OA-3809 for the subject project. We have the following responses to your comments.

We note your department has no objections to the Conservation District Use Application for the subject project. We confirm that the proposed work on the Diamond Head Breakwater and within the basin along the seawall are situated makai of the certified shoreline, and located outside of the City's Special Management Area and Shoreline Setback areas.

If you need additional information, please contact me by phone at 457-3172, or by email at rsato@hhf.com.

Sincerely,

HHF Planners

Ronald A. Sato, AICP
Senior Associate

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March 13, 2018

Mr. Richard Turbin
Turbin Chu Heidt, Attorneys at Law
Pacific Guardian Center, Mauka Tower
737 Bishop Street, Suite 2730
Honolulu, Hawai'i 96813

Dear Mr. Turbin:

Subject: **Doris Duke Foundation for Islamic Art**
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Application OA-3809

Thank you for your letter dated January 22, 2018 to the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) providing comments on Conservation District Use Application OA-3809 for the subject project.

We acknowledge the Waialae-Kahala's Neighborhood Board's (Board) resolution adopted at its June 15, 2017 meeting opposing the application. However, the Applicant strongly believes this project is in the public interest, and we would like to address the following items associated with the resolution adopted by the Board.

1. It is unfortunate that the Board acted on this resolution without first seeking more information about the project, acknowledging that there is neighborhood support for the project, or notifying us or the Applicant that a resolution was under consideration. This approach prevented the Applicant from having a good faith opportunity to speak about the project or to discuss the safety issues, which is the purpose of this project, and which the resolution fails to address.
2. We have made multiple efforts to share the proposed project with the public, including the presentation delivered to the Board at its April 20, 2017 meeting. At this meeting, we addressed alternatives we considered to the proposed project, questions raised by Board members, and concerns raised by Dr. Fred Fong and his suggested alternatives, which are documented in the meeting minutes. We stated that no action by the Board was required or being requested by the Applicant, and our primary purpose for reaching out to the Board was to keep them apprised of the project and address any comments. We note that no position and language could be agreed upon by the Board, and a Resolution was thus not undertaken at that meeting.
3. We were not notified that this project was later taken up by the Board at the next Board meeting (5/18/17). At this meeting, Dr. Fong repeated his opposition to the project, and requested the Board adopt a Resolution against the project. The Board denied his request. Some board members suggested that a public hearing held on the project would be a better venue than their Board to voice his concerns.

4. At the next Board meeting (6/15/17), the agenda included a "Proposed Resolution opposing the dismantling of breakwater by Doris Duke Estate." We remain perplexed as to how a Resolution that was already twice declined by the Board was now included on the agenda. It is unfortunate neither HHF nor the Applicant were notified that the project would be discussed at the meeting, and, were thus not present to speak about the project and its contribution to public safety.
5. We also want to note there have been previous opportunities for the Board to submit public comments. During the environmental review process, a July 27, 2015 pre-assessment consultation letter was sent to the Board to solicit comments on this project. The Draft Environmental Assessment, published on November 8, 2016, was also transmitted to the Board for review and comments. No comment letters were received from the Board on these transmittals.

We have the following responses to address the three areas of concerns raised by the Board in its Resolution.

1. "Deprive the public of a valuable recreational ocean resource"
   As discussed in the Final Environmental Assessment accepted by the State OCCL, a wave modeling study that accounted for future sea level rise determined the project would have minimal changes in wave impacts to the basin area. The volcanic dike under the Diamond Head Breakwater would remain after deconstruction, and could have a height as much as 3 feet above the mean high water mark continuing to provide some protection for the basin. There would not be much change to wave heights occurring along the seawall, and negligible effect on wave heights (only between ±0.01 feet) would occur at surrounding surf breaks. The lowered breakwater crest elevation with the underlying dike would have minimal change on nearshore circulation patterns, and no significant changes to swimming conditions or sediment transport processes.

   Construction of the revetment along the seawall would result in considerably lower overtopping rates affecting the shoreline public walkway due to energy dissipation provided by the added armor stones from the breakwater placed along the seawall. Currently, the existing breakwater and seawall is projected to have an overtopping rate of 15 gal/min/ft under high surf conditions. This overtopping rate poses a hazard for pedestrians being hit by the water while walking along the seawall. With the project, a 93% decrease in overtopping rate (reduced to 1 gal/min/ft) is projected, making the public shoreline walkway more tolerable for the public during high surf conditions.

   With the project, the public would continue to be able to participate in ocean recreational activities (e.g. swimming, snorkeling, fishing, and accessing surf locations), but the opportunities for unsafe activities that have been occurring will be reduced. The concrete stairs would continue to provide safe access into the ocean. Swimming activity in the basin is relatively low, with most activities consisting of hanging out in the water or jumping from the breakwater or seawall. Testimony given at OCCL's public hearing for this project stated that typically only one to three other

persons may be present swimming when the testifier is there, and no one else is present 30% of the time. The public generally does not swim in the basin when there is high surf; also supported by public hearing testimony. Therefore, under typically calmer surf conditions, the remaining dike would continue to provide protection within the basin for recreational activities.

2. "Destroy an important historical site"
It should be clarified that the man-made boat basin was determined to not be "individually eligible" for the historic register. This basin, including the Diamond Head Breakwater, was evaluated as being a "contributing feature" to the larger Shangri La historic property as a whole. The basin's features are of secondary significance and without distinctive characteristics or value supporting the mission of the Applicant. Thus, alteration of the Diamond Head Breakwater would result in a minor loss of historic character associated with Shangri La, and not result in the Shangri La historic property becoming ineligible for the register.

   The project would not impact traditional native Hawaiian cultural practices or resources. Dismantling the Diamond Head Breakwater and construction of the revetment along the seawall would not restrict access to surrounding areas outside of the project area that may potentially be used for traditional native Hawaiian cultural practices. Based upon these results, architectural recordation for the boat basin and breakwaters was recommended. An Intensive Level Historic Resource Inventory Survey of the boat basin and breakwaters has already been conducted providing sufficient documentation for the harbor and breakwaters site to serve as mitigation for the project.

3. "Have negative impact on coastal and marine ecosystem"
Results of reef surveys determined that marine biotic communities in the basin area are presently limited in abundance and species composition. There were no rare or unusual biotic features found in the area, and the existing community is limited in structure owing to continual wave stress in the shallow environment. Most of the corals consisted of either remnant fragments from pre-existing larger colonies, or flat encrustations. State DLNR, Division of Aquatic Resources (DAR) personnel have removed the few corals that occurred within the boat basin. This results in a coral-free habitat within the basin and along the seawall where the revetment will be constructed. To further minimize impacts, the contractor will assess conditions in developing a Barge Spudding Plan prior to construction.

   Populations of reef fish in the area, although low, are presently typical of shallow reef habitats, and do not represent a unique or abundant resource. Dismantling of the breakwater would not significantly change the marine habitat outside of the breakwater, and should not have a significant impact on reef fish.

The basin area does not appear to be a preferred habitat for endangered or protected species. Green turtles likely occur in the general area only on occasion. There is a multitude of foraging and feeding habitat for turtles present all along this coastline. There should be no major changes to turtle feeding habitat in the area after the project is completed. In fact, there will be more submerged rock along the proposed revetment that could increase limu habitat, thereby improving turtle feeding habitat. While monk seals may occur in the area, the lack of beaches suggests that the site would not be a preferred haul out area. Therefore, the project should not negatively impact endangered or protected species.

If you need additional information, please contact me by phone at 457-3172, or by email at rsato@hhf.com.

Sincerely,

HHF Planners

Ronald A. Sato, AICP
Senior Associate

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March 13, 2018

Ms. Kiersten Faulkner, Executive Director
Historic Hawai'i Foundation
680 Iwilei Road, Suite 690
Honolulu, Hawai'i 96817

Dear Ms. Faulkner:

Subject: **Doris Duke Foundation for Islamic Art**
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Application OA-3809

Thank you for your letter dated January 19, 2018 to the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) providing comments on Conservation District Use Application (CDUA) OA-3809 for the subject project. We have the following responses corresponding to your comments.

Coordination with Section 106

We acknowledge that the project would require a permit from the U.S. Department of Army, Corps of Engineers (COE), which subsequently triggers consultation efforts under Section 106 of the National Historic Preservation Act. We have been in contact and coordinating with the COE on this project since its early planning stages in 2013. The COE has already assigned file number POH-2013-00213 to this project.

We did receive your December 8, 2016 letter commenting on the published Draft Environmental Assessment and requesting to be included as a consulting party under the federal Section 106 process. While that letter was "late" being received after the 30-day comment period, we sent a June 23, 2017 response letter addressing your comments. The Historic Hawai'i Foundation (HHFnd) will be included in the Section 106 consultation process when initiated in coordination with the COE.

It is not necessary for Section 106 consultations to be completed before approval of other permits under the federal National Historic Preservation Act regulations. Processing of the CDUA for the project is a state process that has its own set of requirements and procedures separate from the federal consultation procedures under Section 106. Consequently, this CDUA process is not "out of order" in relation to the COE's permit process.

Coordination with the COE has occurred since the initial planning phase of this project. Subsequent meetings with the COE have occurred as this project has progressed, and a site visit initiated by the COE with federal and state resource agencies was held on August 27, 2014 to discuss the project.

The issuance of a State Conservation District Use Permit does not foreclose options being considered under the COE's permit review process. The Section 106 consultation process and COE permit review process would consider the range of reasonable and practicable alternatives to address the purpose and need for the project. It should be noted that several alternatives have already been identified and addressed under the State's environmental review process, which included consultation with the COE, to try to avoid removal of the breakwater or minimize effects on the breakwater. Unfortunately, the range of alternatives considered would not meet the purpose and need for the project. Avoiding demolition of the breakwater would not prevent the public from continuing to participate in dangerous activities jumping from the breakwater. There is no practical way to minimize the effect of the dismantling of the breakwater.

We also note that we, along with the Applicant, did have a meeting and site visit with you at Shangri La on February 22, 2017 to discuss your comments in the December 8, 2016 letter. We believe the meeting was productive in addressing your foundation's concerns. Alternatives were discussed, and we believe sufficient information was shared to justify why the alternatives were not sufficient to meet the purpose of the project.

Our discussion included identifying possible mitigative measures that can be implemented. You suggested that creative mitigative measures should be considered because you "disliked" seeing reports, such as a data recovery report, Historic American Buildings Survey (HABS), or Historic American Engineering Record (HAER), being prepared as part of mitigation and "then just left sitting on a shelf thereafter." You preferred seeing "creative mitigation" that may incorporate the documentation created (e.g. HABS) within the foundation's educational programs to tell the story of the basin site. The Applicant indicated this type of creative mitigation could be explored.

Regarding your comment about the historic preservation consultation process under Section 6E, HRS, the State Historic Preservation Division (SHPD) is responsible for such actions. However, we believe our site visit and meeting with you on February 22, 2017 provided an opportunity for consultation to address your concerns.

Undertaking and APE

The CDUA describes the proposed undertaking, and the area of potential effect (APE) was determined based upon consultation with the SHPD.

Identification of Historic Properties

We note your disagreement regarding the historical significance associated with the boat basin. However, it should be clarified that the man-made boat basin was not determined to be "individually eligible" for the historic register based upon the intensive level historic resource inventory survey conducted by Mason Architects, Inc. This basin, including the Diamond Head Breakwater, was evaluated as being a "contributing feature" to the Shangri La historic property as a whole. The basin's features are of secondary significance to Shangri La and without distinctive characteristics or value supporting the mission of the Applicant. Thus, alteration of the Diamond Head Breakwater would result in a minor loss of historic character associated with the entire Shangri La property, and would not result in the Shangri La historic property becoming ineligible for the National Register of Historic Places (NRHP).

Description of Historic Properties and Determination of Effect

Our previous response addresses your comments and disagreement with the assessment of the project's effects. The man-made boat basin was not determined to be "individually eligible" for the historic register, but is a "contributing feature" to the larger Shangri La historic property as a whole. Alteration of the Diamond Head Breakwater, removal of the drainage culvert in the breakwater, and possible effects on the strainer pit would not result in the Shangri La property becoming ineligible for the NRHP.

Under state historic review requirements, the project effect recommendation was "effect with agreed upon mitigation commitments." The adverse effect criteria cited is based upon the federal Section 106 consultation regulations, and a determination of such an effect would be resolved under the separate federal process. If necessary, mitigative measures can be identified and addressed during that process, such as HAER and creative mitigative measures, as you suggested.

Measures to Avoid Adverse Effects

We appreciate HHFnd's understanding of the need to incorporate safety improvements to the basin. Your suggestion of adding imported rocks to fill the basin while preserving the breakwater was discussed at our February 22, 2017 site visit meeting, and was already considered by the Applicant. However, this alternative would essentially require filling the basin with boulders that would significantly impact and prevent recreational activities from occurring within the basin. The Applicant would like to continue allowing the public to use this basin for ocean recreational activities in a safer manner.

Blocking the opening of the drainage culvert within the breakwater was also discussed at our meeting. However, the culvert is not a significant historic property and blocking the opening does not address the project's purpose of addressing dangerous behavior of continued jumping from the breakwater.

Measures to Mitigate Adverse Effects

The Applicant is willing to consider additional mitigative measures. We also believe the intensive level historic resource inventory survey conducted by Mason Architects, Inc. is a good resource and documentation of the basin serving as one element of necessary mitigative measures.

If you need additional information, please contact me by phone at 457-3172, or by email at rsato@hhf.com.

Sincerely,

HHF Planners

Ronald A. Sato, AICP
Senior Associate

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March 13, 2018

Dr. Fred Fong
1380 Lusitana Street, Suite 514
Honolulu, Hawai'i 96813

Dear Mr. Fong:

Subject: **Doris Duke Foundation for Islamic Art**
Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project
Conservation District Use Application OA-3809

Thank you for your letter dated January 22, 2018 to the State Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) providing comments on Conservation District Use Application (CDUA) OA-3809 for the subject project. We have the following responses corresponding to your numbered comments.

1. We would like to clarify your interpretation of "community opposition" to the project. At the November 19, 2016 community meeting hosted by the Applicant, you were publicly opposed to the project. Others in attendance asked questions about the project's methods and effects, others supported the project, and many did not voice any concerns. The only letter to the editor that we are aware of expressing concerns with the project is the one from yourself.
   a. At the April 20, 2017 meeting with the Wai'alae-Kāhala Neighborhood Board, we addressed alternatives considered to the project, questions raised by Board members, and your concerns. We note that the Board did not adopt a Resolution on this project at this meeting because there was no agreed upon position and language. At your initiative, this project was raised at the following May and June Board agendas, for which neither HHF nor the Applicant were notified.

      At the May 18, 2017 meeting, you again stated your opposition, and requested the Board adopt a Resolution against the project. The Board denied this request. Board members stated at this meeting that a public hearing held on the project as part of the permitting process would be a better venue than the Board to voice concerns. This project was discussed at the Board's June 15, 2017 meeting, and a resolution opposing the project was adopted by the Board in the absence of the Applicant. It is unfortunate HHF and the Applicant were not notified of this meeting, since we could have discussed the project at the meeting.

b. Presentations were also given to the Kaimuki, Pālolo, and Diamond Head/Kapahulu/St. Louis Heights Neighbor Boards on multiple occasions to apprise them of the project and solicit their comments between 2014 and 2015. Overall, these Boards were supportive of the project and efforts to address safety, and did not require further updates from the Applicant. These presentations also included the Wai'alae-Kāhala Neighborhood Board (5/21/15), when questions were answered and the Board was not opposed to the project.

2. We acknowledge the Wai'alae-Kāhala's Neighborhood Board's resolution adopted at their June 15, 2017 meeting opposing the application. A separate response letter addressing the Board's reasoning for their Resolution has been sent to them.
3. No response is necessary because this comment basically restates information included in OCCL's letter accepting the CDUA for processing.
4. With installation of the fence in 2014, the number of jumping incidents initially decreased to about 160 per month. However, in 2015, there was a noticeable shift in activities resulting in an increase in jumping from the Diamond Head Breakwater instead of the landing. From January to October 2016, the average number of visitors recorded visiting this area increased to approximately 700 persons per month from about 620 persons in 2015. During the summer months of 2016, this level of activity was about 1,000 persons per month. Jumping from the breakwater is now the most frequent activity. Therefore, the growing trend of increased jumping from the breakwater, in addition to continued jumping from the landing and fence, support the Applicant's commitment to increase public safety by reducing opportunities for dangerous behavior.
   a. Your continued suggested alternatives to bevel the edges on the seawall, adding deterrent caps on the fence top with addition of another vertical bar between existing bars, and grouting the wall cracks are appreciated, and have been considered since you initially suggested them early in the planning process. However, these alternatives would not effectively prevent persons from continued jumping from the fence and seawall. The fence modification suggested would increase potential safety issues from inappropriate behavior, and furthermore, the fence height cannot be raised from the 6-foot height restriction. Finally, these suggestions do not effectively address jumping from the Diamond Head Breakwater.
   b. Your other concerns have already been addressed in the Final Environmental Assessment (e.g. ocean habitat, waves and currents). The Honolulu Fire Department has already determined the project would have no significant impact on their services. Statutes that limit liability for public use of recreational sites and facilities do not fully protect the Applicant from litigation. More importantly, however, the Applicant prefers that people not be injured in the first place, and therefore wants to provide a safer environment for the public to enjoy, and minimize opportunities for dangerous behavior to occur.

We appreciate your concerns regarding the demolition of the breakwater, however, the Applicant strongly believes that the creation of a safer environment by minimizing opportunities for continued dangerous behavior to occur is in the public interest. The Applicant wants to continue allowing the public to access this basin for recreational activities, and prefers not having to restrict all public access into this basin. We believe your suggested alternatives do not effectively serve the purpose and need for this project.

If you need additional information, please contact me by phone at 457-3172, or by email at rsato@hhf.com.

Sincerely,

HHF Planners

Ronald A. Sato, AICP
Senior Associate

2.2.3 Preliminary Best Management Practices

During the construction period, best management practices (BMPs) would be implemented to avoid or minimize possible short-term effects on marine resources, water quality, etc. BMP measures would be developed during the design phase of the project in coordination with the selected contractor. The contractor would be required to finalize a BMP plan outlining their methods and approach meeting requirements of federal and state permits and conditions. All construction workers associated with the project will be briefed on the BMPs and associated requirements to adhere to for the duration of the work. Preliminary BMP measures being considered at this time are identified. Additional BMP measures will be identified and developed based upon further consultations with regulatory agencies, and implemented in accordance with permit conditions.

Turbidity barriers, such as silt curtains and debris booms, would be installed at appropriate locations and maintained for the duration of in-water work. This would be along the basin channel entrance and across the area where the barge(s) would be operating outside the breakwater. These floating barriers would control silt, sediment and debris within the project area to address turbidity effects that may occur from breakwater dismantling and revetment construction activities. The turbidity curtain would not extend, or need to be anchored to the ocean floor, and will allow water circulation to continue properly within the basin to prevent anoxic conditions from occurring. The contractor would conduct daily visual observations to ensure that control measures are in place and functioning properly. If an activity-related plume is observed outside of the silt curtain, the contractor will stop that activity and take corrective action. Construction activity would resume only after the problem is corrected.

A water quality monitoring program, developed as part of the project's required Department of the Army Permit and 401 Water Quality Certification, could be conducted in the project area during construction. If turbidity levels are found to be outside required parameters, DDFIA and the contractor would work with responsible agencies to identify other measures or work methods that could be implemented to remain in compliance with the permit conditions.

The contractor will be responsible for cleaning up any materials deposited outside the work area or in the water, and will also abide by all applicable local environmental protection standards, regulations, agency requirements, and permit conditions. Work will only occur during daylight hours to minimize potential noise and light pollution impacts associated with nighttime work. Project activities will also comply with the Administrative Rules of the DOH (Chapter 11-46 Community Noise Control) addressing construction noise.

The U.S. Fish and Wildlife Service identified standard BMPs identified below that would be considered for incorporating into the project's design plans to avoid or minimize effects on water quality, fish and aquatic resources.

1. Authorized dredging and filling-related activities that may result in the temporary or permanent loss of aquatic habitats should be designed to avoid indirect, negative impacts to aquatic habitats beyond the planned project area.

2. Dredging/filling in the marine environment should be scheduled to avoid coral spawning and recruitment periods, if practicable. Because these periods are variable throughout the Pacific islands, the relevant local, state, or federal fish and wildlife resource agency should be contacted for site specific guidance.
3. Project-related work should be curtailed during flooding or adverse tidal and weather conditions.
4. BMPs should be maintained for the duration of work until turbidity and siltation within the project area are stabilized. All project construction-related debris and sediment containment devices should be removed and disposed of at an approved site.
5. All project construction-related materials and equipment (dredges, vessels, backhoes, silt curtains, etc.) to be placed in an aquatic environment should be inspected for pollutants including, but not limited to; marine fouling organisms, grease, oil, etc., and cleaned to remove pollutants prior to use.
6. Project-related activities should not result in any debris disposal, non-native species introductions, or attraction of non-native pests to the affected or adjacent aquatic or terrestrial habitats. Implementing both a litter-control plan and a Hazard Analysis and Critical Control Point plan can help to prevent attraction and introduction of non-native species.
7. Fueling of project-related vehicles and equipment should take place in a location equipped with primary and secondary spill prevention and control measures to protect fuels and other equipment fluids from entering the marine environment. A plan should be developed and implemented to control petroleum products accidentally spilled during the project. The plan should be retained on site with the person responsible for compliance with the plan. Absorbent pads and containment booms should be stored onsite to facilitate the clean-up of accidental petroleum releases.
8. The construction project manager and heavy equipment operators will perform daily pre-work equipment inspections for cleanliness and leaks. All heavy equipment operations will be postponed or halted should a leak be detected, and will not proceed until the leak is repaired and equipment cleaned.

Other BMPs that could be considered during the project's design include:

1. Visual observation by qualified personnel for the presence of Federally-protected marine species (e.g. green turtles potentially present around the breakwater) during in-water activities.
2. During the barge mooring process, divers would first inspect the mooring area to identify suitable locations for barges to ensure that spuds dropped do not seat on living corals. During the actual spudding of barge(s), divers would be present to monitor the location and activities.
3. A contingency plan can be developed for the removal and adequate securing of equipment in the event of approaching storms.
4. The contractor will designate an appropriate number of competent observers to survey the project area for Federally-protected marine species prior to the start of work each day, and prior to resumption of work following any break of more than a half hour (30 minutes). All work will be postponed or halted when Federally-protected marine species

are within 50 yards of the work area, and will only begin/resume after the marine species have voluntarily departed the area. If marine species are noticed within 50 yards after work has already begun, that work may continue if, in the best judgment of the project supervisor, the activity would not adversely affect the species. For example, divers performing surveys, or workers conducting over-water work would likely be permissible, whereas operation of heavy equipment to remove or place rock underwater is not.

During the actual spudding of barge(s), divers would be present as needed to monitor the location and activities, as part of the Barge Spudding Plan. Other measures include working with the State Department of Land and Natural Resources, Division of Aquatic Resources (DAR) to remove coral that may be affected so that they can be transplanted in the surrounding vicinity or moved to their Anuenue Fisheries Research Station for research or educational use. DAR has already relocated coral from within the basin, and has requested the opportunity to continue these efforts should circumstances warrant during the duration of the project. DDFIA will ensure the contractor coordinates such efforts with DAR.

To address on-street parking in the neighborhood, the construction contractor will manage employee vehicle parking within the property. It is anticipated that up to 15 construction personnel could be working on the project on a given day in up to 10 vehicles. Up to four vehicles are planned to be accommodated within the Shangri La property. Therefore, approximately six vehicles would be parking along residential streets in the vicinity. This should have minimal effect on the neighbors because there are many available parking areas along nearby residential streets.

The applicant will notify the surrounding community of construction activities, and keep them informed of the project's progress. Construction specifications will include language regarding the use of barriers with visible signage, and sign location(s) for notifying the public of construction activities.