

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

October 26, 2018

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

REGARDING: Third Time Extension Request for Conservation District Use Permit (CDUP) OA-3579 for the Honolulu Seawater Air Conditioning Project

APPLICANT: Frederic Berg
Honolulu Seawater Air Conditioning, LLC.

LOCATION: Submerged Land, Makai of Kaka'ako Waterfront Park, Offshore of Plat (1) 2-1-060 and Channel D of Ke'ehi Lagoon, Island of O'ahu

LANDOWNER: State of Hawai'i

USE: Kaka'ako -Approximately (\approx) 8.0 Acres
Ke'ehi Lagoon - \approx 50.0 Acres

SUBZONE: Resource

BACKGROUND (Exhibits 1-6)

On June 23, 2011, the Board of Land and Natural Resources (Board) approved CDUP OA-3579 for the Honolulu Seawater Air Conditioning (HSWAC) Project subject to 18 conditions. The project is to pump cold, deep seawater through a pipeline more than four miles offshore to a cooling station in Kakaako.

According to the Hawai'i State Energy Office: Once in place, project proponents estimate the district cooling system would eliminate the need for 178,000 barrels of oil per year by saving enough electricity to power more than 10,000 homes. The 25,000-ton system is estimated to cut electricity consumption for air conditioning by 75% (air conditioning represents 35%-45% of a building's energy use), and reduce potable water and chemical use. HSWAC, majority owned by Ulupono Initiative and in partnership with Capital Cooling North America, has identified Prince Kuhio Federal Building and Remington College as potential customers who have signed up for the service, along with First Hawaiian Center, Hawaiian Electric Co., One Waterfront Towers, and Finance Factors. In November 2017, HSWAC reached an agreement with the State of Hawaii to provide seawater air conditioning for eight state buildings, including the Hawaii State Capitol. The State estimates the project could save its facilities 5.3 million kilowatt-

hours, 11.4 million gallons of water, and 1.7 million gallons of sewage discharge annually.¹

On December 12, 2014 the Board amended condition #9 of CDUP OA-3579 to provide that the Permittee had until June 23, 2016 to initiate construction and until June 23, 2018 to complete construction. On June 9, 2016, the Board of Land and Natural Resources approved a second time extension request to initiate construction by June 23, 2018 and complete construction by June 23, 2020. At this time, the DOH permit applications noted as the National Pollution Discharge Elimination System and the Zone of Mixing application continue to be under review. This review process had been on-going since November of 2010.

On August 9, 2016, the Chairperson of the Board approved CDUP OA-3769 for a modification to the authorized project. The modification was to extend the seawater return pipe 1,900 feet to relocated the diffuser component to the depths in a range of -326 to -423-ft. in response to a recommendation dated May 2, 2011 from the US Fish and Wildlife Service to extend the seawater return pipe to depths that are consistent with an anticipated discharge temperature of 58 ° F. At this depth most or all of the photosynthetically active radiation would be unable to take place as it is too dark. Stimulation of benthic algae and the possibility of adversely affecting coral would be reduced. The conditions of CDUP OA-3769 are predicated on CDUP OA-3579.

TIME EXTENSION REQUEST (Exhibit 7)

The Office of Conservation and Coastal Lands (OCCL) received a request for a third time extension request from HSWAC to extend the time to initiate and complete construction. The Permittee is requesting a 2-year extension to initiate and complete construction.

According to HSWAC, an easement approval by the City Council for the project on April 25, 2013 is currently under review with the City's Corporation Counsel. Easement approval is required prior to subdivision approval. While this portion of the project is outside of the Conservation district, it is an important and necessary component of the project. Easement approval could be as early as December 2018.

Further, it was determined that the Division of Aquatic Resources (DAR) administrative rules needed to be amended to issue authorization for HSWAC to impact coral and live rock. The intent of the amendments is to give DLNR authority to authorize take of stony coral and live rock in limited circumstances.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

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

Additionally, §13-5-43(c), HAR, states: "Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant for review."

¹ <https://energy.ehawaii.gov/epd/public/energy-project-details.html?rid=8b--3fd9ace5517>

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating work on a particular project. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

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

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** an extension to initiate and complete the Honolulu Seawater Air Conditioning Project located upon submerged land, makai of Kaka'ako Waterfront Park, Offshore of Plat (1) 2-1-060 and Channel D of Ke'ehi Lagoon, Island of O'ahu subject to the following conditions:


1. That condition #9 of CDUP OA-3579 is amended to provide that the Permittee has until June 23, 2020 to initiate construction and until June 23, 2022 to complete construction; and
2. That all other conditions imposed by the Board under CDUP OA-3579, as amended, shall remain in effect.

Respectfully submitted,

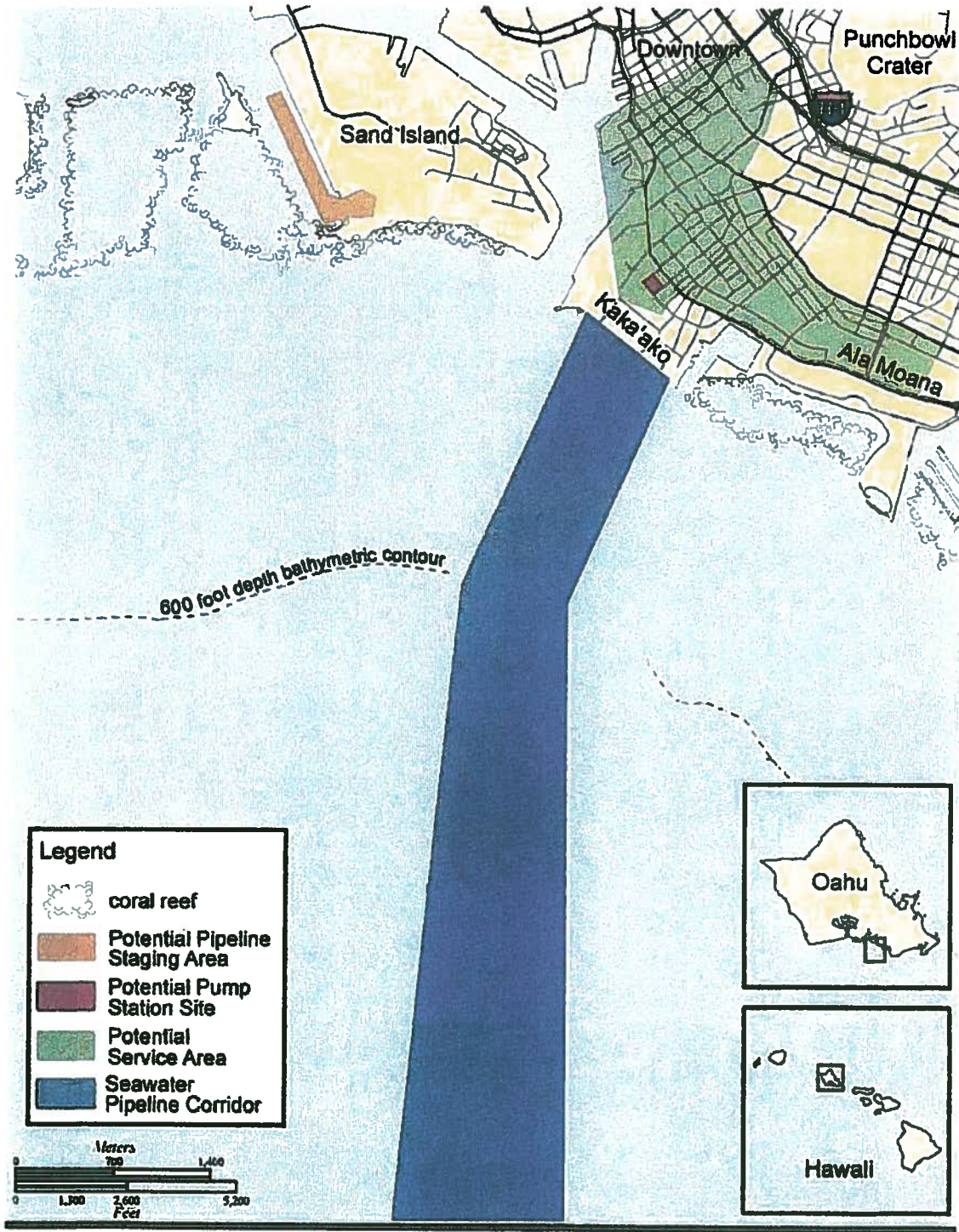


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



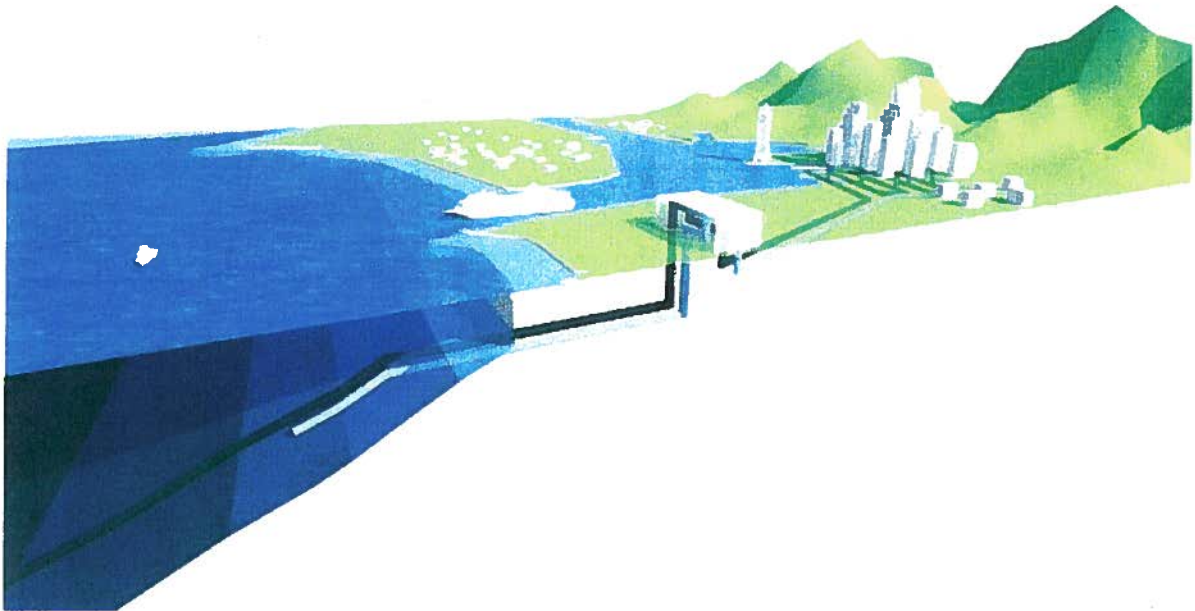
Suzanne D. Case, Chairperson
Board of Land and Natural Resources



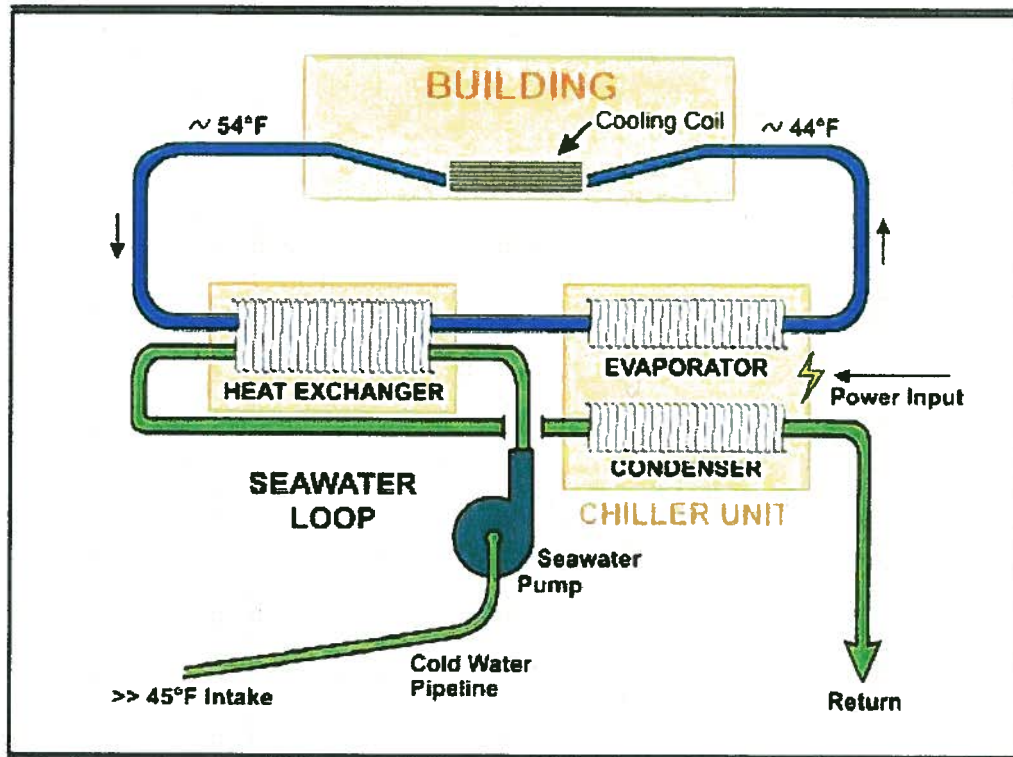
HSWAC Project Area



EXHIBIT 1



Conceptual drawing of major components of the HSWAC System



Schematic drawing of the HSWAC System with chiller enhancement

EXHIBIT 2

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
DIVISION AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

CDUP: OA-3579

George Krasnick
TEC Inc.
1003 Bishop Street
Pauahi Tower, Suite 1550
Honolulu, HI 96814

JUN 27 2011

SUBJECT: Conservation District Use Permit (CDUP) OA-3579 for the Honolulu Seawater Air Conditioning Project

Dear Mr. Krasnick:

This is to inform you that on June 23, 2011, the Board the Board of Land and Natural Resources approved your client, Honolulu Seawater Air Conditioning, LLC's Conservation District Use Application OA-3579 for the Honolulu Sea Water Air Conditioning Project located upon submerged land, makai of Kakaako Waterfront Park, offshore of plat (1) 2-1-060 and temporary use of Channel D of Keehi Lagoon, island of Oahu subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. The applicant, 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 or 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 applicant shall obtain appropriate authorization from the Department for the occupancy of State lands;
4. The applicant shall consult with the Division of Aquatic Resources in regards to a determination for a Special Activity Permit;
5. The applicant shall coordinate with the Department of Transportation's Oahu District Office due to the proximity of the project to Honolulu Harbor to avoid conflicts with maritime operations during construction of this project;

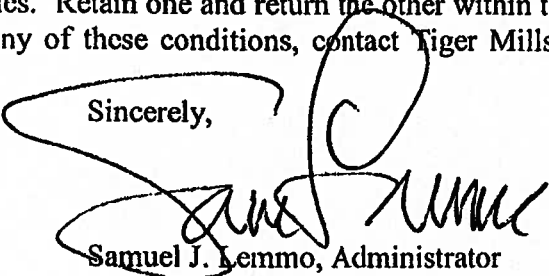
EXHIBIT 3

6. The applicant shall coordinate with the Division of Boating and Ocean Recreation at Keehi Lagoon and the Coast Guard relative to maintaining safe navigation during construction activities and operations;
7. The applicant shall comply with all applicable Department of Health administrative rules;
8. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
9. Any work done or construction to be done on the land shall be initiated within three years of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within five years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
10. All mitigation measures set forth in the application materials, in the final environmental impact statement, and all required permits within the conservation District for this project are hereby incorporated as conditions of this permit;
11. The Applicant shall provide public notification to inform the public of the project;
12. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
13. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this 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/or the Department may, in addition, institute appropriate legal proceedings;
14. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
15. 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;
16. The applicant shall insure access to Mokauea Island to those individuals that have a vested interest related to the island;

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

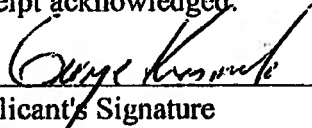
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, contact Tiger Mills at (808) 587-0382.

Sincerely,



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

Receipt acknowledged:


Applicant's Signature

Date 6/29/11

c: Chairperson
ODLO/DAR/DOBOR/SP
DOT-Harbors/Coast Guard/DOA
City & County of Honolulu, DPP

DAVID Y. IGE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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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:TM

CDUP: OA-3579

Mr. Frederic Berg
Honolulu Seawater Air Conditioning, LLC.
1132 Bishop St., Suite 1410
Honolulu, HI 96813

DEC 2 2 2014

SUBJECT: Time Extension Request for Conservation District Use Permit (CDUP) OA-3579 for the Honolulu Seawater Air Conditioning Project Proposed Upon Submerged Land, Makai of Kaka'ako Waterfront Park, Offshore of Plat (1) 2-1-060 and Channel D of Ke'ehi Lagoon, Island of O'ahu

Dear Mr. Berg:

On December 12, 2014, the Board of Land and Natural Resources approved your time extension request to initiate and complete the Honolulu Seawater Air Conditioning Project located upon submerged land, makai of Kaka'ako Waterfront Park, Offshore of Plat (1) 2-1-060 and Channel D of Ke'ehi Lagoon, Island of O'ahu subject to the following conditions:

1. That condition #9 of CDUP OA-3579 is amended to provide that the Permittee has until June 23, 2016 to initiate construction and until June 23, 2018 to complete construction; and
2. That all other conditions imposed by the Board under CDUP OA-3579, as amended, shall remain in effect.

Should you have any questions regarding this matter, contact Tiger Mills of our Office of Conservation and Coastal Lands staff at (808) 587-0382.

Sincerely,

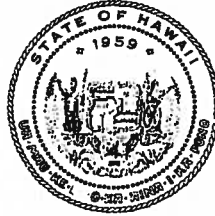
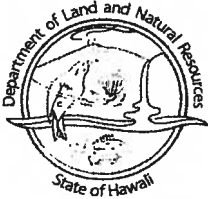
A handwritten signature in black ink, appearing to read "Samuel J. Lemmo".

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

C: ODLO
City and County of Honolulu, DPP

EXHIBIT 4

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

CDUP:OA-3579

Frederic Berg
Berg Enterprises
44-420 Kāne'ohē Bay Drive
Kāne'ohē, HI 96744

JUN 17 2016

SUBJECT: Time Extension Request for the Honolulu Seawater Air Conditioning (HSWAC), LLC Project Located Upon State Submerged Land, Makai of Kaka'ako Waterfront Park, offshore of Plat (1) 2-1-060

Dear Mr. Berg:

On June 9, 2016 the Board of Land and Natural Resources approved your time extension request to initiate and complete the Honolulu Seawater Air Conditioning Project located upon submerged land, makai of Kaka'ako Waterfront Park, Offshore of Plat (1) 2-1-060 and Channel D of Ke'ehi Lagoon, Island of O'ahu subject to the following conditions:

1. That condition #9 of CDUP OA-3579 is amended to provide that the Permittee has until June 23, 2018 to initiate construction and until June 23, 2020 to complete construction; and
2. That all other conditions imposed by the Board under CDUP OA-3579, as amended, shall remain in effect.

Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at 587-0382.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Samuel J. Lemmo".

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

C: ODLO/SP/DOBOR/DOCARE

EXHIBIT 5

DAVID Y. IGE
GOVERNOR OF HAWAII



RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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REF:OCCL:TM

CDUP: OA-3769

Frederic Berg
Berg Enterprises
44-420 Kāneʻohe Bay Drive
Kāneʻohe, HI 96744

AUG 11 2016

SUBJECT: Conservation District Use Permit (CDUP) OA-3769 for the Modification to a Portion of the Honolulu Seawater Air Conditioning (HSWAC) Project

Dear Mr. Berg:

On August 9, 2016, the Chairperson of the Board of Land and Natural Resources approved the Honolulu Seawater Air Conditioning, LLC's Conservation District Use Application OA-3769 for the modification to the Honolulu Sea Water Air Conditioning Project located upon submerged land, makai of Kakaako Waterfront Park, offshore of plat (1) 2-1-060, island of Oahu subject to the conditions of attached CDUP OA-3579 as amended and the following conditions:

1. 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 rea , to the extent the practices are provided for by the constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
2. Other terms and conditions as prescribed by the Chairperson; and
3. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the Chairperson or Board.

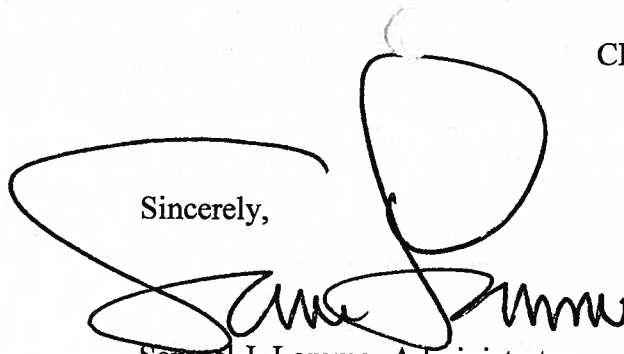
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. A copy of the staff report is included for your information. Should you have any questions regarding any of these conditions, contact Tiger Mills of our Office of Conservation and Coastal Lands at (808) 587-0382.

EXHIBIT 6

Frederic Berg
Berg Enterprises

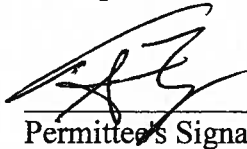
CDUP: OA-3769

Sincerely,



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

Receipt acknowledged:



Date

August 16, 2016

Permittee's Signature or Representative

c: Chairperson
ODLO
DBEDT
DOA



EXT - OA-19-4

Honolulu Seawater Air Conditioning, LLC
1132 Bishop Street, Suite 1410
Honolulu, Hawaii 96813

Tel 808.531.7922
Fax 808.531.7923
www.honoluluswac.com

Affiliate of Renewable Energy Innovations, LLC

2018 SEP 21 A 9:12

DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

September 19, 2018

Mr. Samuel J. Lemmo, Administrator
State of Hawaii, Department of Land and Natural Resources
Office of Conservation and Coastal Land
P.O. Box 621
Honolulu, Hawaii 96809
Attn: Tiger Mills

Subject: Conservation District Use Permit (CDUP) OA-3579 and OA-3769
Honolulu Seawater Air Conditioning Project

Dear Mr. Lemmo:

Honolulu Seawater Air Conditioning (HSWAC) respectfully requests an extension of time to initiate and complete construction of its project on submerged lands, makai of Kakaako Water Front Park, offshore of plat (1) 2-1-060 and temporary use of Channel D in Keehi Lagoon, island of Oahu, as permitted in CDUP OA-3579 and OA-3769.

In initiating the project, the following easements and revocable permit have been obtained:

- State of Hawaii HCDA lands easement
- State of Hawaii Ala Moana Boulevard crossing easement
- State of Hawaii Kaka'ako submerged lands easement
- State of Hawaii Sand Island staging area revokable permit

EXHIBIT

7

The project has applied for and awaits approval for the following:

- City and County of Honolulu easement (Council Approved, awaiting Corporation Counsel approval)
- City and County of Honolulu subdivision (applied 7/18/12, awaiting easement approval)
- State of Hawaii DLNR DAR Coral and Live Rock Take Authorization


The Honolulu City Council approved the easement for the project on April 25, 2013 and it is currently with City's Department of the Corporation Counsel for review and approval. The easement approval is required prior to subdivision approval. Corporation Counsel approval of the easement could be as early as December 2018 with the subdivision approval anticipated shortly after easement approval.

After a comprehensive review, the Department of Land and Natural Resources, Division of Aquatic Resources (DAR), in late December of 2017, determined that DAR did not have the legal authority to issue any form of authorization for HSWAC to impact coral and live rock. It therefore initiated a rule making process to amend its current stony coral and live rock rules to obtain the legal authority to authorize such projects as the HSWAC project to do so. The rule making process is ongoing with an anticipated Governor's signature in November 2018 with an MOA approval subsequent to the Governor's signature.

In view of the delays experienced in obtaining The City and County of Honolulu easement and the DAR processing, we respectfully request a two year extension to initiate and complete construction per the Hawaii Administrative Rules §13-5-43(e).

If additional information is necessary, please feel free to contact me at (808) 284-4221.

Sincerely,



Frederic Berg