

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

File No: CDUP KA-3744

September 27, 2019

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

REGARDING: Request for Second Time Extension for Conservation District Use Permit (CDUP) KA-3744 to Complete a Single Family Residence

APPLICANT: Mark Maxson and Robert Shaw
Walton D.Y. Hong (Consultant)

LANDOWNER: Mark Maxson and Robert Shaw

LOCATION: Haena, Hanalei, Kaua'i

TAX MAP KEY(S): (4) 5-9-002:067

AREA OF USE: 3,492 square feet

SUBZONE: Limited

BACKGROUND:

On September 11, 2015, the Board of Land and Natural Resources (Board) approved CDUP KA-3744 for the Maxson and Shaw single family residence in Haena, Hanalei, Kaua'i (see Location and Parcel maps) subject to 26 conditions (see **Exhibit 1**). The landowners notified the Board on August 30, 2016 that they had commenced construction of their single family residence in accordance with Condition #11 of CDUP KA-3744. Following construction commencement, the landowners filed for their first time extension (Time Ext. Request KA 19-02) of 1 year to complete construction. The initial time extension was granted by the Chairperson on September 19, 2018 requesting that construction to the single family residence be completed by September 11, 2019. The reasoning for their first time extension request was due to work delays by the initial contractor who was replaced by a new contractor in September 2017. These delays in construction were followed and further compounded by the historical floods of April

2018 followed up by additional flooding from Hurricane Lane in August of 2018 which particularly impacted the communities of the Northshore of Kaua'i.

TIME EXTENSION REQUEST:

Condition No. 8 of CDUP KA-3744 states "*Unless otherwise authorized, any work done 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, unless otherwise authorized, shall be completed within three (3) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed.*"

By correspondence dated August 16, 2019, the applicants are requesting a second time extension to CDUP KA-3744; for approximately one year to complete the construction of their single family residence by June 30, 2020. The purpose for the second time extension request is that the landowners have been severely impacted by the floods of 2018 and the associated challenges these floods have caused with the Kuhio Highway repairs, the restricted access to Haena, the difficulties in delivering materials to the project site, and the challenges with recruitment of qualified constructions workers who could work around the restricted access to the area. Despite these difficulties the landowners have attempted to complete the work to their single family residence to the best of their abilities and in accordance with the initial time extension request.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Hawai'i Administrative Rules (HAR), §13-5-43, which allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit. As this is the applicant's second time requesting a time extension, HAR §13-5-43(c) states that "*time extensions may be granted by the board upon the second or subsequent requires for a time extension on a board permit, based on supportive documentation from the applicant.*"

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating and completing 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 requested time extension. Approval of the time extension request will hopefully provide the additional time needed to for the landowners to complete their single family residence.

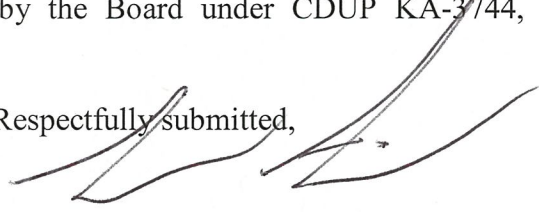
Staff, therefore, recommends the following:

RECOMMENDATION:

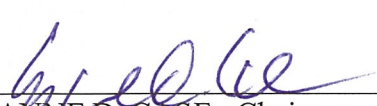
That the Board of Land and Natural Resources **APPROVE** an extension to complete the construction of the single family residence, subject to the following conditions:

1. That Condition 8 of CDUA KA-3744 is amended to provide that the Permittee has until June 30, 2020 to complete any work or construction to be done on the land; and
2. That all other conditions imposed by the Board under CDUP KA-3744, as amended, shall remain in effect.

Respectfully submitted,


Trevor J. Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:


SUZANNE D. CASE., Chairperson
Board of Land and Natural Resources

TMK: (4) 5-9-002:067 Location Map

Maxson & Shaw SFR at 5-7655 Kuhio Hwy

Legend

 5-7655 Kuhio Hwy [TMK: (4) 5-9-002:067]

Kaliu Canyon

Honopu Canyon

5-7655 Kuhio Hwy  Kilauea

Kapaa

Kauai'i

Līhu'e

Kauai

Waimea

Google Earth

Data LDEO-Columbia, NSF, NOAA

© 2018 Google

Image Landsat / Copernicus

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

Hanapepe

Koloa



10 mi

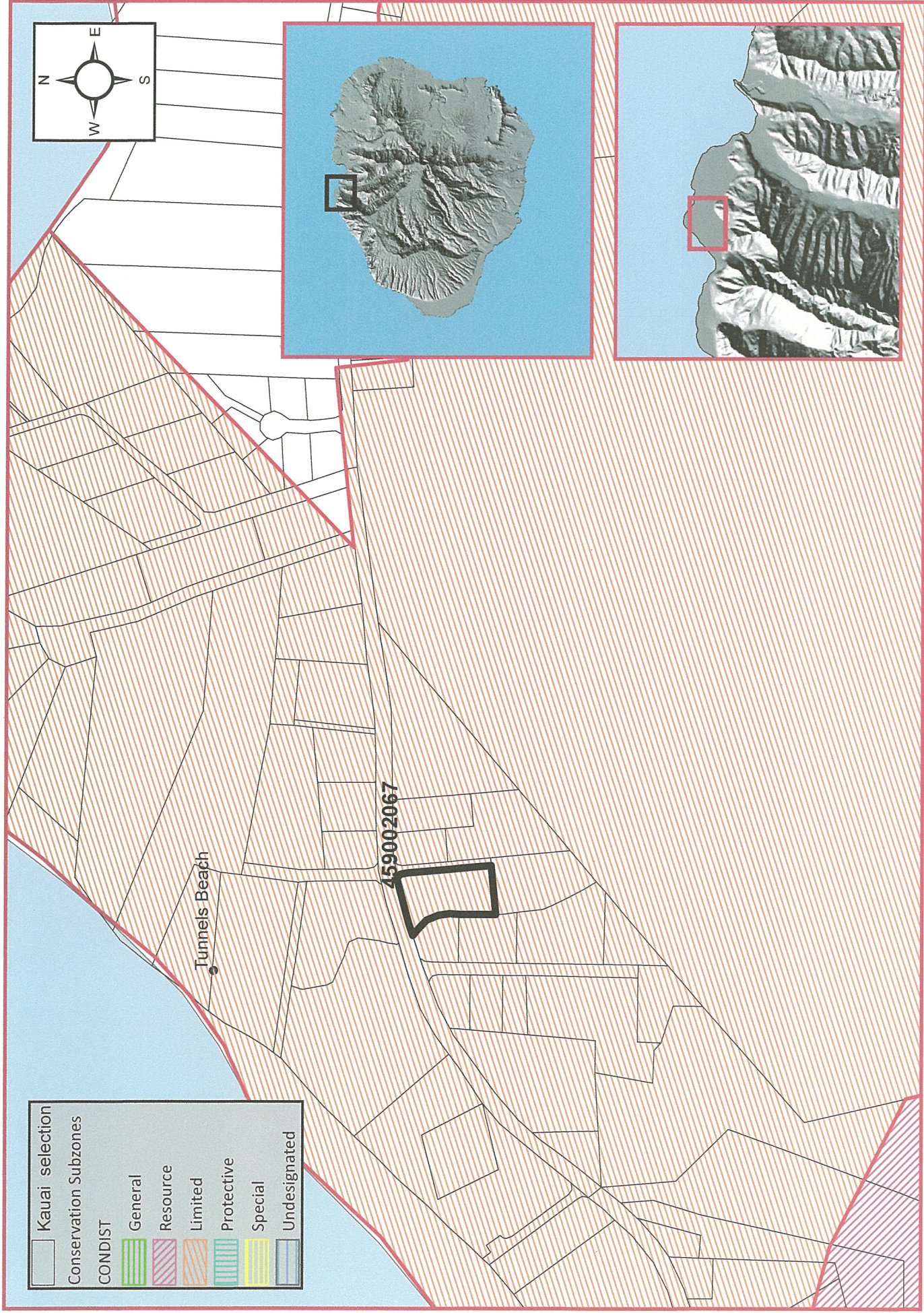
TMK (4) 5-9-002:067 Maxson & Shaw Parcel

300 Meters

150

75

0



WALTON D.Y. HONG

LAW OFFICES OF

WALTON D.Y. HONG

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August 16, 2019

Sent Certified Mail, Return
Receipt Requested

Board of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Re: Conservation District Use Permits KA-3744
Applicants: Mark Maxson and Robert Shaw
TMK: (4th) 5-9-002-067, Haena, Kauai, Hawaii
Request for second extension to complete single family residence

Dear Members of the Board:

We represent Mark Maxson and Robert Shaw, herein the "Applicants", who obtained your approval of the above referenced permit on September 11, 2015, for the construction of a single family dwelling at Haena, Island and County of Kauai, State of Hawaii, on real property identified as Kauai Tax Map Key: 1-5-9-002-067. The CDUP required completion of the residence within three years of approval, or by September 11, 2018.

By request of August 30, 2018, the Applicants requested a one-year extension to complete the residence, due to circumstances resulting from the historical flood in April of 2018 which virtually isolated Kauai's Northshore from the rest of the island. By your letter of September 19, 2018, the requested extension was granted, allowing the Applicants to complete the work by September 11, 2019.

Unfortunately, it is not possible to complete the construction by September 11, 2019, and the Applicants are hereby requesting an additional extension until June 30, 2020 to complete the work. The Applicants' request is based on the following:

(a) Access to the communities of Wainiha and Haena, on Kauai's Northshore, remained restricted until mid-June of this year. At the time of the Applicants' August 2018 extension request, it was expected that reasonably normal access to the subject property would be possible within a matter of weeks or several months. Due to unexpected safety concerns, completion of the Kuhio Highway repairs was delayed and extended multiple times from August 2018 through June 2019. Until Kuhio Highway was finally opened in June 2019,, access was

available only to residents and qualified persons through a system of convoys scheduled alternately in opposite directions, while work on the highway repair was being undertaken;

(b) Because of the restricted access, the Applicants were unable to truck required materials to the project site in a timely and efficient manner. Understandably, priority for transportation of building materials went to the repair of Kuhio Highway itself. From approximately February 2019 through June 2019, trucking companies, which had been making intermittent deliveries in 2018, suspended delivery service to Haena. When possible, the Applicants attempted to breakdown deliveries into multiple pickup truck sized loads. However, this was not always possible due to the nature of the building materials;

(c) The Applicants further encountered difficulty in obtaining qualified workers willing to endure the hassles during the period when the highway was closed and restricted. With a lack of qualified workers already residing on the Northshore, workers would need to come from outside of the affected communities. These workers would have needed to schedule their start times to coincide with a scheduled convoy heading into Wainiha and Haena in the mornings, and schedule their exit with the convoys heading out of Wainiha and Haena after work. This resulted in a short work time if the workers observed normal working hours, or a very long workday if they were to do a full day's work. Workers willing to work under these conditions were scarce, further delaying completion of the residence. The Applicants' estimate is that the restrictive access to the site resulted in work taking twice as long as normally required; and

(d) Despite the difficulties in obtaining materials and workers, the Applicants have been diligently proceeding with the construction to the best of their abilities under the circumstances. We are attaching recent photographs of the residence, showing the stages of substantial construction of the project.

Based on the foregoing, the Applicants Mark Maxson and Robert Shaw respectfully request your favorable consideration for the extension of time to complete the residence.

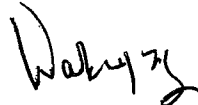
If your staff will advise me of the date, time and place where the matter will be considered, we will have someone present to respond to any questions which you may have.

Thank you for your consideration to this matter. If there are any questions, please do not hesitate to have your staff contact the undersigned.

We would appreciate your returning one filed-marked copy of this letter, after filing, for our files.

Board of Land and Natural Resources
August 16, 2019
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Yours very truly,

A handwritten signature in black ink, appearing to read 'Walton D. Y. Hong', written in a cursive style.

Walton D. Y. Hong

WDYH:wh

Encls.

cc: Mark Maxson and Robert Shaw

