

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

File No: CDUP MA-3746

October 25, 2019

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

**REGARDING:** Request for a Third Time Extension for Conservation District Use Permit (CDUP) MA-3746 for the Initiation and Completion of the Construction of an Above Ground Waterline

**APPLICANT:** Andrew P. Wilson, LLC

**LANDOWNER:** County of Maui  
Lochland Holdings, LLC  
Roy Sakamoto, Commissioner

**LOCATION:** Honua'ula, Makawao, Maui

**TAX MAP KEY(S):** (2) 2-1-004:046, 068, 073, & 113

**AREA OF USE:** Approximately 12,190 linear feet

**SUBZONE:** Protective, Resource, & General

**BACKGROUND:**

On October 23, 2015, the Board of Land and Natural Resources (Board) approved CDUP MA-3746 for an above ground waterline along Mākena-Keone'ō'io Road subject to 27 conditions (see **Exhibit 1**). Since then, the applicant, who represents those who are responsible for the construction and installation of the waterline, filed for an initial time extension (Time Ext. Request MA 17-01) of 1 year to initiate and complete construction. The initial time extension was granted by the Chairperson on August 15, 2016 requesting that the construction of the above ground waterline be initiated prior to October 23, 2017 and shall be completed by October 23, 2018. The reason for the initial time extension request was due to difficulty locating a contractor to submit plans and specifications to commence construction.

Since the granting of the initial time extension of 1 year, the applicant filed for a second time extension (Time Ext. Request MA 18-6) of two years to initiate and complete construction for the above ground waterline. On November 9, 2017, the Board of Land and Natural Resources (Board) approved a second time extension for the initiation and construction of the above ground waterline to be completed by October 23, 2019. The reason for the second time extension request was due to the applicant, and the parties they represent, being involved in mediation and arbitration hearings regarding the waterline and subject property (TMK: (2) 2-1-004:068). The mediation and arbitration hearings resulted in the appointment of a new court-appointed Commissioner to facilitate the sale of the subject property. According to the applicant, these mediation and arbitration hearings also resulted in the inability to meet the conditions of CDUP MA-3746 as amended by the initial time extension granted by the Chairperson.

#### **TIME EXTENSION REQUEST:**

Condition No. 8 of CDUP MA-3746 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 permittee shall notify the Department in writing when construction activity is initiated and when it is completed.”*

By correspondence dated September 6, 2019, the applicant is requesting a third time extension for a period of 18 months to CDUP MA-3746. It appears that the purpose for the third time extension request is based on the applicant having been granted two prior time extensions to CDUP MA-3746, and that the new court-appointed commissioner (Mr. Ron Sakamoto and Sakamoto Properties) has attempted to market and sell the property.

#### **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 third 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 request for a time extension on a board permit, based on supportive documentation from the applicant.”*

#### **BASIS FOR TIME EXTENSIONS:**

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating work on a particular project.

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

**DISCUSSION:**

Staff notes that the initial time extension was due to the difficulty in locating a contactor to submit plans and specifications to commence construction. These actions gave the Staff the impression that the applicant was proceeding with the construction of the waterline.

Staff notes that the second time extension request was due to ongoing mediation/arbitration delays regarding the selling of the property. The mediation and arbitration hearings resulted in Mr. Roy Sakamoto of Sakamoto Properties being the new court appointed Commissioner tasked with selling the parcel (TMK: (2) 2-1-004:068) "as is". Mr. Sakamoto was unable to sell the property as quickly as he had originally anticipated. The inability to sell the subject parcel quickly should not have affected CDUP MA-3746 and the initiation and construction of the above ground waterline.

With regards to the current third request for a time extension to CDUP MA-3746, Staff notes that the applicant and the parties they represent have not clearly demonstrated some form of current hardship or delay in initiating and constructing the above ground waterline. Additionally, the applicant has not provided supportive documentation justifying their third time extension request as required by HAR §13-5-43 (c). Documents attached to their request for a third time extension included the approval letter for CDUP MA-3746 and its 27 conditions, the approval letter for the initial time extension, the approval letter for the second time extension, and a letter to the Division of Forestry and Wildlife (DOFAW) stating that the owners of the subject parcel would be willing to sell the property to the State of Hawaii (see Exhibit 2, 3, & 4). These letters do not amount to a hardship.

Due to the lack of a clear justification for granting a third time extension and a lack of supporting documentation, it would appear to Staff that any hardship or delay is presently self-imposed, and that there has been little to no "good faith effort" on behalf of the parties involved to execute CDUP MA-3746 with regards to initiating and constructing the above ground waterline. At this point and time, initiating and constructing the above ground waterline would occur approximately four years after CDUP MA-3746 originally had been granted (October 23, 2015). The applicant and the parties they represent have been afforded the same opportunity to a waterline as their neighbors yet have not taken any actions towards seizing this opportunity by initiating and constructing the above ground waterline. While the applicant and its clients may have experienced some degree of hardship in the past, the Staff currently does not see a clear reason why the project could not be initiated in the time that has passed since the granting of CDUP MA-3746.

Based on the above, Staff sees no justification for a third time extension and recommends that CDUP MA-3746 be allowed to lapse. If the above ground waterline is an absolute necessity for some future project, the applicant and the parties they represent, or any future

owner of the subject parcel may reapply for a CDUP with regards supplying the subject parcel with water through an above ground waterline.

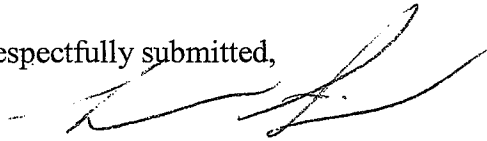
Staff, therefore, recommends the following:

**RECOMMENDATION:**

That the Board of Land and Natural Resources **DENY** a third time extension to CDUP MA-3746 to start and complete the installation of the above ground waterline for the following reasons:

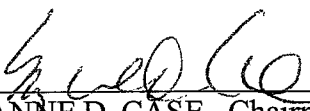
1. The applicant and the parties they represent have not provided clear reasoning or justification as to why a third time extension is needed; and
2. The applicant and the parties they represent have not provided supportive documentation for a third time extension; and
3. The applicant and the parties they represent have made little to no "good faith effort" to undertake CDUP MA-3746 for the installation and construction of the above ground waterline.

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:


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



# TMKs: (2) 2-1-004:046, 068, 073 & 113

CDUP MA-3746 Installation and Construction of the Above-Ground Waterline

## Legend

 TMK: (2) 2-1-004:068



Google Earth

Image Landsat / Copernicus

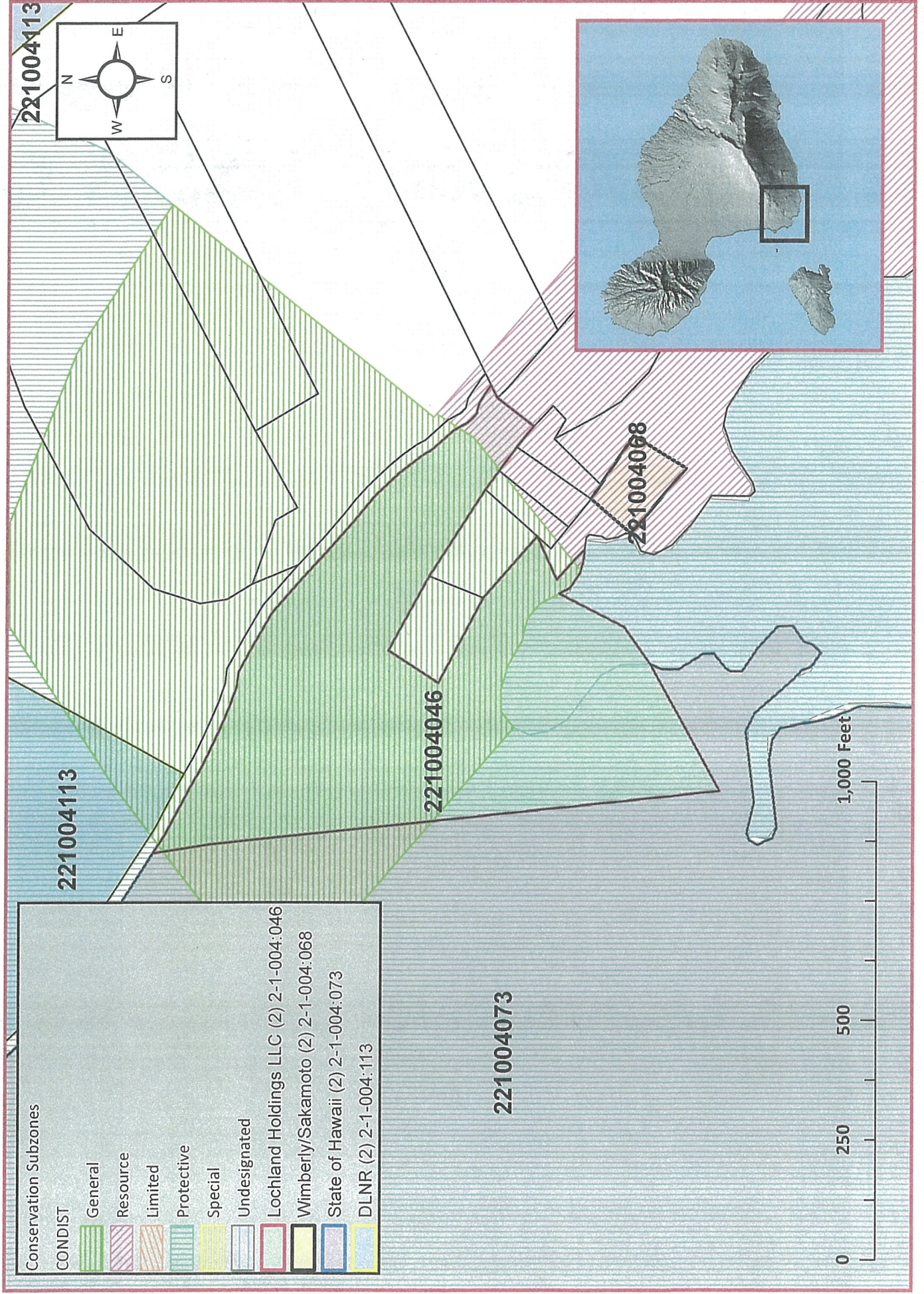
© 2018 Google

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

Data LDEO-Columbia, NSF, NOAA



**TMKs: (2) 2-1-004:046, 068, 073 & 113 CDUP MA-3746 Above Ground Waterline**





MA-20-8

ANDREW P. WILSON, AAL LLC

107 Lihikai Road  
Hilo, Hawaii 96729  
(808) 936-2291  
[wilsona811@hawaii.rr.com](mailto:wilsona811@hawaii.rr.com)

September 6, 2019

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2019 SEP -9 A 11: 11  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Mr. Samuel Lemmo  
State of Hawai'i Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
P.O. Box 624  
Honolulu, Hawai'i 96809

Subject: Time Extension Request for Conservation District Use Permit  
(CDUP) MA-3746  
Regarding the Initiation and Completion of Constructive of the  
Above-Ground Waterline along Mākena-Keone`o`io Road  
Located at Honua`ula, Makawao, Maui  
Tax Map Key: (2) 2-1-004: 046, 068, 073 & 113

Dear Mr. Lemmo,

I represent the Plaintiffs' Snowden in the underlying litigation that led to the above-entitled matter.

By letter dated November 3, 2015, we were granted permission to install a water line in the above entitled matter. See Exh. 1. By letter dated August 15, 2016, we received a one-year extension for initiation of construction to CDUP MA-3746 wherein construction was to be initiated prior to October 23, 2017 and completed by October 23, 2018. See Exh. 2. By letter dated August 15, 2017 we received a time extension to October 23, 2019 to start and complete the installation of the H2O line, subject to certain conditions. See Exh 3.

This letter shall serve as a third extension pursuant to HAR §13-5-43, which provides: Time Extension: (b) *Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the Applicant.*

ANDREW P. WILSON, AAL LLLC

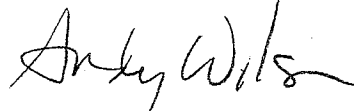
---

Mr. Samuel Lemmo  
State of Hawai'i Department of Land and Natural Resources  
Page 2

The property was marketed with Sakamoto Properties, Mr. Ron Sakamoto, President. Mr. Sakamoto endeavored to sell the property. It is my understanding the State of Hawaii has expressed an interest in the property. See letter Exh 4. The availability of water to the property would appear to be beneficial and therefore we seek an additional 18-month extension.

Thank you for your consideration in this matter. If you have any questions, feel free to contact me at 808.936.2291.

Very truly yours,



Andrew P. Wilson

APW/b

Attachments: Exhibits 1, 2, 3, and 4



DAVID Y. IGE  
GOVERNOR OF HAWAII



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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON  
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

2015 NOV 19 A 11:38

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

REF:OCCL:LY

CDUP: MA-3746

NOV - 3 2015

Arsima A. Muller, Esq.  
Carlsmith Ball LLP  
ASB Tower, Suite 2100  
1001 Bishop Street  
Honolulu, HI 96813

SUBJECT: Conservation District Use Permit MA-3746

Dear Ms. Muller:

On October 23, 2015, the Board of Land and Natural Resources approved your Client's (Mr. Ray P. Wimberley, Commissioner) Conservation District Use Application (CDUA) MA-3746 for an above ground waterline located at Honua'ula, island of Maui, further identified as Mākena-Keone'ō'io Road and Tax Map Keys (TMKs) (2) 2-1-004: 046, 068, subject to the following standard 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 single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;
6. 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;
7. 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

EXHIBIT 1  
13

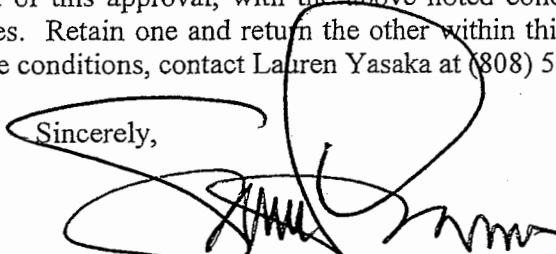
representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

8. 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;
9. 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;
10. The permittee understands and agrees that the permit does not convey and vested right(s) or exclusive privilege;
11. In issuing the permit, the department and the 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;
12. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
13. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
14. 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;
15. Obstruction or 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;
16. Except in case of public highways, access roads shall be limited to a maximum of two lanes;
17. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
18. Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;
19. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department; where applicable.
20. Animal husbandry activities shall be limited to sustainable levels in accordance with good soil conservation and vegetation management practices;

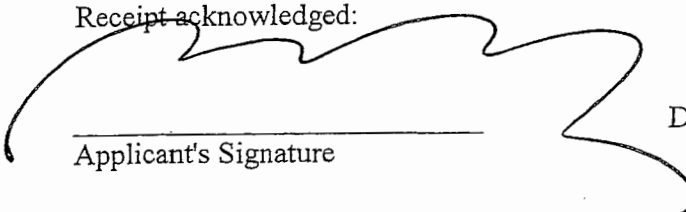
21. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
22. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
23. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean water, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
24. Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;
25. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices or native Hawaiians in the immediate area, 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; and
26. Other terms and conditions as prescribed by the chairperson;
27. Failure to comply with any of these conditions shall render this Conservation District Use Permit void under Chapter 13-5, as determined by the chairperson or board.

Please have your client 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 Lauren Yasaka at (808) 587-0386.

Sincerely,

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

Receipt acknowledged:

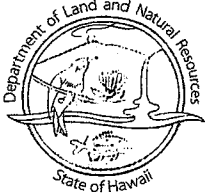
  
Applicant's Signature

Date 11-17-15

c: Chairperson  
DOFAW, NARS  
DOFAW, Maui Branch  
MDLO



DAVID Y. IGE  
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

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

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

Ref: OCCL:LY

Time Ext. Req: MA 17-01

CDUP MA-3746  
AUG 15 2016

Mr. Andrew P. Wilson,  
Attorney at Law, LLC  
107 Lihikai Road  
Hilo, Hawai'i 96720

SUBJECT: Time Extension Request for Conservation District Use Permit (CDUP) MA-3746 Regarding the Initiation and Completion of Construction of the Above Ground Waterline along Mākena-Keone'ō'io Road Located at Honua'ula, Makawao, Maui Tax Map Key: (2) 2-1-004: 046, 068, 073, & 113

Dear Mr. Wilson

The Department is in receipt of your request regarding the subject project. According to the information you have provided, you represent the Defendants Snowden and the owners of Parcel 068 who are responsible for the construction and installation of the waterline. Currently, there has been a delay in the project as you have been having difficulty locating a contractor to submit plans and specifications, and commence construction. Therefore, on behalf of your clients, you are requesting a one (1) year time extension to initiate construction.

CDUP MA-3724 was approved on October 23, 2015 for the an above ground waterline located at Honua'ula , island of Maui, further identified as Mākena-Keone'ō'io Road subject to 27 conditions. Condition No. 8 states *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.*


Pursuant to Hawai'i Administrative Rules (HAR) §13-5-43, Time Extensions. (b) *Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.*

Exhibit 2  
1 of 2

Therefore, the Department grants a 1-year time extension for initiation of construction to CDUP MA-3746. **Construction shall be initiated prior to October 23, 2017 and shall be completed by October 23, 2018.** All other conditions imposed by the Board under CDUP MA-3746 shall remain in effect.

Should you have any questions regarding this matter, please contact Ms. Lauren Yasaka of our Office of Conservation and Coastal Lands staff at (808) 587-0386.

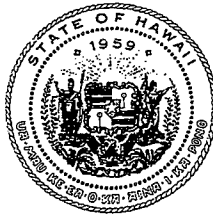
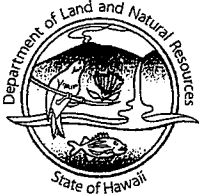
Sincerely,



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

c: MDLO  
CoM, Planning Dept.

DAVID Y. IGE  
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

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

Ref: OCCL:LY

CDUP: MA-3746

Mr. Andrew P. Wilson, LLLC  
107 Lihikai Street  
Hilo, HI 96729

DEC - 5 2017

SUBJECT: Time Extension Request for Conservation District Use Permit (CDUP) MA-3746 for an Above Ground Waterline along Mākena-Keone'ō'io Road, Honua'ula; Makawao, Maui Tax Map Key (TMK): (2) 2-1-004: 046, 068, 073, & 113

Dear Mr. Wilson:

This is to inform you that on November 9, 2017, the Board of Land and Natural Resources (Board) approved your request for a time extension to October 23, 2019 to start and complete the installation of the waterline, subject to the following conditions:

1. That Condition 8 of CDUA MA-3746 is amended to provide that the Permittee has until October 23, 2019 to complete any work or construction to be done on the land; and
2. That all other conditions imposed by the Board under CDUP MA-3746, as amended, shall remain in effect.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two (2) copies. Retain one and return the other within thirty (30) days. Should you have any questions, please feel free to contact Lauren Yasaka at 587-0382.

Sincerely,

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

Receipt acknowledged:

Applicant's Signature

Date Dec. 9, 2017

cc: Chairperson  
MDLO/DOCARE/DOFAW  
CoM, Planning Department

EXHIBIT 3  
171



# SAKAMOTO PROPERTIES

*Prestige our business... Reputation our foundation*

15 March, 2019

Ms. Leah Laramée  
Natural Resource Planner  
Division of Forestry and Wildlife  
Department of Land and Natural Resources

Dear Ms. Laramée:

Re: Makena Road, La Perouse Bay Lot  
(2)2-1-004-068

Please be advised that the owners of this property would be willing to sell to the State of Hawaii based on appraised valuation which may or may not be lower than actual market value. In addition, the owners of this parcel would be willing to donate 25% of the appraised valuation.

Mahalo,



ROY SAKAMOTO  
President, Sakamoto Properties

RS.d

EXHIBIT 4