

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 12, 2020

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

LOD No.:28553

OAHU

Amend Grant of Perpetual, Non-Exclusive Easement to Hawaii Kai Marina Community Association for Maintenance of the Hawaii Kai Marina Entrance Channel and Sandbag Groin Purposes, Maunalua, Oahu; Tax Map Key: (1) 3-9-002:seaward of Kalanianaʻole Highway near the bridge.

The amendment is to increase the easement area by an additional 7,852 square feet for the purpose of replacing the existing deteriorating sandbag groin with a new larger permanent rock rubble groin.

HISTORY:

At its meeting of July 13, 2001, under agenda item D-26, the Board approved the issuance of a perpetual, non-exclusive easement for maintenance purposes of a channel entrance and sandbag groin to the Hawaii Kai Marina Community Association (HKMCA) - see **Exhibit 1**.¹

Subsequently, at its meeting on March 8, 2002, under agenda item D-7, the Board amended the July 13, 2001 Board approval by clarifying that the term of the easement will be perpetual further subject to the payment of a one-time consideration.

The easement was signed on May 6, 2004 ("LOD 28553") and was divided into two areas; Easement "A" and Easement "B" as shown on **Exhibit 2**. Easement "A" covers the submerged lands beneath the Hawaii Kai Marina bridge and the channel area immediately Makai and Mauka of the bridge for an area of 21,768 square feet. Easement "B" which abutted the Makai boundary of Easement "A" covers the submerged lands at the mouth of the channel, and the sandbag groin (located along the east bank of the channel) for an area of 29,120 square feet. The total submerged land area for both Easement "A" and "B" is 50,888 square feet. The HKMCA paid the one-time valuation of \$71,000.00 for the perpetual, non-exclusive easement.

BACKGROUND:

Around March 2016, the HKMCA began working with the Office of Conservation and

¹ Exhibits of the July 13, 2001 Board action are not attached herein.

Coastal Lands (OCCL) on the proposed Hawaii Kai Marina Groin Replacement project located seaward of Tax Map Key: (1) 3-9-008:035. The current groin is a 150-foot long sandbag structure that runs along the east side of the channel entrance as shown in **Exhibit 3** photos. The purpose of the sandbag groin structure is to slow the longshore transport rate of sand along Portlock Beach and reduce the rate of sediment accumulation in the channel entrance. The intent of the proposed project will be to replace the sandbag structure (located within Easement “B”) with a larger, more permanent “L-shaped” rock rubble mound structure (180-foot long with a 50-foot head), see **Exhibit 4**. The final footprint of the replacement rock rubble structure will extend beyond the metes and bounds of easement B. Therefore, HKMCA is requesting the use of additional State lands beyond the boundaries of Easement B.

The Final Environmental Assessment and Finding of No Significant Impact was published in The Environmental Notice on August 8, 2017; Hawaii Kai Marina Entrance Groin Replacement FEA (FONSI). And, at its meeting on August 30, 2018, Item K-2, the Board of Land and Natural Resources approved Conservation District Use Permit OA-3820 for the subject project (see **Exhibit 5**, OCCL’s CDUP OA-3820).

Now, staff comes to the Board to seek authorization for the following amendments to LOD 28553:

- (a) Increase the easement area by an additional 7,852 square feet, more or less, subject to a one-time payment to be determined by independent appraisal, at HKMAC’s cost, establishing fair market rent, further subject to review and approval by the Chairperson;
- (b) Replace the sandbag groin described in the character of use by a rock rubble structure;
- (c) Revise the liability insurance coverage from \$300,000 per occurrence and \$500,000 aggregate to the current requirement of \$1,000,000 and \$2,000,000, respectively.

No comments were solicited, because the request for comments were done during the OCCL’s approval.

Upon approval of today’s request, the Applicant will be reminded of the requirement for concurrent resolution from both houses of the Legislature under Sect. 171-53(c), HRS prior to amending LOD 28553. Staff will work with the applicant to obtain concurrent resolution and Governor’s approval.

HKMCA is in compliance with the terms and conditions of LOD 28553. There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board authorize the amendment of the Grant of Non-Exclusive Easement (LOD 28553) under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current easement amendment form, as may be amended from time to time;
- B. Terms and conditions of CDUP OA-3820;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson.

Respectfully Submitted,

Cal Miyahara

Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

RT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

D-26

AAS

July 13, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Grant of Perpetual, Non-Exclusive Easement to Hawaii Kai
Marina Community Association for Maintenance Purposes,
Maunaloa, Oahu, Tax Map Key: (1) 3-9-2: seaward of
Kalanianaʻole Highway near the bridge

APPLICANT:

Hawaii Kai Marina Community Association, a Hawaii non-profit
association, whose mailing address is 377 Keahole Street Suite
D1-C, Honolulu, Hawaii 96825.

LEGAL REFERENCE:

Section 171-13, 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Submerged lands located seaward of Kalanianaʻole Highway near the
bridge and near Parcel 31, Maunaloa, Oahu, identified by Tax Map
Key: (1) 3-9-2, as shown on the attached map labeled Exhibit A.

AREA:

20,000 square feet, more or less.

ZONING:

State Land Use District: Conservation
City and County of Honolulu CZO: P1 and P2

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO ☒ x

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

July 13, 2001. *AA*

Exhibit 1

BLNR - Issuance of Easement
to HKMCA

Page 2

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to dredge, use, maintain and repair the Hawaii Kai Marina entrance channel and the sandbag groin over, under and across State-owned submerged land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

LEASE TERM:

55 years

ANNUAL RENT:

One-time payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to the May 30, 2001 Decision and Order, Department of Land and Natural Resources, Division of Boating and Ocean Recreation conservation district use application to dredge the entrance channel to Hawaii Kai Marina and place the dredged material on Portlock Beach was approved (CDUA #OA-2935B).

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>x</u>	NO	<u> </u>
Registered business name confirmed:	YES	<u>x</u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u>x</u>	NO	<u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Remit \$39,055 deposit for total estimated cost of appraisal fees, one-time payment, and other fees within sixty (60) days of this Board approval; and
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BLNR - Issuance of Easement
to HKMCA

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REMARKS:

In 1994, the State Legislature passed Act 231, Session Laws of Hawaii 1994, which states "The legislature declares that keeping the entrance to the Hawaii Kai Marina in navigable condition serves a public purpose because important health, safety, and welfare considerations are involved." Act 231 also appropriated up to \$240,000 for the dredging. On February 27, 1998 the Department accepted a conservation district use application by the Division of Boating and Ocean Recreation (DOBAR) to dredge the entrance channel to Hawaii Kai Marina and place dredge material on Portlock Beach. The application was processed and agency comments were solicited.

In August 1998 the CDUA was withdrawn to avoid expiration of the 180 day processing period and default approval of the project. In October 1998 the final environmental assessment for the project was completed and a Finding of No Significant Impact (FONSI) was issued by the Department.

In May 1999 the Department accepted the re-submitted application. In June 1999 a public hearing was held in Honolulu. At this hearing three oral requests for a contested case hearing were made. On July 9, 1999, the Land Board approved the request of Mr. Marshall Rosa to be a party in the contested case hearing. On October 26, 2000 the Hawaii Kai Marina Association was admitted as intervener to the contested case hearing. The contested case hearing was completed in December 2000 and the hearing officer has submitted the decision and order for the Land Board to review and approve in May 2001.

DOBOR proposes to dredge sand material from the entrance channel to the Hawaii Kai Marina and place the dredged material on Portlock Beach. Approximately 6,500 cubic yards of material would be dredged.

An approximately 1,000 cubic yards may be dredged by the marina Association mauka of the state's right-of-way line. A terminal groin would be constructed on the east side of the entrance channel to retain the sand and slow the rate of sand deposition in the channel. The proposed sandbags are made of beige-colored, vinyl-coated polyester. When filled with sand they are approximately 8 feet long, 4 feet wide and 1.5 feet thick.

DOBAR will monitor the beach nourishment project. A monitoring plan require DOBAR to do beach profiles before and after the project.

By letter dated June 11, 2001, Mr. Kale Feldman on behalf of the Hawaii Kai Marina Community Association requested the Department issue an easement for maintenance purposes for future dredging of the Hawaii Kai Marina entrance channel. This is in pursuant to the May 30, 2001 Decision and Order, portion of Condition 25 which states: "HKMA shall be required to apply for and obtain from DLNR an easement for maintenance purposes for all future dredging of the Hawaii Kai Marina entrance channel and sandbag groin within one (1) month of the Board's approval of this application." By letter dated June 12, 2001, receipt of the application was confirmed by staff.

BLNR - Issuance of Easement
to HKMCA

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A draft submittal was sent to Mr. Feldman for his review and comments. Subsequently, Mr. Feldman informed staff that the Decision and Order did not require his clients to pay for the easement, and claimed the Attorney General's office offered the easement as no charge. He also said that dredging in the future was the responsibility of the State.

Staff told Mr. Feldman there is no statutory authority to charge anything less than fair market for this easement to HKMA. As far as future dredging, the Decision and Order did say the easement is for maintenance purposes for all future dredging of the Hawaii Kai Marina entrance channel and the sandbag groin. It is our understanding, after DOBAR's project is completed, then Mr. Feldman's clients or another entity whomever obtains the easement from the Department will be responsible for keeping the entrance channel clog free, and if dredging is the mechanism to keep it clear, it would done.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Agency or community comments were addressed by the Applicant in the conservation district use application (OA-2935B) which was approved by the Land Board pursuant to Decision and Order dated May 30, 2001.

The Appraisal Section staff has estimated the easement's consideration to be \$39,055 (\$34,000 easement, \$5,000 appraisal fee, \$30 document and \$25 map). The actual consideration will be determined by a full appraisal. Upon execution of the legal documents, this deposit will be applied towards the consideration amount and other applicable charges. If the deposit amount is more than the final consideration amount along with all the fees and charges, then the Applicant shall be reimbursed any difference (and vice versa). If the Applicant does not execute the document including obtaining legislative concurrent resolution within a reasonable time, they will forfeit their deposit.

Staff has no objections to the request.

RECOMMENDATION: That the Board:


1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Hawaii Kai Marina Community Association covering the subject area for maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;

BLNR - Issuance of Easement
to HKMCA

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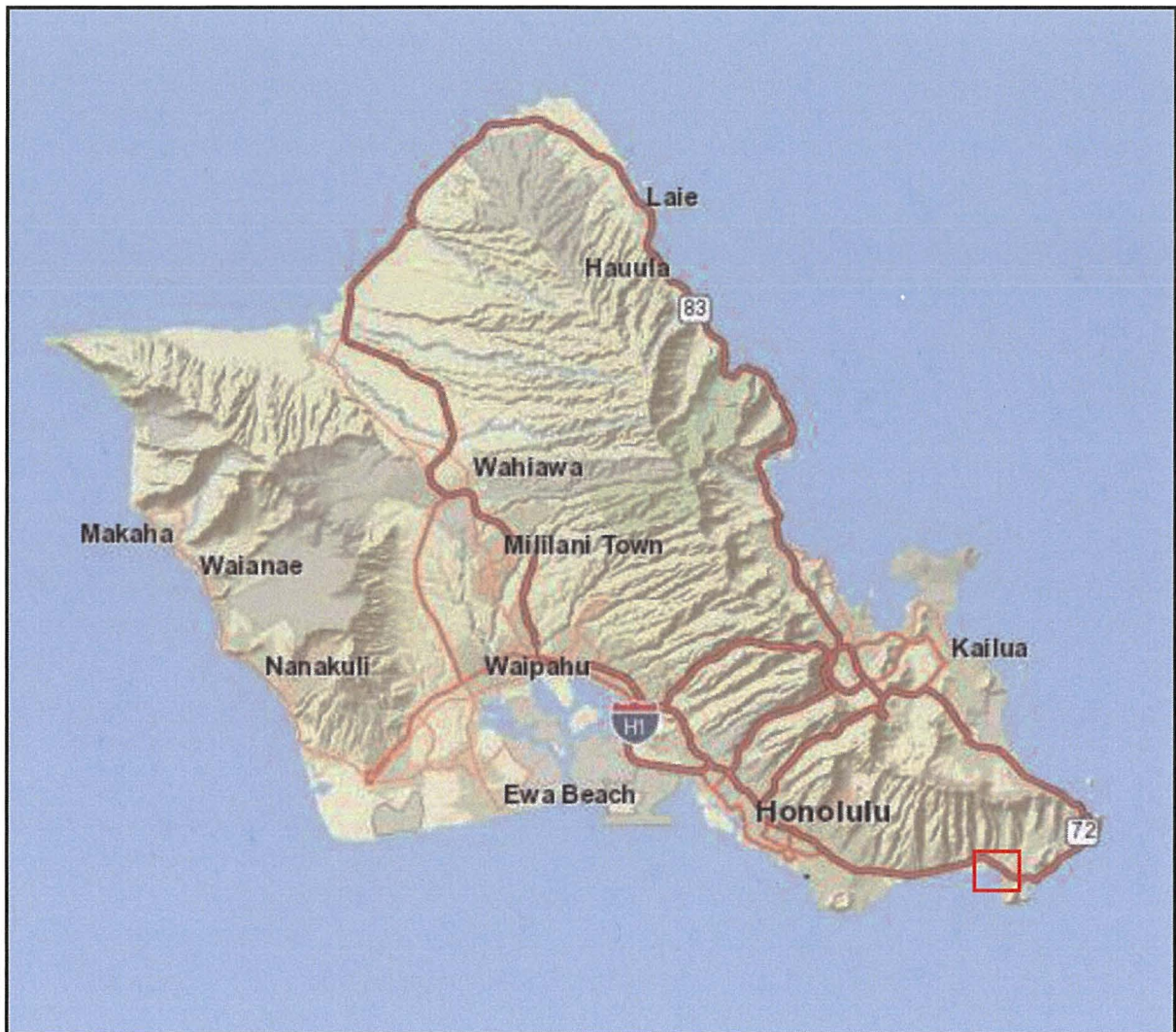
- B. Review and approval by the Department of the Attorney General;
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
- D. Compliance with terms and conditions imposed by the May 30, 2001 Decision and Order (OA-2935);
- E. Obtain prior approval of the Governor and prior authorization of the Legislature by concurrent resolution.
- F. Authorize the Department to accept a deposit in the amount of \$39,055 from the Applicant pursuant to the conditions set forth in the Remarks section above.

Respectfully Submitted,


Charlene E. Unoki
Supervising land agent

APPROVED FOR SUBMITTAL:


GILBERT S. COLOMA-AGARAN, Chairperson



Note: The easement area is located in the Hawaii Kai Marina channel entrance vicinity.

TMK: (1) 3-9-002:seaward of Kalanianaʻōhale Highway near the bridge.





Photo looking northeast towards Kalanianaʻole Hawaii Kai Marina channel bridge.



Photo looking southwest towards the Hawaii Kai Marina channel entrance.

Exhibit 3

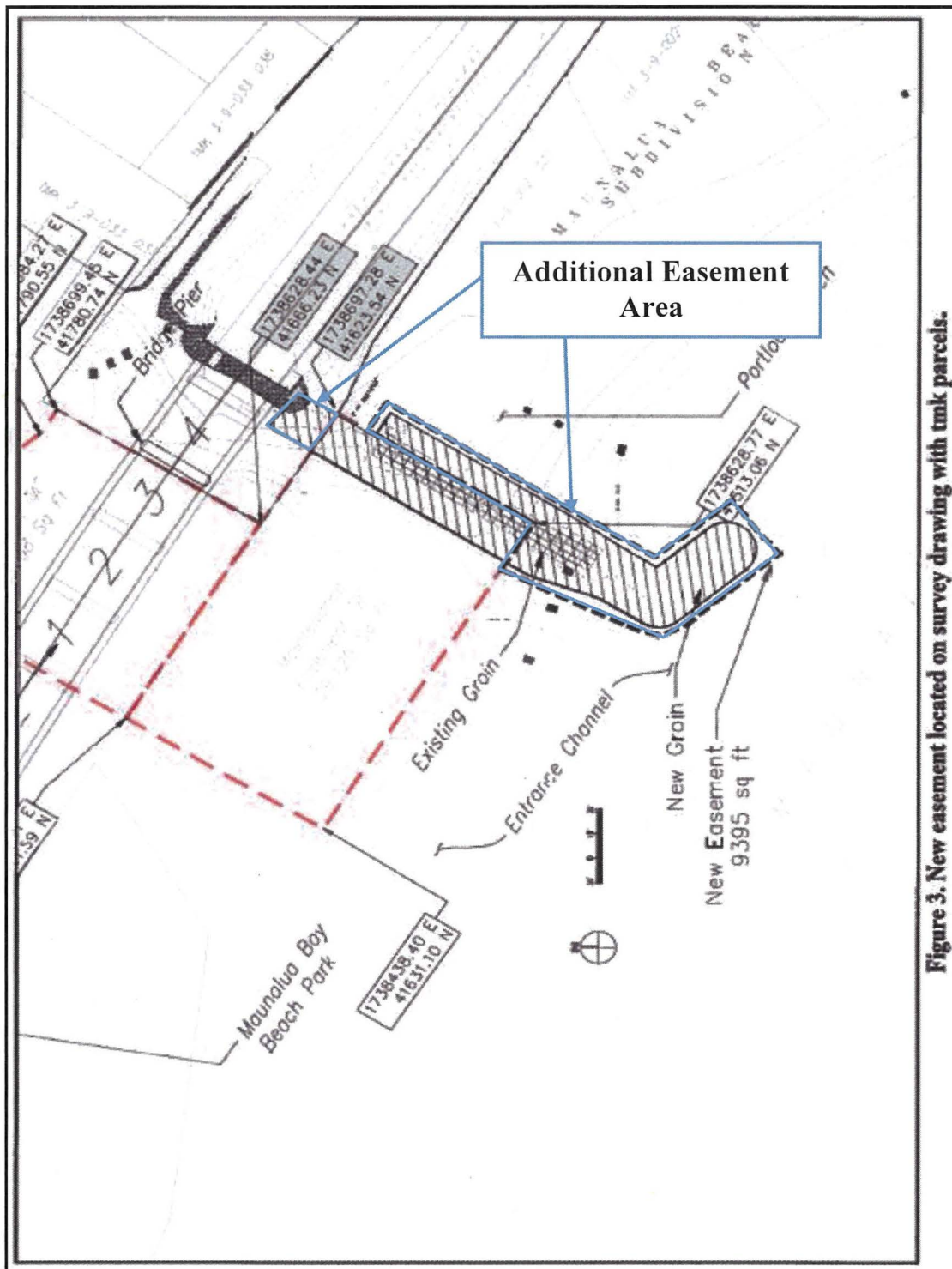




Exhibit 4

 <p>DAVID Y. IGE GOVERNOR OF HAWAII</p>	 <p>STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES POST OFFICE BOX 621 HONOLULU, HAWAII 96809</p>	<p>SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCES MANAGEMENT</p> <p>ROBERT K. MASUDA FIRST DEPUTY</p> <p>JEFFREY T. PEARSON, P.E. DEPUTY DIRECTOR - WATER</p> <p>AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUREAU OF CONVEYANCES COMMISSION ON WATER RESOURCES MANAGEMENT CONSERVATION AND COASTAL LAKES CONSERVATION AND RESOURCES ENFORCEMENT ENDANGERED FORESTRY AND WILDLIFE HISTORIC PRESERVATION KAIKOLAWE ISLAND RESERVE COMMISSION LAND STATE PARKS</p>
<p>REF: OCCL: AJR</p>		
<p>Derek P. Linsley c/o Sea Engineering, Inc. 41-305 Kalanianaʻole Hwy. Waimanalo, HI 96795</p>		
<p>CDUA: OA-3820</p>		
<p>AUG 31 2018</p>		
<p>SUBJECT: CONSERVATION DISTRICT USE PERMIT (CDUP) NO. OA-3820 FOR THE HAWAII KAI MARINA ENTRANCE GROIN REPLACEMENT PROJECT Honolulu District, Island of Oahu TMK: Submerged lands seaward of (1) 3-9-008:035 & 3-9-002:029</p>		
<p>This is to inform you that on August 30, 2018 the Board of Land and Natural Resources APPROVED Conservation District Use Permit (CDUP) OA-3820 for the <i>Hawaii Kai Marina Entrance Groin Replacement Project</i> located in the Honolulu District, Island of Oahu, on submerged lands of the State seaward (<i>makai</i>) of TMKs: (1) 3-9-008:035 & (1) 3-9-002:029 subject to the following conditions pursuant to HAR §13-5-42:</p>		
<ol style="list-style-type: none">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 continue to work with the Office of Hawaiian Affairs (OHA) to provide an additional cultural assessment for the proposed project in accordance with the guidelines provided by the Office of Environmental Quality Control (OEQC). No work on the proposed project may begin until the DLNR and OHA have reviewed the additional information, and mitigation efforts (if necessary) are in place prior to beginning construction;		

REF: AJR: OCCL

CDUA: OA-3820

6. **The applicant shall not conduct “sand back-passing” outside the initial construction activity without prior approval from the Department or Board for beach nourishment;**
7. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one (1) 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 (3) 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. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
9. 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;
10. 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;
11. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
12. 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;
13. 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;
14. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
15. 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;
16. 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;
17. 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

REF: AJR: OCCL

CDUA: OA-3820

shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

18. 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;
19. 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; and
20. Other terms and conditions as prescribed by the chairperson;
21. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board;
22. The State and Federally listed Hawaiian stilt has the potential to occur in the vicinity of the proposed project sites. To minimize the potential for take, surveys for the Hawaiian stilts by a qualified biologist are recommended before any land clearing or excavation activities occur and should be repeated if these activities are delayed more than three (3) days. If an endangered Hawaiian stilt is present or flies into the area during ongoing activities, then all activities within 100 feet (30 m) of the bird should cease, and the bird shall also not be approached. Work may continue after the bird leaves the area of its own accord. If a nest is discovered at any point, please contact the DOFAW staff;
23. The permittee shall provide copies of construction plans to the State Department of Transportation for review and approval prior to conducting approved activities; and
24. During sand back passing, consideration shall be given to placing material at the *City and County of Honolulu - Maunalua Bay Beach Park* located west of the project site.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below.

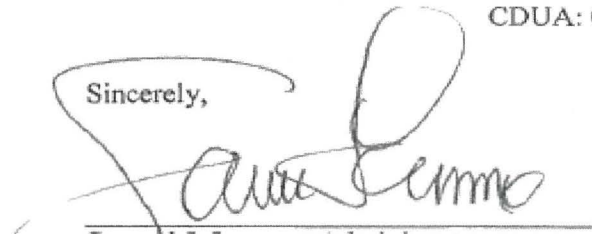
Please sign the original and the provided copy. Please keep the original and return the copy within thirty (30) days to the OCCL (PO Box 621, Honolulu, 96809).

Should you have any questions on any of these conditions, please feel free to contact Alex J. Roy, M.Sc. of our Office of Conservation and Coastal Lands staff at 808-587-0316.

REF: AJR: OCCL

CDUA: OA-3820

Sincerely,



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

RECEIPT ACKNOWLEDGED:





Applicant's Signature

9/5/18

Date

CC: *Chairperson*
 ODLO
 CCH – DPP

Attachments: OCCL Staff Report; OA-3820

 <p>DAVID Y. IGE GOVERNOR OF HAWAII</p>	 <p>STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF CONSERVATION AND COASTAL LANDS POST OFFICE BOX 621 HONOLULU, HAWAII 96809</p>	<p>SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT</p> <p>ROBERT K. MASUDA FIRST DEPUTY</p> <p>M. KALEO MANUEL DEPUTY DIRECTOR - WATER</p> <p>AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUREAU OF CONSERVANCIES COMMISSION ON WATER RESOURCE MANAGEMENT CONSERVATION AND COASTAL LANDS CONSERVATION AND RESOURCES ENFORCEMENT ENGINEERING FORESTRY AND WILDLIFE HISTORIC PRESERVATION KAHOLAWE ISLAND RESERVE COMMISSION LAND STATE PARKS</p>
Ref OCCL:MC		CDUP OA-3820 (extension)
Derek Linsley, P.E. Sea Engineering, Inc. Makai Research Pier 41-305 Kalanianaʻole Hwy Waimanalo, HI 96795		SEP 27 2019
Dear Mr. Linsley,		
SUBJECT: EXTENSION REQUEST OA-20-07 RE: CDUP HA-3820 Hawai'i Kai Marina Entrance Channel Groin Replacement Maunalua, O'ahu Makai of TMKs (1) 3-9-008:035 and 002:029		
The Office of Conservation and Coastal Lands (OCCL), part of the Department of Land and Natural Resources (DLNR), has reviewed your request on behalf of the Hawai'i Kai Marina Association for a two-year extension on the construction deadlines contained in Conservation District Use Permit (CDUP) OA-3820 regarding the replacement of the Hawai'i Kai Marina entrance channel groin and associated work makai of the above subject parcels.		
The permit was approved by the Board of Land and Natural Resources on August 30, 2018. As a condition of the permit, work was to be initiated within one year and completed within three years.		
The permittee is requesting the extension as the Water Quality Certification and Department of Army permit for the project are still being processed. The request was received by OCCL on August 22, 2019.		
A two year-extension of the permit conditions would give a new initiation deadline of August 29, 2021, and a completion deadline of August 29, 2023.		
<u>Discussion</u>		
The authority to grant time extensions on this permit lies with the Chair of the Board of Land and Natural Resources, pursuant to Hawai'i Administrative Rules (HAR) § 13-5-43 Time Extensions (a) <i>Permittees may request time extensions for the purpose of extending the period of time to comply</i>		

Extension OA-20-07

with the conditions of the permit, and (b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for an extension of a board permit.

The Department recognizes that projects with overlapping jurisdictions often face delays in securing all the necessary permits. The permittee appears to have been active in trying to secure all permits, and we have no objection to a two-year extension of the deadline for completing the project. Any further extensions will require the approval of the Board of Land and Natural Resources.

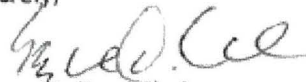
Decision

The conditions for CDUP OA-3820 for the replacement of the Hawai'i Kai Marina Entrance Channel Groin and associated work at Maunalua, O'ahu, makai of TMKs (1) 3-9-008:035 and 002:029, are thus amended to read:

Any work or construction to be done on the land shall be initiated by August 29, 2021, in accordance with construction plans that have been signed by the chairperson or their authorized representative, and shall be completed by August 29, 2023. The permittee shall notify the department in writing when construction activity is initiated and when it is completed.

Please call Michael Cain at 587-0048 should you have any further questions.

Sincerely,



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