

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

File No: CDUP KA-3744

July 24, 2020

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

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

APPLICANT: Mark Maxson and Robert Shaw

AGENT: Walton D.Y. Hong

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 (parcel is 26,371 sq. ft)

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.

On September 27, 2019, the Board approved the landowners' second time extension request due to the difficulties the landowners faced in completing their single-family residence on the property following the historic floods of April 2018 and the additional flooding caused by Hurricane Lane in August of 2018. Condition #8 of CDUP KA-3744 was amended and requested that the landowners complete the construction of their single-family residence by June 30, 2020.

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 received May 20th, 2020, the applicants are requesting a third (3rd) time extension to CDUP KA-3744; for approximately one (1) year to complete the construction of their single-family residence by June 30, 2021. The purpose for the third time extension request is that the landowners have been impacted by the challenges surrounding the COVID-19 pandemic and subsequent travel restrictions and local lockdown orders. The purpose for the third time extension request is that the landowners have experienced difficulties and delays in coordinating the selection of materials, styles, and patterns due to the landowners being sheltered-in-place in two different locations. Mr. Mark Maxson has been on Kaua'i since March 5th, 2020 to oversee ongoing work efforts and Mr. Robert Shaw has remained in San Francisco following the rapid implementation of shelter in place orders following the outbreak of COVID-19 in the area (see **Exhibit 2**). Additionally, similar lockdown and shelter in place orders were issued here in the State of Hawai'i and the County of Kaua'i and has caused the project to come to a standstill according to the applicants.

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:

Staff notes that the initial time extension was due to the difficulty in work delays resulting in the replacement of the contractor. These actions gave the Staff the impression that the applicants were proceeding with the construction of their single-family residence.

Staff notes that the second time extension request was due to the historic floods of April 2018 and followed by additional flooding caused by Hurricane Lane in August of 2018. These events particularly impacted the communities of the Northshore of Kaua'i.

With regards to the current third request for a time extension to CDUP KA-3744, Staff notes that the hardships or delays that the applicants are facing in completing construction of their single-family residence appear to be partially self-inflicted. The remaining work on the residence appears similar to depictions of remaining work for the project made to Staff at the time of their second time extension request. Additionally, Staff notes that COVID-19 was first reported on New Year's Eve 2019 in the city of Wuhan, China. By mid-March 2020, all 50 states in the U.S. had reported cases of COVID-19 and restrictions and lockdown orders were then shortly put in place thereafter contrary to statements or representations made to Staff by the applicants' agent. This left a period of four (4) to five (5) months following the applicants' approval for their second time extension request on September 27, 2019 where it would appear little to no progress was made on completing the single-family residence associated with CDUP KA-3744 and its amended completion date of June 30, 2020.

Despite the above, COVID-19 and its associated impacts have severely disrupted all aspects of our lives. COVID-19 will continue to present a threat to our health and well being as well as present significant challenges to carrying out what was once perceived as normal or routine tasks. Although construction has been allowed to continue during the COVID-19 pandemic, the industry has been affected by the virus with workers dealing with the infection or disruptions to supply chains which have in total caused delays in performing the required work. Disruptions and delays caused or associated with COVID-19 are to be expected for the foreseeable future until a vaccine or some other relevant solution can be implemented.

In the present case, the applicants have abided by lockdown orders and their project appears to have experienced delays in obtaining needed building and finishing materials or other impacts associated with COVID-19. Future delays are likely be experienced by

the applicants given the uncertainty surrounding the COVID-19 pandemic. Given the current status of the project and structure, it would appear that the home can be completed and occupied by the landowners in a timely manner. Approval of the time extension request will hopefully provide the additional time needed to for the landowners to complete their single-family residence.

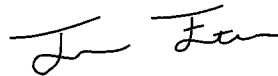
Staff, therefore, recommends the following:

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, 2021 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.

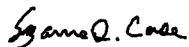
Respectfully submitted,



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

SL

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

Kaaliw Canyon

Honopu Canyon

5-7655 Kuhio Hwy
Kilauea

Legend

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

Kauai

Waimaea

Kauai

Hanapepe

Koloa

Kapaa

Lihue

Google Earth

Data LDEO-Columbia, NSF, NOAA

© 2018 Google

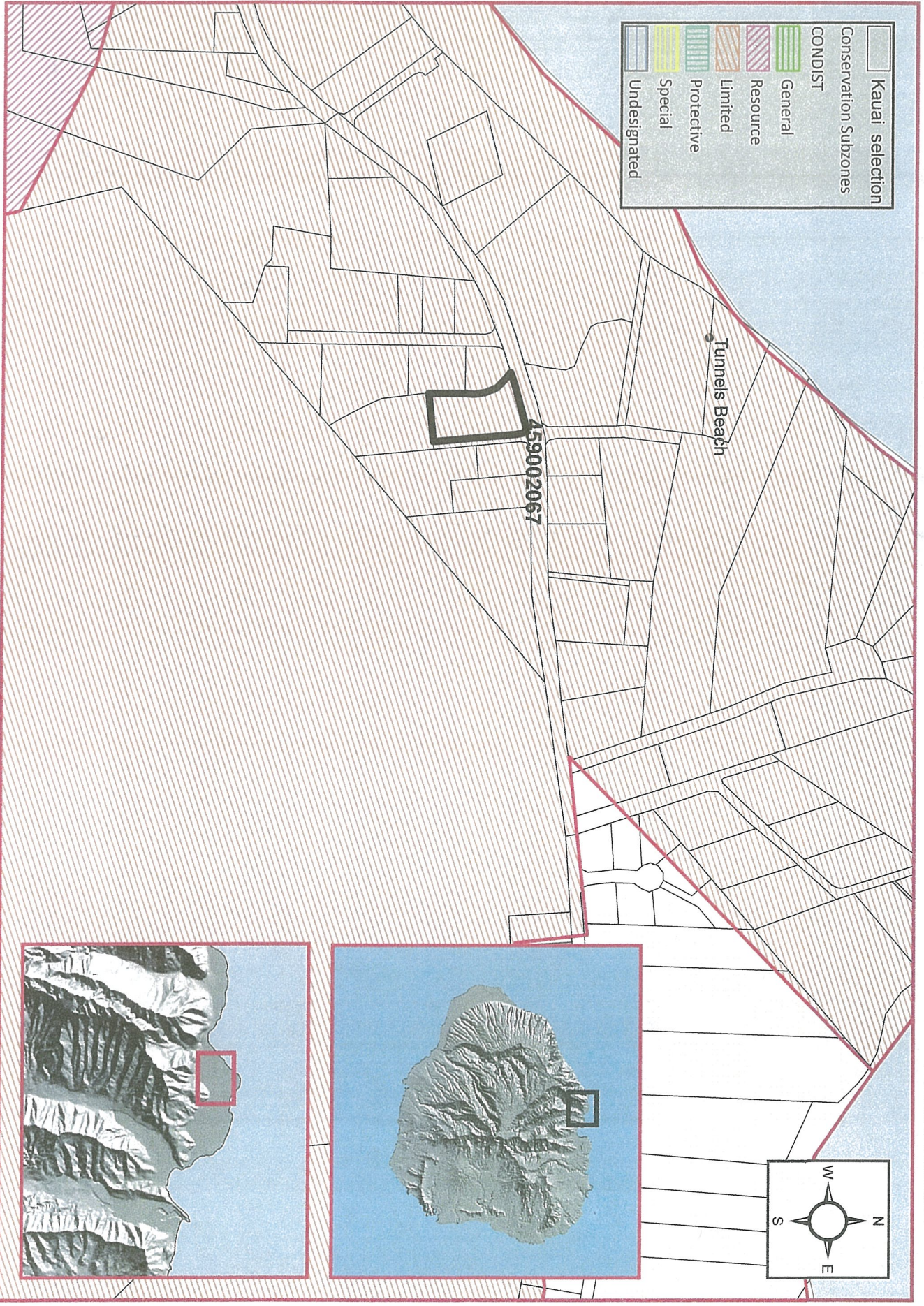
Image Landsat / Copernicus

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

10 mi



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



Produced by Trevor Fitzpatrick @ OCCL

All boundaries are approximate

Date: 8/27/2019

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
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVIYANCES
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: KA-3744

Mr. Walton D.Y. Hong
3135 'Akahi Street, Suite A
Lihu'e, Hawaii 96766-1106

SEP 21 2015

SUBJECT: Conservation District Use Permit KA-3744

Dear Mr. Hong:

On September 11, 2015, the Board of Land and Natural Resources approved your Client's (Mark Maxson and Robert Shaw) Conservation District Use Application (CDUA) KA-3744 for a single family residence located at Ha'ena, Hanalei, island of Kaua'i, further identified as Tax Map Key (TMK) (4) 5-9-002:067 subject to the following conditions:

1. The Board's approval is temporarily stayed until the 30-day challenge period is over. However, should an appeal be filed, approval will be stayed indefinitely until the appeal has been resolved.
2. 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;
3. 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;
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 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;

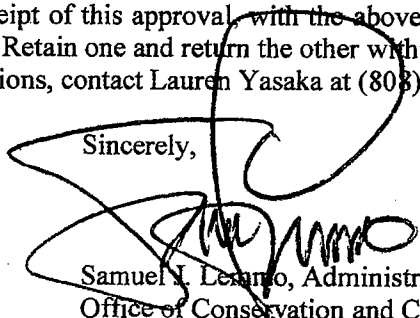
Exhibit 1

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 application and environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
10. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;
11. The permittee shall notify the Office of Conservation and Coastal Lands (OCCL) in writing prior to the initiation and upon completion of the project;
12. 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 SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
13. The permittee shall utilize Best Management Practices for the proposed project;
14. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;
15. The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Chapter 13-5;
16. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
17. 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;
18. 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;
19. 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;

- 20. Obstruction of public roads, trails, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, or pathways acceptable to the department;
- 21. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- 22. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
- 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. All exterior lighting shall be shielded to protect the night sky;
- 24. 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;
- 25. Any landscaping will shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawai'i. The introduction of invasive plant species is prohibited;
- 26. 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 H. Lesano, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Mark J. Maxson
Applicant's Signature

Date 9-30-15

c: Chairperson
KDLO

LAW OFFICES OF

WALTON D.Y. HONG

WALTON D.Y. HONG

TELEPHONE (808) 245-4757
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ATTORNEY AT LAW
A Law Corporation
3135 AKAHI STREET, SUITE A
LIHUE, KAUAI, HAWAII 96766-1191

April 20, 2020

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

Re: Conservation District Use Permit KA-3744
Applicants: Mark Maxson and Robert Shaw
TMK: (4th) 5-9-02-067, Haena, Kauai, Hawaii
Request for third extension to complete single family residence

RECEIVED
2020 MAY 20 AM 10:12
DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

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: 5-9-02-067. 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 the floods experienced by the Kauai's North Shore in April 2018. This request for extension was granted, giving the Applicants up to September 11, 2019 to complete the work.

By request of August 16, 2019, the Applicants requested a second extension until June 30, 2020 to complete the residence, as access to the area was essentially denied because of the need to repair Kuhio Highway from Hanalei to Haena. Although the highway was reopened in June of 2019, access continued to be restricted to convoys in alternating directions and available to owners and qualified persons. For these and the other reasons stated in our August 16, 2019 extension request, it was not possible to complete the residence by September 2019. By your action of September 27, 2019, the Applicants were granted their requested extension to complete the residence by June 30, 2020.

The Applicants have been proceeding in a diligent and good faith manner to complete the structure by mid-2020. When the COVID-19 corona virus began its spread from October 2019 from Wuhan, China, to its present status worldwide, it had significant effects on the ability of the Applicants to meet the June 30, 2020 completion deadline. Some of the effects are as follows:

Exhibit 2

(a) Applicant Mark Maxon travelled to Kauai on March 5, 2020, expecting to oversee ongoing work efforts. Applicant Robert Shaw planned to join Mark in Kauai several weeks later. Given the rapid implementation of shelter in place orders in San Francisco and Kauai, as well as infection risks associated with travel, Mr. Maxson has remained on Kauai while Mr. Shaw has remained in San Francisco. This situation made coordination in the selection of the remaining building materials, styles, and patterns difficult and delayed;

(b) With Governor David Ige ordering a lockdown in the entire State of Hawaii except for essential services, and Kauai Mayor Derek Kawakami issuing a similar stay in place order for the County of Kauai, the project has come to a complete standstill;

(c) The remaining work on the residence consists of essential finishing work, as all of the major construction has been completed. A list of the unfinished work includes the following:

- (1) Fabrication and installation of the kitchen and bath countertops;
- (2) Completing the interior painting (the exterior painting has been completed);
- (3) Installation of the hardwood flooring, baseboards and door trims;
- (4) Completion of tile flooring, with approximately one-half having been laid down before the County's stay in place order;
- (5) Installation of appliances, lighting fixtures, and plumbing fixtures; major plumbing and electrical work and wiring are already completed and have passed inspection;
- (6) Completing the installation of the solar panels and related electrical work; and
- (7) Installing the septic system, and the propane storage tank and lines for cooking and heating;

(c) Some of the building and finishing materials for the above work are presently being held in Lihue by Kauai Freight Service. However, until the State and County lockdowns are lifted, those materials cannot be delivered from Lihue without violating the law; and

Board of Land and Natural Resources

April 20, 2020

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(d) Even if the building materials could be delivered to the property, skilled tradesmen necessary to finish the work could not travel to the worksite because of the stay in place orders, without risking being cited and penalized.

Due to the uncertainty as to the length of the State's and County's stay in place orders, and how long it will take the building industry to recover and provide the necessary skilled labor to complete the remaining work on the residence after the stay in place orders are lifted, the Applicants respectfully request an additional one-year extension, or until June 30, 2021, for the completion of the work. The Applicants will nonetheless proceed to complete the residence as quickly as possible following the lifting of the stay in place orders of the State and County.

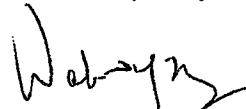
While the Applicants would normally appear or have a representative appear before you at the time this matter is being considered, we respectfully request that such presence be excused due to the travel restrictions and desired social distancing to mitigate the spread of the COVID-19 virus.

However, we request that we be informed of the date and place where this request will be considered by the Board of Land and Natural Resources in the possible event that the travel restrictions will be lifted and the Applicant or their representative believe that they are reasonably safe in appearing before you in person.

Thank you for your understanding and 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.

Yours very truly,



Walton D. Y. Hong

WDYH:wh

cc: Mark Maxson