

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

August 14, 2020

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

REGARDING: Proposed MEMORANDUM OF UNDERSTANDING between THE STATE OF HAWAII, Department of Land and Natural Resources, by its Board of Land and Natural Resources and the WAIKIKI BEACH SPECIAL IMPROVEMENT DISTRICT ASSOCIATION to Help Fund Phase II of the Waikiki Beach Maintenance Project & Amendment to Condition # 4 of Conservation District Use Permit OA-3558 for the Waikiki Beach Maintenance Project to Allow up to 20,000 Cubic Yards of Sand Recovery and Placement at Waikiki, Oahu, Hawaii

The Department of Land and Natural Resources (DLNR) is proposing to conduct a project in partnership with the Waikiki Beach Special Improvement District Association (WBSIDA) to complete phase II of the Waikiki Beach Maintenance Project. Phase I of the Waikiki Beach Maintenance Project was completed in 2012 in which the Department placed approximately 24,000 cubic yards of sand on Royal Hawaiian Beach (RHB) (**Exhibit 1**). The Department is seeking the permission of the Board of Land and Natural Resources (Board) to enter into a cost share agreement with the WBSIDA to share in the cost of the project. The project is estimated to cost up to \$3,500,000.

The proposed public-private partnership between DLNR and WBSIDA follows on the success of the 2012 Waikiki Beach Restoration Project to restore and maintain the vital public and visitor beach resources at Waikiki, which have suffered from chronic and seasonal erosion over the past few decades.

The Department has received an appropriation from the Legislature for \$2,000,000. (**Exhibit 2, proposed CIP appropriation**). WBSIDA will contribute \$1,000,000 and remaining funds will come from existing departmental trust funds. Thus, the DLNR wishes to enter into an MOU with the WBSIDA for which they will be responsible for funding up to \$1,000,000 of the construction costs. The remaining costs would be the responsibility of the State. The source of funds for the cost match is from the WBSIDA

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through financing from the Waikiki Beach Special Improvement District No. 3. The proposed Memorandum of Understanding (MOU) is attached (**Exhibit 3**).

The Department is also requesting an amendment to condition # 4 of Conservation District Use Permit OA-3558 to allow up to 20,000 cubic yards of sand recovery from the same offshore sand fields from which 24,000 cubic yards of sand was extracted in 2012. As it reads, condition # 4 states that “The project will also include an option for a second beach nourishment after approximately 10 years, involving *approximately* 12,000 cubic yards of sand recovered from the same offshore area.”

The need and justification for the additional sand extraction and placement is explained below:

1. During planning, design, and permitting for Waikiki Beach Maintenance in 2010 discussion was held with permitting agencies, including the Army Corps of Engineers and the DOH Clean Water Branch, as to the appropriate extent of beach improvement, and the volume of sand necessary to maintain a reasonable beach. Waikiki Beach is entirely manmade, with sand imported from other parts of Oahu, and its size and seaward extent has varied greatly over the years. The position of the shoreline in 1985 represents an approximate average seaward extent over the preceding thirty years and maintaining this beach width in the future was considered reasonable. Using the “1985” shoreline meant that the beach would not exceed its historical maximum seaward extent and had the added benefit of permitting 95% plus of the nourishment sand to be placed on existing sandy nearshore seafloor. Thus the “1985” shoreline became the “2012” shoreline with the accomplishment of beach maintenance in 2012. And this is the shoreline that it is the intent of the project to maintain. In effect, there is no change in the project scope. The addition of 20,000 cubic yards of sand rather than 12,000 cubic yards achieves the exact same goal as that envisioned by the Board when they approved the permit in 2010 by maintaining the “1985” shoreline.
2. Preparing an EA or EIS and procuring all the necessary permits for in-water work, is time consuming and costly work. Recognizing this, and because maintenance of Waikiki Beach is expected to be necessary for the foreseeable future, DLNR requested and received permits (CDUP, DA Section 10 and 404, DOH 401WQC) in 2011 that included approval for a second phase of beach nourishment approximately 10 years later. The OCCL is currently in discussions with these agencies in regards to the additional sand.
3. The 2012 project recovered and placed about 24,000 cubic yards of sand, and widened the beach by approximately 37 feet, such that the project succeeded in its intent of restoring the esthetics and recreational usage of the beach in response to long-term chronic erosion, and promoting lateral access along the shore. In 2010, when the permit applications were being prepared, the average beach recession rate for the previous 30 years had been about 1.5 feet per year. Based on the historical recession rate it was estimated that about half the 2012 width would be lost in 10

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years, thus necessitating a second nourishment of 12,000 cubic yards, half of the initial volume, to return the beach to its 2012 position. Thus, 12,000 cubic yards was cited as the desired future volume for a second phase of sand restoration to be included with the permit declarations.

4. Unfortunately, the rate of sand loss and beach recession subsequent to the 2012 maintenance project has been nearly twice the pre-project rate of recession. This more rapid beach loss has been evidenced by periodic beach surveys conducted by the UH Coastal Geology Group over the past 8 years. A recent (May 2020) detailed beach topographic survey by Sea Engineering, Inc. shows that the beach has receded nearly to its pre-2012 project position. It is currently estimated that 20,000 cubic yards of sand is required to return the beach to its intended 2012 position.
5. The precise reasons for the recent more rapid erosion rates are difficult to quantify. The 2012 maintenance was the first nourishment of this beach sector in more than 40 years, and thus the historical sand loss rate likely did not accurately represent current trends. Subsequent to the 2012 project there have been a number of very active summer south swell seasons, bringing considerable wave energy to the Waikiki area; however, a 2016 study by Habel et al. showed that elevated wave energy contributed to increased sand volumes within this beach system. It is more likely that the increased rate of erosion is related a persistent **6" – 8" sea level rise anomaly in the vicinity of Hawaii**, which results in more incident wave energy reaching the shoreline. These factors, plus the fact that the Waikiki nearshore area is very dynamic and variable, and that it is a manmade and not natural shoreline, essentially means that regular maintenance will be required to keep a beach in place much like repaving a road.
6. The nearshore sea floor is relic fossil reef rock, with intermittent thin patches of sand. Shifting sand, and heavy use by people, results in very little benthic fauna. The primary marine life is various species of invasive algae. Post-2012 beach nourishment marine environmental investigation by UH **showed no significant project impacts at either the offshore sand recovery site or the nearshore sea floor.**
7. The proposed 2020-21 maintenance project includes detailed marine environment and beach monitoring for one year post construction. This information will help guide future beach maintenance planning. In addition, DLNR is preparing a long term maintenance and resiliency improvement program for the entire Waikiki shoreline. This program is currently in the EIS preparation phase.
8. The objective and intent of the second nourishment project is to maintain the beach width established by the 2012 project. In order to meet this objective DLNR requests approval to place 20,000 cubic yards, instead of the currently permitted 12,000 cubic yards, in order to be consistent with the intent of the project and the permits to maintain the "2012" beach position. All other permit requirements and

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conditions will be adhered to. DLNR intends to accomplish the second beach maintenance during the 2020-21 winter period.

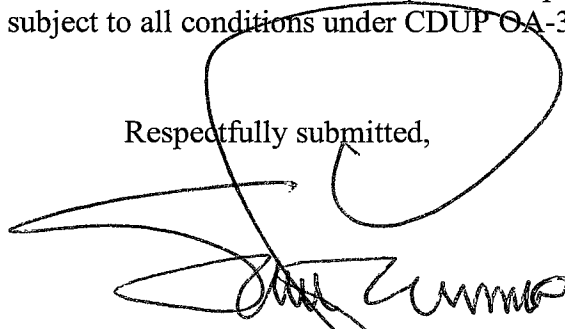
9. Conducting a 12,000 cubic yard project would likely result in the need for a follow up project nearer in time verses conducting a 20,000 cubic yard project. Considering Covid-19 related slowdowns in the visitor industry, it may be beneficial to conduct a larger project while beach traffic is low. Doing so would reduce the project related risk of bystander injury, likely speed up the rate of project completion, and limit inconvenience to adjacent hotels when compared to conducting a follow-up nourishment following a rebound in tourism.

The Department of the Attorney General is currently reviewing the MOU. The proposed donor, WBSIDA, agrees with the proposed language of the MOU. If significant changes to the MOU are required, the matter will be resubmitted to the Board for review and approval.

RECOMMEDATION:

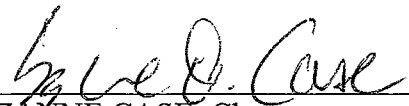
That the Board of Land and Natural Resources (BLNR) approve the Department entering into an MOU for the subject project and authorize the Chairperson to finalize and sign the MOU subject to the approval, as to form, by the Department of the Attorney General & also authorize an amendment to condition # 4 of CDUP OA-3558 to allow up to 20,000 cubic yards of sand to be recovered from the same offshore sand deposits and placed in the same areas of the beach as in 2012, subject to all conditions under CDUP OA-3558.

Respectfully submitted,

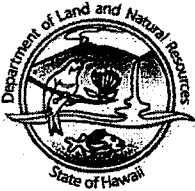


SAMUEL J. LEMMO, Administrator
Office of Conservation and Coastal Lands

Approved for submittal:

By: 
SUZANNE CASE, Chairperson
Board of Land and Natural Resources

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 KAULUKUKUI
DEPUTY DIRECTOR
LENORE N. OHYE
ACTING 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:AB

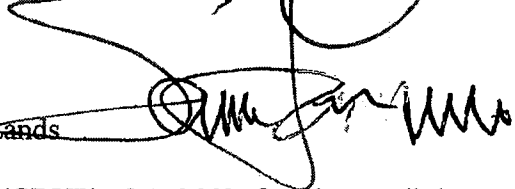
CDUP: OA-3558

MEMORANDUM

TO: William J. Aila, Jr., Chairperson

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

SUBJECT: Conservation District Use Permit (CDUP) OA-3558 for the Waikīkī Beach Maintenance Project, Located at Waikīkī Beach, Honolulu, O'ahu, Shoreline Fronting TMKs: (1) 2-6-001:008, 012, 013, 015, 018, and 019



On December 1, 2010, the Board of Land and Natural Resources approved the Conservation District Use Application OA-3558 for the Waikīkī Beach Maintenance Project, located at Waikīkī Beach, Honolulu, O'ahu, shoreline fronting TMKs: (1) 2-6-001:008, 012, 013, 015, 018, and 019, subject to the following 18 conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State, and County governments, and applicable parts of Chapter 13-5, HAR;
2. The applicant shall comply with all applicable Department of Health administrative rules;
3. 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, unless otherwise authorized, shall be completed within three (3) years of the approval of such use;
4. The project will also include an option for a second beach nourishment after approximately 10 years, involving approximately 12,000 cubic yards of sand recovered from the same offshore deposits;
5. All representations relative to mitigation set forth in the accepted environmental assessment for the proposed use are incorporated as conditions of the permit;
6. The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

EXHIBIT 1

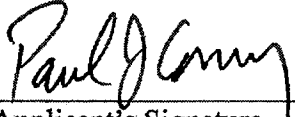
7. Work shall be conducted during calm weather periods to the most practical extent possible and no work shall occur if there is high surf or ocean conditions that will create unsafe work or beach conditions;
8. Authorization of the sand use and placement is contingent upon review and approval of the sand by the Department. The sand shall meet the following State quality standards:
 - a. The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).
 - b. The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach compatible material and rubble.
 - c. No more than 50 percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.
 - d. Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non carbonate sands are unacceptable.
9. Sand used for beach maintenance shall be screened of course material (rocks) and any non beach compatible material;
10. The applicant shall implement Best Management Practices (BMPs) and an approved monitoring and assessment plan to minimize dirt and silt from entering the ocean through silt containment devices or barriers, and to contain and clean up fuel, fluid, or oil spills immediately for this project. Any spill(s) or other contamination(s) that occur at the project site will be reported immediately to the Department of Health and other appropriate agencies;
11. All placed material shall be free of contaminants of any kind, including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam, or any other pollutant that would produce an undesirable condition to the beach or water quality;
12. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site, and a notification to the public informing them of the project;
13. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson;
14. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the

immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;

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 SHPD (808-692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
16. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson;
17. Other terms and conditions as prescribed by the Board; and
18. Failure to comply with any of these conditions shall render this Conservation District Use Permit void.

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

Receipt acknowledged:

for 

Applicant's Signature
William J. Aila, Jr.

Date 12/8/10

c: ODLO
DPP

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)			
				FISCAL YEAR 2019-2020	M O F	FISCAL YEAR 2020-2021	M O F
9.3		<u>WAIKIKI BEACH SAND RENOURISHMENT, OAHU</u>					
		<u>DESIGN AND CONSTRUCTION FOR PLACEMENT OF APPROXIMATELY 15,000 CUBIC YARDS OF SAND AND RELATED WORK AT ROYAL HAWAIIAN BEACH.</u>					
		<u>TOTAL FUNDING</u>	<u>LNK</u>		<u>C</u>	<u>2,000 C</u>	
AGS221		- PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION					
10.		LUMP SUM MAINTENANCE OF EXISTING FACILITIES, PUBLIC WORKS DIVISION, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND MAINTENANCE OF PUBLIC FACILITIES AND SITES, STATEWIDE. PROJECTS MAY INCLUDE REPAIRS AND IMPROVEMENTS.					
		<u>TOTAL FUNDING</u>	<u>AGS</u>	28,609 C			C
11.		STATE CAPITOL BUILDING, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REFURBISHMENT, RENOVATION, INSTALLATION, CONSTRUCTION, INFRASTRUCTURE, REPAIR FOR THE HAWAII STATE CAPITOL; EQUIPMENT AND APPURTENANCES.					
		<u>TOTAL FUNDING</u>	<u>AGS</u>	1,480 C			C

2,000 C

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MEMORANDUM OF UNDERSTANDING
(WAIKĪKĪ BEACH MAINTENANCE PROJECT)

This memorandum of understanding (“MOU”), dated _____, outlines the agreement between the State of Hawaii, Department of Land and Natural Resources (“DLNR”) and the Waikiki Beach Special Improvement District Association (“WBSIDA”) regarding the Waikīkī Beach Maintenance Project at Waikiki, Oahu, Hawaii.

RECITALS

- A. WBSIDA and DLNR enter into this MOU regarding the joint funding of the construction, construction monitoring, environmental monitoring, and after action report of the Waikīkī Beach Maintenance Project (the “Project”).
- B. The Project will entail marine dredging, dewatering and placement of marine sediment (beach sand) on Waikīkī Beach, environmental monitoring, and an after action report (Waikīkī Beach Maintenance Project) the project utilizing sand borrowed from the nearshore area of Waikiki.
- C. The Project includes dredging, delivery, treatment and placement up to 25,000 cubic yards of sand in the Royal Hawaiian Beach cell between the Royal Hawaiian Hotel and Kuhio Beach, Waikīkī.
- D. The intent of the Project is to restore the beach conditions and shoreline position as a result of the 2012 Beach Maintenance Project which placed approximately 20,000 cubic yards of sand in the same beach cell. The goal of the Project is to protect and preserve the beach resource at Waikiki for the benefit of the public at large, to alleviate hazards to upland development from long-term and seasonal beach erosion.
- E. The DLNR has engaged the services of a professional coastal engineering company to produce a comprehensive design and plans for the Project. The State is paying for these services through an existing contract. The State estimates the cost of construction, construction monitoring, environmental monitoring, and after action report to cost a total of \$3 million.
- F. The purpose of the MOU is to provide the mechanism by which WBSIDA will deposit up to \$1 million with DLNR for the Project.
- G. DLNR will manage all the planning, permitting, and construction for the Project.
- H. DLNR and WBSIDA desire to memorialize their understanding of the terms and conditions upon which DLNR and WBSIDA will fund a portion of the construction for the Project in this MOU.

Now, THEREFORE, the terms of the MOU are as follows:

1. Estimated Cost of Project: The current estimated total cost for the construction for the Project (“MOU Work”) is approximately TWO TO THREE MILLION DOLLARS (\$2,000,000.00-\$3,000,000).
2. Joint Funding of the Project: DLNR and WBSIDA agree to jointly fund the MOU Work, with WBSIDA and DLNR each, contributing a portion of the total cost.
3. Contribution: WBSIDA agrees to contribute to DLNR, ONE MILLION DOLLARS (\$1,000,000.00) (the “WBSIDA Contribution”), upon and subject to the terms and conditions set forth in this MOU.
4. Use of WBSIDA Contribution: The WBSIDA Contribution shall be used solely as set forth in the MOU to fund the MOU Work. It is explicitly understood that the moneys covered by this MOU are trust funds and are not subject to appropriation by the Legislature.
5. Deposit of the WBSIDA Contribution: The WBSIDA Contribution shall be held in a separate account and shall not be commingled with other funds of the State. WBSIDA shall deposit the WBSIDA Contribution upon written request from DLNR to WBSIDA.
6. Payment of Money for MOU Work: DLNR shall make each progress payment for the MOU Work by making payments by or on behalf of DLNR and from the WBSIDA separate account in equal amounts.
7. Return of Funds: The WBSIDA Contribution or any portion thereof remaining, as the situation may be, shall be returned to WBSIDA as set forth herein below:
 - a. If for any reason DLNR is unable to award a contract for the MOU Work by June 30, 2021, DLNR shall provide written notification to WBSIDA and shall promptly return any unused portion of the WBSIDA Contribution to WBSIDA. If, however, DLNR is unable to award a contract because the bid opening reveals that the total cost of the MOU Work is expected to exceed \$3,000,000.00, the parties shall, in good faith, discuss potential options for moving forward with the MOU Work prior to the return of any unused portion of the WBSIDA Contribution to WBSIDA.
 - b. If for any reason a contract for the MOU Work is awarded but there are circumstances that arise by June 30, 2021, that prevent or otherwise make impracticable the contract’s completion, then upon termination or cancellation of the contract, DLNR shall promptly return any unused portion of the WBSIDA Contribution to WBSIDA.
 - c. If, after the DLNR’s final acceptance of the MOU Work and DLNR’s final payment is made, there is an unused portion of the WBSIDA Contribution, DLNR

shall promptly return any unused portion of the WBSIDA Contribution to WBSIDA.

8. Miscellaneous Provisions:

- a. Partial Invalidity: If any provision of the MOU or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions of this MOU, or the application of such provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected.
- b. Governing Law: This MOU shall be construed, interpreted and applied in accordance with the laws of the State of Hawaii.
- c. No Warranty: Nothing in this MOU shall be construed as a warranty or guaranty of the successful or full completion of the Project or the MOU Work, or of the quality of the Project or the MOU Work.
- d. No Third Party Beneficiaries: No term or provision of the MOU is intended to be, or shall it be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- e. No Partnership: Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.
- f. Modifications: This MOU may not be modified except by a written agreement signed by both parties.
- g. Binding on and Inuring to Benefit of Successors and Assigns: This MOU shall be binding upon, and shall insure to the benefit of the parties, and their respective successors and assigns.
- h. Notices: All notices and other communications in connection with this MOU shall be in writing and shall be deemed to have been received by a party when actually received in the case of hand delivery, facsimile transmission, e-mail, or internationally recognized courier services, or three (3) days after being sent by United States mail, as the case may be, using the information of the DLNR and WBSIDA as shown below. Any refusal to accept delivery of a written notice delivered or mailed to the addresses set forth below resulting in non-operation of the receiving party's facsimile equipment, shall be deemed to be receipt of such notice for the purpose of this MOU.

DLNR: Department of Land and Natural Resources

Office of Conservation and Coastal Lands
1151 Punchbowl Street
Honolulu, Hawaii 96822
Facsimile No.: (808) 587-0377

WBSIDA: Waikiki Beach Special Improvement District Association
2250 Kalakaua Avenue, Suite 315
Honolulu, Hawaii 96815
Facsimile No.: (808) 923-2622

i. Counterparts; Facsimile Execution: The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. An executed counterpart of this instrument transmitted and received by facsimile or email shall be deemed for all purposes to be an original, executed counterpart thereof.

IN WITNESS WHEREOF, DLNR and WBSIDA have executed this Memorandum of Understanding as of the date stated above.

Waikiki Beach Special Improvement District Association

By: _____

Print name: Rick Egged

Title: President

Approved as to form:

State of Hawaii, Department of Land and Natural Resources

By: _____
XXXXXX
Deputy Attorney General

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

Approved by the Board of Land and Natural Resources at its meeting held on