

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

November 13, 2020

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

REGARDING: Extension Request HA-21-06, Third time extension request for Conservation District Use Permit (CDUP) HA-3682 regarding a single-family residence

PERMITTEE: Maria Shon Magsalin

LOCATION: Wa`awa`a, Puna, Hawaii

TMK: (3) 1-4-028:007

AREA OF USE: 1412 ft²

SUBZONE: Resource

BACKGROUND

On December 13, 2013, the Board of Land and Natural Resources issued Conservation District Use Permit (CDUP) HA-3682 to Maria Shon Magsalin to build a one-story single-family residence on post-and-pier with a developed area of 1412 square-feet on the above subject parcel.

The residence will be set back 58 feet from the shoreline, at an elevation of 30 to 35 feet above sea level. It is not in a tsunami or large-wave inundation zone. A parcel owned communally by the Wa`awa`a subdivision-owners separates the subject parcel from the pāhoehoe shelf along the coast.

As a condition of the permit, work was to be initiated within one year (December 12, 2014) and completed within three years (December 12, 2016).

The location of the parcel is shown on **Exhibit 1**.

FIRST TIME EXTENSION REQUEST

In October 2014 the permittee notified the Department that she was experiencing delays in finalizing the construction plans for the residence and requested a one-year extension of the deadlines. The Department had no objections to the request, and the Chair of the Board of Land and Natural Resources approved a one-year extension to the construction deadlines pursuant to Hawaii Administrative Rules (HAR) § 13-5-43 Time Extensions (a) *Permittees may request time*

extensions for the purpose of extending the period of time to comply with the conditions of a permit, and (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.

The permit was amended to read that the work must be initiated before December 13, 2015 and be completed by December 13, 2017. The permittee was notified that further extensions would require approval by the full Board of Land and Natural Resources.

SECOND TIME EXTENSION REQUEST

In October 2017 the permittee applied for a second-time extension. She reported that she had initiated work on the property and had cleared the property and installed the permitted septic tank. However, she stated that she was having trouble securing financing and finding a contractor for the project and requested a three to five-year extension on the deadline for completing the residence.

OCCL presented the extension request to the Board on April 27, 2018. The Board approved the request, and the deadline for completing the residence as extended to December 13, 2020.

THIRD TIME EXTENSION REQUEST

In September 2020 the permittee contacted OCCL and reported continuing difficulties in completing the residence. She reported that she had faced delays due to the 2018 Lower Puna eruption, and the on-going COVID-19 pandemic.

Ms. Magsalin's request for an extension is attached as **Exhibit 2**.

BASIS AND AUTHORITY FOR GRANTING 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. The permittee should be able to demonstrate that the hardship or delay was not self-imposed and that a good faith effort had been made to undertake the project.

The authority for the granting of time extensions is provided in §13-5-43, Hawaii Administrative Rules (HAR), which allows for a permittee to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

The relevant sections are §13-5-43:

(a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

...

(c) 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.

... and

(f) Temporary variances are excluded from this provision.

DISCUSSION

As the Board has the authority to grant or deny time extension requests, OCCL is forwarding the permittee's request for review. The extension request was submitted in a timely manner pursuant to HAR §13-5-43.

In general, OCCL discourages multiple extensions on permits. However, in this case we note that the delays have been caused by significant real-world crises, and that Ms. Magsalin has been diligent in keeping our office updated on her progress.

Given this, OCCL recommends that the Board grant the permittee a third time extension.

RECOMMENDATION

Based on the above, OCCL recommends that the Board of Land and Natural Resources approve the request for an extension of the deadlines of CDUP HA-3682 for the Magsalin Single Family Residence in Wa'awa'a, Puna District, Hawai'i, TMK (3) 1-4-028:007. The new deadline for completing the project will be December 13, 2022.

Respectfully submitted,

S Michael Cain

Michael Cain
Office of Conservation and Coastal Lands

Approved for submittal:

Suzanne D. Case

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

Administrator review:

Sam Lemmo

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

TMK (3) 1-4-028:007

0 62.5 125 250 Meters

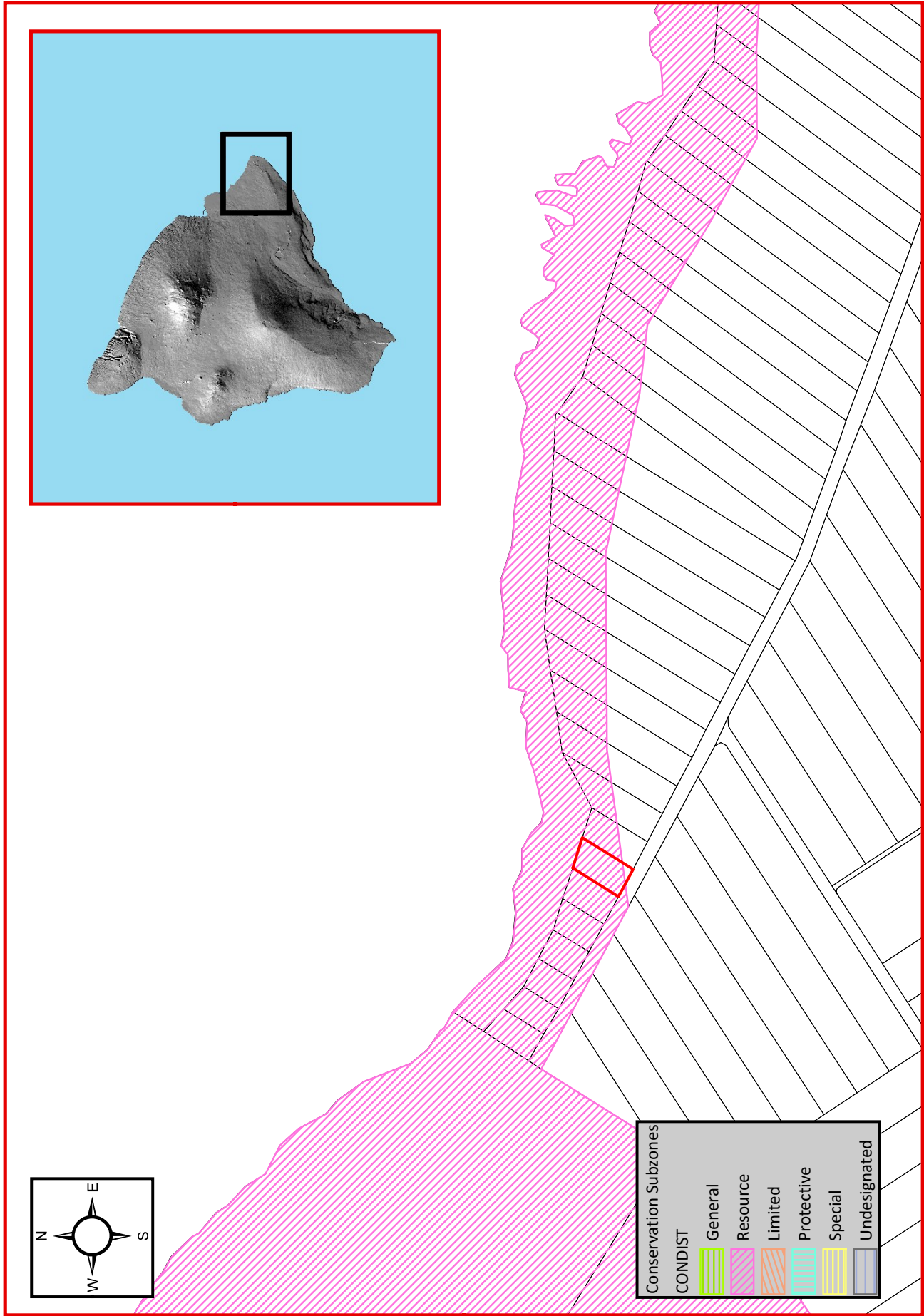


Exhibit 1: Location Map

Sept 6, 2020

Dear Mr. Cain,

Thank you for responding to my request for a phone call.
As I have mentioned in my previous email, my permit to build a single family residence will expire this December 13, 2020.

I am indeed getting frustrated with all the events that is happening and that has happened. I was granted the extension on September 28, 2018. I was totally ecstatic as I will finally get to build my dream home which I started working on since 2011.

In August 2018, the lava flow ended after 3 months of worrying if it will get to Waawaa. Fortunately Waawaa was spared but 2 miles away was like a 3 story high lava.

My builder contractor, Mr. Frank Stiller, was doing another project in the Big Island during 2019. Knowing my home is not that of a huge project, I was put on hold.

I was for sure glad the lava eruption halted and my builder contractor was ready for my project. He was working on my plans at the County and Building Permit. Then April came and we have the pandemic. My contractor who is 91yo moved back to Maui where he is from. My building permit has not been approved yet. I am still doing the necessary requirements per their request.
Building permit application: A2020-BH00262 (initiated and submitted Mar. 10, 2020) by Frank Stiller.

Now I face all this challenges, the Covid 19 period that seem to no end in sight yet.

I would like to request an extension again. I do not see my project getting finished by Dec 2020.

Please let me know what to do. Thank you for reading this letter. Hoping for your kind consideration.

Respectfully yours,

Maria Shon Magsalin