

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

**December 10, 2021**

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawai`i**

**REGARDING:** Extension Request HA-22-3, First time extension request for Conservation District Use Permit (CDUP) HA-3868 regarding a single-family residence

**PERMITTEE:** Robert Garrett representing Kamahele Farms LLC

**LOCATION:** 15-2145 Government Beach Road, Maku'u, Puna, Hawai`i

**TMK:** (3) 1-5-010:009

**AREA OF USE:** SFR: 4,695 sf and Farm/utility shed: 680 sf

**SUBZONE:** Resource

**BACKGROUND**

On October 9, 2020, the Board of Land and Natural Resources issued Conservation District Use Permit (CDUP) HA-3868 to Robert Garrett to construct a 4,695 sf two-story residence with related utilities; replacement of the existing entry gate and fencing along Government Beach Road; landscaping; well, pump house, and potable water storage tank; and a farm shed (680 sf) for agricultural use.

The property is bordered by the shoreline to the northeast and by the Government Beach Road to the southwest. Across and along the Government Beach Road are various farms, cattle pastures, and single-family residences. The approximately 1,000-foot shoreline can be described as rocky and "hard." The residence will be set back 212 feet from the shoreline. A total area of approximately 8,150 square feet will be used for the construction of the home and its related improvements.

As a condition of the permit, work was to be initiated within one year (October 9, 2021) and completed within three years (October 9, 2023).

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

#### **FIRST TIME EXTENSION REQUEST**

This is the applicant's first time extension request. The applicant requested their first extension after the deadline to initiate construction activities. The construction initiation deadline was October 9, 2021, and the OCCL received the permittee's request for a construction initiation extension on October 15, 2021. Pursuant to (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 (e) if a time extension is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.*

Therefore, the applicant is requesting a 1-year time extension to initiate and complete construction and because this time extension request was submitted after the initiation deadline, the request is being submitted for board review.

Robert Garrett'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.*

... and

*(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review.*

#### **DISCUSSION**

As the Board has the authority to grant or deny time extension requests, the OCCL is forwarding the permittee's request for review. The extension request was submitted after the project initiation deadline.

The applicant states that they have been diligently working through the permit process but due to the COVID-19 pandemic, building permit approval has been held up for several months. Given this, the OCCL recommends that the Board grant the permittee a 1-year extension for project initiation and completion.

**RECOMMENDATION**

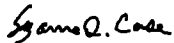
Based on the above, the OCCL recommends that the Board of Land and Natural Resources approve the request for an initiation extension of CDUP HA-3868 for the Garrett Single Family Residence in Maku'u, Puna District, Hawai'i, TMK (3) 1-5-010:009. The new deadline for initiating the project will be October 9, 2022. The new deadline for project completion will be October 9, 2024.

Respectfully submitted,



Rachel Beasley, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:



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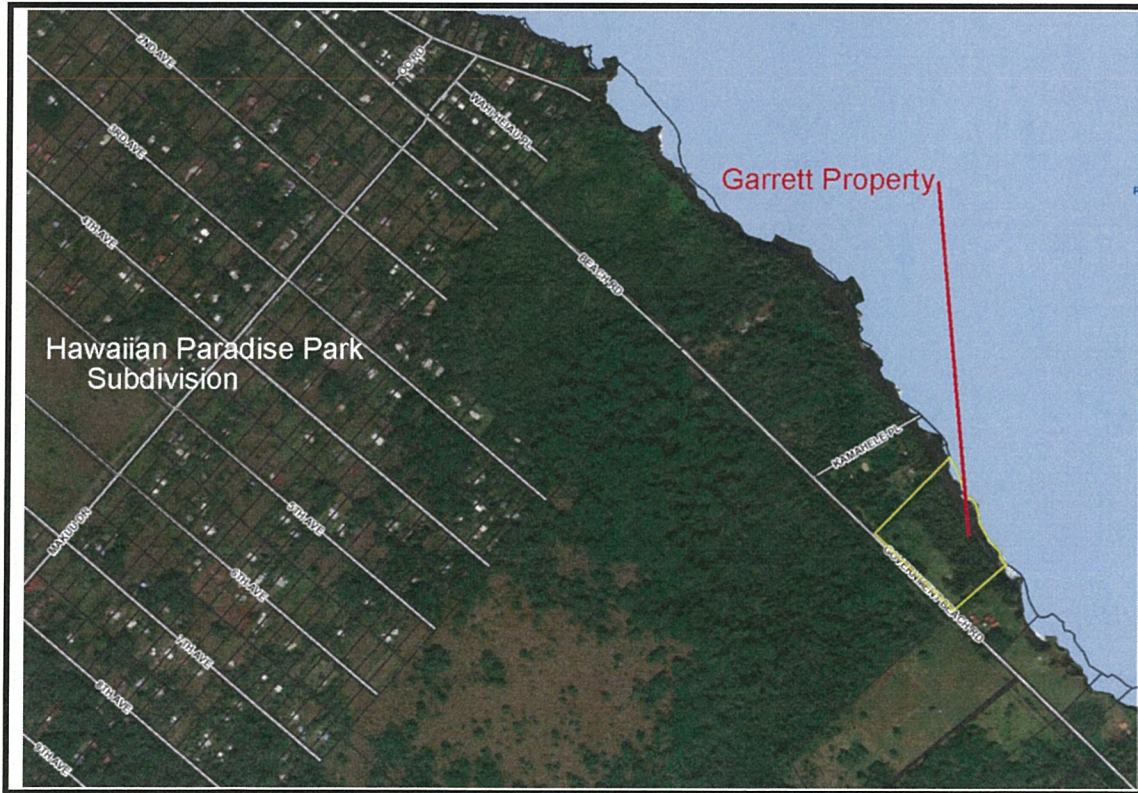
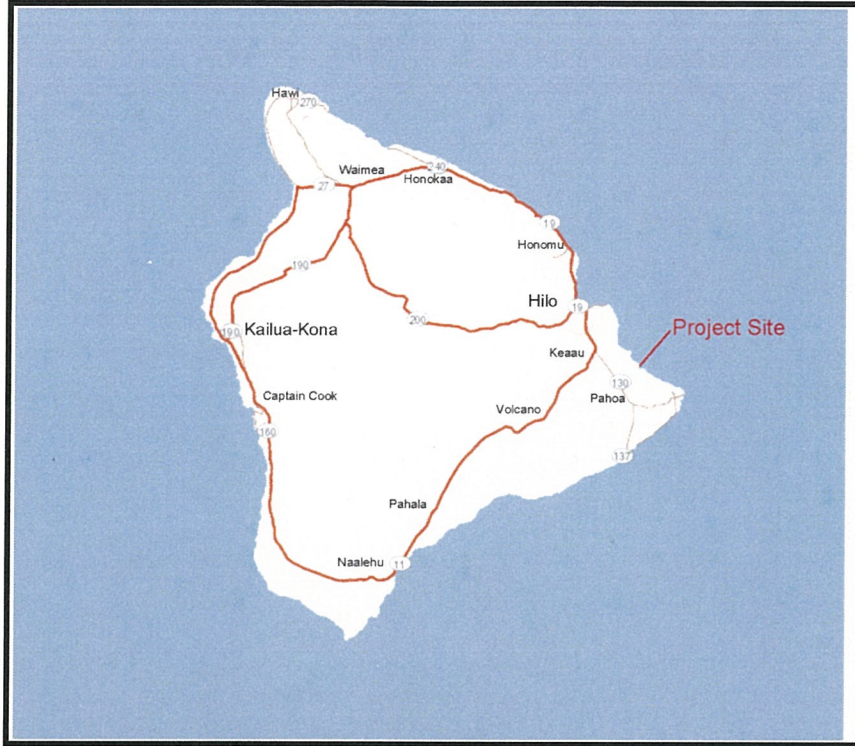
Suzanne D. Case, Chairperson  
Board of Land and Natural Resources

Administrator review:



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

GARRETT SINGLE FAMILY RESIDENCE - CONSERVATION DISTRICT USE PERMIT APPLICATION



**Figure 1 Island/Regional Location Maps** Conservation District Use Permit Application  
**Garrett Single-Family Residence**

**EXHIBIT 1**

HA 22-3

Kamahele Farms LLC RECEIVED  
OFFICE OF CONSERVATION AND COASTAL LANDS (CDUP) HA-3868

Samuel J Lemmo  
Administrator  
Office of Conservation and Coastal Lands

2021 OCT 15 A 11:12

SUBJECT: Conservation District Use Permit (CDUP) HA-3868 DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII


Dear Mr. Lemmo,

I sincerely appreciate your department approving the Conservation District Use Permit HA-3868 on October 9<sup>th</sup>, 2020 pertaining to my home in Maku'u, Puna, Hawai'i.

Since your department's approval, we have diligently worked through the process of getting our building permit approved. Unfortunately, it has been held up for many months in several departments because of COVID-19 causing, I'm assuming, staffing issues in those departments.

We humbly request a 1 year extension of our Conservation District Use Permit (CDUP) HA-3868 so that we have more than enough time to get the plans approved in the Kona planning department.

Thank you for your consideration. Feel free to reach out and contact me with any considerations or concerns.

Sincerely,  


Bob Garrett  
3333 E. Camelback Rd Ste 275  
Phoenix, AZ 85018  
Bellgroup4930@yahoo.com  
623-330-7244

EXHIBIT 2

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  
M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
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:RB

CDUP: HA-3868

James Leonard  
JM Leonard Planning, LLC  
56 Laukona St.  
Hilo, HI 96720

OCT 13 2020

SUBJECT: Conservation District Use Permit (CDUP) HA-3868

Dear Mr. Leonard:

On October 9, 2020, the Board of Land and Natural Resources approved Conservation District Use Application HA-3868 for a Single-Family Residence; Agricultural use/farm with associated farm/utility shed; and Landscaping and Associated Improvements located at Maku'u, Puna, Hawai'i, Tax Map Key: (3) 1-5-010:009 subject to the following 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 Hawai'i 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 comply with all applicable Department of Health administrative rules;
4. 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;
5. 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;

6. 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;
7. 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;
8. 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;
9. The permittee 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;
10. The permittee shall notify the Office of Conservation and Coastal Lands (OCCL) in writing prior to the initiation and upon completion of the project;
11. 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;
12. The applicant shall develop an appropriate burial treatment plan in consultation with the lineal descendants for the identified burial plot on the property and shall obtain a SHPD determination and shall consult with the HIBC prior to County grading and/or building permit approval, whichever occurs first;
13. The applicant shall develop an archaeological preservation plan for the agricultural complex (Site 18980) and shall obtain a SHPD determination prior to County grading and/or building permit approval, whichever occurs first;
14. The permittee shall utilize Best Management Practices for the proposed project;



15. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;
16. The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawai'i Administrative Rules, Chapter 13-5;
17. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
18. 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;
19. 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;
20. 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;
21. 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;
22. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
23. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
24. 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 waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
25. 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 Hawai'i, and by Hawai'i statutory and case law;



26. Any landscaping 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;
27. Trees taller than 15 feet shall not be removed or trimmed during the Hawai'i Hoary bat birthing and pup rearing season from June 1st to September 15<sup>th</sup> and no barbed wire shall be constructed;
28. The applicant shall encircle the Ischaemum byrone clumps with rock curbs to protect the endangered grass by encouraging people to walk around it;
29. If land clearing occurs between March 1 and September 30, a pre-construction hawk nest search by a qualified ornithologist using standard methods will be conducted. If Hawaiian Hawks are present, no land clearing will be allowed until October, when hawk nestlings will have fledged;
30. Other terms and conditions as may be prescribed by the Chairperson; and
31. 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

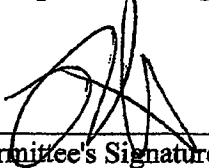
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, contact Rachel Beasley at (808) 798-6481.

Sincerely,

*SAM LEMMO*

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

Receipt acknowledged:

  
\_\_\_\_\_  
Permittee's Signature

Date \_\_\_\_\_

c: Chairperson  
HDLO  
County of Hawaii—Department of Planning