

STATE OF HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai‘i
July 28, 2023

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

REGARDING: Third Time Extension Request for Conservation District Use Permit (CDUP) KA-3668 for the Kalāheo Water System Improvements and Subdivision

APPLICANT County of Kaua‘i- Department of Water Supply (DOW)

LANDOWNER: State of Hawai‘i
Tax Map Keys: (4) 2-4-004: 005, 039, 049 & 058; 2-4-009:003 & 008

LANDOWNER: County of Kaua‘i Board of Water Supply
Tax Map Key: (4) 2-4-003: 007

LANDOWNER: Marty Hoffman, Trustee of the Hoffman, Marty Rev Living Trust
Tax Map Key: (4) 2-4-003:006

LOCATION: Kalāheo and Wahiawa, Kaua‘i

SUBZONE: Limited, Resource and General

BACKGROUND (Exhibits A, B, C & D)

On September 13, 2013, the Board of Land and Natural Resources approved CDUP KA-3668 for the Kalāheo Water System improvements and subdivision of land subject to 21 conditions of which condition #6 states that work would be completed within three years of approval. A time extension was requested on July 15, 2016, due to delays for construction right of entry notifications and the processing of a subdivision. The first time extension was authorized by the Chairperson on August 4, 2016 and the time extension was granted to complete the project by September 13, 2018.

On August 30, 2018, the Board of Land and Natural Resources approved a second time extension request to complete the County of Kauai’s Kalaheo Water System Improvements. According to the applicant, construction drawings were amended to reduce the size of one of the water tanks, financing processes needed to be completed, and a contractor needed to be procured. The second time extension was granted to complete the project by September 13, 2023.

TIME EXTENSION REQUEST (Exhibit E)

On June 07, 2023, the Office of Conservation and Coastal Lands received correspondence from consultant, Bowers & Kubota requesting additional time to complete the project. According to the submitted information, full funding of the project was obtained, and the project was advertised for construction in April 2022. A contractor was selected in May 2022, mobilization, blessing of the project and land clearing activities were initiated at the end of May 2023.

There have been multiple delays due to staff turnover at the County's Department of Water and government permitting processes due to the impacts of the COVID-19 pandemic. It is anticipated that construction will be completed by June 2025.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

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

Additionally, §13-5-43(c), HAR, states: "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."

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 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:

In the present case, none of these factors suggest any reason to deny the request. The Department believes that work has been initiated for the project with the processing of the proposed subdivision and recent mobilization. The permittee has endeavored to obtain all permits and approvals in addition to complying with permit conditions for project construction. Although work is anticipated to be completed within 2 years, staff is recommending additional time to complete the project given the improvements include construction of new reservoirs, a well, waterlines and supporting facilities and must be installed in a prescribed sequence to provide proper switching of services and phasing in of the new facilities to insure uninterrupted water services. Approval of the time extension request shall hopefully provide the time needed to complete the project.

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** an extension to complete the County of Kauai's Kalaheo Water System Improvements by September 13, 2028, subject to the following conditions:

1. That condition #6 of CDUP KA-3668 is amended to provide that the Permittee has until by September 13, 2028, to complete construction; and
2. That all other conditions imposed by the Board under CDUP KA-3668, as amended, shall remain in effect.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

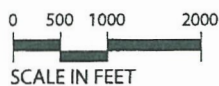
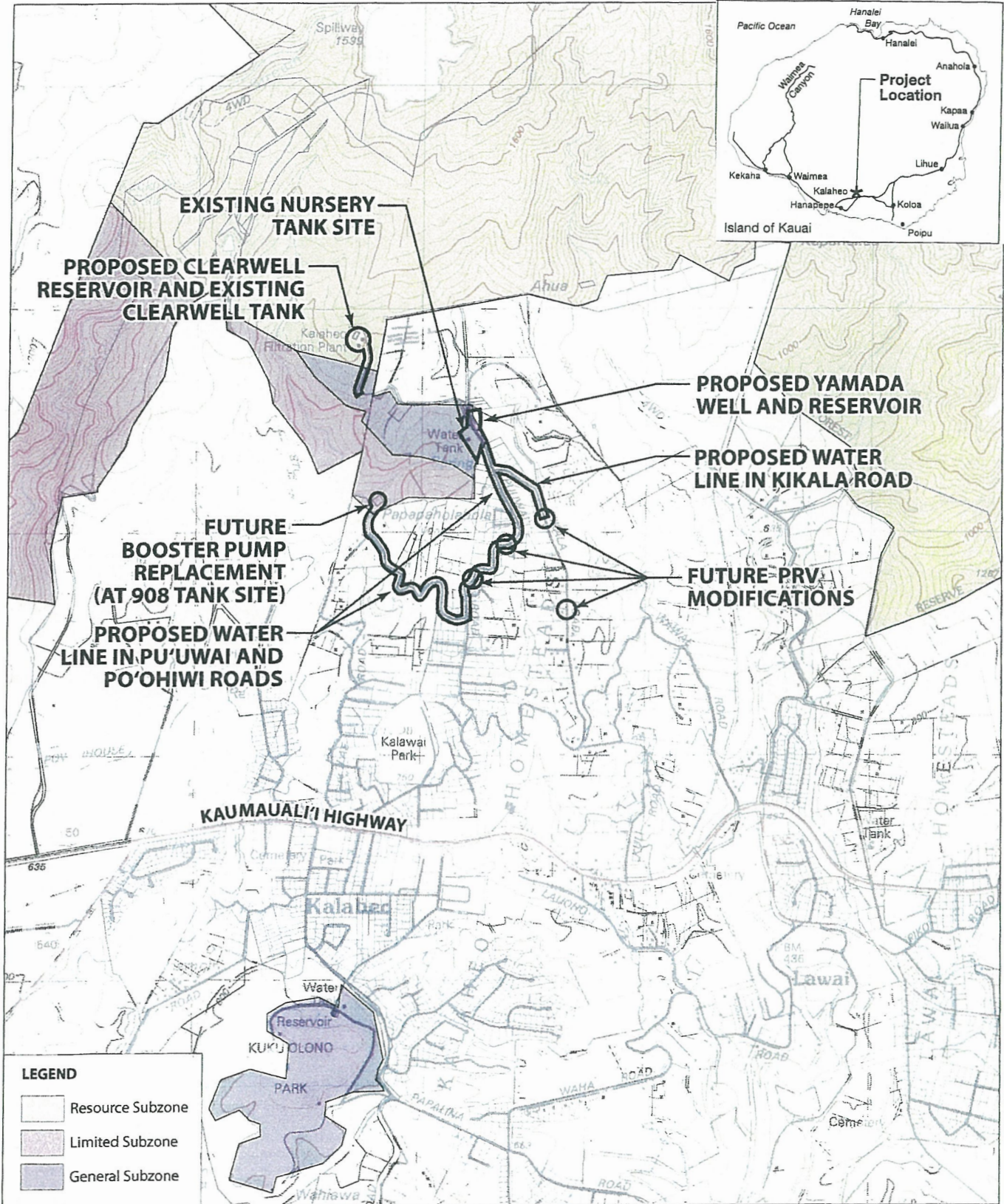


Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources

MC

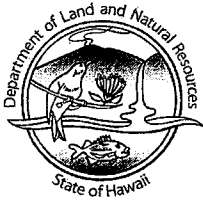
EXHIBITS

- A** Location Map
- B** Conservation District Use Permit KA-3668
- C** First Time Extension
- D** Second Time Extension
- E** Third Time Extension Request



LOCATION MAP WITH CONSERVATION DISTRICT SUBZONES
 Kalāheo Water System Improvements
 Kalāheo, Kaua'i

Exhibit A



ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

CDUP: KA-3668

Glen T. Koyama
Belt Collins Hawaii LLC.
2153 North King St, Suite 200
Honolulu, Hi 96819

SEP 16 2013

SUBJECT: Conservation District Use Permit (CDUP) KA-3668

Dear Mr. Koyama:

This is to inform you that on September 13, 2013, the Board of Land and Natural Resources approved your client's application for the Kalāheo Water System improvements and subdivision of land on parcel (4) 2-4-003:007 located at Kalāheo and Wahiawa, Kaua'i, Tax Map Keys: (4) 2-4-003:006 & 007; 2-4-004: 005, 039, 049 & 058; and 2-4-009:003 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 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;
- (4) The permittee shall comply with all applicable department of health administrative rules;
- (5) 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;
- (6) 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

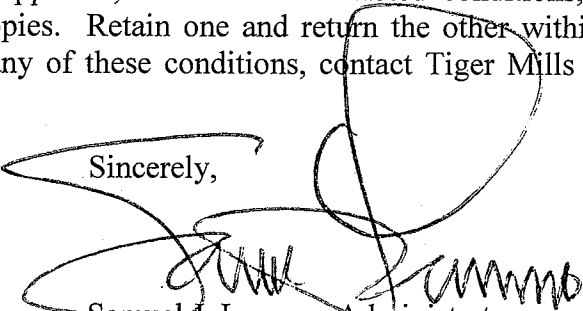
Exhibit B

- of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
- (7) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
 - (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 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) Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;
 - (16) The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
 - (17) The permittee shall obtain the required authorizations from the Commission on Water Resource Management prior to the initiation of any well construction work;
 - (18) Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

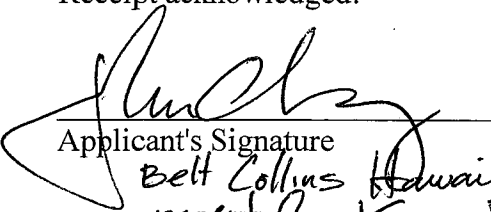
- (19) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- (20) Other terms and conditions as prescribed by the chairperson; and
- (21) Failure to comply with any of these conditions shall render a permit void under the chapter, 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 days. Should you have any questions on any of these conditions, contact Tiger Mills at (808) 587-0382.

Sincerely,


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

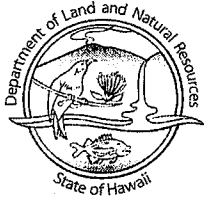
Receipt acknowledged:


Applicant's Signature

Date 10/3/13

*Belt Collins Hawaii
agent for Kauai Dept of Water*
c: Chairperson
KDLO
County of Kauai
-Department of Planning

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKO A KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

Time Extension: CDUP KA-3668

Jay M.K. Stone
Belt Collins Hawai'i
2153 North King St., Suite 200
Honolulu, HI 96819-4554

AUG - 4 2016

SUBJECT: Time Extension Request for Conservation District- Use Permit (CDUP) KA-3668 Regarding Completion of Construction of the Kalāheo Water System Improvements and Subdivision Located at Kōloa, Kaua'i, TMK: (4) 2-4-003: 006 & 007; 2-4-004: 005, 039, 049 & 058; 2-4-009:003

Dear Mr. Stone:

The Department is in receipt of your letter regarding the subject request. According to your information, your client, the County of Kaua'i, Department of Water, is requesting a 2-year time extension to complete construction. According to your information, components of the project must be completed in a prescribed sequence for proper switching of service and phasing in of the new facilities. Funding of the project is expected in 2017 and construction is expected to begin the same year. There have been significant delays due to construction rights-of-entry notification requirements and due to the processing of a subdivision of one of the parcels. (**Exhibit 1**).

CDUP KA-3668 was approved by the Board of Land and Natural Resources on September 13, 2013 for the Kalāheo Water System Improvements and Subdivision subject to twenty-one (21) terms and conditions. Condition # 6 states,

"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."

Pursuant to the Hawaii Administrative Rules (HAR), §13-5-43, TIME EXTENSIONS (b), "time extension 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."

Exhibit C

Jay M.K. Stone
Belt Collins Hawai'i

Time Extension: CDUP KA-3668

Therefore, the Department is granting a 2-year time extension for CDUP KA-3668. All work and construction shall be completed by September 13, 2018. All other conditions imposed by the Board under CDUP KA-3668 shall remain in effect (**Exhibit 2**).

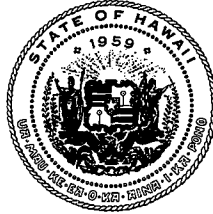
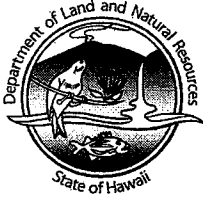
Should you have any questions regarding this matter, contact Tiger Mills of our Office of Conservation and Coastal Lands staff at (808) 587-0382.

Sincerely,


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

c: KDLO
County of Kauai, Department of Planning

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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REF:OCCL:TM

Time Extension: CDUP KA-3668

Jay M.K. Stone
Belt Collins Hawai'i
2153 North King St., Suite 200
Honolulu, HI 96819-4554

SEP 12 2018

SUBJECT: Time Extension Request for Conservation District Use Permit (CDUP) KA-3668 Regarding Completion of Construction of the Kalāheo Water System Improvements and Subdivision Located at Kōloa, Kaua'i, TMK: (4) 2-4-003: 006 & 007; 2-4-004: 005, 039, 049 & 058; 2-4-009:003

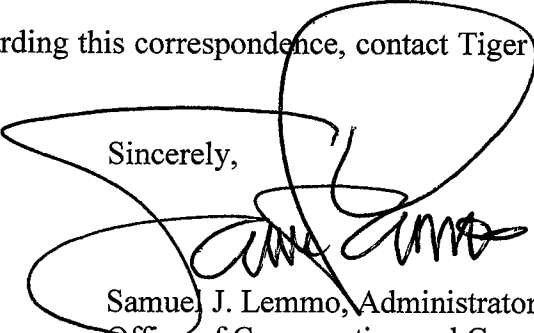
Dear Mr. Stone:

On August 30, 2018, the Board of Land and Natural Resources approved the time extension request to complete the County of Kauai's Kalaheo Water System Improvements located at Kōloa, Kaua'i, TMK: (4) 2-4-003: 006 & 007; 2-4-004: 005, 039, 049 & 058; 2-4-009:003 subject to the following conditions:

1. That condition #6 of CDUP KA-3668 is amended to provide that the Permittee has until September 13, 2023 to complete construction; and
2. That all other conditions imposed by the Board under CDUP KA-3668, as amended, shall remain in effect.

Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at 587-0382.

Sincerely,


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

C: KDLO
County of Kaua'i
- Planning

Exhibit D



BOWERS + KUBOTA

Construction Management · A/E Design · Planning · Project Management

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2023 JUN -7 P 4: 01 June 5, 2023

2011.74.0100 / 23E-141

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Michael Cain, Administrator
State Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Kalanimoku Building
1151 Punchbowl Street, Room 131
Honolulu, HI 96813

Dear Mr. Cain:

**Request for Extension
Conservation District Use Permit (CDUP) KA-3668
Proposed Kalāheo Water System Improvements
Kōloa, Kauaʻi, Hawaiʻi**

On behalf of the County of Kauaʻi (County), Department of Water (DOW), we respectfully request an extension of CDUP KA-3668 which is scheduled to expire on September 13, 2023. The CDUP was initially issued on September 13, 2013, and administratively extended on August 4, 2016 for a 2-year period until September 13, 2018. The CDUP was extended for a second time on August 24, 2018 for a 5-year period until September 13, 2023.

The construction drawings for the Yamada Reservoir, Clearwell Reservoir, and watermain replacement were approved in July 2018. Following approval, the project sought all required permits and approvals, and continued through the legislative process to obtain funding. The project also applied for the Drinking Water State Revolving Fund (DWSRF) loan and completed the required environmental review and federal cross-cutter consultations. Full funding for the project was obtained and the project was advertised for construction in April 2022. A contractor was selected in May 2022 and has begun mobilizing to start construction by the end of May 2023.

The project has endeavored to obtain funding and all required permits and approvals to complete construction before the CDUP extension deadline of September 13, 2023. However, there have been multiple delays due to staff turnover at the DOW and the impacts of the COVID-19 pandemic on State and County permit processing timelines. The project has finally reached the construction phase with groundbreaking scheduled to start by the end of May 2023, and construction completion anticipated by June 2025.

Mr. Michael Cain
May 5, 2023 / 23E-141
Page 2

As described in the original application, DOW is upgrading its water system in upland Kalāheo, Kaua'i, to meet future Maximum Day Demand storage and fire flow requirements. These improvements are needed to adequately serve the current and future customers of the Kalāheo-Lāwa'i-Ōma'o water service area. The water system improvements include construction of new reservoirs, a well, waterlines, and supporting facilities. The construction must be installed in a prescribed sequence to provide proper switching of services and phasing in of the new facilities.

We appreciate your consideration of this request. Please call me at (808) 521-5361 or email me at jstone@bowersandkubota.com should you have any questions on this request.

Very truly yours,

Bowers + Kubota Consulting, Inc.



Jay M. K. Stone, P.E., BCEE, CFM, CPESC, LEED AP
Senior Associate / Chief Engineer

JMKS/JC:hp

cc: Jason Kagimoto, DOW
Scott Suga, DOW