

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 8, 2023

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

PSF No. 23OD-047
Emergency Conservation District Use Permit KA-14-03
Emergency CDUP Extension KA-18-12

Grant of Term, Non-Exclusive Easement, Immediate Right of Entry, and Revocable Permit to Marisa and Graham Chelius for Shoreline Protection Structure on State Lands at Kikiaola, Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-2-013: seaward of 031, or Alternatively, Requirement of Immediate Removal of Shoreline Protection Structure and Grant of Immediate Right-of-Entry for Removal Purposes.

APPLICANTS:

Dr. Marisa Chelius and Dr. Graham Chelius, a married couple, fee owners, tenants by the entirety.

LEGAL REFERENCE:

Sections 171-13, 171-53, and 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of State lands at Kikiaola, Kekaha, Kauai, identified as Tax Map Key: (4) 1-2-013: seaward of 031. (**Exhibit A-1** and **Exhibit A-2**)

AREA:

Undetermined. Subject to determination by survey.

ZONING:

State Land Use District: Conservation
County of Kauai Zoning District: O – Open District (for abutting property)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachment.

TERM, NON-EXCLUSIVE EASEMENT:

CHARACTER OF USE:

Shoreline protection structure (sandbag barrier).

COMMENCEMENT DATE:

To be determined by the Board.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market value, subject to review and approval by the Chairperson.

TERM:

Twenty-five (25) years.

The Land Division has reduced the term for which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission and pursuant to the recommendation of the Office of Conservation and Coastal Lands. Landward migration of the shoreline is currently occurring as a direct result of sea level rise. This will progressively expose immobile shoreline structures to an evolving combination of destructive effects from erosion, chronic flooding, and wave inundation. The intention of the term reduction is two-fold: (1) to reduce the potential for accidents and liabilities resulting from dysfunctional shoreline structures by more frequently reviewing and managing shoreline structures and (2) to facilitate a general process of managed retreat from the shoreline.

MONTHLY RENTAL FOR RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

To be determined by the Chairperson.

REMOVAL BOND:

A removal bond is required, in an amount to be determined by Land Division, in consultation with the Engineering Division, and further subject to the approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, which applies to "[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,"

The Part I exemption applies to the options presented to the Board for disposition under the present submittal as follows:

1. Immediate removal of the shoreline protection structure is specifically exempt under Part I, Item 35, which exempts "[l]aw enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative measures."
2. Grant of term, non-exclusive easement, immediate right-of-entry, and revocable permit is specifically exempt under Part 1, Item 44, which exempts "[p]ermits, licenses, registrations, and rights-of entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

It is expected that the subject request will have minimal or no significant effect on the environment and therefore should be declared exempt from the preparation of an environmental assessment and the requirements of §11-200.1-17, HAR. **(Exhibit B)**

DCCA VERIFICATION:

Not applicable. Applicants are individual private property owners and are not required to register with DCCA for this purpose.

APPLICANT REQUIREMENTS:

1. If the Board authorizes the grant of a term, non-exclusive easement, immediate right of entry, and revocable permit:
 - a. Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost;

- b. Pay for an appraisal to determine one-time payment in consideration of the easement; and
 - c. Obtain the prior concurrence of the Legislature and approval of the Governor pursuant to §171-53(c), HRS; or
2. If the Board orders immediate removal of the shoreline protection structure and grants an immediate right-of-entry for removal purposes:
- a. Obtain and pay for liability insurance covering the portion of State lands on which removal work will be performed and agree to indemnify the State against any loss or damage incurred on or due to the State land at issue during the effective term of the permit;
 - b. Obtain all required State and County permits for removal of the shoreline protection structure; and
 - c. Immediately remove the shoreline protection structure (sandbag barrier).

JUSTIFICATION FOR REVOCABLE PERMIT:

The land disposition presented to the Board as one of the recommended options in this matter is an orderly process that uses a series of permits structured to allow for immediate use and occupancy and proceed on a direct course to a to a long-term lease, subject to conditions that benefit the State. The land disposition presented in the present submittal as one of the two options recommended to the Board is a three-stage process encompassing:

1. Issuance of a right-of-entry permit for a period of up to six months. This allows the Applicants to immediately legitimize occupancy of the public land in question, begin repair and maintenance of the shoreline protection structure without undue delay and without cost to the State, and begin preparations for the Applicants' obligations under future land dispositions.¹ The right-of-entry permit includes requirements for payment of monthly rent, provision to the Department of a removal bond or equivalent securitized funds, indemnification of the State, and provision of liability insurance by the Applicants.
2. Issuance of a revocable permit for no longer than one year. This allows Land Division time to complete the administrative processes that underlie the grant of easement including approval of the easement contract by the Department of the Attorney General, completion of the appraisal (at the Applicants' cost) to determine

¹ The Applicants' obligations under a revocable permit and easement include obtaining a survey to confirm the size of the disposition area, obtaining a cost estimate for removing the shoreline protection structure which determines the amount of the removal bond, and procurement through Land Division of an appraisal to determine the lump-sum value of the easement.

the lump-sum payment for value of the easement, and approval of the Legislature and Governor of the easement while the Applicants maintain the same obligations for rent payments, removal costs, indemnification, and provision of liability insurance.

3. Issuance of an easement. This final step cannot be executed without prior completion of the prerequisites stated above. Therefore, the interim disposition through revocable permit is necessary.

The interim revocable permit step is limited in its duration and essential in its utility. While the revocable permit is in effect, the Applicant assumes the costs of maintaining the subject parcel of State land and the liability for any damages caused on or by the Applicants' use of the land during the often-lengthy process of consummating the easement.

REMARKS:

The purpose of the present submittal is to recommend that the Board approve an easement on a portion of State submerged land located at TMK: (4) 1-2-013: seaward of 031 so that the Applicants can legitimize their long-term use of State land and repair and maintain the shoreline protection structure that has been in place along approximately 80 linear feet of erosion scarp abutting the Applicants' private property pursuant to a series of temporary permits since 2013. As discussed further herein, the Applicants oppose the requirement of an easement to resolve their encroachment. Therefore, if the Applicants refuse to obtain an easement, as an alternative, staff recommends that the Board require the immediate removal of the shoreline protection structure and authorize a right-of-entry permit allowing the Applicants to complete the removal.

The Applicants are owners of the private property located at 4491 Kikiaola Place, Kekaha, Kauai, TMK: (4) 1-2-013:031. The Applicants were originally granted an emergency authorization for temporary shoreline stabilization to place geotextile bags along the erosion scarp abutting the makai side of their property by the Office of Conservation and Coastal Lands (OCCL) under Emergency Conservation District Use Permit (CDUP) KA-14-03, for a five-year term commencing July 16, 2013. The Board granted a corresponding right-of-entry permit for gratis at its meeting on December 13, 2013, under Agenda Item D-2 for a term of "[r]enewable one-year periods from November 2013 to October 2018 as per OCCL."

When the Board approved the original right-of-entry permit in 2013, the Board noted that a long-term trend of beach erosion had created an erosion scarp within approximately 10 feet of the single-family residence on the subject property. That erosion exposed previously buried sandbags and netting, which slumped onto the active beach. Staff was not able to locate records of any permit or other land disposition authorizing those previously placed sandbags and netting and was not able to determine from the record when or by whom they were originally installed. The 2013 authorized shoreline protection device included geotextile bags filled with approximately 1,000 cubic yards of sand, creation of an access ramp, and shaping of the erosion scarp prior to installation of the

bags.

On April 9, 2018, OCCL approved a five-year extension of its original Emergency CDUP, Extension KA-18-12. An extension of the concurrent right-of-entry permit was thereafter administratively approved under reference number 17KD-046 by the Chairperson pursuant to the Board's delegation of authority. Because of the emergency nature of the initial CDUP application, the CDUP and subsequent extensions were also issued administratively by the Chairperson. **(Exhibit C)**

The Applicants contacted OCCL on May 6, 2023, to submit a request for an extension of the currently effective Emergency Authorization for temporary shoreline stabilization and corresponding right-of-entry permit. After historic ocean swells in January and February of 2023, the accumulated sand and natural vegetation covering the sandbag structure was washed away, leaving the damaged geotextile bags exposed and affecting lateral access along the shoreline. OCCL has approved a second five-year extension of its currently operative Emergency CDUP to repair and maintain the structure, pursuant to the same terms and conditions of the initial emergency permit. **(Exhibit D)**

The May 6, 2023, application triggered Land Division's analysis of the existing permits and the statutory authority that underlies them. Upon review, Land Division determined that the original permits, which were intended to be temporary in nature, have been continuously renewed for ten years. The Applicants have communicated to Land Division that they intend to keep the shoreline protection structure in place and conduct extensive repair and maintenance work on the structure, including excavation on the shoreline and taking sand from the opposite side of Kikialoa Small Boat Harbor to fill large sandbags. As a practical matter, the Applicants' present request for a multi-year renewal of a temporary emergency permit amounts to a request for continued gratis use of State land for an indefinite period without a long-term land disposition which leaves the State unable to collect compensation for use of State land and unprotected by the requirements for liability insurance, indemnification, and removal bond that are standard conditions of land dispositions for encroaching structures.

The Department's past practice of allowing long-term maintenance of shoreline erosion control devices under emergency permits, some of which have expired and remain on the shoreline with no means to ensure removal has been the subject of scrutiny from the public and in the press. A 2020 joint reporting venture by ProPublica and the Honolulu *Star-Advertiser* found that the Department granted sixty-six such emergency permits in the twenty years preceding publication.² Of those, approximately one in five permits were granted for structures that were originally installed in violation of the Department's permit requirements. The 2013 emergency authorization at issue in the present submittal is included in that number.

² Cocke, Sophie, "Paradise Lost: How Famous Surfers and Wealthy Homeowners are Endangering Hawaii's Beaches", Honolulu *Star-Advertiser*, Dec. 5, 2020. Available at <https://www.propublica.org/article/how-famous-surfers-and-wealthy-homeowners-are-endangering-hawaiis-beaches>.

It is Land Division's position that the continuous renewal of a temporary right of entry permit at gratis in lieu of a long-term land disposition deprives the beneficiaries of the public land trust a fair return for the use of public land. This practice is, in effect, abrogation of the State's right to regulate public resources and of the State's responsibility to beneficiaries of the public land trust. The Applicants in this matter have communicated to Land Division their unwillingness to comply with the land disposition process and adamantly refuse to compensate the State for their use of public land for a private benefit. The Applicants disagree with staff's position and have asserted that they should be exempt from the normal long-term land disposition process that applies to use of State submerged lands. The Applicants contend that the erosion affecting their property is caused entirely by the existence of the Kikiaola Small Boat Harbor, a State facility, and therefore the Applicants should not be required to pay for and obtain a long term disposition from State for their shoreline protection structure. However, staff disagrees with the Applicants' position. Whatever the cause of the erosion may be, staff believes that it is irrelevant to justify the continued presence of the encroachment on public lands without fair compensation.

Staff further notes that, according to County of Kauai tax records, the Applicants purchased the property in 2010, the date of the most recent fee conveyance. Kikiaola Small Boat Harbor was built in 1959 and improved in 1961 and 1964, therefore existing in its present state for almost 50 years prior to the Applicants' purchase of the residential real property. The presence of the Harbor was a known condition at the time the Applicants made the decision to purchase the property. Additionally, the Applicants are aware that the prior owners of the residential real property attempted and failed to control erosion. Their 2023 request to OCCL for an extension of their emergency CDUP cited "numerous attempts to control erosion by the previous owners" and Applicants' obligation to deal with "the resulting debris from these failed attempts." (**Exhibit E**). The evidence indicates that coastal erosion on the subject property was a condition that was knowable and known to the Applicants at the time they made the decision to purchase the property. The Applicants made the decision to purchase a costly coastal property that they knew was subject to ongoing erosion conditions. The Applicants, not the State, hold responsibility for any mitigation measures that they choose to undertake for the benefit of the fragile asset they knowingly purchased.

Therefore, given the Applicants' position in consideration of the forgoing, Land Division has determined that it is appropriate to alternatively recommend that the Board require the immediate removal of the shoreline protection structure and issue an immediate right-of-entry permit to enable the Applicants to remove the shoreline protection structure.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Sections 11-200.1-15 and -16, HAR, the issuance of a proper land disposition is expected to have minimal or no significant effect on the environment and is therefore exempt from the preparation of an

environmental assessment.

2. Authorize the continued applicability of the subject requests in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 1-2-013:031 when such change in ownership occurs prior to the removal of the structure or prior to execution of the easement alternative, provided that in the latter case, the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.
3. Authorize the issuance of a right-of-entry permit for six months to Marisa and Graham Chelius covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Posting of a removal bond or equivalent securitized funds during the effective period of the right-of-entry permit;
 - C. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
 - D. Commencement of the right-of-entry on the Board date, for a term of six months or until the issuance of the revocable permit described in recommendation 5 below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown in accordance with section 171-55, HRS; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Based on the testimony and facts presented, find that approving the revocable permit, under the conditions and rent set forth herein, would serve the best interests of the State.
5. Authorize the issuance of a revocable permit to Marisa and Graham Chelius, covering the subject area for encroachment purposes, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - B. Posting of a removal bond or equivalent securitized funds during the

- effective period of the revocable permit;
- C. Removal of the subject encroachment, if required (e.g., if the applicant is unable to secure the prior approval of the legislature or the governor for the issuance of the easement), within the period stipulated by the Chairperson;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Marisa and Graham Chelius, covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: Tax Map Key: (4) 1-2-013:031, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the State, as Grantor, of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS;
 - D. Review and approval by the Department of the Attorney General;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
8. In the alternative, should the Board decline to approve the staff recommendations contained in paragraph 3-7, above, approve the staff recommendations contained in paragraph 9, below, subject to the enumerated conditions.

9. Require immediate removal of the shoreline protection structure from the State land at issue in this submittal and authorize the issuance of a right-of-entry permit to Marisa Chelius and Graham Chelius to allow for such removal subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Provision of liability insurance for the subject State land to insure the State against liability for any activities on or use of the land during the effective term of the permit;
 - C. Removal of the subject encroachment and restoration of the State land to the satisfaction of Land Division staff within the period determined by the Chairperson; and
 - D. Commencement of the right-of-entry on the Board date, for a term of six months or until the subject encroachment is removed and the State land is restored, whichever is sooner.

Respectfully Submitted,



Rebecca L. Anderson
Shoreline Specialist

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

KEM

RT



TMK (4) 1-2-013: seaward of 031

EXHIBIT A-1



TMK (4) 1-2-013: seaward of 031

EXHIBIT A-2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Grant of Term, Non-Exclusive Easement, Immediate Right of Entry, and Revocable Permit to Marisa and Graham Chelius for Shoreline Protection Structure on State Lands at Kikiaola, Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-2-013: seaward of 031, or Alternatively, Requirement of Immediate Removal of Shoreline Protection Structure and Grant of Immediate Right-of-Entry for Removal Purposes..

Reference No.: PSF 23OD-047

Project Location: Portion of State Lands at Kikiaola, Waimea, Kauai, Tax Map Key: (4) 1-2-013: seaward of 031.

Project Description: Issuance of right-of-entry, revocable permit and easement for shoreline erosion control structure, or alternatively, removal of the structure along with right-of-entry for removal.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with HAR §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, which applies to “[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.” Specifically, the subject request is exempt under Part 1, Item 44, which exempts the “[p]ermits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing” for the right of entry, revocable permit and easement; or Part I, Item 35, which exempts “[l]aw enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative measures” for the immediate removal of the structure and right of entry.

EXHIBIT B

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?

No. No successive actions other than repair and maintenance of the structure, or removal are planned by the Applicants in the same location. As such, staff believes that there would be no significant cumulative impact.

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the requested area is a portion of shoreline State land that contains a temporary erosion control structure makai of the abutting private property which has been in existence for many years and is not likely to have any significant environmental impact. The shoreline abuts a busy beach that is frequently visited and that is already impacted by the presence of Kikiaola Small Boat Harbor and other infrastructure nearby. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors. If the structure were to be removed, the area would be restored to natural shoreline conditions.

Consulted Parties:

Office of Conservation and Coastal Lands, Kauai District Land Office.

Analysis:

The Board and the Chairperson have authorized rights-of-entry for this shoreline erosion control structure in the past and have also authorized long-term dispositions pursuant to statute for similar shoreline protection structures. The proposed request is of a similar type and scope as other shoreline dispositions across the State. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing. Furthermore, in the event the structure would be removed, the subject area would be restored to natural shoreline conditions.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 15, 2019

Mr. Graham Chelius
Mrs. Marisa Chelius
[REDACTED]
Waimea, HI 96796

Ref. No.: 17KD-046
KA-18-12

Subject: Five Year Extension on Existing Right-of-Entry Permit Upon
Unencumbered State Lands at Kikiaola, Waimea, Kauai, Tax Map Key: (4)
1-2-013:031.

Dear Mr. & Mrs. Chelius:

We acknowledge receipt of your request for a five-year term extension of an existing right-of-entry permit which was originally approved by the Board of Land and Natural Resources at its meeting of December 13, 2013, under agenda item D-2. Purpose of the permit was to conduct temporary emergency measures in response to ongoing coastal erosion seaward of your private property, identified as TMK: (4) 1-2-013:031.

On July 15, 2013, the Office of Conservation and Coastal Lands (OCCL) approved a Conservation District Use Permit No. KA-14-03, for emergency shore protection purposes at Kikiaola, Waimea, Kauai, TMK: (4) 1-2-013:031. The emergency CDUA for a five year term commenced on July 16, 2013.

On April 9, 2018, OCCL approved a five-year extension (Extension KA-18-12), which is scheduled to expire on July 16, 2023.

The above Right-of-Entry Permit and Conservation District Use Applications are subject to all the Terms and Conditions of the original authorizations.

If you have any questions, please contact Wesley T. Matsunaga at the Kauai District Land Office at (808) 274-3491. Thank you.

Sincerely,


Suzanne D. Case,
Chairperson

cc: Hawaii Land Board Member
District Files
Central Files

EXHIBIT C

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPEKIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
LAURA H.E. KAAKUA
FIRST DEPUTY
M. KALEO MANUEL
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:MC

RE: Extension KA-23-06
Emergency CDUP KA-14-03

Graham and Marisa Chelius
[REDACTED]
Waimea, HI 96796
[REDACTED]

MAY 30 2023

SUBJECT: Permit Extension for Emergency Temporary Shore Protection KA-14-03 for Tax
Map Key: (4) 1-2-013: seaward of 031

Dear Drs. Chelius,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) has received your 06 May 2023 request for a second extension and repair of the temporary structure fronting the subject property initially authorized by Emergency Conservation District Use Permit (CDUP) KA-14-03.

Emergency CDUP KA-14-03 which authorized a geotextile sandbag revetment along approximately 80 feet of erosion scarp fronting your property was issued on July 15, 2013 for a period of five years. Extension KA-18-12 of Emergency CDUP KA-14-03 was issued on 9 April 2018 and is set to expire on 16 July 2023. The sandbag revetment is currently in a state of disrepair.

As acknowledged in Extension KA-18-12, a long-term trend of beach erosion along the shoreline fronting your property is due in large part to the interruption of alongshore sediment transport by Kikiaola Small Boat Harbor (KSBH). The CDUP issued to the DLNR Division of Boating and Ocean Resources (DOBOR) for KSBH was amended in 2013 as follows:

“The project scope of KA-3240 be amended to include 1) an initial transport of 80,000 cubic yards of sand, 2) the repair of the west breakwater root, and 3) the annual maintenance transport of 5000 cubic yards of sand.”

DOBOR conducted an initial sand bypassing of approximately 40,000 cubic yards of sand from the east side of KSBH to a section the depleted beach on the west side of the harbor in 2014, temporarily alleviating the erosion along the receiving shoreline. DOBOR has not conducted

EXHIBIT D

Graham and Marisa Chelius

Extension KA-23-06
Emergency CDUP KA-14-03

additional sand bypassing since 2014. In 2019, DLNR Land Division conducted maintenance dredging of the Waimea River mouth and placed approximately 14,000 cubic yards of sand on a section of the beach to the west of KSBH.

Since 2019, the shoreline to the west of KSBH continues to erode in the absence of ongoing bypassing. The shoreline along many of Hawaii's carbonate sand beaches are retreating due to natural wave dynamics and sea level rise. However, the sand in the subject area originates from volcanic sediments transported by the Waimea River. The shoreline along this region should be naturally accreting due to the steady source of sand from the river, as demonstrated by the significant expansion of the dry beach to the east of KSBH. DOBOR is currently engaged in planning an ongoing sand bypassing program to alleviate the disruption of KSBH to the natural longshore transport of sand originating from the Waimea River mouth. The temporary revetment fronting the subject property is considered necessary to protect the occupied dwelling until a regular program of sand bypassing is established by DOBOR.

OCCL notes extensions to temporary shoreline revetments are rarely given. This case is unique given the history and DLNR commitments discussed above. **Your request to extend Emergency Authorization KA-14-03 for temporary erosion control and to conduct repairs and restacking of the structure to its original configuration is APPROVED.** The authorization of the temporary erosion structure is extended for five years from the date of this letter or until DOBOR has established a regular program of annual sand bypassing to redistribute impounded sand from the east of KSBH to the degraded shoreline west of KSBH, whichever occurs first. This authorization is subject to all the Terms and Conditions of the original authorization (Emer. CDUP KA-14-03).

Please contact DLNR's Land Division to secure any land disposition that might be required.

Should you have any questions pertaining to this letter, please contact Michael Cain, Administrator Office of Conservation and Coastal Lands at (808) 798-6912 or michael.cain@hawaii.gov.

Sincerely,



Dawn Chang, Chairperson
Board of Land and Natural Resources

C: KDLO
DOBOR
County of Kauai Planning Dept
Ruby Pap, Hawaii Sea Grant

Michael Cam, Administrator
Hawaii Department of Land and Natural Resources,
Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, HI 96809

5/6/2023

RE: Permit extension for Emergency Temporary Shore Protection KA-14-03 and Right-of-Entry 13K13-174 for
TMK (4) 1-2-013-031

Aloha Mr. Cain,

I am pleased to inform you that the Emergency Temporary Shore Protection at TMK (4) 1-2-013-031 has been in place since February 2014 and has resulted in stabilization of the erosion and improvement in aesthetics and usability of the beach. This letter is an application to extend the Emergency Temporary Shore Protection Permits for another 1 year, or 5 years if there is a possibility of further extension as we had in the past. Our current permit expires July 16th 2023.

As is well documented from the extensive studies of the down drift effects of the Kikiaola Small Boat Harbor (KSBH), this property is subject to beach sand deprivation due to impounding of sand and obstruction of normal littoral drift by the rock structures of the KSBH. Unless the harbor structures are removed, as per the Corps of Engineers' studies, accelerated erosion of the downdrift land, such as this property, is to be expected. Additionally, written official communication between OCCL and DOBOR (the harbor is subject to a DLNR Conservation District Use Permit CDUP-KA-3003B), noting **"There is a clear and demonstrated need to address the chronic erosion occurring to the west (down drift) of the harbor. The OCCL has been working with several affected landowners in this area who have been struggling with extensive ongoing coastal erosion for decades.....Sand bypassing is an integral part of the project and OCCL strongly supports this component."** (DLNR:OCCL; DE Correspondence: OA-09-211 June 26, 2009)

OCCL's historic lack of proper oversight of DOBOR's ongoing damage to the Kikiaola beach and DOBOR's lack of appropriate action has resulted in serious degradation to the harbor and to the adjoining beach. We deserve equal protection from ongoing property damage and property loss.

You may observe that the following text and format of this letter is nearly identical to our successful request from 2018 attached. This is intentional. The situation has not changed, we are aware that the draft rules have not been finalized, so the rules have not changed as of the writing of this letter, so logic would suggest that the letter requesting the extension (and the outcome of the letter) should also not change.

Historical overview

Prior to our purchase of the property, there had been numerous attempts to control erosion by the previous owners, the Brobysns. We received your letter COR: KA-12-189(c) in Feb 2012 regarding the resulting debris from these failed attempts and we embarked on finding a long-term solution to the erosion.

Soon after, the highway west of the property was subject to erosion that was threatening its integrity and in addition to a massive, submerged piling system the erosion was initially controlled with large sandbags which are produced by several companies and are known as "Softrock" or "Elecrock." After some study we elected along with our westward neighbors to apply for a temporary permit to install a similar system to address the chronic erosion. Thankfully, the permits for the system and right-of-entry were granted in late 2013.

The bags for this project were sourced from Naue, a German firm, and using a Kauai-based contractor, 250 approximately 4000 lb bags were placed in early 2014. Just prior to initiation of the project a high energy swell hit the beach and our eastern neighbors lost 30 feet of depth along their entire property width within a few days.

Soon after the completion of our portion of the project (the western neighbors would be several months later) we noted that the sandbags were losing a substantial amount of volume, due to the high percentage of silt that the naturally present sand contained. This silt problem also complicated the sand bypass which came later in 2014. For our project, we eventually required some reworking of the bags, but since then the bags have been remarkably stable. The neighbors to the west, the Beckenfolds, having seen the issues we were having with our project.

EXHIBIT E

substantially increased the fill percentage of their bags, and have not had as much problem with volume loss. We have been subject to several bags being vandalized and the Beckenfelds have had ongoing and numerous problems with intentional damage to their bags.

By August 2014 the first sand bypass project was completed, and in 2019 the second sand replenishment project with sand from the Waimea river mouth was completed. We have had an opportunity to observe the effect of the projects.

In 2018 we had contemplated and had gotten approval for a project to repair and restack the sandbags of the revetment as they have shifted over time, however the 2019 sand bypass was very effective at replenishing the sand so we never completed the restacking project.

Current status

The shore protection has been 100% effective at halting further inland erosion at our property and has had a protective effect when compared to the erosion of the eastern adjoining property. Extrapolating the erosion to the west from where the neighbor's erosion scarp is currently, the erosion would have undermined our patio and our house would no longer be safe to live in due to the erosion being about 5 feet from the foundation. The sand bypass projects have been very beneficial with improved erosion of the beach for hundreds of yards west of the project properties, however gradual western drift has eventually resulted in elimination of this improvement. A future sand bypass is funded but until it is completed, we expect the beach to be starved of sand. Due to the uncertainty of timing of this and future sand bypass programs and continued impounding of sand by the KSBH, continuation of the shore protection is required and requested.

The current bags were nearly covered with sand and natural vegetation, mostly Beach Morning-glory and Naupaka as of 11/2022, however the historic swells of January/February of 2023 deeply eroded the sand, and the bags are largely exposed at this time. The debris left by the previous landowners is gone, and a wide and usable beach is usually present especially after bypass projects. Beach walkers and shoreline fishermen are frequently present on the beach. However, it appears that we will soon need to complete the repair and restacking project we began planning a few years ago, as shifting has continued to degrade the project.

Conclusion

Thank you for the initial permits to complete this shore protection project. We feel that the project has benefited our property, adjoining properties, and has resulted (in combination with the sand bypass) in improved access to the beach by the community and a huge aesthetic improvement. Currently beach erosion on the westward, downdrift beach from KSBH continues, and periodic swell associated erosion events will continue to cause rapid erosion and without the current shore protection system potentially threaten structures on our property. The KSBH is a community asset and is extremely unlikely to be removed, resulting in a long-term need for the current shore protection system at TMK (4) 1-2-013-031 unless a multi-year, long-term sand bypass program is funded. Please grant us an extension of the current permits for the emergency temporary shore protection.

Thank You,
Graham and Marisa Chelius
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[REDACTED]
[REDACTED]

