

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

December 7, 2023

Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i

REGARDING: Request for Second Time Extension for Conservation District Use Permit (CDUP) OA-3818 to Complete a Single-Family Residence

**APPLICANT/
LANDOWNER** Dawn Horn, Managing Member
MDHE LLC

LOCATION: Kailua, Ko'olaupoko District, Island of O'ahu

Tax Map Key: (1) 4-2-004:001

SUBZONE: General

BACKGROUND:

- October 26, 2018, the Board of Land and Natural Resources (Board) approved CDUP OA-3818 for the MDHE LLC's single-family residence project subject to 29 conditions at Kailua, O'ahu.
- July 16, 2021, the Chairperson approved the first-time extension request of 2 years to complete construction. According to the applicant, there was delays in construction due to permitting delays with the City and complications with utility services to the property. The deadline for completing the project was extended to October 26, 2023.

TIME EXTENSION REQUEST:

Condition 12 of CDUP OA-3818 states *"Unless otherwise authorized, any work done 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, unless otherwise authorized, shall be completed within three (3) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed."*

By correspondence dated September 5, 2023, the landowner is requesting a second time extension to CDUP OA-3818 for approximately one year to complete the construction of the residence by October 26, 2023. The applicant has stated staffing issues at the City has resulted in lengthy waits for Building Inspectors to approve phases of construction and allow commencement of the next construction phase. Construction material supply chains and competition with major infrastructure and development projects for construction materials continue to delay construction completion.

The landowner has also reported significant progress with the completion of the access road, retaining walls, basement and foundation, private fire hydrant, utility installations and the forest stewardship area that has been planted with native Hawaiian and endemic mesic forest trees and shrub over three acres of the proposed six-acre area.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Hawai'i Administrative Rules (HAR), §13-5-43, which allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit. As this is the applicant's second time requesting a time extension, HAR §13-5-43(c) states that "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 initiating and 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 requested time extension. Approval of the time extension request will hopefully provide the additional time needed to for the landowner to complete the single-family residence project.

Staff, therefore, recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** an extension to complete the construction of the single-family residence, subject to the following conditions:

1. That Condition 12 of CDUP OA-3818 is amended to provide that the Permittee has until October 26, 2024, to complete any work or construction to be done on the land; and
2. That all other conditions imposed by the Board under CDUP OA-3818, 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

1 Location Map

2 Request for Time Extension

2a Authorization for first time extension

2b Conservation District Use Permit (CDUP) OA-3818

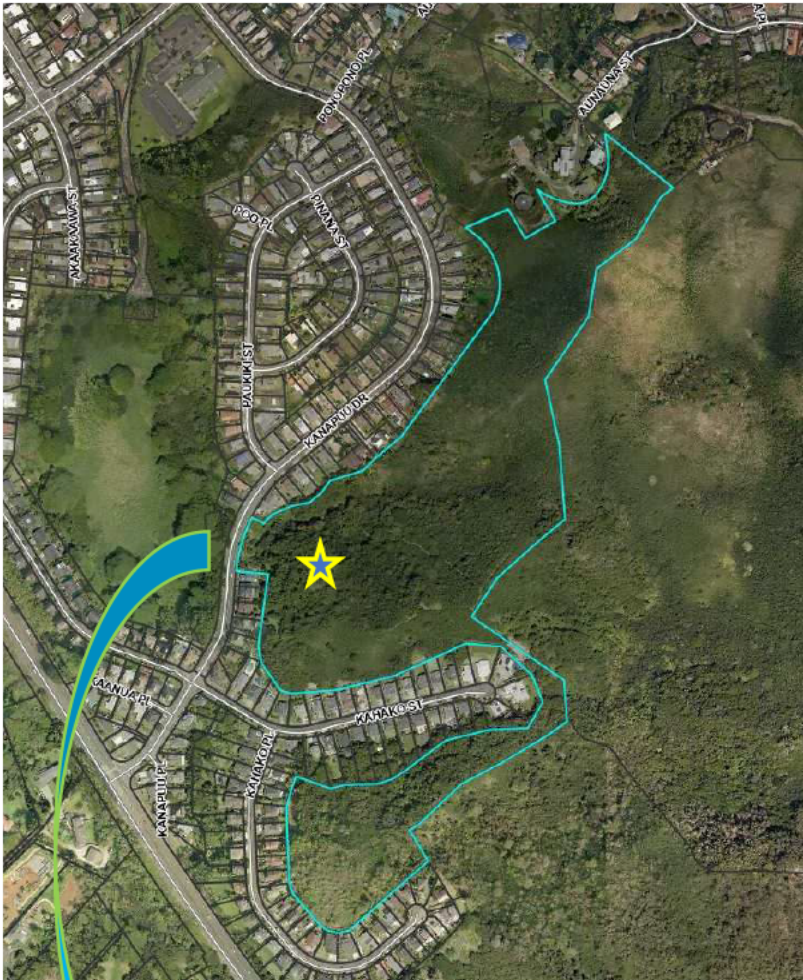


Exhibit 1

[-<-honolulupropertytax.com](http://<-honolulupropertytax.com)



Ext OA-24-02

TM

CDUP 3818

5 September 2023

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

2023 SEP 11 A 9:59

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

Mr. Michael Cain
Administrator, Office of Conservation and Coastal Lands
Department of Land and Natural Resources, State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Request for Extension of Time to Complete Residence Construction per CDUP OA-3818
1711 Kanapuu Drive, Kailua, HI 96734 TMK:(1) 4-2-004:001

Aloha Mr. Cain,

MDHE LLC is pleased to report that it has made significant progress in the single family residence construction, access road/driveway and utility installation, and Forest Stewardship Management Plan (FSMP), and Conservation Plan implementation and conservation practices in accord with CDUP OA-3818. The access road is complete except for the final fire truck turnaround surface at the house site, the private fire hydrant to protect the Forest Stewardship Area is installed and operational, and water, electric, and sewer services installations are completed. The FSMP is on schedule, entering the fifth year with over three acres of the six acre project planted with Native Hawaiian and endemic Mesic Forest trees and shrubs.

The single family residence construction continues to face delays due to short staffing and ongoing issues at the City and County of Honolulu Department of Planning and Permitting resulting in lengthy waits for Building Inspectors to arrive on site to approve phases of construction and allow commencement of the next construction key stages. Also, construction materials supply chains which were severely impacted by the COVID pandemic, although eased, are not fully recovered and continue to delay construction projects at all levels. MDHE LLC, like most small residence construction projects has had to compete at a low priority for concrete and rebar deliveries with a large airport apron extension project, and the ongoing rail construction.

MDHE LLC has now completed the reinforced concrete lower level of the home, basement fire safe room, and all retaining walls, therefore concrete availability should be less of a challenge. We are proceeding with the construction of the steel frame upper level living area. Our contractor estimates it will take another 8 months to complete all construction which will exceed the current CDUP extension construction deadline of 26 October 2023. Therefore, MDHE LLC has recognized the need to humbly request a further extension of the time required to complete construction of the single family residence as specified in term 12 of CDUP OA-3818 and as extended in the correspondence below OA-22-01. MDHE LLC humbly requests a one year extension of the deadline to complete construction to 26 October 2024.

Respectfully,



Dawn R. Horn
Managing Member, MDHE LLC

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
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref OCCL:MC

Extension OA-22-01
July 16, 2021

Dawn R. Horn, MDHE LLC
129 South Kalaheo Ave.
Kailua, HI 96734

Dear Ms. Horn

SUBJECT: EXTENSION REQUEST OA-22-01 RE: CDUP OA-3818
Single Family Residence
Kailua, Koolaupoko, Oahu
TMK (1) 4-2-004:001

The Office of Conservation and Coastal Lands (OCCL), part of the Department of Land and Natural Resources (DLNR), has reviewed your request for a two-year extension of the completion deadline contained in Conservation District Use Permit (CDUP) OA-3818 for the single family residence on the above subject parcel.

The permit was approved by the Board of Land and Natural Resources on October 26, 2018. As a condition of the permit, work was to be initiated within one year of the approval of the permit, and to be completed in three years.

As the permittee, you report that you initiated construction within the time required, but have experienced delays in completing the construction. You report that the delays are in part due to a slow down in permit review at the City and County of Honolulu Department of Planning and Permitting, and in part due to complications in connecting utility services to the property.

Based on this, you are requesting a two-year extension on the deadline for completing the project, which would give a new deadline of October 26, 2023.

Discussion

The authority to grant time extensions on this permit lies with the Chair of the Board of Land and Natural Resources, pursuant to Hawai'i 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 the permit*, and (b) *Time extensions may be granted as determined by the*

Exhibit 2a

chairperson on all departmental permits and on the first request for an extension of a board permit.

The Department recognizes that many projects have experienced delays due to the uncertain economic conditions triggered by the on-going pandemic.

We have no objection to a two-year extension of the deadline for completing the project. Any further extensions will also require the approval of the Board of Land and Natural Resources.

Decision

The conditions contained in CDUP OA-3818 for the single-family residence on Tax Map Key parcel (1) 4-2-004:001 are thus amended to read:

Unless otherwise authorized, work and construction shall be completed by October 26, 2023. The permittee shall notify the department in writing when construction activity is completed;

Please contact Michael Cain at michael.cain@hawaii.gov should you have any further questions.

Sincerely,

Suzanne D. Case

SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Admin Reviewed

S Michael Cain
p.p. _____
SAMUEL J. LEMMO, ADMINISTRATOR
Office of Conservation and Coastal Lands

From: Dawn Horn
To: Cain, Michael
Cc: [REDACTED]
Subject: [EXTERNAL] Request for Extension of Time to Complete Construction CDUP-OA-3818 MDHE LLC
Date: Thursday, July 15, 2021 9:07:14 AM

Mr. Michael Cain
OCCL

Aloha Mr. Cain,

My email below to Mr. Lemmo resulted in an automatic reply indicating that Sam was on leave until September 20th. I called the OCCL office and the receptionist suggested that I forward the email to you. I gave a heads up phone call to Sam Lemmo in January when the HECO error was discovered and it looked like we would need an extension. Sam made it sound like an initial extension was a fairly routine matter, however he did not give me any details at that time as to how to request the extension or how long you needed to process and approve the request. With a deadline of October 26th to obtain an extension, there would likely be insufficient time for OCCL to act if this matter waits for his return on September 20th.

Mahalo,

Dawn R. Horn
MDHE LLC



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From: Dawn Horn
Sent: Thursday, July 15, 2021 8:51 AM
To: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>
Cc: [REDACTED]
Subject: Request for Extension of Time to Complete Construction CDUP-OA-3818 MDHE LLC

Mr. Samuel J. Lemmo
Administrator, Office of Conservation and Coastal Lands
State of Hawaii, Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Aloha Mr. Lemmo,

MDHE LLC humbly requests an extension of the time allowed to complete construction of the single family residence and driveway on its property at 1711

Kanapuu Drive, Kailua, HI 96734 as specified in term 12 of CDUP OA-3818. MDHE LLC anticipates two additional years will be needed to complete construction.

As you are aware the global COVID-19 pandemic resulted in periods of complete shutdown as well as periods of limited service by government agencies and private businesses. The City and County of Honolulu Department of Planning and Permitting (DPP) experienced COVID outbreaks resulting in complete shutdown of its permit review sections, as well as a bribery scandal that further impaired the agency's ability to process plans reviews and building permits. Honolulu DPP took over two years to process MDHE LLC's primary Building Permit, Grading Permit and Trenching Permit for the substantive construction of the single family residence and driveway, finally issuing these permits on 23 December 2020. MDHE LLC and its planners, engineers, contractor, and surveyors all acted in a timely manner and the delay is through no fault of MDHE LLC.

Further, upon initiating construction preparation to connect utility services to the property at the Kanapuu Drive street frontage, a Hawaiian Electric Company (HECO) inspector discovered that HECO had given incorrect planning information to MDHE LLC's engineers. Specifically, in January 2021, upon opening the sidewalk HECO utility box designated for connection of electric service, the HECO inspector and MDHE LLC's contractor discovered that the box did not contain the required secondary power connections. The secondary power connections were located in a different HECO sidewalk box 55 feet away. This error by HECO required revision of four pages of construction plans relating to utility connections and rerouting these revised pages back through Honolulu DPP, HECO, the Board of Water Supply, Wastewater Management, and Hawaiian Telephone for approvals, resulting in an additional six month delay for utility connection construction.

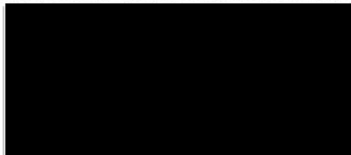
MDHE LLC is pleased to report that the construction, planting, and forest health management activities related to its Forest Stewardship Program project are on track. The Feral Pig Exclusion perimeter fence has been completed except for the final gate area where it crosses the driveway under construction. Over two hundred native Hawaiian trees, and initial areas of native Hawaiian shrubs and groundcover have been successfully planted within a 1.2 acre portion of the six acre Forest Stewardship Area. The FSP is entering the third year of the plan on schedule. Similarly the Conservation Plan activities are proceeding as planned.

Please let us know what form, format, and process is required to obtain the extension of time to complete construction and any additional information you need from MDHE LLC. Mahalo for your assistance, and your understanding of the significant impacts COVID-19 has wrought upon the construction industry including supply chain delays, labor and materials shortages, and other impacts which must be considered in our request for an extension of the current October 26, 2021 deadline for completion of construction activities.

Respectfully,

Dawn R. Horn

Managing Member, MDHE LLC



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
ROBERT K. MASUDA
FIRST DEPUTY DIRECTOR
JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER
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HAWAII STATE OF HAWAII
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF COMPLIANCE
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND AND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: AJR

CDUA: OA-3818

Barrie Morgan
c/o Group 70 Intl.
111 S. King St., Ste. 170
Honolulu, HI 96813

NOV 30 2018

SUBJECT: CONSERVATION DISTRICT USE PERMIT (CDUP) NO. OA-3818 FOR THE MDHE, LLC SINGLE FAMILY RESIDENCE PROJECT
Ko'olaupoko District, Island of Oahu
TMK: (1) 4-2-004:001

This is to inform you that on **October 26, 2018** the Board of Land and Natural Resources APPROVED Conservation District Use Permit (CDUP) **OA-3818** for the *MDHE, LLC Single Family Residence Project* located in the Ko'olaupoko District, Island of Oahu, on *TMK: (1) 4-2-004:001* subject to the following conditions:

1. **The permittee shall position the Single Family Residence (SFR) at Site "C" as shown on map provided by the applicant and supplied to the Department;**
2. **The permittee shall realign the driveway to Site "C";**
3. **The permittee shall use earth tones and non-reflective tones on the exterior of all proposed structures;**
4. **The permittee shall be required to participate in all community-wide and community-driven drainage management activities;**
5. 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;
6. 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;
7. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;

Exhibit 2b

8. The permittee shall comply with all applicable department of health administrative rules;
9. 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;
10. 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;
11. **Before proceeding with any work authorized by the department or the board, the permittee shall submit three (3) 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. Two (2) of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;**
12. Unless otherwise authorized, 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 shall be completed within three (3) 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. *This condition does not include the approved Forest Stewardship Management Plan completed by the permittee;*
13. 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;
14. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
15. 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;
16. 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
17. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
18. 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;
19. Obstruction of public roads, trails, lateral shoreline access, 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;

20. Except in case of public highways, access roads shall be limited to a maximum of two lanes;
21. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
22. 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;
23. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
24. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
25. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property;
26. 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;
27. 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; and
- 28. Other terms and conditions as prescribed by the chairperson.**
29. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Based on the BLNR decision, the Office of Conservation and Coastal Lands assumes that the permittee will position the 0.6-acre Subsistence Agricultural area adjacent to Site "C".

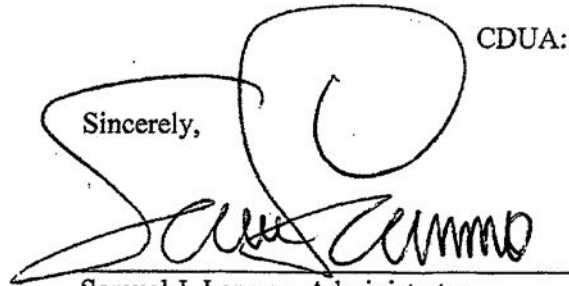
Please acknowledge receipt of this approval (with the above noted conditions) in the space provided below by signing the original and provided copy. *Please keep the original* and return the copy within thirty (30) days to the OCCL.

Should you have any questions on any of these conditions, please feel free to contact Samuel J. Lemmo at 808-587-0377.

REF: AJR: OCCL

CDUA: OA-3818

Sincerely,



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

RECEIPT ACKNOWLEDGED:



Applicant's Signature Dawn R. Horn
Managing Member
12/14/2018 MDHE LLC
Date

- Attached
Notary

CC: Chairperson
Oahu Board Member
ODLO
DOFAW
CCH - DPP

Attachments: OCCL Staff Report; OA-3818