NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
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
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

SEP 12 2011

Alicia Toney, Environmental Planner
ANCHOR QEA, LLC
1423 3rd Avenue, Suite 300
Seattle, Washington 98101

SUBJECT: Conservation District Use Application (CDUA) File No. OA-3584

Dear M. Toney:

This letter is to inform you that on September 9 2011, the Board of Land and Natural Resources (BLNR) approved Conservation District Use Application (CDUA) OA-3584 for the proposed Hawaii Kai Marina and Entrance Channel Dredge Project, subject to the CDUP OA-2471 terms and conditions, CDUP OA-2872 terms and conditions, and CDUP OA-2935 terms and conditions, and the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments, and the applicable parts of Section 13-5-42, Hawaii Administrative Rules;

2. The applicant, 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 or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents for any interference, nuisance, harm or hazard relating to or connected with the implementation of corrective measures to minimize or eliminate the interference, nuisance, harm or hazard;

3. The applicant shall comply with all applicable Department of Health administrative rules;

4. Where any interference, nuisance, or harm may be caused, or hazard established by the use the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson;

5. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the

conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

6. Any work done or construction to be done on shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson. The applicant shall notify the Department in writing when construction activity is initiated and when maintenance dredging will occur;

7. A Biologist living in Hawaii will be hired to oversee the proposed dredging project for the grading, filling, and landscaping of Rim Island;

8. Work shall be conducted during calm weather periods to the most practical extent possible and no work shall occur if there is high surf or ocean conditions that will create unsafe work or beach conditions;

9. Authorization of the sand use and placement is contingent upon review and approval of the sand by the Department. The sand shall meet the following State quality standards:

    a. The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).

    b. The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach compatible material and rubble.

    c. No more than 50 percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.

    d. Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non carbonate sands are unacceptable.

10. Sand used for beach maintenance shall be screened of course material (rocks) and any non beach compatible material;

11. The applicant shall implement Best Management Practices (BMPs) and an approved monitoring and assessment plan to minimize dirt and silt from entering the ocean through silt containment devices or barriers, and to contain and clean up fuel, fluid, or oil spills immediately for this project. Any spill(s) or other contamination(s) that occur at the project site will be reported immediately to the Department of Health and other appropriate agencies;

12. All placed material shall be free of contaminants of any kind, including: excessive

silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam, or any other pollutant that would produce an undesirable condition to the beach or water quality;

13. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site, and a notification to the public informing them of the project;

14. The applicant shall implement Best Management Practices (BMPs) and an approved monitoring and assessment plan to minimize dirt and silt from entering the ocean through silt containment devices or barriers, and to contain and clean up fuel, fluid, or oil spills immediately for this project. Any spill(s) or other contamination(s) that occur at the project site will be reported immediately to the Department of Health and other appropriate agencies;

15. All placed material shall be free of contaminants of any kind, including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam, or any other pollutant that would produce an undesirable condition to the beach or water quality;

16. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site, and a notification to the public informing them of the project;

17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson;

18. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

19. 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 (808-692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

20. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson;

21. The applicant shall take appropriate measures to mitigate the impacts of erosion and siltation, and prevent oil, fuel, or cement products from falling, blowing, or flowing on Conservation lands and ocean waters. All work will be scheduled during periods of low rainfall;

22. All representations relative to mitigation set forth in the accepted final environmental assessment or impact statement, including responses to comments for the proposed uses are incorporated as conditions of the permit;

23. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease immediately in the vicinity and the remains shall be protected from further damage. The State Historic Preservation Division (692-8015) shall immediately be contacted;

24. The applicant understands and agrees that this permit does not convey any vested right or exclusive privilege;

25. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this 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/or the Department may, in addition, institute appropriate legal proceedings;

26. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;

27. Cleared areas shall be revegetated within thirty (30) days of grading or construction completion unless otherwise provided for in a plan on file with and approved by the department;

28. The hours of proposed project will be limited to 7 AM to 6 PM Monday through Friday, excluding state holidays;

29. The applicant shall provide access as required to the Department of Land and Natural Resources to conduct semi-annual water bird surveys in the Hawaii Kai Marina;

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 null and void.

Should you have any questions, please contact Sam Lemmo of the Office of Conservation and Coastal Lands at 587-0377. Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

Sincerely,

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

Receipt acknowledged:

_____

Date:

_____

c: Chairperson
ODLO
City and County of Honolulu
Department of Planning and Permitting

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

REF:OCCL:DH

SEP - 9 2011

CDUA OA-3584

Acceptance Date: March 9, 2011
180-Day Exp. Date: September 26, 2011

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

REGARDING:	Conservation District Use Application (CDUA) OA-3584 for Hawaii Kai Marina and Entrance Channel Dredge Project
APPLICANT:	Hawaii Kai Marina Community Association, 377 Keahole Street, Suite D-1C, Honolulu, Hawaii, 96825
AGENT:	Alicia Toney, Environmental Planner, Anchor QEA, 1423 3rd Avenue, Suite 300, Seattle, Washington, 98101
LANDOWNER:	Hawaii Kai Marina Community Association
LOCATION:	Hawaii Kai Marina and Entrance Channel and Portion of Maunalua Bay, Island of Oahu
TMKs:	(1) 3-9-7:011 (1) 3-9-8:035 (1) 3-9-2:009 through 011
AREA OF USE:	40.37 Acres in the Hawaii Kai Marina 3 Acres for the Entrance Channel
SUBZONES:	General and Resource

PRIOR CONSERVATION DISTRICT USE PERMITS (CDUPs):

Prior CDUP's include dock construction (CDUP OA-2471), landscaping of Rim Island # 1 (CDUP OA-2872), and the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) dredge project (CDUP OA-2935)(**Exhibit 1**).

DESCRIPTION OF AREA AND CURRENT USE:

In 1959, the community of Hawaii Kai started development with the construction of Single Family Residences (SFR) and multi-family residences. Currently, the mixed use community contains 265 acres of open water area, 2,400 single and multi-family residences, three commercial shopping centers, and a full-service marina that accommodates residential and

APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON SEP - 9 2011

commercial water-related activities. There are two manmade islands located within the marina, Rim Island # 1 and Rim Island # 2.

Navigation to and from the marina is through the entrance channel (dredged during World War II for military purposes) located under the Kalanianaole Highway Bridge. The channel is bounded by Maunalua Bay Beach Park to the west and Portlock Beach to the east and connects the marina with Maunalua Bay. However, a second channel, the Mayway Entrance Channel, to the west of the entrance channel, is a smaller channel accessible by smaller boats, kayaks, and paddleboards, etc.

The marina serves more than 1,000 private registered vessels, and provides a safe harbor for passing vessels. Current recreational uses within the marina include: power boating, fishing, kayaking, sailing, water skiing, paddling, paddle boarding, canoeing, and swimming. Commercial vessels transiting between the marina and Maunalua Bay provide community charter services such as fishing, diving, sightseeing, and surfing charters.

Maunalua Bay Beach Park and Portlock Beach are used by the general public to access Maunalua Bay for kayaking, canoeing, paddle boards, surfing, swimming, and fishing.

A biological resources survey indicated that there were no endangered species of coral, algae, fish, or invertebrates. The survey indicated the following species located within the project area: 1) algae (limu akiaki, leather mudweed, gorilla ogo, Hookweed, limu palahalaha, sailor's eyeballs); 2) flowering plants (Caribbean seagrass, Hawaiian seagrass); 3) invertabrates (blue sponge, grey encrusted sponge, variable terpios, Christmas tree hydroid, box jellyfish, Sesere's anemone, lace corral, cauliflower coral, pohaku puna, lobe coral, finger coral, rice coral, blur rice coral, ghost tube anemone, parchment worm, feather duster worm, bushy bryozoans bushy bryozoan, decorated nudibranch, jingle shell, Hawaiian oyster, Shipworm, Borradaile's ghost shrimp, a'ama, thin shelled rock crab, sponge brittle star, toothed brittle star, collector urchin, yellow-green sea squirt, black sea squirt, colonial tunicate); and 4) fish (snowflake moray, aholehole, yellow stripe goatfish, bandtail goatfish, milletseed butterflyfish, yellow longnose butterflyfish, Hawaiian sergeant, Hawaiian dascyllus, belted wrasse, Christmas wrasse, bullethead parrotfish, halfspotted goby, Moorish idol, ringtail surgeonfish, convict surgeonfish, stripebelly puffer).

Seagrass beds and coral reefs occuring in Maunalua Bay (near the entrance channel) are designated as special aquatic sites under the Clean Water Act. Three species of coral are known to occur in the vicinity of the channel (*Cyphastrea ocellina*, *Montipora patula*, and *Psammocora stellata*) and are proposed for protection under federal law. Maunalua Bay Beach Park and Portlock Beach areas are dominated by non-indigenous algae (*Acanthophora spicifera*, *Avrainvillea amadelpha*, *Lyngbya majuscule)*. Within Maunalua Bay few coral colonies are present in the area.

Endangered species such as the Green sea turtle (honu) and Hawksbill sea turtle (*Eretmochelys imbricata*) may be found in the vicinity of the marina. Humpback whales (*Megaptera novaeangliae*), the Hawaiian monk seal (*Monachus schauinslandi)* and Hawaiian stilt maybe found in the vicinity of Maunalua Bay.

The proposed project is located within the boundaries of a large traditional Hawaiian fishpond site (State Site No. 50-80-15-049) named Keahupua-o-Maunalua. The fishpond was in use at the time of historic contact; it appears on historic maps and in contemporaneous narrative descriptions. It was actively fished until the development of Hawaii Kai. Because the marina's development included significant dredging and land creation within the fishpond's boundaries the fishpond is no longer recognizable. However, some archaeological evidence may remain outside the limits of previous dredging.

A second possible archaeological site may be present in the project area; a rock-walled fish trap associated with the fishpond appears on a 1921 map near the entrance channel. If any portion of the fish trap remains it may be in or near the project area. The archeological survey indicated that valued cultural, historical, and natural resources in the area will not be affected by the proposed project **(Exhibits 2 & 3)**.

PROPOSED USE:

Significant shoaling of the marina's entrance channel has been ongoing for years; sediment deposits have formed within the channel and are hindering navigation. Concurrently, ongoing sedimentation within the marina is facilitating the request for maintenance dredging to maintain adequate depths for safe navigation and vessel berthing. The HKMCA proposes to :1) restore the marina and entrance channel navigable capacity; 2) restore adequate depths for navigation and vessel berthing; and 3) use the dredged material to the greatest extent possible.

Dredging will occur within Hawaii Kai Marina at 4 specific locations (**Exhibit 4**). These areas are generally located in the upper areas of the marina. Because tidal currents are reduced suspended sediments have settled and accumulated, thus reducing navigability and vessel berthing capabilities. The maximum planned dredge depth within the marina is -6 feet relative to mean lower low water (MLLW) datum; dredging will be required to depths of -4 to -5 feet MLLW, with 1 foot of allowable overdredge. Approximately 111,900 cubic yards (12,000 linear feet) of material will be dredged from the marina.

Dredging will occur at the entrance channel and will extend 130 feet into Maunalua Bay (**Exhibit 5**). Dredging will be required to a depth of -7 feet MLLW, with 1 foot of allowable overdredge, for a maximum dredge depth of -8 feet MLLW. Approximately 10,000 cubic yards of material (600 linear feet) will be dredged from the entrance channel.

Dredge material will be directed to three areas; two upland sites - Rim Island # 1 and the Yacht Club Property or transported to the South Oahu Ocean Dredged Material Disposal Site (SOODMDS). Suitable dredge material from the entrance channel will be redistributed via beach nourishment to Maunalua Bay Beach Park and Portlock Beach.

Rim Island # 1 is a 1.4 acre manmade island located within the marina (**Exhibit 6**). The island was constructed in the 1960's by using dredged material for the sole purpose of future dredged material management. Since Rim Island No. 1's construction, dredged material from the marina has routinely been placed on this island during maintenance dredging events. The existing capacity of the island to contain dredged material is estimated to be 12,000 cubic yards. The island will be partially stripped of vegetation and re-graded. The existing earthen berm around the island's perimeter will be improved, prior to dredging, to ensure dredged material is

contained. Dredged material from within the marina will raise the elevation of the island to a maximum elevation of +13 feet MLLW; it will be stabilized with landscaping.

Portions of Portlock Beach are known to be receding at a rate of 0.56 +/- 0.35 feet per year. Maunalua Bay Beach Park appears to be experiencing a similar erosive pattern. Sand dredged from the entrance channel will be returned to the littoral system. Shoaled material within the marina's entrance channel has been identified as coarse to medium grained sand/sediment. All samples have met DLNR guidelines of no more than 6 percent fines and no more than 50 percent material less than 0.125 mm. Maunalua Bay Beach Park and Portlock Beach will both receive 500 linear feet of material (a total of 1,000 linear feet)(**Exhibit 7**).

The proposed project will utilize the following equipment: 1) hydraulic dredging equipment (entrance channel), mechanical dredging equipment (clamshell dredge, backhoe excavator-type buckets); 2) a dredging scow with an excavator-bucket assembly; 3) small and large barges and an ocean-ready barge; 4) bulldozers; 5) graders; 6) hydraulic pipeline; and 7) a sealed and U.S. Coast Guard (USCG) certified bottom-dump barge. Buoys and markers will be used along the dredge and pipeline route to minimize navigation hazards. The proposed project is slated to start in September 2011 and end in December 2011.

SUMMARY OF COMMENTS:

CDUA OA-3584 was referred to the following agencies for review and comment: Department of Land and Natural Resources (DLNR) - Division of Conservation and Resource Enforcement (DOCARE), Division of Boating and Ocean Recreation (DOBOR), Division of Forestry and Wildlife (DOFAW), Division of Aquatic Resources (DAR), Oahu District Land Office (ODLO), Historic Preservation Division (HPD), Engineering Division; US Army Corps of Engineers (USACOE); US Fish and Wildlife Service (USFW); US Coast Guard (USCG); US National Marine Fisheries Service; Department of Health (DOH) - Office of Environmental Quality Control (OEQC) and Environmental Planning Office; Office of Hawaiian Affairs (OHA); City and County of Honolulu, Department of Planning and Permitting; Hawaii Kai Marina Community Association; Hawaii Kai Public Library; Malama Maunalua (Laura Thompson, Alyssa Miller); Hawaii Audubon Society (Ron Walker); Judge Lou Nevels; Hawaii Fish Ponds (Chris Cramer); Liveable Hawaii Kai Hui; Hawaii Fishing News; Conservation Council of Hawaii; and Anne Marie Kirk. Comments are summarized below regarding the proposed project.

Engineering Division

Please take note that according to the Flood Insurance Rate Map (FIRM), the project is located in Zones AE and VE. The National Flood Insurance Program (NFIP) regulates developments within Zones AE and VE. Please note that the project must comply with the rules and regulations of the NFIP presented in Tile 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are any questions please contact the DLNR and/or County NFIP Coordinator.

Applicant Response: Mario Siu Li from the County NFIP confirmed this is an offshore dredging project, meeting the NFIP standards will be sufficient.

Land Division
Dredging activities at the channel entrance, which is outside the easement area, requires authorization from the Land Board

Staff Note: The HKMCA has an existing easement which includes the channel entrance. Authorization is not required from the BLNR because the proposed project is located within the easement area.

Division of Boating and Ocean Recreation
No Comment.

Department of Business, Economic Development and Tourism - Office of Planning
We concur with your certification that the subject proposal is consistent with the enforceable policies of the Hawaii CZM Program. All conditions are necessary to ensure consistency with HRS, Chapter 205A, CZM. The conditions are also necessary to ensure consistency with additional CZM enforceable policies.

Applicant Response: Thank you for your concurrence with the certification that the subject proposal is consistent with the enforceable policies of the Hawaii CZM Program. The conditions (1 through 8) in your concurrence letter have been noted and are covered in the permitting and Environmental Assessment process currently underway to gain approval for the proposed project. All conditions in the letter you submitted will be complied with once the project has obtained all the necessary permits and approvals.

Department of Health - Office of Environmental Quality Control
We note the following: 1) please correct the year in Table 1, first column third row on page two; 2) please discuss the use of Rim Island # 1 with regards to past dredging operations; describe the placement process of sediments on the island, the mechanical means of placement versus hydraulic means, and elaborate on dewatering activities and other relevant sand/sediment treatment at the relevant sites; 3) provide the estimate of cubic yards for the different sand/sediment placement sites for Yacht Club Property, Maunalua Bay Beach Park, and Portlock Beach, include measurements of boundaries for the beach areas and maps; 4) please discuss probable odors (if any) from the dredged slurry and mitigation; 5) elaborate of there will be any ground transportation or sediments to placement sites, and include a traffic impact analysis report and mitigation.

Applicant Response: The table has been corrected as requested. Rim Island # 1 was constructed in the 1960s for the purpose of serving as a sediment disposal area for future maintenance dredging events. As recently as 1996, dredged material was placed at Rim Island # 1 for the purposes of routine marina maintenance. The placement of dredged material at Rim Island # 1 associated with this project is consistent with past use of this area. Dredging within the marina is expected to be by mechanical means, using equipment such as a standard excavator or clamshell dredge. The DEA provides details on the differences between mechanical dredging and hydraulic dredging. Material will be loaded into a floating barge and transported to Rim Island # 1, it will be unloaded to the center of the island, temporarily stockpiled, and allowed to dry. When dry, grading equipment will be used to distribute the material. When grading is complete the area will be immediately seeded and stabilized with vegetation.

Hydraulic dredging is not well-suited for placing sediment on Rim Island # 1. The water/sediment slurry pumped from a hydraulic dredge would introduce a large amount of water to the site that would need to be managed and contained, with only a designed point (or points) of controlled outflow (i.e., spillway). By comparison, the mechanically-dredged material will be much lower in water content and can be dried on-site with standard erosion control measures in place (i.e., earthen berm, silt fencing).

A site-specific erosion control plan for Rim Island No. 1 will be developed prior to construction, certified by a professional engineer, and submitted to the City and County of Honolulu as part of a grading permit application. A conceptual erosion control plan has been provided in the DEA. This conceptual plan includes best management practices (BMPs) such as earthen sediment berms, silt fencing, and vegetative cover. Final sedimentation control measures will be developed during detailed site design, in coordination with County engineers.

5,000 cubic yards of sediment are estimated to be disposed at the Yacht Club property and 12,000 cubic yards of sediment are expected to be disposed of at Rim Island # 1. 5,000 cubic yards of sand are expected to be placed at two locations: Portlock Beach and Maunalua Bay Beach Park. Conceptual plans for beach areas after sand placement are depicted in the FEA. Odor is not expected to be a significant concern at these sites because the sediment contains a limited amount of organic material; any odors generated are expected to be quickly dissipated by wind and breezes. No specific mitigation measures are planned for odor control. The FEA discusses the disposal methods that will be used for this project. Upland off-site disposal via ground transportation is not expected as part of this project therefore, no traffic impact analysis report or mitigation will be required.

U.S. Army Corps of Engineers (ACOE)

The USFW notes the following concerns: 1) lack of documentation of green turtles nesting or basking within the project area and anticipated effect; 2) consultation with the National Oceanic and Atmosphere Administration (NOAA); 3) effects to listed water birds; 4) sea grass located within the marina and proposed mitigation; 5) potential spread of *Avrainvillea amadelpha*; 6) proposed sand nourishment; and 7) incorporating BMPs for dredging activities.

Applicant Response: We have consulted with the NOAA National Marine Fisheries Service. BMPs intended to avoid green turtles and other endangered species will be implemented. Conservation measures identified and included in the ACOE permit will be implemented and followed during construction of this project. BMPs will be required by the pending ACOE individual permit, and will be implemented and followed during construction of the project. A water quality monitoring plan will be developed in conjunction with the DOH water quality certification. It is unlikely the marina contains suitable substrate for seagrass because of its turbid waters and limited light penetration. Turbidity is a result of high levels of runoff and siltation from upland areas. The only areas of the project where seagrass was identified are two locations in Maunalua Bay; these areas of seagrass will be avoided. Notwithstanding the likely absence of seagrass, standard BMPs will still be implemented to protect water quality and the natural resources during dredging and beach nourishment activities.

The USACOE and U.S. Environmental Protection Agency have approved the sediment as suitable for ocean disposal in accordance with all management guidelines for the SOODMDS.

Portions of the marina planned for dredging are not likely to provide suitable habitat for the cited species of algae; they are known to have a soft, muddy sediment surface, not well-suited to growth and population by this algae. The cited species is more commonly observed populating sandy, rocky, and reef-related substrates, in order to develop significant community growth. While its presence has been noted in nearshore areas outside of the marina the shifting sands and strong currents of the entrance channel result in substantial erosive forces and instability that would significantly hinder the spread and establishment of algae into the marina interior. In the event that an incidental amount of this or other algae species is encountered by the dredging it is likely to be so physically disrupted that it will have minimal to no survival rate during shipment and/or placement at the disposal site. *A. amadelpha* is known to have a relatively low ability to reproduce by fragmentation so for it to spread successfully to points beyond the immediate point of disposal is minimal.

The beach at Maunalua Bay Beach Park has been undergoing significant gradual erosion over the past several years. The available beachfront area has degraded and the existing parking lot has several portions that are eroded. Sand nourishment for Portlock Beach was not in the original project plan developed by HKMCA, but was included at the DLNR's specific request. It has been experiencing erosion-related difficulties similar to those at Maunalua Bay Beach Park, with the beach having eroded significantly so access is limited.

Staff notes Anchor QEA responded to the USACOE Public Notice of Application for Regional General Permit. Anchor QEA notes the project will comply with all conditions issued in the individual permit.

Maunalua Fishpond Heritage Center

Our organization is a 501(c)(3) nonprofit whose mission is to restore and preserve the last remaining fishponds in the Maunalua area. We note the following: 1) the center has a strong interest in the area's historic findings and data…we are interested in learning of any archeological findings and also serving as a repository for fishpond related items which can be used to educate the community; 2) there are concerns the prevailing winds and current may take the sediment and smother the reef with silt and damage the fishery (as had occurred with previous dredging efforts); 3) the area of water adjacent to the Oahu Club was a former skeet shooting range and may contain high amounts of lead; it is likely these would be found in the sediments from Dredge Area # 2; and 4) we urge that longtime residents living adjacent to the channel entrance site also be consulted before commencement of this project.

Applicant Response: An archaeological monitoring plan will be developed by the HKMCA. We look forward to working with the Heritage Center regarding any significant findings that may occur. BMP's (floating silt curtains) will be utilized for dredging and sediment disposal to ensure continuous protection of water quality and to the natural resources during the project work. Agencies (USFWS, NMF, NOAA, USACOE, DOH, and DLNR) have provided conditions and permit requirements that are intended to prevent destruction of any fish habitat and disruption of migration. A thorough sediment sampling and analysis program was completed for the project in 2010, encompassing all areas planned for dredging. The report concluded there were no elevated levels of lead found in any of the dredge areas. All residents adjacent to the dredge areas of the project were notified of the project, and were provided an opportunity to comment on the DEA.

In addition, a community meeting was held on April 11, 2011 to inform the community of project specifics and to address any concerns from residents

Peter Dunn-Rankin
I have lived in the West Marina area since 1966. In those 45 years the passage under the first bridge (Mayway Entrance Channel) into Hawaii Kai has never been dredged. Small motorboats and powered skiffs have used this waterway and still make their way but it is (getting) harder. The silting blocks the flow of water in and out of this end of the marina.

Applicant Response: The project specifically involves the main entrance channel, which is used by all passenger-sized boats and vessels entering the marina, and areas within the marina that are shallower than reasonable navigable elevations. The Mayway Entrance Channel is not being dredged as part of the proposed project; it was excluded from the report.

Jim and Sherry Dittmar
We have the following comments regarding: 1) DLNR's preliminary determination; 2) draft environmental analysis (DEA) title; 3) required Grading Permit; 4) community organization and local knowledge; 5) Mayway Entrance Channel; 6) relevant dates and permits; 7) relevant Aeo studies at Rim Island # 2; 8) the landfill; 9) Migratory Bird Treaty Act; 10) entrance channel dredging volume; 11) DEA notification; 12) hydrographic survey after tsunami action; 13) landscaping - Rim Island # 2 and Yacht Club site; 14) dredge material transfer to barges and mitigation measures; 15) noise impacts and effects on Ae'o, Hawaiian Stilt, Alae Ula, Common Moorhen and Alae Ke'oke'o; 16) inserting the AECOS Report 2010; 17) DOH water quality rules and regulations; 18) increase in nutrients into the water column; 19) biological survey regarding include benthic invertebrates (hammerhead sharks, moray eels, conger eels, puffer fish, papio, barracuda, ahi, tilapia, etc.); and 20) effect of dredging on Hawaiian Stilt colony on Rim Island # 2.

Staff Note: Because of the lengthy letter and Anchor QEA's response letter staff is attaching the letter as an exhibit. Staff notes the DEA and project was submitted in the OEQC Bulletin on March 23, 2011. The HKMCA notified the community and the SFR homeowners located adjacent to the project sites via letter(March 25, 201) regarding the proposed project. The DOFAW was consulted but there was no comment from the division regarding the proposed project. Staff notes the FEA was deemed adequate for the proposed project.

ANALYSIS:

After reviewing the application, the Department found by correspondence dated March 9, 2011 that:

1. The proposed use is an identified land use in the Conservation District, according to Chapter 13-5, Hawaii Administrative Rules (HAR), Section 13-5-24, identified land uses in the Resource Subzone, R-6, MARINE CONSTRUCTION, "marine construction, dredging, filing, or any combination thereof of submerged lands;" please be advised however, that this finding does not constitute approval of the proposal;

2. Pursuant to Section 13-5-40(4), HAR, HEARINGS, a hearing will not be required; and

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment will be submitted to the Office of Environmental Quality Control (OEQC), and will be published in the March 23, 2011 edition of OEQC's Environmental Notice.

The FEA for the proposed project was published in the June 23, 2011 edition of OEQC's Environmental Notice.

CONSERVATION CRITERIA:

HAR Section 13-5-30 provides eight specific criteria that the department or board shall apply to proposed land uses within the Conservation District. Land uses must conform to the following criteria:

1. *The proposed land use is consistent with the purpose of the conservation district.*

   The purpose of the Conservation District is to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote long-term sustainability and the public health, safety, and welfare. The proposed action is consistent with the purpose of the Conservation District.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

   The subject parcel lies within the General and Resource Limited subzones. The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities.

   Staff believes that the project is consistent with the purpose of both the Resource and Limited subzones. The project seeks to sustain and improve the natural resources of the shoreline by restoring Maunalua Bay Beach Park and Portlock Beach, and by improving navigation and berthing opportunities for the marina and entrance channel.

3. *The proposed land use complies with the provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.*

   Staff notes the project complies with CZM objectives as identified in Chapter 205A, HRS:

   Recreational Resources: The proposed project will result in substantial long-term benefits to public water-based recreation, navigation, and fishing.

Historic Resources: A cultural resources report was conducted for the project. This report concluded that no historical or archaeological sites will be impacted. The project is within the former boundaries of a fishpond, but the fishpond is no longer in use, and the project is completely within the footprint of previous disturbance.

Scenic and Open Space Resources: Maintenance dredging will not affect the natural beauty or aesthetics of the area. Beach nourishment will enhance the open space and aesthetic characteristics of the area by restoring eroded beaches for public use.

Coastal Ecosystems: A biological resources survey of the proposed project area was conducted in 2010, and the accompanying evaluation suggests that the proposed project will not result in adverse effects to the environment or biological resources. Because the proposed project entails maintenance of an existing facility, all impacts will be temporary and construction related.

Economic Uses: In addition to docking approximately 1,000 private vessels, the Hawaii Kai Marina serves several important public functions by providing safe harbor for passing vessels during storm events and a base of operations for fire and rescue operations during times of emergency. The marina is used by a number of commercial businesses serving the needs of tourists for activities such as fishing, diving, sightseeing, kayaking, and surfing tours. The proposed project would benefit the local economy.

Coastal Hazards: The proposed project does not entail any development in storm wave, tsunami, flood, erosion, or subsidence hazard areas, and it will not affect inland waterways or storm water systems. The proposed dredging of the marina and entrance channel will provide additional depth for safe navigation of the waterways. The proposed beach nourishment will increase the width of the existing beaches at Maunalua Bay Beach Park and Portlock Beach, both of which have suffered erosion. Nourishment of these beaches would be expected to decrease adverse effects of storm waves and would not increase coastal erosion or subsidence.

Managing Development: The purpose of the proposed project is to maintain existing navigable waterways and nourish adjacent beaches used by the public for recreation. The proposed project does not include any new development or intensification of land use. No structures will be built, and the natural beauty of the landscape will not be altered.

Public Participation: The public was informed of the project through the Chapter 343, HRS and CDUA process.

Beach Protection: The proposed nourishment of Maunalua Bay Beach Park and Portlock Beach will increase public access to the shoreline by restoring eroded portions of the beaches, making them wider and more gently sloped.

Marine Resources: A biological resources survey of the proposed project area was conducted; the report indicated the proposed project will not result in adverse effects to the environment or biological resources. Because the proposed project entails maintenance of an existing facility, all impacts will be temporary and construction related.

Staff notes only a small number of sites are actually within the SMA (entrance channel and two adjacent areas of fill), pursuant to Revised ordinance of Honolulu, (ROH) Section 25-1.3(2)(C) routine maintenance dredging of existing streams, channels, and drainage ways is exempt from SMA requirements; the project does not require any SMA permits. If it is determined that work may involve a significant effect on SMA resources, then an SMA permit can still be required. All appropriate construction permits must be obtained prior to the start of work.

4. *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

   Staff notes the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate BMP's and mitigation measures are implemented. Dredging related impacts are anticipated but are not expected to have any significant negative long-term effects on the surrounding environment.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical condition and capabilities of the specific parcel or parcels.*

   The proposed project is compatible with the locality and surrounding area of Hawaii Kai Marina and Maunalua Bay, and is appropriate to the physical condition and capabilities of the project areas. The proposed navigation improvements will have no effect on the existing HMKCA. Rim Island # 2 will be landscaped. The beach nourishment projects will restore and protect existing shoreline properties, improve public access along the beach and enhance the recreational value of the area.

6. *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

   The existing physical and environmental aspects of the land, natural beauty and open space characteristics will be preserved. The nourishment of sand to Maunalua Bay Beach Park and Portlock Beach will increase the natural beauty and open space characteristics of each area.

7. *Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district.*

   The proposed project will not increase the intensity of land uses in the Conservation District.

8. *The proposed land use will not be materially detrimental to the public health, safety, and welfare.*

   The proposed project will not be materially detrimental to the public's health, safety, and welfare. The dredging of the marina and entrance channel will increase the public's health and safety and provide safe navigation and berthing. The beach nourishment project will

enhance the public's welfare. The proposed beach nourishment projects are not anticipated to have any long-term impacts on public health, safety and welfare. The nourishment project will provide a buffer zone for existing properties on Portlock Beach, improve beach access and enhance the recreational values of Maunalua Bay Beach Park.

DISCUSSION:

Staff notes the proposed use is an identified land use in the Resource subzone, pursuant to Hawaii Administrative Rules (HAR), Section 13-5-24, identified land uses in the Resource Subzone, R-6, MARINE CONSTRUCTION, "marine construction, dredging, filing, or any combination thereof of submerged lands."

Staff notes a Public Hearing was not required, however a public meeting was held on April 11, 2011 at the Mariners Cove Bay Club facility from 6:30 to 8:30 PM to discuss the proposed project. Approximately 40 people showed up to the meeting. The following was discussed by the consultant, HKMCA representatives and the community: 1) cubic yards; 2) vessels/barges to be use to transport dredge material; 3) offshore approval required; 4) Rim Island disposal versus offshore disposal; 5) seawall repair; 6) contractor's responsibilities; 7) West Marina dredge area and navigation under bridge; 8) increased sedimentation for property owners fronting Kalanianaole Highway; 9) exposing utility (electric, sewer) lines during dredging; 10) consultant cost-analysis scenario - offshore dumping versus upland dumping; 11) dredge barge located in Maunalua Bay; 12) Endangered Species Act to be included in DEA; 13) funding; 14) deadline(s); and 15) past dredge activities.

Staff notes most comments were positive in nature regarding the proposed project. Specific concerns mostly came from specific community members who discussed the DEA, Rim Island # 2, project costs, and construction hours.

Staff recommends to the Board of Land and Natural Resources (BLNR) that a term and condition be added requiring a Biologist (living in Hawaii) be hired to supervise the proposed project for the grading, filling, and landscaping of Rim Island and for the two beach nourishment projects. The consultant is located on the mainland and although local contractors will be hired, staff would like to ensure the natural resources will be protected.

Staff notes typical construction hours are from 7 AM to 10 PM (daily) and from 10 PM to 7 AM (nightly). However, the hours of the proposed project should be limited from 7 AM to 6 PM, Monday through Friday, excluding state holidays. Staff notes this is a highly residential community. Residents will not want to hear construction noise (dredging and jackhammers) after coming home from work. Staff recommends to the BLNR that a term and condition be assigned that the proposed project work hours will be from 7 AM and to 6 PM, Monday through Friday, excluding state holidays.

Lastly, Staff recommends to the BLNR that the terms and condition to initiate and complete construction be altered. A condition that construction shall be initiated within one year should be kept as the standard condition. Staff notes the dredge project should not be assigned the standard condition noting a deadline of three (3) years to complete the project. Staff notes the marina and entrance channel will need to be dredged periodically for as long as there is a marina and entrance channel. Maintenance dredging should be allowed as long as the Department or the

Chairperson's representative is amendable to future dredging actions. Staff notes as a caveat the HKMCA will need to consider whether a DEA is required each time dredging is proposed.

Staff, therefore, recommends as follows:

RECOMMENDATION

That the Board of Land and Natural Resources APPROVE CDUA OA-3584 for the proposed Hawaii Kai Marina and Entrance Channel Dredge Project, subject to the CDUP OA-2471 terms and conditions, CDUP OA-2872 terms and conditions, and CDUP OA-2935 terms and conditions, and the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments, and the applicable parts of Section 13-5-42, Hawaii Administrative Rules;

2. The applicant, 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 or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents for any interference, nuisance, harm or hazard relating to or connected with the implementation of corrective measures to minimize or eliminate the interference, nuisance, harm or hazard;

3. The applicant shall comply with all applicable Department of Health administrative rules;

4. Where any interference, nuisance, or harm may be caused, or hazard established by the use the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson;

5. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

6. Any work done or construction to be done on shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson. The applicant shall notify the Department in writing when construction activity is initiated and when maintenance dredging will occur;

7. A Biologist living in Hawaii will be hired to oversee the proposed dredging project for the grading, filling, and landscaping of Rim Island;

8. Work shall be conducted during calm weather periods to the most practical extent possible and no work shall occur if there is high surf or ocean conditions that will create unsafe work or beach conditions;

9. Authorization of the sand use and placement is contingent upon review and approval of the sand by the Department. The sand shall meet the following State quality standards:

   a. The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).

   b. The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach compatible material and rubble.

   c. No more than 50 percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.

   d. Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non carbonate sands are unacceptable.

10. Sand used for beach maintenance shall be screened of course material (rocks) and any non beach compatible material;

11. The applicant shall implement Best Management Practices (BMPs) and an approved monitoring and assessment plan to minimize dirt and silt from entering the ocean through silt containment devices or barriers, and to contain and clean up fuel, fluid, or oil spills immediately for this project. Any spill(s) or other contamination(s) that occur at the project site will be reported immediately to the Department of Health and other appropriate agencies;

12. All placed material shall be free of contaminants of any kind, including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam, or any other pollutant that would produce an undesirable condition to the beach or water quality;

13. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site, and a notification to the public informing them of the project;

14. The applicant shall implement Best Management Practices (BMPs) and an approved monitoring and assessment plan to minimize dirt and silt from entering the ocean through silt containment devices or barriers, and to contain and clean up fuel, fluid, or oil spills immediately for this project. Any spill(s) or other

contamination(s) that occur at the project site will be reported immediately to the Department of Health and other appropriate agencies;

15. All placed material shall be free of contaminants of any kind, including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam, or any other pollutant that would produce an undesirable condition to the beach or water quality;

16. Appropriate safety and notification procedures shall be carried out. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site, and a notification to the public informing them of the project;

17. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson;

18. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

19. 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 (808-692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

20. At the conclusion of work, the applicant shall clean and restore the site to a condition acceptable to the Chairperson;

21. The applicant shall take appropriate measures to mitigate the impacts of erosion and siltation, and prevent oil, fuel, or cement products from falling, blowing, or flowing on Conservation lands and ocean waters. All work will be scheduled during periods of low rainfall;

22. All representations relative to mitigation set forth in the accepted final environmental assessment or impact statement, including responses to comments for the proposed uses are incorporated as conditions of the permit;

23. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease immediately in the vicinity and the remains shall be protected from further damage. The State Historic Preservation Division (692-8015) shall immediately be contacted;

24. The applicant understands and agrees that this permit does not convey any vested right or exclusive privilege;

25. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this 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/or the Department may, in addition, institute appropriate legal proceedings;

26. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;

27. Cleared areas shall be revegetated within thirty (30) days of grading or construction completion unless otherwise provided for in a plan on file with and approved by the department;

28. The hours of proposed project will be limited to 7 AM to 6 PM Monday through Friday, excluding state holidays;

29. Other terms and conditions as may be prescribed by the Chairperson; and

30. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

Dawn T. Hegger
Senior Staff Planner

Approved for submittal:

By: _____
William J. Aila Jr., Chairperson
Board of Land and Natural Resources

JOHN WAIHEE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

REF:OCEA:SKK

AUG 21 1991

FILE NO.: OA-2/28/91-2471
180-Day Exp. Date: 8/27/91
DOC. NO.: 1421E

Mr. Gordon S. Harkins
Project Engineer
Sea Engineering, Inc.
Makai Research Pier
Waimanalo, Hawaii 96795

Dear Mr. Harkins:

Subject: Conservation District Use Application for
"The Peninsula" Floating Docks and Boat Ramp
Hawaii Kai Marina, Oahu

We are pleased to inform you that Namsay Hawaii Inc. Conservation District Use Application for the "Peninsula" floating docks and boat ramp was approved on August 9, 1991 subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments and applicable parts of Section 13-2-21, Administrative Rules, as amended;

2. The applicant, 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 applicant shall comply with all applicable Department of Health Administrative Rules;

4. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

5. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the dredging and construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;

6. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within (3) years of the approval of such use;

7. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this 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/or the Department may, in addition, institute appropriate legal proceedings;

8 That all representation relative to mitigation set forth in the accepted Environmental Assessment for this proposed use are hereby incorporated as conditions of this approval;

9. The applicant shall conduct water quality studies at the marina site and within Kuapa Pond before, during and after dredging the pond and will submit reports of these studies to the Department;

10. That the applicant affirm that appropriate measures shall be exercised to prevent debris, petroleum derivatives, eroded soil, herbicides, pesticides, etc., from entering or polluting surrounding areas and nearby waters. In this regard, siltation control devices will be employed during dredging and construction activities;

11. That the marina is for private recreational vessels. The marina will not be used for commercial vessel operations;

12. That all necessary pre-assemblage of the docks and catwalks be done on land, as practical, to include the treatment of paint, antifoulants, etc. These activities shall be allowed to dry and cure (estimated timeframe - one week) sufficiently prior to transfer to water bodies;

13. That proposed marina rules affirm no "live-aboards" on docked vessels;

14. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void;

15. Other terms and conditions as prescribed by the Chairperson;

16. The applicant will enter into a cooperative agreement with the City and County of Honolulu, Department of Public Works, to ensure that all necessary navigational lights on Wailua Street bridge are funded by private sources and are established on the bridge in Phase II, as required; and

17. That the deeded landowner of the submerged land within the marina be held responsible for the overall management of the marina facility, including all necessary contingency operations should they be determined necessary by the Department or the Board of Land and Natural Resources.

Please acknowledge receipt of this permit, with the above noted conditions, in the space provided below. Please have the applicant sign two copies. Retain one and return the other to the Department within thirty (30) days.

OA2872

Ref.PB:SL

JAN 5 - 1998

Edward Short and Associates
49 South Hotel Street, Suite 207
Honolulu, Hawaii 96813

Dear Mr. Short:

This is to inform you that the Chairperson of the Board of Land and Natural Resources approved your request for landscaping of Rim Island No. 1 in the Hawaii Kai Marina, Honolulu, Oahu, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;

2. The applicant shall comply with all applicable Department of Health recommendations and administrative rules relating to polluted runoff control;

3. All mitigation measures set forth in the application for this project are hereby incorporated as conditions of approval;

4. The applicant shall notify the Department when the project is initiated and shall submit photographs of the completed work, referencing this permit by file number (OA-2872), when the landscaping work is completed;

5. The applicant shall maintain all vegetation growing on the subject Rim Island No. 1 in perpetuity, unless the Department agrees to a permit modification or this permit is otherwise nullified or terminated;

6. Project-related work on the land shall be initiated within one (1) year from the date of this approval, and all work, excluding perpetual maintenance, must be completed within three (3) years of the approval;

7. That in issuing this permit, the Department has relied on the information and data that the permittee has provided in connection with this permit application. If, subsequent to the issuance of this 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/or the Department may, in addition, institute appropriate legal proceedings;

EXHIBIT 1

8. The applicant, 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 or 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;

9. That failure to comply with any of these conditions shall render this Conservation District Use Application null and void; and

10. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this action, 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, please feel free to contact Sam Lemmo of our Planning Branch, at 587-0381.

Aloha,

for Dean Y. Uchida, Administrator
Land Division

Receipt acknowledged

_____
Applicant's Signature

Date _____

cc: Oahu Board Member
City and County of Honolulu
Land Utilization
DOH
U.S. Army Corps of Engineers

bcc: DAR/DOCARE

IN THE MATTER OF A CONTESTED CASE FOR THE DREDGING OF MAUNALUA BAY ENTRANCE CHANNEL	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER GRANTING CONSERVATION DISTRICT USE PERMIT APPLICATION; ATTACHMENTS "1" THROUGH "8"

COUNFOFCOL.139

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER, GRANTING
CONSERVATION DISTRICT USE PERMIT APPLICATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND.

1. This is an application for a conservation district use permit. The State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation ("DOBOR") has applied for a permit to:

a. Dredge approximately 6500 cubic yards of sand from the main entrance channel to the Hawaii Kai Marina.

b. Place the dredged sand along Portlock Beach, to the southeast of the entrance channel.

c. Construct a groin of sandbags perpendicular to the shoreline, immediately southeast of the entrance channel, to retard the flow of sand back into the channel.

As part of the project, the Hawaii Kai Marina Community Association ("HKMA") would also dredge approximately 1000 cubic yards from the portion of the Marina immediately inland of the Kalanianaole Highway bridge. (Applicant's Ex. A-2 at 2.) The project should cost about $189,7000 in public funds.

d. An analysis of the potential environmental impacts to both sides of the entrance channel from the dredging activity. See findings of fact, sections D and F;

e. An analysis of the potential environmental impacts from this project on the Paiko lagoon area. See findings of fact, section F, no. 6;

f. An analysis of the public benefits derived from this project involving public funds used to dredge the entrance channel to a private marina. See findings of fact, section E, and conclusions of law, section B;

g. An analysis of the potential liability to the state if the state proceeds with the project. See conclusions of law, section C;

h. An analysis of alternatives to the proposed activity (i.e. sell easements to HKMA). See findings of fact, section H.

6. The DLNR retained a hearing officer in late July, 2000.

7. On July 27, 2000, a telephone conference was held between Dave Parsons representing DOBOR, Marshall K. Rosa, Tom Eisen representing DLNR Land Division, and the hearing officer, which produced Minute Order No. 1, with the following decisions: hearing on set for October 26, 2000; publication of Notice of Hearing on August 28, 2000; consideration of request for intervention; written communications to be sent directly to the hearing officer and other parties; DLNR to supply file to the hearing officer; and deadlines for lists, exhibits, memos, motions, and summaries will be set at a later date.

8. The hearing officer granted HKMA's petition to intervene.

9. By Minute Order No. 3, the hearing officer established a deadline for witness and exhibit lists and a statement of issues.

David Parsons, of DOBOR

James Leavitt, president of the Portlock Community Association

Sammy "Steamboat" Mokuahi, Hui Nalu Canoe Club coach

L.R. Tracy, Hawaii Kai Marina Manager

Marshall K. Rosa

16. The hearing officer requested that the minutes of the Dec. 11, 1998 BLNR meeting be admitted as an exhibit. The parties agreed, and this is Hearing Officer's Exhibit "1".

17. The hearing officer also made a site visit after the completion of testimony, at mid-day, on Oct. 26, accompanied by counsel for the parties. During the site visit, the hearing officer looked at the channel from the west (Diamond Head) side, then crossed the bridge to the southeast side and looked at the bridge abutments, the site of the proposed groin, and the location of Rosa's property.

18. After the hearing, the hearing officer requested supplemental information from the parties about the boundary between the State and HKMA's property, and about who built the Kalanianaole Highway bridge. This information is Hearing Officer's Exhibit "2" (Attachment "2").

19. The record on this contested case consists of the following:

a. DOBOR's Ex. A-1 to A-29;

b. HKMA's Ex. I-1- I-44;

c. Rosa's Ex. IR-1;

d. Transcript of October 26, 2000 hearing;

e. Site visit on October 26, 2000, Attachment 4;

3. Beginning around 1959, Kaiser Development Co. dredged about 1 million cubic yards from Kuapa Pond and Maunalua Bay to create Hawaii Kai Marina. As a result, the entrance channel was widened from 40' to 250'. (FEA at III-1.)

4. In 1969, Kaiser built the present Kalanianaole Highway bridge over the entrance channel. The bridge was later dedicated to the State. (Hearing Officer's Exhibit "2.") It was originally built with four channels, separated by the bridge abutments, open for the passage of boats, for a total of 172'. The channels had a design depth of 7'. There is another small entrance to the Marina under the highway, to the west, but is has enough clearance only for canoes and kayaks. (FEA.)

5. Over time, sediment—primarily sand from Portlock Beach—has drifted into the entrance channels. The last dredging was done by HKMA in November, 1986. Two of the bays are now completely blocked by sand, and a third bay is almost completely blocked. The fourth, most westerly bay, is the only open passage for boats, and for the flow of tidal waters, in and out of Hawaii Kai Marina. This one remaining passage has actually been scoured out deeper than its design depth by the flow of water. Fig. II-6 of the FEA (Attachment "3") is a cross-section showing the present condition and the proposed condition after the dredging project. Fig. II-7 (Attachment "4"), shows the overall location, including the location of the proposed sandbag groin, and Fig. II-5 (Attachment "5") shows a plan view of the bridge and of the areas proposed for dredging. Applicant's Ex. A-9 is a detailed map of the existing sand areas, the bridge, and Rosa's home.

2. The only endangered marine species known from the area is the green sea turtle, *Chelonia mydas*. Turtles eat some of the species of algae identified in the project area. The biological survey in the FEA did not attempt to thoroughly study turtles, because an extensive study had been done for the Ferry System EIS. (Applicant's Ex. A-29.) That study determined that turtles commonly rested in a large area along and outside the Maunalua Bay fringing reef, but very few turtles were seen near the entrance channel.

C. Project Description.

1. The project would dredge a second bay between the abutments under the bridge, creating a second channel for boats. In addition, the third bay would be partially dredged, allowing the passage of canoes and kayaks. About 88,000 square feet of submerged land, plus a smaller area of dry land, would be dredged. The dredging would be done by a backhoe on a barge, or possibly by a crane with a bucket. A silt curtain would be spread around the dredging area to reduce turbidity due to silt. See Attachment "7."

2. Dredged sand would first be stockpiled, examined, and screened to remove pebbles, then would be transported along Portlock Beach and placed in an area about 900' long and 40' wide. If the material contained too much fine silt, it would be dried and placed on shore, probably within Maunalua Beach Park. Samples taken of the material to be dredged, including core samples taken at various depths, show that the presence of fine silts will not be a problem, and that the material is not contaminated with petroleum products or other pollutants. (Testimony of Fletcher.) Trucks or a front-end loader would move the sand from the dredge site to the beach.

being pulled off course going with the current. The Marina manager testified that even experienced power boat operators can have difficulty getting through the 28' wide channel, that there have been collisions with the bridge piers and abutments, and boats have almost collided. Gehring testified that there have been groundings in the shallow water. The two-way traffic through the single passage increases the hazard. Canoe paddlers and kayakers must share the one channel entrance with the power boats. (Canoes and kayaks can pass through the adjacent bay at high tide, but it is not recommended for the inexperienced. Tr. at 70-72, Testimony of Mokuahi.)

2. The dredging of the second bay would allow one channel for incoming traffic and another for outgoing traffic. Water should also flow more slowly through the two channels, making it easier for the boats to traverse the entrance. Boats would be less likely to run aground if the shoal areas near the channel were dredged. (Testimony of Gehring and Tracy.)

3. The dredging is apparently not necessary to keep the channel from plugging up completely; the current flowing through the single channel is strong enough to keep it open, but even at present, there are shallow areas near the entrance which are hazardous. (Testimony of Parsons.)

4. The State owns the submerged lands of Maunalua Bay, including the channel entrance, and the lands that have accreted under the bridge. The State also owns a right-of-way extending a varying distance, 100-150 feet *mauka* into the Marina. (FEA at II-1; Hearing Officer's Exhibit "2.") HKMA owns the remainder of the Marina.

5. The United States Supreme Court, in Kaiser-Aetna v. United States, 444 U.S. 164 (1979), decided that the Hawaii Kai Marina, unlike other navigable

individuals who are either members or affiliated with the club in some way. Membership is open to the general public.

g. The Kaiser High Canoe Club is also allowed to practice in the Marina. Membership is open to Kaiser High students (Kaiser High is public).

h. The Marina is opened for certain special events, such as races.

i. Other boaters may be allowed refuge in the Marina during storms.

(Testimony of Tracy and Mokuahi.)

8. The Marina manager also testified that the Marina would allow its waters to be used as a base for boats and equipment for oil spill cleanups and other emergencies. He was not sure whether there was a formal agreement to that effect. (Testimony of Tracy.)

9. A secondary project benefit is the replenished beach at Portlock. The record does not disclose where the public obtains access to the beach, however, from the site visit, it is obvious that one can get to the beach from the Portlock side of the highway bridge from trails that pass through the accreted sandy area. Restoration of the sand area will create a wider and more pleasant beach for public use. (See attachment 4)

10. The replenishment of Portlock Beach would protect the beachfront property of a few individuals, over a distance of about 900 feet, at least for a time, until the beach starts to erode again. The record does not show how many individuals' properties will be benefited, but it could only be a few, given the distance. (Rosa's home is between the bridge and the proposed sand nourishment area. (See attachment 4)

of Bucher.) The groin can then be moved to a more optimal location, or replaced with a more permanent structure.

5. The project may cause increased turbidity in the immediate vicinity of the channel entrance, as silt is churned up by the dredging. A silt curtain can mitigate this temporary, local effect. (The water clarity is presently poor--observation by the hearing officer during the site visit.)

6. The project should have no effect at all on Paiko Lagoon or peninsula, because of the distance and the small scale of the dredging. (Testimony of Bucher.)

7. Marine invertebrates that burrow in the sand will undoubtedly be killed by the dredging when the sand is stockpiled. (Testimony of Fletcher.) The marine environment should recover completely. (FEA at II-12.)

8. Except for possible temporary and local increase in turbidity, there should be no negative impact to water quality in Maunalua Bay, and the quality may improve. (FEA at II-12; Testimony of Fletcher.)

9. The project engineer and HKMA's consultant did not testify in person. Given the relatively small scope of the project, the hearing officer believes that the studies done to date are adequate to make findings and conclusions about the likely effects of the project on nearby coastal properties and the marine environment. (See testimony of Bucher at 3.)

10. There will be noise from heavy equipment during the dredging and from moving sand along Portlock Beach. The channel entrance is normally every noisy because of highway and boat traffic.

interferes with such rights in certain circumstances...Nevertheless, the State is obligated to protect the reasonable exercise of customary and traditionally exercised rights of Hawaiians to the extent feasible.

4. In making that determination, The Hawaii Supreme Court has stated that governmental agencies must address three questions: "(1) whether traditional and customary native Hawaiian rights are exercised in the project area; (2) of the extent to which, if such rights exist, they will be affected by the proposed action; (3) of the feasible action, if any, that should be undertaken by the [agency] to protect these rights, if they are found to exist." Trustees of the Office of Hawaiian Affairs et. al v. Board of Land and Natural Resources et.al., Supreme Court No. 19774, memo.op., filed March 12, 1998.

5. The entrance channel was completely dredged in 1959, and at least partially dredged in 1986. The area to be dredged consists of sand which has drifted and settled over the last forty years. It therefore should not contain sites of historical or archaeological significance. (FEA at III-4.)

6. The entrance channel and the proposed groin location cannot be landscape features of traditional significance because the entrance channel was created in 1959 (there were much smaller entrances previously), and the sandbag groin would be placed on land that has accreted in the last forty years or so. Kuapa Pond is undoubtedly a significant cultural feature but the proposed dredging should not change its appearance. (It was greatly changed by the earlier dredgings.) Portlock Beach may be a significant landscape feature. The project would restore it to more closely resemble its appearance twenty years ago.

12. If these practices were held at some customary time, such as a holiday, one could impose a permit condition that the project halt on the day in question to respect the practice. It appears, however, that these offerings are personal and informal and there is no way to predict when they will occur.

13. Mokuahi mentioned offerings being made from shore near Maunalua Bay Beach Park boat ramp, by a Hawaiian religious group. Tr. at 85-86. Because of the distance from the channel entrance, the project would have no effect on this practice.

14. Rosa, a native Hawaiian, testified that he and his family gathered at the beach in front of his home for an annual remembrance of his father.

15. Rosa did not request any special conditions or considerations for his family gathering. He mentioned it in response to questions, not as a reason for opposing the project. If he requested consideration so that this gathering could take place undisturbed by construction activities for a portion of a day, it would be a reasonable request and could be made the subject of a condition.

16. There is further evidence in the record that customary or traditional Hawaiian practices will not be significantly affected by the proposed project. The Office of Hawaiian Affairs reviewed the draft environmental assessment. Its comments referred only to the issue of public funding of the project, and to the presence of the green sea turtle, not to any customary Hawaiian practices. No other party commenting on the DEA mentioned any concern about native Hawaiian practices. The project attracted considerable testimony at BLNR meetings, but no potential threat to customary Hawaiian

into the Marina entrance channel, and dredging will have to be repeated more frequently. Accelerated erosion of Portlock Beach may also occur. (FEA at II-10)

3. Dredging Without Beach Nourishment. Dredged sand could be removed from the site for possible use on other beaches. If the sand is removed and not used on Portlock Beach, beach erosion will continue. Removal of beach sand from a littoral system is not good coastal zone management. (Testimony of Bucher.)

4. Similar Project, but Paid for by HKMA. A similar project, but entirely funded by HKMA, would require the same CDUP, and the analysis of the application, except for the funding issue, would essentially be the same. HKMA would need a right-of-entry to dredge the submerged lands under the channel and to place sand along Portlock Beach. The groin could be constructed under a right-of-entry if the State would maintain it thereafter. If HKMA retained maintenance responsibilities there should be an easement.

III. CONCLUSIONS OF LAW

A. Consistency with Conservation District Rules.

1. The proposed project is partially in the R subzone, and partially in the G subzone. Marine construction and dredging may be approved in the R subzone, with a board permit. H.A.R. §13-5-24. Marine construction and dredging may be approved in the G subzone, with a board permit. H.A.R. §13-5-25.

2. In order to grant a conservation district use permit, the board must find the following:

a. The proposed land use is consistent with the purpose of the conservation district;

4. The purposes of the conservation district are set forth in H.R.S. §205-2(e). The project is consistent with the purposes of the conservation district in that it is a permitted use (under the conservation district rules), which is not detrimental to a multiple use conservation concept. Thus, the project conforms to H.A.R. §13-5-30(c)(1).

5. The overall purpose of the conservation district rules is to "regulate land use in the conservation district for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare." H.A.R. §13-5-1. The project is consistent with the purposes of the conservation district rules, and thus, conforms to H.A.R. §13-5-30(c)(1).

6. The objective of the Resource subzone is "to develop, with proper management, areas to ensure sustained use of the natural resources of those areas." H.A.R. §13-5-13(a). The project promotes the sustained use of Portlock Beach, and thus, conforms to H.A.R. §13-5-30(c)(2).

7. The purpose of the General (G) subzone is "to designate open space where specific conservation uses may not be defined, but where urban use would be premature." The project enhances the use of Hawaii Kai Marina as a waterway and drainage basin, and thus, conforms to H.A.R. §13-5-30(c)(2).

8. The conservation district rules incorporate the "Special Management Area Guidelines," contained in H.R.S. §205A-26.

9. Of the SMA Guidelines, H.R.S. §205A-26(3) merits additional discussion:

The authority shall seek to minimize, where reasonable:

funds for what the petitioner and some others consider a project with essentially private benefits.

2. Public funds must be used for public purposes. Art. VII, §4 of the Hawaii State Constitution provides that "No tax shall be levied, nor shall the public credit be used, directly or indirectly, except for a public purpose."

3. Act 231, S.L.H. 1994, appropriated $240,000 for the dredging of the channel entrance. The Legislature declared that "the marina, although private, serves several important function in time of emergency," and mentioned it being a refuge for boats during storms, a base for clean-up operations, and that rescue and fire equipment could be transported. It declared that "keeping the entrance to the Hawaii Kai Marina in navigable condition serves a public purpose because important health, safety, and welfare considerations are involved." The Governor later released these funds.

4. While the legislature's determination that a public purpose exists is not absolutely conclusive, it is given great weight, and should be respected unless it is "manifestly wrong." State ex. rel. Amemiya v. Anderson, 56 Haw. 566, 545 P.2d 1175 (1976).

5. While the project does, in fact, serve a public purpose for members of the Hawaii Kai Marina Association, it is questionable whether the members of the general public are being served since they are excluded from entering the Marina.

C. Liability Issues.

1. The BLNR requested an analysis of the State's liability issues as a part of the CDUA.

3. COEMAP discourages coastal armoring as a response to erosion. (Id. at 36.) "Armoring" or "hardening" means constructing seawalls, bulkheads, revetments, and the like. The project's groin is not a "armoring" or "hardening" structure.

4. The petitioner has pointed to statements in COEMAP encouraging a cost-benefit analysis of proposed erosion management strategies, and has complained of the lack of this analysis for this project. (See Petitioner's Proposed Findings of Fact, par. 48.)

5. These statements in COEMAP relate to economic analysis of alternatives such as purchasing land and letting it erode versus the cost of engineered solutions to protect property. Such an economic analysis, while never free from uncertainty, can at least begin with the value of the property meant to be protected. In the present project, the primary goal is to fix a safety hazard. The beach nourishment aspect is secondary. A cost-benefit analysis of a safety project presents serious and perhaps unsolvable issues, like the value to be placed on human safety. COEMAP does not require such an analysis.

E. Customary And Traditional Hawaiian Rights.

1. Article XII, Section 7 of the Hawaii Constitution places an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights, and confers upon the State and its agencies the power to protect these rights and to prevent any interference with the exercise of these rights. Ka Pa`akai O Ka `Aina, et al. v. Land Use Commission, State of Hawaii, et al., ____

7. The project will enhance the use of the area for the outrigger canoe paddling, a traditional and cultural Hawaiian activity.

F. Use Of Ceded Lands.

1. Petitioner also challenges the use of ceded lands for this project. The submerged lands used for this project are ceded lands subject to §5(f) of the Admissions Act.

2. The project's uses of submerged lands are (1) to make an area of sand which is now partially underwater deeper by dredging, (2) for the sandbag groin, and (3) for an area to place the dredged sand (along Portlock Beach).

3. None of these uses will impair or interfere with any rights or activities presently enjoyed by the public in the area.

4. The project does not require any disposition of state land to a private entity. Boaters using the marina do not need an easement, lease, or other disposition from the State to traverse the area under the bridge. These are navigable waters.

5. The petitioner has referred to the Hawaii Supreme Court's memorandum decision in Office of Hawaiian Affairs v. Board of Land and Natural Resources, (No. 19774) (March 12, 1998). In that opinion, the Hawaii Supreme Court reviewed the BLNR's decision to allow a private party, Haseko, to excavate an entrance channel to a 1400 slip marina through the state-owned shoreline.

6. The Hawaii Supreme Court upheld this use against a claim that this was an improper use of ceded lands, and cited a number of public benefits from the project.

for the Section 401 Water Quality Certification, including deployment of a silt curtain across the entire water column to control turbidity;

3. Implementation of the five-year monitoring plan for the sandbag groin;

4. Heavy equipment shall not be operated near the entrance channel except in daylight hours. In front of homes, heavy equipment shall be operated only in daylight hours, and also shall not be operated in the early morning and late afternoon;

5. Dredged material shall be periodically analyzed to make sure it is suitable for beach replenishment, and only suitable material shall be so used (less than (9) 6% with grain size under 0.062 mm.) It shall be tested for unwanted contamination, such as petroleum by-products. The sand shall be screened to remove pebbles;

6. The sandbag groin shall not be placed until the accreted area to the southeast of the channel, which is expected to erode slightly, 10-20 feet, after the dredging begins, has stabilized. (See p. 2 and p. 6 of Fletcher testimony;)

7. The same area which is expected to erode is full of trash, which shall be removed before dredging begins so that it does not wash into the ocean;

8. Negotiation of a memorandum of agreement, if one does not already exist, between DOBOR and HKMA, allowing the use of the Marina as a staging area for boats and equipment in case of an oil spill or other emergency, and as a safe harbor for boats during storms. This condition may be satisfied by an agreement in principle between the marina manager and DOBOR prior to initiation of construction;

9. Representation by HKMA that it will continue to provide access to the Marina waters to Hui Nalu and the Kaiser High canoe clubs, on reasonable terms and conditions, unless there is serious misconduct by the clubs; and

17. All material placed on the beach shall be free of metal products, organic materials, debris and any pollutants at toxic or potentially hazardous concentrations to aquatic life;

18. Any material not suitable for beach nourishment must be processed and disposed of according to State Department of Health and U.S. Army Corps of Engineers requirements;

19. Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the project plans and specifications to the chairperson or his 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 applicant. Plan approval by the chairperson does not constitute approval required from other agencies;

20. In issuing the permit, the department and board have relied on the information and data, which the applicant 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;

21. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

22. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;

27. Such other terms and conditions that are deemed reasonable by the Chairperson; and

28. Failure to comply with any of these conditions shall render this permit null and void.

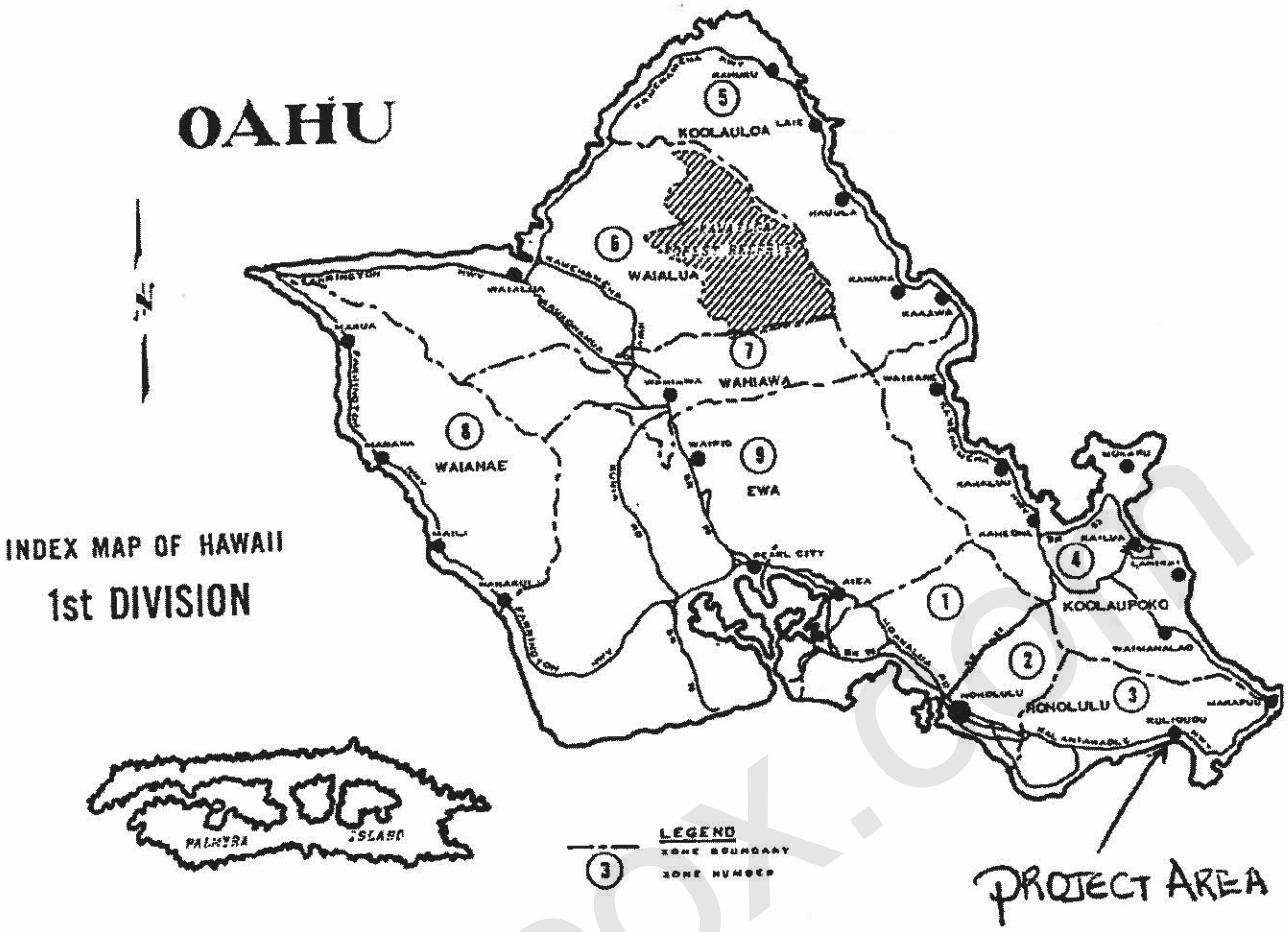


EXHIBIT 1 ISLAND MAP PG. 1 OF 1

EXHIBIT 2

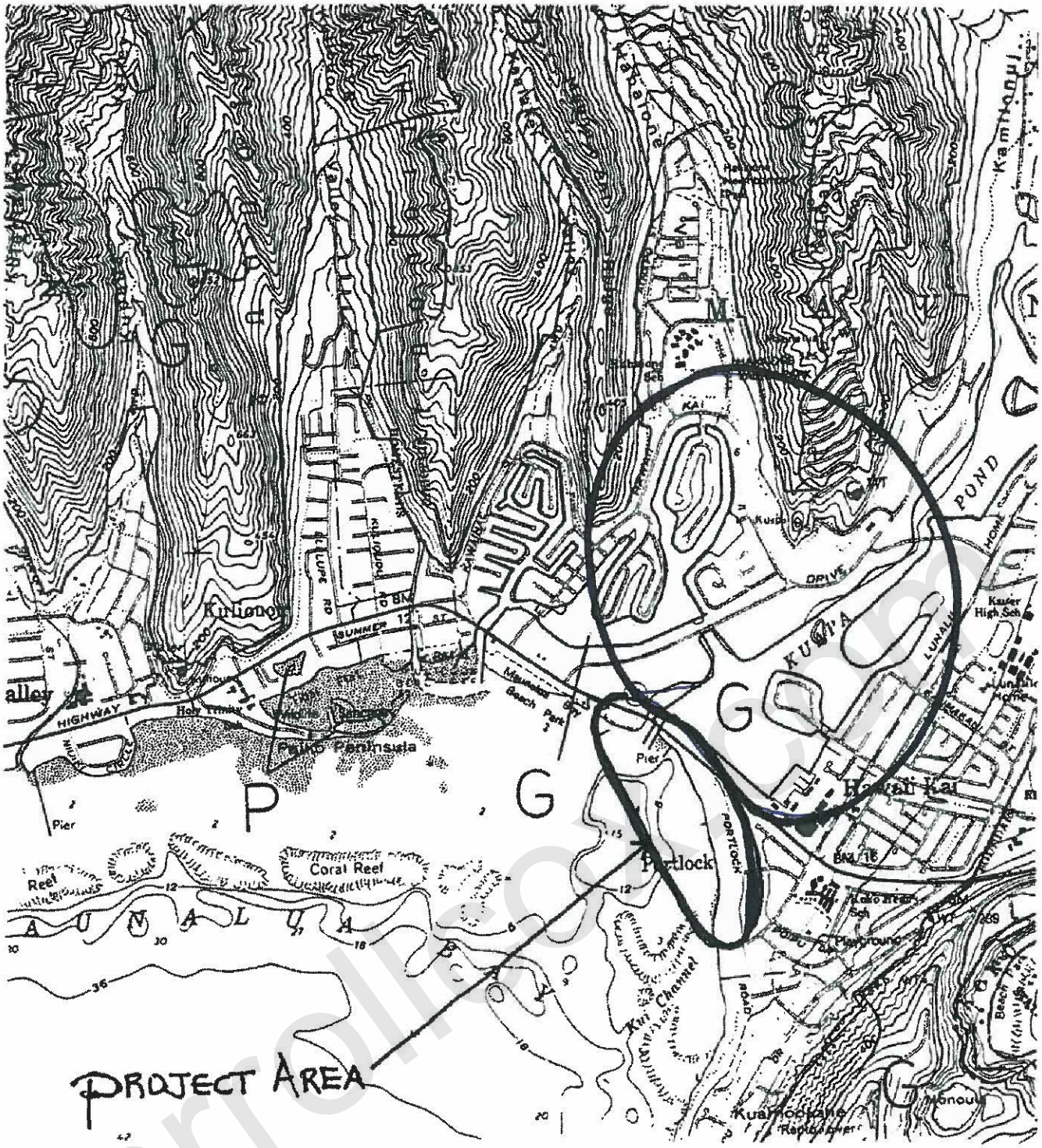


EXHIBIT 2 **SUBZONE/AREA MAP** **PG. 1 OF 1**

EXHIBIT 3

ANCHOR QEA

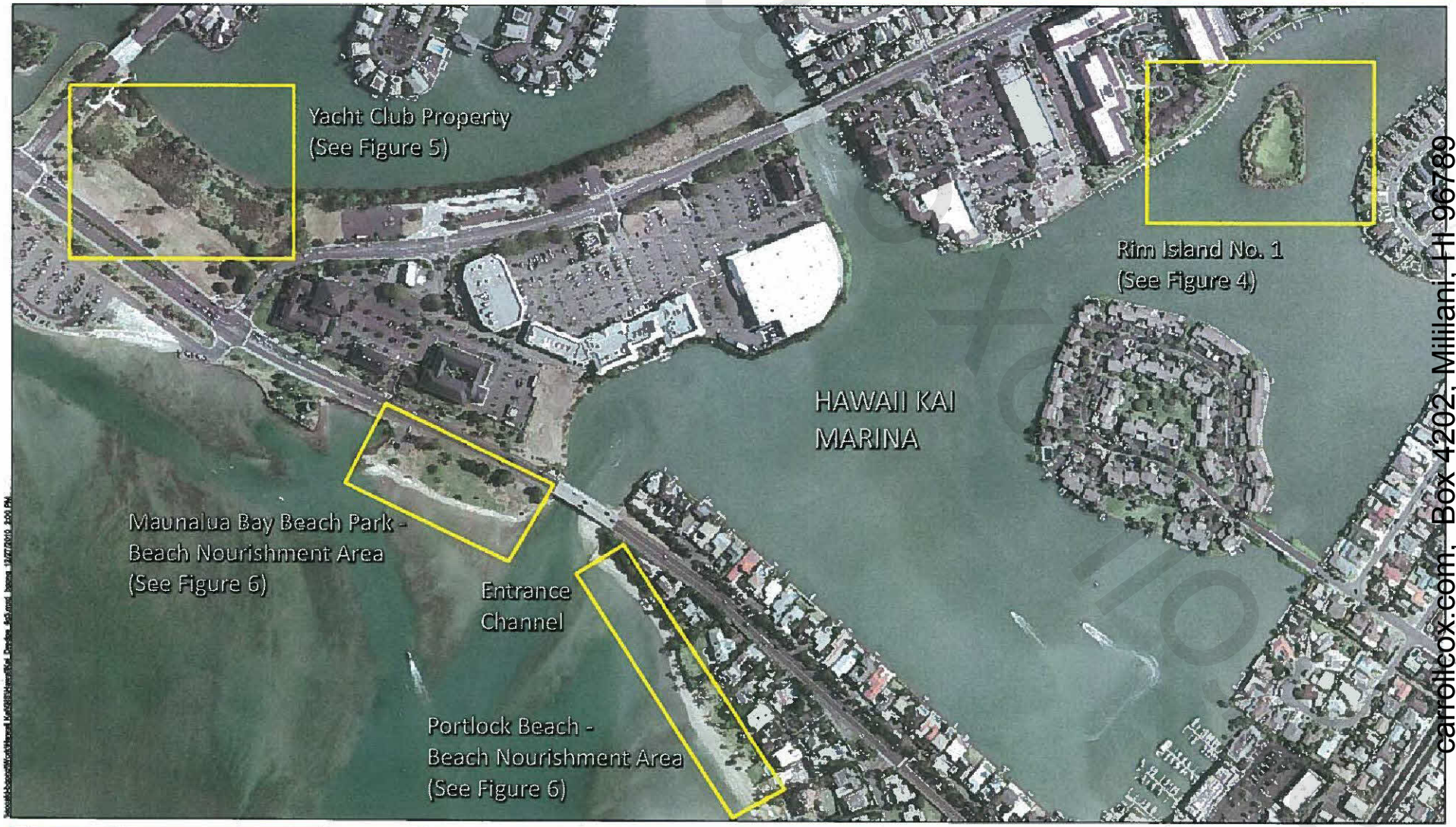
Feet
0 500 1,000

Figure 2
Proposed Dredge Areas
Hawaii Kai Marina and Entrance Channel Maintenance Dredging

EXHIBIT 4

ANCHOR QEA

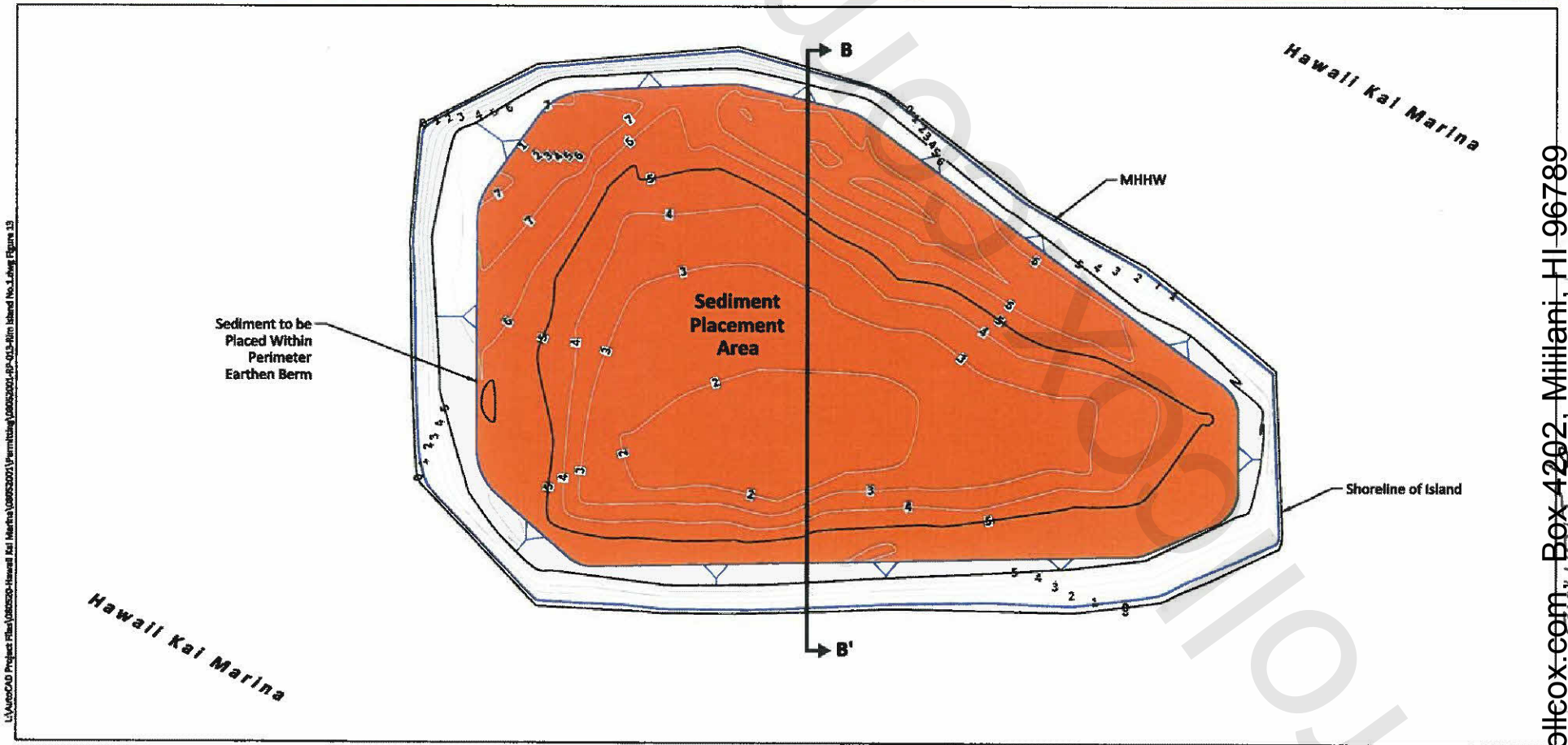
Figure 2
Bathymetric Survey of Hawaii Kai Marina
Hawaii Kai Marina and Entrance Channel Maintenance Dredging



ANCHOR QEA

Feet
0 500 1,000

Figure 3
Proposed Upland Areas for Dredged Material Placement
Hawaii Kai Marina and Entrance Channel Maintenance Dredging



L:\AutoCAD Project Files\080520-Hawaii Kai Marina\080520021\Permitting\080520021-RP-013-Rim Island No.1.dwg Figure 13

Dec 29, 2010 9:03am benaye

SOURCE: Drawing prepared from Austin, Tsutsumi & Associates, Inc., file named, "09-15.dwg" dated March 23, 2009.
HORIZONTAL DATUM: All azimuths are referred to Government Survey Triangulation Station "KOKO HEAD3."
VERTICAL DATUM: Elevations referred to Benchmark I-11, (Elev. = 16.00) mean sea level (MSL).

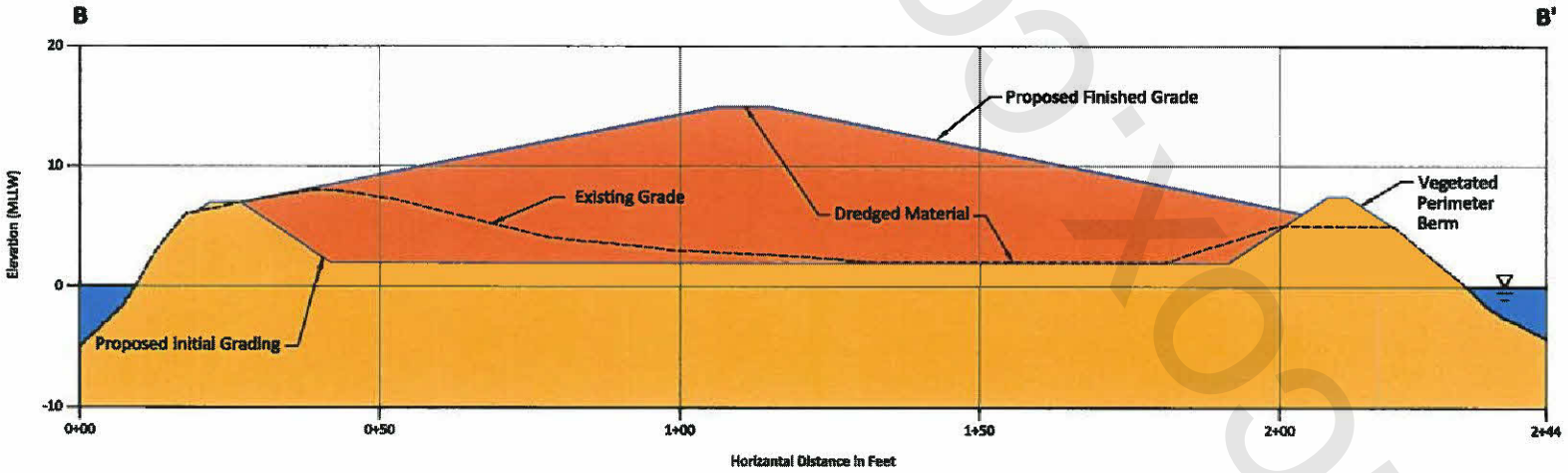
NOTES:
1. MHHW determination (+0.82' MSL) based on NOS Station 1612340 (Honolulu) for the 1983-2001 tidal epoch.

LEGEND:
- Approximate Extent of Sediment Placement Area
- MHHW (+0.82' MSL)

0 40
Scale in Feet

ANCHOR QEA

Figure 13
Proposed Sediment Placement Area - Rim Island No. 1
Hawaii Kai Marina and Entrance Channel Maintenance Dredging



Section B-B'

L:\AutoCAD Project Files\080520-Hawaii Kai Marina\080520001\Permitting\080520001-A9-013-Rim Island No.1.dwg Figure 14

Dec 29, 2010 2:49pm bmaye

SOURCE: Drawing prepared from Austin, Tsutsumi & Associates, Inc., file named, "09-15.dwg" dated March 23, 2009.
HORIZONTAL DATUM: All azimuths are referred to Government Survey Triangulation Station "KOKO HEAD3."
VERTICAL DATUM: Elevations referred to Benchmark L-11, (Elev. = 16.00) mean sea level (MSL).

Horizontal Scale in Feet
0 20 40
0 10 20
Vertical Scale in Feet
Vertical Exaggeration x 2

ANCHOR QEA

Figure 14
Conceptual Cross Section - Proposed Sediment Placement on Rim Island No. 1
Hawaii Kai Marina and Entrance Channel Maintenance Dredging

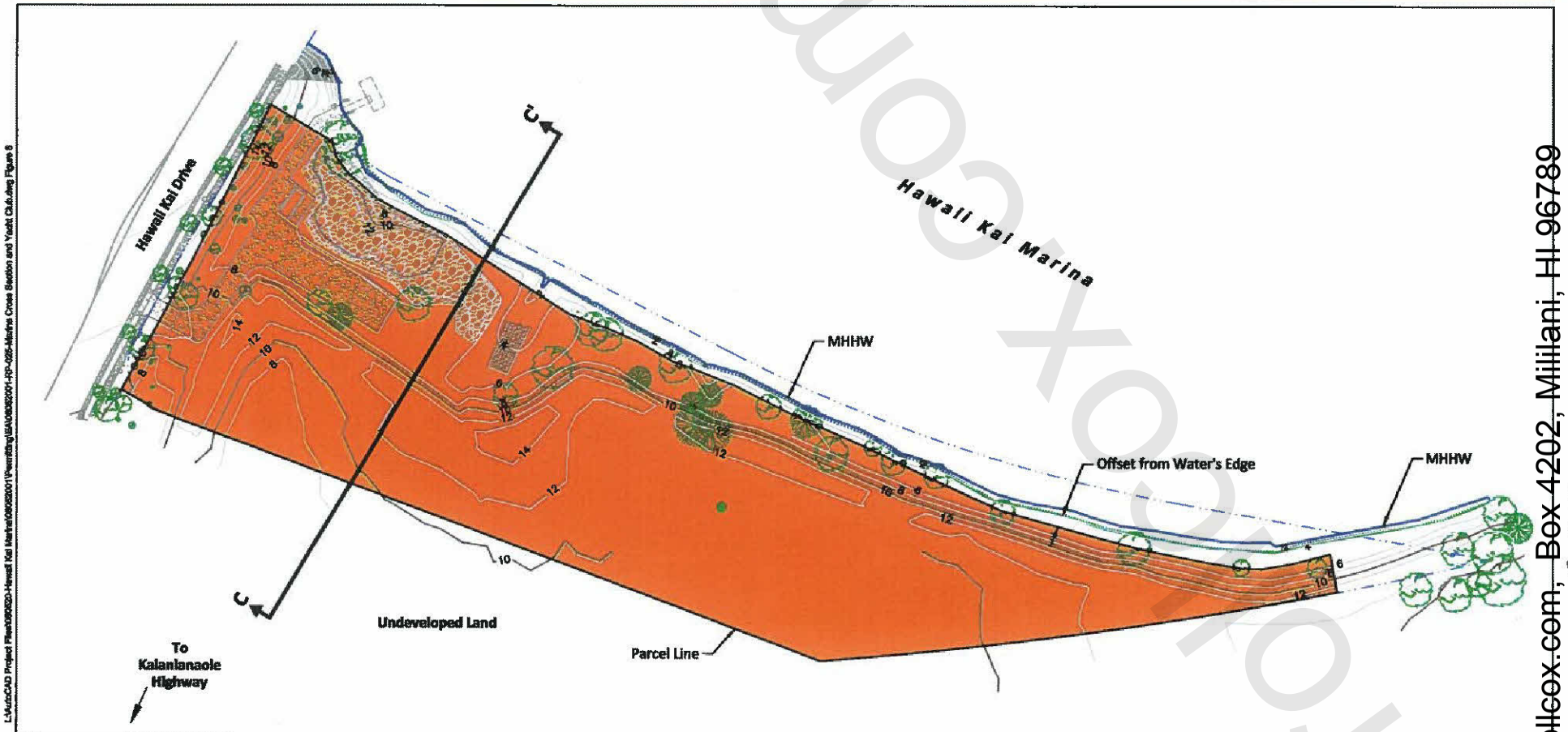
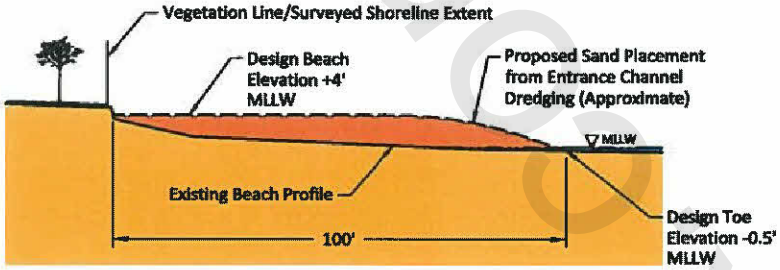
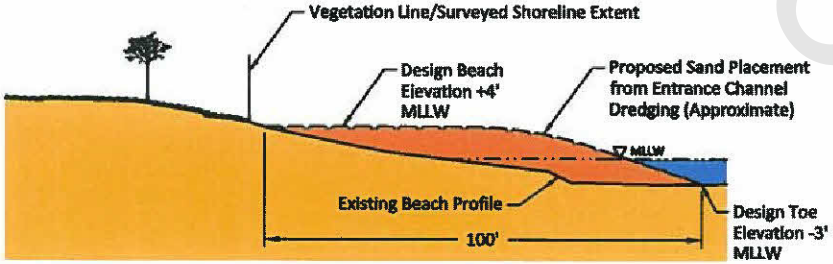


Figure 5
Proposed Sediment Placement Area - Yacht Club Property
Hawaii Kai Marina and Entrance Channel Maintenance Dredging



Maunalua Bay Beach Park (Typical)



Portlock Beach (Typical)

HORIZONTAL DATUM: Hawaii State Plane, Zone 3, NAD83 HARN.
VERTICAL DATUM: mean lower low water (MLLW).

NOTES:
1. Bathymetric survey performed by Northwest Maritime Industrial in January 2009.
2. Topographic survey of adjacent Shoreline performed by Austin, Tsutsumi, and Associates Inc., in February 2009.

Horizontal Scale in Feet
0 30 60
0 15 30
Vertical Scale in Feet
Vertical Exaggeration x 2

ANCHOR QEA

Figure 6
Conceptual Cross Sections - Beach Nourishment Areas
Hawaii Kai Marina and Entrance Channel Maintenance Dredging

ANCHOR QEA

Figure 2

Bathymetric Survey of Hawaii Kai Marina

Hawaii Kai Marina and Entrance Channel Maintenance Dredging

ANCHOR QEA

26300 La Alameda, Suite 240
Mission Viejo, California 92691
Phone 949.347.2780
Fax 949.334.9646

June 1, 2011

Jim and Sherry Dittmar
485 Opihikao Place
Honolulu, Hawaii 96825

Re: Hawaii Kai Marina and Entrance Channel Maintenance Dredging
Draft Environmental Assessment, Oahu

Dear Mr. and Mrs. Dittmar:

Thank you for your comments on the Draft Environmental Assessment. Each of your comments has been reviewed; in this letter, the comments are repeated in the originally submitted form (in *italicized* font), and a response is provided in the paragraphs below.

Comment:

1. *Memo dated March 9, 2010 from OCCL to OEQC. I am always bothered by an agency that makes a determination before all the "I" doteed and "t" are crossed, however preliminary.*

Response: See response to comment 2.

Comment:

2. *Cover page of EA- It states it is an Environmental Assessment not a Draft EA. It gives the impression that this document is done deal. See comment above.*

Response: This was a draft Environmental Assessment, submitted for review and comment. All comments received are being evaluated, and changes are being made as appropriate. A Final Environmental Assessment will be submitted that incorporates these changes.

EXHIBIT B

Comment:

3. *Page I under Required Permits a Grading Permit from the CCH is not cited, and will be required.*

Response: Comment noted. A grading permit from the City and County of Honolulu permit has been added to the list of required permits.

Comment:

4. *Page ii Under Consulted Orgaization it should listed.*

Response: The City and County of Honolulu will be added to list of organizations consulted.

Comment:

5. *Only the State and Federal organizations were contacted. Why not Community organizations for local knowledge. They could have supplied local knowledge which this EA is lacking.*

Response: Several local experts were consulted as part of the Environmental Assessment. Most notably, local biologists conducted the biological survey and review of the marina, entrance channel, and adjoining beaches, and local archaeological and cultural resource experts performed a review of historic and cultural resources. Other firms and individuals who work in Honolulu and the Hawaii Kai area have been contacted at various stages during the environmental assessment work. Such consultations are requirements of state and federal laws, all of which have been followed in the process of performing the Environmental Assessment, understanding the potential effects of this work on the surrounding environment, and completing permit applications.

Comment:

6. *Page 1 The Mayway Entrance Channel is not cited. This Channel provides important water circulation to west Marina and is used by kayaks, outrigger canoes and small power boats.*

Response: This project specifically involves the main Entrance Channel, which is used by all passenger-sized boats and vessels entering the marina, and areas within the marina that are

shallower than reasonable navigable elevations. The Mayway Entrance Channel is not being dredged as part of the proposed project; thus, it is excluded from the report.

Comment:

7. *Page 2- date should be 1977 not 1077. Also the Marina first applied to the COE for a dredging permit in August 2004. The sentence "The HKMCA did not obtain an permit for this activity." This is wrong, no Permits were obtained.*

Response: The cited year has been changed to "1977". In 2004, permits were pursued for dredging of the marina, but the permits were not successfully obtained, due to issues raised by regulatory agencies regarding the use of Rim Island 2 as a disposal site.

Comment:

8. *Page 4- The Marina has spend thousands of dollars on Wildlife Studies for the Ae'o at RI2. These studies should have included in appendix. A general discussion of the Ae'o at RI2 ie number, nesting etc should be included in the text. This information is necessary for any analysis on the impact of dredging Ae'o at RI2. Since this information is not include one wonder's as to the reason for it's absent. It should be noted in the DEA that RI2 is only nesting site for the Ae'o from Pearl Harbor to the Windward side of Oahu.*

Response: A biological survey and report was completed for this project, and is cited on multiple occasions in the Draft Environmental Assessment. The full report is available from the Hawaii Department of Land and Natural Resources or from the Hawaii Kai Marina Community Association (HKMCA) and in Appendix D of the Final Environmental Assessment. In Sections 1.3, 4.8.1, and 4.8.2.1 of the Draft Environmental Assessment, it is noted that Rim Island 2 was not considered as a disposal area because of the existence of suitable habitat for the Hawaiian Stilt. The dredging project is not anticipated to have an impact on the Hawaiian Stilt.

Comment:

9. *Page 4 paragraph on landfill should rewritten does not make sense.*

Response: Paragraph will be revised for clarity as necessary.

carrollcox.com, Box 4202, Mililani, HI 96789

Comment:

10. Page 5- 1.4 No Action should be No Action Alternative.

Response: Comment noted and revision made.

Comment:

11. Page 5 1.5 Again list CCH Grading Permit.

Response: City and County of Honolulu grading permit added to Section 1.5.

Comment:

12. Page 6- Migratory Bird Treaty Act is applicable since the Marina is winter home to migratory birds. The Migratory birds should also be listed as winter native bird residents.

Response: Comment noted and applicable revisions have been added.

Comment:

13. Page 8 Table 3 does not list the entrance channels dredging volume I realize it a separate area but the Permits are for all dredge areas. Why was Marina Lot 2, a two acre parcel deeded to the HKMCA for the temporary storage of dredge material discussed?

Response: Table 3 does not list the entrance channel dredge volume because the entrance channel dredge volume was not split into different areas. The table is used to differentiate the volumes for various dredging areas within the marina. The entrance channel volume is discussed in Section 2.1. All suitable, feasible, and available parcels were considered for sediment disposal, but the authors and project proponent (HKMCA) are unclear on what parcel the reviewer is referring to as "Marina Lot 2".

Comment:

14. Figure 2 I live in the Marina Dredging 2 how come we not notified of DEA?

Response: All affected residents were given the opportunity to learn about this project and the Draft Environmental Assessment, which was published by the Office on Environmental Quality Control as part of a public notice. Furthermore, letters announcing a public meeting concerning the proposed project were mailed by the HKMCA to all residents adjacent to dredge areas of the project. (This public meeting was held on April 12, 2011.)

Comment:

15. *Page 10 – I am pleased to see RI1 used as fill site, since past Presidents of the HKMCA has testified that it was filled to capacity and could not be used.*

Response: Current engineering evaluations have concluded that Rim Island 1 has capacity for approximately 5,000 cubic yards of sediment storage.

Comment:

16. *Since the tsunami a new hydrographic survey should be done cine the Channel entrance has changed.*

Response: An updated hydrographic survey will be completed prior to project construction.

Comment:

17. *Will RI 1 and the Yatch Club sites be landscaped after being used for fill?*

Response: Rim Island 1 and the Yacht Club property will be graded and seeded after sediment placement in order to stabilize the newly constructed surface against erosion as discussed in Section 2.2.1.

Comment:

18. *Figure 5 – There is no Cross Section figure for the Yatch Club site.*

Response: Figures 4 and 5 in the Draft Environmental Assessment depict conceptual fill plan designs for Rim Island 1 and the Yacht Club property. Additional figures showing cross-sectional views of the conceptual fill plan designs are provided as attachments to this letter.

Comment:

19. *Page 21 – A major environmental impact on Manalua Bay will be the transfer of dredge material to larger barges. This needs to be discussed with mitigation measures.*

Response: A Clean Water Act section 401 permit has been applied for as part of the permitting process for the proposed project. The issued 401 permit will stipulate conditions on the dredging activity, to ensure there is no adverse impact to water quality.

Comment:

20. *Page 23 – Noise- Why is the State of Hawaii Endangered Species Act not mention in this DEA. We do not know how may Ae'o reside at RI2 but estimate there 20 Ae'o on the Island. They nest from March to August and the noise from the dredging operations would be considered hazing which is prohibited in State ESA. Care should not disturb the Ae'o during nesting season.*

Response: Noise impacts on sensitive species have not been cited as a concern by the federal and state regulatory and natural resources agencies. All relevant agencies have been offered the opportunity to review and comment on project-related documents, and compliance with applicable provisions of the state and federal Endangered Species Acts will be mandatory when this project is being constructed.

Comment:

21. *Page 24 -4.1.2 Potential Impacts – again no analysis on how they reach this conclusion – There are three Endangered Waterbirds with the Hawaii Kai Marina and environs. One is the Ae'o, Hawaiian Stilt, the 'Alae'Ula, the Common Moorhen (Gallinula choropus sandvicensis) and part time visitor the 'Alae Ke' oke'o, Hawaiian Coot (Fulica alai) all of which could be affected by the noise from the dredging. An analysis needs to made impact to these endangered species.*

Response: A biological survey was completed by local biologists with expertise in these sensitive species, and the appropriate state and federal regulatory and natural resources agencies have been offered the opportunity to review and comment on project-related documents. The biologists and agencies have determined that there will be no impacts to any

endangered or threatened species as a result of the project, including no noise-related impacts as discussed in Section 4.8.2.1.

Comment:

22. *Page 25 Water Quality – The AECOS Report 2010 must be included in the Drafe in order for the reviewer to understand the conclusions that were reached by the authors of the DEA.*

Response: Direct references were taken from the AECOS 2010 report and included in the Draft Environmental Assessment. The full report was cited, is available from the Hawaii Department of Land and Natural Resources or from the HKMCA, and is provided in Appendix D of the Final Environmental Assessment.

Comment:

23. *Page 25- Current conditions- There are several areas with the Marina that the HKNCA has stated that are not recommended for water contact activity. These areas should be listed and the impact that the dredging will have on them.*

Response: This appears to be a misunderstanding or information that is no longer in effect. Consultation with the Hawaii Kai Community Association indicated that they have not, in the recent past, recommended any areas as unsuitable for water contact activity.

Comment:

24. *Table 5, page 27- The DOH Water Quality Rules and Regulations for Water Quality within the Marina should also be listed for comparison as compared to current conditions within the Marina.*

Response: The Draft Environmental Assessment states that current water quality conditions will be used as a reference against which any project-related effects on water quality can be directly compared. State water quality standards and water quality standards specified in the 401 water quality certification issued by the Hawaii Department of Health will be adhered to during the project.

Comment:

25. *Page 29- Potential Impact- In the past Red Tide has been a problem within the Marina during summer months. With dredging it is expected that the sediment will release additional nutrients in the water column. This should be discussed and mitigation measures proposed.*

Response: Dredging within the marina will occur in a segmental fashion, limiting the area of disturbance at any particular time. In addition, a continuous barrier of silt curtains will be maintained around the area of active dredging to separate the workspace from the rest of the marina. The use of silt curtains and phased dredging will minimizes the release of turbidity and nutrients and their movement within the marina. Thus, the proposed dredging is not anticipated to increase the incidence of algal blooms within the marina. This discussion has been added to the Final Environmental Assessment in Section 4.3.2.

Comment:

26. *Page 33- The Biological Survey deals only with the entrance channel and should be labeled as such. It appears to be a cut and paste job from the last Oceanet EA for the 2004 Channel Dredging.*

Response: A new biological survey was performed by AECOS in 2010, specifically for this project. Information from their report was included directly in the Draft Environmental Assessment. The AECOS report includes both historical data and recent project-specific surveys, and addresses the marina, entrance channel, and beach nourishment sites.

Comment:

27. *Page 41 – 4.8.1 When one looks at biological information for the Channel site it appears adequate particularly in comparison to this section. The DEA twelve species of fish from the Marina dredging sites and no benthic invertebrates. Again this shows a complete lack of local knowledge. Chuck Johnston, Publisher of Hawaii Fishing News, and a past president HKMCA, lives on the Marina and should have been contact for his input this section. They should add hammerhead sharks, moray ells, conger ells, puffer fish, papio, barracuda, the occasional ahi and how could they miss the ubiquitous tilapia.*

Response: Section 4.8 discusses all species found in the biological survey, which was performed by an experienced local firm (AECOS) and included a complete evaluation of benthic invertebrates. Table 6 lists all organisms observed during the survey.

Comment:

28. *Page 41 Upland Disposal Areas- Will the Yatch Club and Rim Island No. 1 be landscaped after being use a s dump site for dredging?*

Response: Rim Island 1 and the Yacht Club property will be graded and seeded after sediment placement in order to stabilize the newly constructed surface against erosion as discussed in Sections 2.2.1 and 2.2.2.

Comment:

29. *Page 45- Potential Impacts to the Marine Biota- Again Red Tide and possibility of fish kills due to lack of dissolved oxygen. What are the species of marine benthic organisms that will be lost during dredging.*

Response: It is anticipated that some of the benthic species listed in Table 6 of the Draft Environmental Assessment will be physically removed by the dredging. Benthic organisms on the reefs and attached to structures such as docks and piles, on the other hand, would not be impacted. The proposed project has been reviewed by the appropriate regulatory and resource agencies, and standard best management practices (BMPs) will be implemented in addition to the agency permit conditions to protect natural resources and water quality.

Comment:

30. *Page 45 Potential Impacts to the Protected Species. There is no analysis on the impact of the dredging activity on the Hawaiian Stilt colony on RI2, particularly during the Stilt nesting season from March to August in Dredge Area 3. It should be noted that there are a pair of Hawaiian Stilt at Duck Island which going thru nesting behavior. How will dredging affect them, Dredge Area 1. Within 200 feet of Dredge Area 2 is a wetland which connects directly to the Marina, the Oahu Club wetland, it is home to up to 11 of the Common Moorhen, an Endangered Species of Hawaiian Waterbird, there estimated to only 350 left in the State. They nest year round what will the effect of dredging on their nesting cycle?*

Response: The evaluation of endangered species in and around the dredging areas (as documented in the Draft Environmental Assessment) concluded that the planned project is not expected to have any impact on such species. Rim Island 2 and other sensitive areas have been specifically avoided to ensure that they are not disturbed during the project.

Comment:

31. *Page 49 – Where is the report by AECOS 2010, again by not including the report one wonders if this an omission or by commission. Will WQMP and BMP be made available to the public?*

Response: The AECOS report is available through the Hawaii State Department of Land and Natural Resources or from the Hawaii Kai Marina Community Association, and is provided in Appendix D of the Final Environmental Assessment. The WQMP and BMP plan will be submitted to the required regulatory agencies prior to permit issuance or project approval.

Comment:

32. *It is the usual practice in Hawaii at the end of the EA/EIS to include the qualifications and experience of the technical personal responsible for the document.*

Response: An appendix will be added to the Final Environmental Assessment with qualifications of authors.

We trust that the above responses present sufficient information and clarifications in response to your comments on the project. Your interest and participation in this important process are appreciated. Should you have any questions about the proposed project or require additional information, please contact me at (949) 347-2780.

Sincerely,

Michael Whelan
Anchor QEA, L.P.

Attachments: Environmental Assessment Figures 6 and 7