

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

February 13, 2009

CDUP Exp. Date: December 31, 2020

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

REGARDING: Rescind an Amendment Regarding the Size of the Hoakalei Marina for Conservation District Use Permit (CDUP) OA-2670 for the Construction of a Marina Entrance Channel

Contested Case Request Regarding Amendments to Conservation District Use Permit (CDUP) OA-2670 for the Construction of a Marina Entrance Channel

PERMITTEE: Haseko (EWA), Inc.

PETITIONER: Michael Kumukauoha Lee

LANDOWNER: State of Hawaii

LOCATION: Submerged Land, Honouliuli, Ewa, Oahu
Makai of plat (1) 9-1-012

SUBZONE: Resource

BACKGROUND:

The subject area exists on the south shore of Ewa, Oahu and is part of the Ocean Pointe Master Plan. Staff notes in this particular area, the Conservation District is defined as makai (seaward) of shoreline. The shoreline meanders along this coast and may be defined by 'the road,' 'vegetation' and the 'highest wash of the waves.'

On April 26, 2000, the Board of Land and Natural Resources (Board) approved the first amended Findings of Fact, Conclusions of Law, Decision and Order conditionally granting Haseko a Conservation District Use Permit to construct a marina entrance channel at Honouliuli, Ewa, Oahu (**Exhibit 1**). Two of the ten issues to be considered in the contested case included issue #7 regarding protection of archaeological sites to be impacted by the project and issue #9 regarding traditional and customary activities in the area (**Exhibit 2 & 3**).

On July 13, 2001 the Board approved a request by Haseko to amend CDUP OA-2670¹ to recognize a reduction in the size of the marina from 120 acres to approximately 70 acres. This

¹ Condition # 32 of CDUP OA-2670 states, "Implementation of the project shall be in general conformity with the representations made in the application on file with the Department and at the contested case hearing. Any substantial change in the size or nature of the marina as determined by the department shall require an amendment to

amendment to the permit did not change the size of the entrance channel that is located within the Conservation District.

On August 24, 2007, Haseko again came before the Board to request a second amendment to CDUP OA-2670 to reduce the size of the marina from 70-acres to 53.76-acres. Action on this matter was deferred as Staff was requested to investigate a possible breach of the Memorandum of Agreement (MOA) regarding historic sites that is incorporated in CDUP OA-2670 under conditions #10 and #26. The MOA was created under U.S. Army Corps of Engineers (USACE) permit and pertains to the treatment of historic sites on the project site.

On October 26, 2007, the Board found Haseko in violation of §183C-7, Hawaii Revised Statutes and §13-5-6 of the Hawaii Administrative Rules regarding non-compliance of Conservation District Use Permit (CDUP) OA-2670 Conditions #10 and #26. Haseko paid all fines and remedied all non-compliance issues under the permit. During the processing of this case, discussion between the Permittee and the U.S. Army Corps of Engineers (USACE) indicated that, "the SHPD and not OCCL, has standing to amend/enforce the terms of the MOA."

On February 22, 2008, the Board of Land and Natural Resources amended CDUP OA-2670 to reflect a reduction in size of the Hoakalei Marina from approximately 70-acres to approximately 53.76-acres. In addition, the Board approved several amendments to the permit as suggested by the Department. These additional amendments were to amend condition #11 to state: "The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for the final TMK(s) that contains the marina component, prior to submission for approval of construction plans for the marina channel"; amendment of condition #22 to state: "The applicant shall provide fully developed and Government approved plans for constructing a flood drainage system in concert with the drainage plans for the upper development of Kapolei, Ewa Villages, and other developments in the Kaloι Gulch watershed"; and amendment of condition #26 to state: "The Applicant shall comply with the provisions contained in the Memorandum of Agreement (MOA) among the Applicant, the Hawaii State Historic Preservation Division, the U.S. Army Corps of Engineers (USACE), the Advisory Council of Historic Preservation and the Office of Hawaiian Affairs (OHA) regarding the treatment of historic sites on the project site. Provisions of the MOA to the contrary notwithstanding; the Applicant shall also consult directly with the Hawaii State Historic Preservation Division (SHPD) and the Office of Hawaiian Affairs (OHA) on matters relating to the MOA. The applicant shall submit quarterly reports to SHPD and OHA on activities relating to and progress in implementing the MOA."

At the February 22, 2008 meeting, the Petitioner, Michael Kumukauoha Lee, requested a contested case. The Petitioner's verbal request for a contested case was subsequently followed up with a written petition on February 29, 2008 (**Exhibit 4**). The written petition challenged the action on the basis that "significant ali'i burial site identified in beach area to be destroyed by construction of marina entrance. Improper regulatory oversight and archaeological investigation of cultural and historic resources." The Petitioner did not appear to be challenging the other amendments to the permit that had been requested by the Department.

the permit. Any change that the department determines to be incidental, shall be permitted upon review and approval of the Chairperson."

On December 12, 2008, Staff recommended to the Board that the Petitioner's request for a Contested Case be denied as the amendments to CDUP OA-2670 would not affect the size of the entrance channel and therefore shall not change the nature, character, and extent of activity within the Conservation District that had been previously approved. At this meeting Mr. Lee raised a new issue regarding water circulation within the marina and the potential affects to the ocean. As such, the Board allowed Mr. Lee ten days to amend his petition.

On December 18, 2008, the Department received the amended petition from Mr. Lee. Mr. Lee's specific disagreement, denial or grievance continues to be, "Inadequate and inefficient government regulatory oversight of public trust resources thereby irreparably and unreasonable harming my ability to exercise my traditional and customary Native Hawaiian practices." "Efficacy of DLNR/BLNR in properly identifying, assessing, mitigating natural, cultural and historical resources and traditional and customary Native Hawaiian practices."

In addition, under the outline of basic facts, Mr. Lee amended his petition to state, "the high potential for toxicity and anoxic conditions to develop in a reduced marina with more stagnant water and less circulation..."(Exhibit 5).

By correspondence dated January 15, 2009, Haseko withdrew its request to reduce the size of the marina (Exhibit 6).

DISCUSSION:

Staff notes Mr. Lee's grievance regarding the archeological, cultural and historical features were mitigated and addressed under the USACE permit that was issued to Haseko (Ewa) on June 28, 1993 via a Memorandum of Agreement for preservation that was created under the USACE permit to mitigate the adverse effects of the project on significant sites noted in the Archaeological Mitigation Plan, Ewa Marina Community Project-Phase I, Mitigation Plan for Data Recovery, Interim Site Preservation and Monitoring dated 1991. The first amended findings of fact, conclusions of law, decision and order in the contested case held by the Board regarding this project confirms that the archaeological and cultural issues were raised and addressed in the original grant of this permit.

Issue #7 and Issue #9 of the first amended Findings of Fact, Conclusions of Law Decision and Order also noted as Exhibit 2 & 3, addressed the impacts to archaeological sites and to traditional and customary activities in the area. The Board addressed these issues, imposed conditions to mitigate potential impacts, and then granted the permit. Condition #26 of the CDUP which incorporated the MOA in regards to the treatment of historic sites on the project site is one such condition.

These issues were previously addressed in the proceedings that resulted in CDUP OA-2670. In addition, the current proposed action, rescission of the Board's grant of Haseko's request to reduce the size of the marina while retaining the other amendments, will not have any physical impact on the land in the conservation district. The most effect it will have is to require additional consultation and communication between the SHPD, OHA, and Haseko regarding the MOA and the treatment of the historic sites on the property. Based on these considerations, Staff cannot recommend reopening these matters for the current actions.

In regards to the wetland (the opaeula habitat) area described in Mr. Lee's petition, this area comes under the U.S. Army Corps of Engineers permit as it is not in the Conservation District, nor part of the marina project area and will be preserved in its entirety within a 22-acre preservation zone that has been designated on the City and County of Honolulu's Ewa Development Plan Land Use map.

Haseko has requested to rescind the granted amendment to reduce the size of the marina from 70-acres to 53.73-acres while still having amended conditions #11, #22 and #26 that was approved by the Board on February 22, 2008 remain in effect. According to Haseko, going through another contested case (or, alternatively, defending a denial of standing on appeal to the courts) is not the most productive use of resources and therefore Haseko would like to retain its permit for the 70-acre marina that was granted by the Board in 2001.

As Mr. Lee's petition appears to contest the amendment regarding the reduction of the size of the marina, if the Board rescinds the granted amendment to reduce the size of the marina from 70 acres to 53.76-acres, the issues raised in Mr. Lee's petition would be moot.

As such, Staff recommends as follows:

RECOMMENDATION:

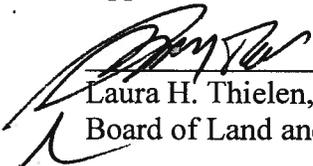
- A. That the Board of Land and Natural Resources rescind their approval of the amendment to Conservation District Use Permit (CDUP) OA-2670 to reduce the size of Hoakalei Marina from 70 acres to 53.76-acres subject to all other conditions imposed by the Board under CDUP OA-2670, as amended, remain in effect.
- B. That Mr. Lee's petition for a contested case be denied due to the following:
 1. Mitigation for the archeological, cultural and historical features was addressed in prior proceedings that resulted in CDUP OA-2670 which authorized Haseko to construct a marina entrance channel; and
 2. The Permittee has withdrawn its request to reduce the size of the Hoakalei Marina, therefore issues raised in Mr. Lee's petition regarding the Marina reduction would be moot.

Respectfully submitted,



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

Approved for submittal:



Laura H. Thielen, Chairperson
Board of Land and Natural Resources

- I. With the conditions imposed by the Board of Land and Natural Resources in its Decision and Order herein, the entrance channel at Honouliuli Ewa, Oahu, is in compliance with the provisions of Chapters 183 and 205, Hawaii Revised Statutes, and Title 13, Chapter 2, Hawaii Administrative Rules.
- J. Any finding of fact herein contained in this decision and order which is determined to be more properly deemed a conclusion of law, is hereby incorporated in this part and made a conclusion of law herein.
- K. Because fishing is a traditional and customary practice of native Hawaiians and others along the shoreline adjoining Haseko's proposed Ewa Marina Project and in the waters where Haseko proposes to build the entrance channel to its proposed marina, Native Hawaiians, including Howell and her family, who engage in such activities are exercising rights "established by Hawaiian usage." § 1-1, H.R.S., see Pele Defense v. Paty, 73 Haw. 578 (1992), and protected under Haw. Const., Art XII, § 7. [SEBO proposed COL 7.]
- L. The BLNR has reviewed the evidence presented at the hearing pertaining to the issue of traditional and customary native Hawaiian rights exercised in the project area including the environmental effects the project will have on those rights. The Board finds that those rights have been sufficiently protected with the issuance of this conditional approval.



IV. DECISION AND ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, IT IS THE DECISION of the Board of Land and Natural Resources to conditionally grant the applicant a Conservation District Use Permit for a marina entrance channel at Honouliuli, Ewa, Oahu, subject to the following conditions:

STANDARD 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, Hawaii 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. Since this approval is for use of conservation lands only, the applicant shall obtain appropriate authorizations through the Division of Land Management, State Department of Land and Natural Resources for the disposition of State land[s] in compliance with Chapter 171, HRS;
 4. That in issuing this 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 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;
 5. That all representation relative to mitigation set forth in the accepted Environmental Impact Statement for this proposed use are hereby incorporated as conditions of this approval;
 6. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void;
 7. Other terms and conditions as prescribed by the Chairperson consistent with this Findings of Fact, Conclusions of Law, Decision and Order,
 8. That the applicant understands and agrees that this permit does not convey any vested right(s) or exclusive privilege.
 9. That the applicant notify the Department in writing when construction activity is initiated and when it is completed.

MODIFIED STANDARD CONDITIONS

10. The applicant shall comply with all applicable Department of Health Administrative Rules; including the Section 401 Water Quality Certification conditions; all applicable conditions of the U.S. Army Corps of Engineers Permit No. PODCO 2117 dated June 28, 1993, and applicable conditions of the Unilateral Agreement Declaration for Conditional Zoning;
11. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for TMK: 9-1-12: 6, prior to submission for approval

of construction plans;

12. **Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the 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. The construction plans shall show the alternate public access routes to be used during construction. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;**
13. **The evidence presented herein supports approval of Standard Condition 13-2-21(a), HAR, criteria met under 13-2-21(c)(1-4), HAR: Any work or construction to be done on the land shall be initiated within five years of the approval of such use, and all work and construction must be completed within ten years of the approval of such use;**
14. **CONSTRUCTION RELATED**
 - A. **The applicant shall provide written advance-notice to the U.S. Coast Guard at least 30 days prior to any dredging or blasting;**
 - B. **Prior to the submission for approval of construction plans, the applicant shall furnish the Department's Division of Aquatic Resources with a blasting plan for review and approval, if blasting is deemed necessary;**
 - C. **Existing public access to and along the shoreline shall not be restricted during construction except as necessary to ensure safety. (p. 40 CDUA, p. VI-3 FEIS) In the event that public access is restricted, the applicant shall provide alternate public access routes;**
 - D. **The applicant shall leave a berm along the shoreline separating the marina entrance channel and the marina itself. The berm shall remain in place until the entire marina is completed before being removed;**
 - E. **During construction, fishing along the seaward shoreline shall remain open as long as possible. The shoreline berm separating the marina from the ocean shall be wide enough to accommodate both construction operations and public access for fishing;**

- F. Prior to connecting the marina waterways to the ocean, the applicant shall remove the collected silt and sediment within the marina;**
- G. The applicant shall implement erosion control measures during construction, such as silt curtains;**
- H. If applicable, the applicant shall construct the causeway or trestle within the channel boundaries;**
- I. Disposal of excavated material shall be in compliance with the U.S. Corps of Engineers Department of the Army Permit;**

15. PUBLIC ACCESS/FACILITIES RELATED

- A. Prior to breaching the shoreline to connect the marina with the ocean, the applicant shall construct piers that provide public fishing access along the banks of the marina. The piers shall be designed to accommodate the physically challenged;**
- B. Should the applicant convey to the City and County of Honolulu (City) the approximate nine acres of beachfront land adjacent to Oneula Beach Park identified in the City's Ordinance 93-94 ("Unilateral Agreement and Declaration for Conditional Zoning") that prior to breaching the shoreline to connect the marina with the ocean, the applicant shall implement the "Oneula Improvements;"**
- C. To protect the traditional and customary rights exercised in the project area, during construction of the marina, access to the shoreline fronting the project area must be permitted for the reasonable exercise of traditional and customary practices of native Hawaiians to the extent feasible and safe;**
- D. After completion of the project, the applicant will provide, in addition to any other access for traditional and customary practices that may be established in any subsequent or future proceeding or by agreement, public access for the purpose of permitting the reasonable exercise of traditional and customary practices of native Hawaiians, to include the following;**
 - 1. Dedication of approximately nine acres of beachfront land adjacent to Oneula Beach Park identified in the City's Ordinance 93-94 ("Unilateral Agreement and Declaration**

for Conditional Zoning"), or alternatively, dedication to a perpendicular access to the shoreline which shall be no closer than 600 feet from the eastern boundary of Oneula Beach Park;

- 2. Dedication of the boat launching complex to the State of Hawaii as set forth in paragraph 15.F., below; and**
 - 3. Shoreline access on either side of the marina entrance channel as set forth in paragraph 15.G., below.**
- E. The applicant shall make at least fifty percent of the boat slips available to the general public at reasonable market rates;**
- F. The boat launching ramp complex shall be completed in a timely manner following breakout to the ocean. The applicant shall dedicate the launching ramp complex to the State of Hawaii. The launching ramp complex shall be operated and maintained by the State or others as a State launching facility. Subject to applicable laws, the State may at any time enter into a joint venture or operating contract with the Applicant for the operation and maintenance of the boat launching ramp complex as a State launching facility. In addition to the seven launching ramps, the launching ramp complex shall include: about 150 associated trailer parking, public parking, boat wash down areas, restrooms and outside showers. The launching ramp complex shall be open and available 24 hours a day;**
- G. The applicant shall provide shoreline access with nearby restrooms, showers, and parking areas free-of-charge on each side of the channel;**
- H. The applicant shall provide public access to and around the entire marina facilities through a series of internal vehicular, bicycle and pedestrian ways. The pedestrian pathway around the edge of the marina shall be open and available to the public free of charge at all times, excepting during the actual construction of the project and upon a determination by the Department or other governmental agency that if it is unsafe to permit public access to that area;**
- I. The applicant shall provide well-signed and lit public pedestrian access around the edge of the marina; including a provision for diverting pedestrian access around certain facilities, such as boat**

- haul-out or repair facilities, where heavy equipment operation may pose a safety hazard;
- J. The marina waterway shall be open free of charge to navigational access by the general public in perpetuity;
- K. The applicant shall provide sewage pump-out facilities for boats using the marina;

16. MONITORING REPORT

- A. The applicant shall submit to the Department's Division of Aquatic Resources all monitoring reports for water quality turtle, marine resources inventory, etc.;
- B. The applicant shall conduct an additional marine biota survey three years following the breakthrough connecting the channel with the marina basin and submit the results to the Department. The survey shall be conducted along the same transects used to establish baseline data prior to construction;

OTHER/GENERAL

- 17. The applicant shall construct and maintain for a specified period of time as determined by the Department, an artificial reef subject to review and approval by the Department. Prior to the construction of an artificial reef, the applicant shall apply for, and obtain a Conservation District Use Permit;
- 18. The applicant shall be responsible for the maintenance dredging of the entrance channel to its approved depth and in accordance with the U.S. Corps of Engineers' Department of the Army Permit;
- 19. The applicant shall notify the U.S. Coast Guard of its intention for marking the entrance channel and marina with navigational aids;
- 20. The applicant shall obtain appropriate approval from the Commission on Water Resource Management relative to the caprock aquifer issues;
- 21. The applicant shall be responsible for removing any noxious aggregations of algae washed up along the shoreline fronting the applicant's property;
- 22. The applicant shall provide fully developed and Government approved plans for constructing a flood drainage system through the marina

dévelopment in concert with the drainage plans for the upper development of Kapolei, Ewa Villages, other developments in the Kaloi Gulch watershed;

- 23. The applicant shall submit a comprehensive Maintenance and Management Plan for the Marina and its operations to the Department for review and approval prior to opening the marina for vessel use. The plan should be designed to protect water quality of the marina and ocean waters, among other things, and shall include, but not be limited to the following:**
- Elements identified on pages 11, 12, and 41 in the permit application;**
 - Enforcement;**
 - Responsibilities for compliance of the plan clearly defined;**
 - Procedures for coordinating with the U.S. Customs, the U.S. and State Department of Agriculture, the Department of Health and other federal and state agencies having an interest in processing foreign arrivals;**
- 24. Prior to the submission for approval of construction plans, the applicant shall submit a site plan of the marina area to the Department for review and approval. The site plan shall include, but not be limited to the following information:**
- The location of the artificial reef;**
 - Identify areas around the both sides of the marina entrance and periphery of the marina that will be open to the general public (including the physically challenged) for fishing. Identification should include: specific areas or number of areas and fishing piers, a description of these areas (i.e. entrance channel boundaries, open spaces, etc.), and distances to these fishing areas from planned parking areas;**
 - Oneula Beach Park and the nine-acre expansion area;**
 - Identify the setback areas required by the City Council's Resolution 93-286 granting a Special Management Area Use Permit and Shoreline Set Back Variance, Ordinance No. 93-94 Unilateral Agreement and Declaration for Conditional**

Zoning, and the Urban Design Plan approved by the Department of Land Utilization;

- **Public boat slips;**
 - **Launching ramp complex;**
 - **Sewage pumpout facilities;**
 - **Public access (pedestrian, bicycle, and vehicular) to and around the edge of the marina, signs, and lighting;**
 - **Public parking, restrooms and showers;**
- 25. Live-aboards shall be prohibited in the Marina;**
- 26. The applicant shall comply with the provisions contained in the Memorandum of Agreement (MOA) among the applicant, the Hawaii State Historic Preservation Division, the U.S. Army Corps of Engineers, the Advisory Council of Historic Preservation, and the Office of Hawaiian Affairs regarding the treatment of historic sites on the project site;**
- 27. The applicant shall submit a copy of the "Best Management Practices" plan required by the State Department of Health pursuant to Section 401 Water Quality Certification to the Department for review and comment;**
- 28. To the extent practicable, the applicant shall preserve native strand vegetation and/or use xeriphetic native plant species for landscaping of coastal areas;**
- 29. The applicant shall provide educational information on the safe use of marinas and pollution control, in the form of brochures, signs, video, and posters;**
- 30. The applicant shall submit an annual report to the Department which shall include the status of compliance of the permit conditions and implementation of the land use;**
- 31. That the Board reserves the right to amend these conditions and the right to stop work should any unanticipated and/or unreasonable adverse ecological results occur;**
- 32. Implementation of the project shall be in general conformity with the representations made in the application on file with the Department and**

at the contested case hearing. Any substantial change in the size or nature of the marina as determined by the Department shall require an amendment to the permit. Any change that the Department determines to be incidental, shall be permitted upon review and approval of the Chairperson.

- 33. The BLNR shall retain continuing jurisdiction over this permit and in the event of any violation or non-compliance with an aforementioned condition (general or special) the BLNR may revoke this permit or take any appropriate action.**

DATED: APR 26 2000


TIMOTHY E. JOHNS
Chairperson, Board of Land and
Natural Resources

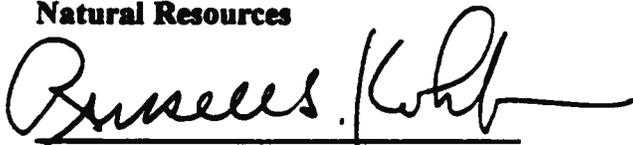
RECUSED
LYNN P. McCRORY
Member, Board of Land and
Natural Resources


WILLIAM KENNISON
Member, Board of Land and
Natural Resources

DID NOT PARTICIPATE IN
FURTHER HEARINGS

COLBERT M. MATSUMOTO
Member, Board of Land and
Natural Resources


KATHRYN WHANG INOUE
Member, Board of Land and
Natural Resources


RUSSELL S. KOKUBUN
Member, Board of Land and
Natural Resources

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of Conservation) DLNR File No.: OA-2670
District Use Application for)
)
HASEKO (Ewa), Inc.)
)
to Construct a Marina Entrance)
Channel Using State owned)
Submerged Lands at)
Honouliuli, Ewa, Oahu)

FIRST AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW
DECISION AND ORDER

APRIL 2000

APPENDIX A

EXHIBIT 2

Attorney for Save Ewa Beach Ohana; Anna Marie Kahunahana-Castro-Howell, a contestant; Sheryl Nicholson and Richard Kiefer, and Pamela Bunn, Attorneys for the Trustees of the Office of Hawaiian Affairs. The agreements reached by the parties and the rulings of the Presiding Officer are contained in the attached Minute Order Number 1 and are hereby incorporated as part of this findings of fact, conclusions of law, and decision and order by this reference.

The September 12, 1994, prehearing conference was attended by Linnel Nishioka, Deputy Attorney General; Cathy Tilton, Staff Planner, DLNR; Yvonne Izu, attorney for the Applicant; Jeff Alexander; Carl Christensen, Attorney for Save Ewa Beach Ohana; Anne Marie Kahunahana-Castro-Howell; Sheryl Nicholson and Richard Kiefer, Attorneys for the Office of Hawaiian Affairs. No Minute Order was issued following the September prehearing conference as the primary purpose of this meeting was to clarify the procedures relating to the contested case hearing.

C. Issues

Minute Order Number 1 sets forth ten issues to be considered in this contested case hearing as shown below:

- 1. Does the proposed activity meet the criteria for a CDUP, including:
 - a. Does it meet the objectives of a resource subzone?**
 - b. How are the physical hazards to be alleviated?**
 - c. Is it consistent with the County General Plan?**
 - d. Does it meet the purpose and intent of the Conservation district?****
- 2. Does the proposed activity comport with the Public Trust Doctrine relating to navigational servitude?**
- 3. Is HASEKO's proposed use of the ceded lands that are the subject of the CDUA, a use that the State, through the BLNR, may permit consistent with its obligations under Section 5(f) of the Hawaii Admission Act, which provides, in relevant part, that:**

(ceded lands) shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians,.. . for the development of farm and home ownership on as widespread a basis as possible(,) for the making of public improvements, and for the provision of lands for public use.

See Admission Act of March 18, 1959, §5(f), Pub.L. No. 86-3, 73 Stat. 4.

4. Does the Ewa Marina project meet the standards which the BLNR must consider in reviewing the CDUA pursuant to the applicable statutory authority and the appropriate rules and regulations that may exist under those statutes?
5. Does the proposed use comply with section 171-58.5, Hawaii Revised Statutes?
6. Is the proposed use in accord with the State Environmental Policy Act, Hawaii Revised Statutes, Chapter 344?
7. Protection of archaeological sites to be impacted by the Project; including, in particular, Petitioner's compliance with the conditions imposed under the Memorandum of Agreement among various parties pertaining to Department of Army Permit Application No. PODCO 2117.
8. Effect of the Project on wildlife and marine resources in and near the area to be dredged.
9. Effect of the Project upon the conduct of fishing, gathering, and other traditional and customary activities by Hawaiian members of Save Ewa Beach Ohana and/or other Hawaiians that use the project area.
10. Imposition of permit conditions necessary to minimize or avoid adverse environmental impacts of the Project relative to the matters considered herein and to ensure compliance with mitigation procedures identified in environmental impact disclosure documents.

D. Burden of Proof

The applicant has the overall burden of proof of meeting the requirements of the law and rules governing the Conservation District Use Application process in order to obtain a permit.

E. Motions and Prehearing Briefs

Four motions were filed during the contested case hearing process. Additionally, prehearing briefs were also submitted on the issues of applicant's compliance with Chapter 343, HRS, and economic compensation to the State for use of State lands.

101. **With anticipated algal recolonization, a significant reduction in the overall availability of limu on which turtles feed is not anticipated. (Ex. A-2, p. 4-23)**

102. **In addition to the large limu, turtles also eat a variety of other organisms, including jellyfish, scallops, and crustacean. (Tr. p. 313)**

7. **Protection of archaeological sites to be impacted by the Project; including in particular Petitioner's compliance with the conditions imposed under the Memorandum of Agreement among various parties pertaining to Department of Army Permit Application No. PODCO 2117.**

103. **There are no historic sites in the area of the proposed use which lies seaward of the shoreline in the Conservation District. (CDUA, p.12, Tr. p. 478 & 479)**

104. **However, to protect historic sites landward of the Conservation District, the applicant has entered into a Memorandum of Agreement (MOA) with the U.S. Army Corps of Engineers, the Hawaii State Historic Preservation Division, the Advisory Council of Historic Preservation, and the Office of Hawaiian Affairs in conjunction with Special Condition Number 5 of the Department of the Army Permit. (CDUA; Ex. A-11; 2/17/94 Memo to Roger Evans from Don Hibbard, SHPD)**

105. **It is the applicant's understanding that the December 31, 2003, expiration date on the Army Corps 404 permit issued to the applicant is merely the deadline by which the applicant must complete work authorized under the permit. (TR. 630 & 631, 689 & 691) The MOA itself provides for longterm preservation and protection of the significant sites for which preservation has been mandated (Tr. p. 478 - 481).**

106. **Data recovery work as required under the MOA has been completed at all sites for which the DLNR-SHPD and other signatories of the MOA have determined that additional research is necessary. (Rebuttal Witness Statement of Rosendahl, p. 3)**

107. **The applicant has incorporated, or is in the process of incorporating, all of the preserve sites identified in the MOA into preservation reserves; none of which will be affected by construction. (Rebuttal Witness Statement of Rosendahl, p. 3 and 4)**

8. **Effect of the Project on wildlife and marine resources in and near the area to be dredged.**

9.

The proposed project does not abridge or deny traditional and customary rights of native Hawaiians.

139. Although there are Hawaiians and others who fish and gather along the subject shoreline area (Tr. 595, 596, 619; Written testimony of Howell; Rebuttal Witness Statement of Kahalewai, p. 3; Rebuttal Witness Statement of Serrao, p. 5), the weight of the evidence presented supports that the location of the proposed entrance channel is not an especially good spot for either fishing, gathering, or other traditional and customary activities by Hawaiians. (Rebuttal Witness Statement of Lee, p. 8; Tr. p. 501, 616, and 617)
140. There are no fishing villages, burial grounds, or other spiritual sites in the area where the proposed channel is to be constructed. (Tr. p. 478, 479, 616, 622; Rebuttal Witness Statement of Kahalewai p. 4; Rebuttal Witness Statement of Serrao, p. 6; Eaton, p. 6; CDUA p. 12)
141. Construction of the proposed entrance channel will permanently remove 400 feet of the existing shoreline. (CDUA; A-2, p. 4-26)
142. The proposed channel and artificial reef may increase the abundance and diversity of fish species, possibly improving fish catch. (Ex. A-2, p. 4-28)
143. The increased accessibility to the shoreline with expected higher levels of shoreline fishing, diving, and crabbing activity, however, could result in over harvesting of the fishery. (Ex. A-2, p. 4-28)
144. Limu: The limu grows mainly in the intertidal region (i.e. the area between the high and low tide on the shallow bench). (Tr. p. 501; Ex. A-1, Appendix H) Channel construction would temporarily interrupt limu gathering, but limu gathering on either side of the entrance channel would not be affected. (Ex. A-2, p. 4-27)

Algae would be destroyed by the dredging activities. Damage may also occur in the immediate vicinity of the dredging activity. (Ex. A-2, p. 4-22)

The resulting sandy bottom likely to develop within the channel basin is less suitable for marine algae than the existing hard substrate. The channel margins, however, would provide a hard substrate for algal attachment and growth, and the relief, some shelter. However, overall, algal growth is likely to be reduced slightly. (Ex A-2, p. 4-22)

Increased access could result in overharvesting of limu. (Ex A-2, pp. 4-23 & 4-27)

145. The board finds that the conditions imposed by other agency permits provides significant public access and mitigative environmental conditions that will preserve and enhance traditional and customary practices of native Hawaiians. These conditions are hereby appended to the DECISION AND ORDER and are enumerated below:

a. Protection and Enhancement of Public Access for Traditional and Customary Practices by native Hawaiians:

- (1) Conditions C, D, E, and F of the City and County of Honolulu, Special Management Area Use Permit and Shoreline Setback Variance for Ewa Marina**
- (2) Conditions 1, 7(a, b, g), 8, and 25, of the Unilateral Agreement for a Zone Change by Haseko for the Ewa Marina Project.**

b. Preservation of Cultural and Archaeological Resources and Mitigation of Project Impacts to the Environment:

- (1) Conditions 2, 21, 23, and 26 of the Unilateral Agreement for a Zone Change by Haseko for the Ewa Marina Project.**
- (2) Conditions 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, imposed under the Department of the Army Permit No. PODCO 2117.**

146. Article XII, Section 7 of the Hawaii State Constitution provides for protection on native Hawaiian traditional and customary gathering rights:

The State reaffirms and shall protect all rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate.

147. In Public Access Shoreline Hawai'i v. Hawaii County Planning Commission, 79 Hawai'i 425, 903 P.2d 1246 (1995), the Hawaii Supreme Court stated:

The State's power to regulate the exercise of customary and traditionally exercised Hawaiian rights...necessarily allowed the State to permit

development that 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.

Id. at 450 n. 43, 903 P.2d at 1271 n.43.

148. 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; and (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, 1998.¹
149. Surveys conducted for Haseko found at least 63 different species of fish living in the area in question, including "food fish" such as ulua, papio, taape, grouper, palani, and kala that are sought by both commercial and recreational fishermen. (Exhibit A-1, Appendix H; Testimony of Philip S. Lobel, at 326-29; Testimony of Steven Dollar, at 510-13) [OHA proposed FOF 38.]
150. Further, according to the Department of Land and Natural Resources' Division of Aquatic Resources, stocks of mullet, parrot fishes, lobster and octopus migrate through and forage in this area. (Exhibit Board-2) [OHA proposed FOF 39.]
151. As a result, and as Haseko acknowledges in the Environmental Impact Statement prepared for the project, the area in question supports substantial local fishing. (Exhibit A-1 at III-22, IV-15, Appendix P: Testimony of Earl Matsukawa, at 547-53.) [OHA proposed FOF 40.]
152. Residents of Ewa Beach and surrounding area, including both native Hawaiians and non-Hawaiians, fish in the area along the shoreline where Haseko plans to dredge its channel, and also dive in the area of the proposed channel, where fishing and lobster gathering occur. (Testimony of Thomas Palmeira, at 571-74; Testimony of Anna Marie Kahunahana-Castro-Howell, at 595-96; Testimony of Clifford Olivera, at 587-84;

¹ This memorandum opinion may be cited in this case pursuant to Rule 35(c), Hawaii Rules of Appellate Procedure.

Testimony of Tim Tucker, at 216-17 (acknowledging that on clam days people come from all over central Oahu to fish and dive in this area). [OHA proposed FOF 41, as amended.]

- 153.** The area in which Haseko proposes to build its entrance channel is also a rich source of the marine algae, or limu, for which Ewa is renown. (Exhibits B-6, B-7.) [OHA proposed FOF 42, as amended.]
- 154.** This limu is gathered, for both personal consumption and commercial use, by residents of the Ewa area, including both native Hawaiians and non-Hawaiians. (Testimony of Clifford Olivera, at 584; Testimony of Anthony Tepedino, at 489; Witness Statement of Thomas Palmeira.) [OHA proposed FOF 43.]
- 155.** The native Hawaiians who fish and gather limu and shellfish along the shoreline fronting the proposed Ewa Marina development, and in the waters where Haseko proposes to dredge its entrance channel, are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 and include residents of the ahupua'a of Honouliuli. (Testimony of Thomas Palmeira, at 571; Testimony of Anna Marie Kahunahana-Castro-Howell, at 598; Witness Statement of Anna Marie Kahunahana-Castro-Howell, at 1-3.) [OHA proposed FOF 44.]
- 156.** Anna Marie Kahunahana-Castro-Howell ("Howell") resides at 91-946 Komana Street, Ewa Beach, and is a resident of the ahupua'a of Honouliuli and a member of Save Ewa Beach Ohana. Witness Statement of Anna Marie Kahunahana-Castro-Howell ("Howell Statement"), at 1. [SEBO proposed FOF 7.]
- 157.** Howell is of greater than 50% Native Hawaiian ancestry. Howell Statement, at 1, 3. [SEBO proposed FOF 8.]
- 158.** Fishing and gathering of shellfish and limu are traditional and customary practices of native Hawaiians, including Howell and members of her family, along the shoreline fronting the proposed Ewa Marina development, and in the waters where Haseko proposes to dredge its entrance channel. (Testimony of Thomas Palmeira, at 572-74; Testimony of Mary Kaipo Malama Serrao, at 619-20; Rebuttal Witness Statement of Mary Kaipo Malama Serrao at 5; Rebuttal Witness Statement of Ethelreda Kaialuna Robello Sylva Kahalewai, at 3.) [OHA proposed FOF 45.]
- 159.** Based on the evidence presented, the Applicant has demonstrated by a preponderance of the evidence that any excavation of the entrance

channel will result in at best a temporary diminishment of access to the dredged area. The proposed use will result in a temporary diminishment of fish and limu in the nearshore area where the entrance channel will be located.

160. Based on the evidence presented, the board finds a temporary diminishment of access and temporary reduction of the fish and a non-significant reduction of limu to the dredged and submerged land area where the entrance channel will be constructed is justified because the proposed use will enhance fishing and limu gathering by improving access to the ocean along the present rocky shoreline. The proposed project will make the area more accessible to those who may be unable to currently traverse this area, and thereby improving access to exercise traditional and customary rights.

161. As part of the community benefits package, the Applicant is required to donate approximately 10 acres of beachfront property as an addition to the Oneula park. This addition will improve public access to the shoreline. Additionally, the boat launching ramp will improve access to the ocean by boat. This will enhance the opportunities for fishing in the area. On balance, the board finds that the project will enhance rather than diminish or abridge the exercise of traditional and customary rights of native Hawaiians.

162. Therefore, based on the evidence presented, Applicant's applied-for uses, as amended and set forth in this Findings of Fact, Conclusions of Law, Decision and Order, do not abridge or deny and if fact, may enhance, traditional or customary Hawaiian rights, customs, practices, the state laws or the Constitution of the State of Hawaii.

10. Imposition of permit conditions necessary to minimize or avoid adverse environmental impacts of the Project relative to the matters considered herein and to ensure compliance with mitigation procedures identified in environmental impact disclosure documents.

163. The Board finds that the conditions set forth in Section IV will minimize or avoid adverse environmental impacts associated with the development of the proposed project and to ensure compliance with mitigation procedures identified in environmental impact disclosure documents.

BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

1. Name Michael Kumukavaha Lee Phone [REDACTED] Fax [REDACTED]

2. Address [REDACTED], Ewa, HI 96706

Email Address [REDACTED]

3. Attorney (if any) _____ Phone _____

4. Address _____

Email Address _____

5. Subject Matter: BLNR Mtg- 2/22/08 Amendments to Conservation District Use Permit OA-2670 to Construct a Marina Entrance Channel at Honolulu HASEKI

6. Date of Public Hearing/Board Meeting February 22, 2008

7. Legal authority under which hearing, proceeding or action is being made §13-1-31 HAR Supreme Ct. Kohaiki vs. Planning Director, County of Hawaii, Section 1-1, 7-1 HRS, Ka Pāakai o Ka Aina v. Land Use Commission

8. Nature of your specific legal interest in the above matter, including tax map key of property affected: Plat(1)9-1-012, Established Native Hawaiian Traditional Cultural Practitioner in Ewa region protected by Constitution, HRS and judicial opinion

9. The specific disagreement, denial or grievance with the above matter: Inadequate and inefficient government regulatory oversight of public trust resources thereby irreparably and unreasonably harming my ability to exercise my traditional and customary Native Hawaiian practices

10. Outline of specific issues to be raised: DLNR/SHPD admission that 3-4 years of developer self-monitoring activities and loss and destruction of irreplaceable resources.

Efficacy of DLNR/BLNR in properly identifying, assessing, mitigating natural, cultural and historical resources and traditional and customary Native Hawaiian practices

11. Outline of basic facts: Significant Ahi burial site identified in beach area to be destroyed by construction of marina entrance. Improper regulatory oversight and archaeological investigation of cultural and historic resources.

12. The relief or remedy to which you seek or deem yourself entitled: Proper identification and protection of historic and cultural sites. Protection of exercise of my religious and traditional and customary native Hawaiian practices and historical, cultural and natural resources my practices rely upon

(If there is not sufficient space to fully answer any of the items above, use additional sheets of paper.)

The above-named person hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above. Dated: 1-29-08

Michael Kumukavaha Lee
EXHIBIT 4

2008 FEB 29 P 2:23
STATE OF HAWAII
LANDS & NATURAL RESOURCES
DIVISION

December 18, 2008

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

2008 DEC 18 P 3: 36

1. **Name:** Michael Kumukauoha Lee Phone: [REDACTED] Fax: None
2. **Address:** [REDACTED] 'Ewa Beach, HI 96706

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Email Address: [REDACTED]

3. **Attorney:** Pro Se Phone: N/A
4. (Same as above)
5. **Subject Matter:** Board of Land and Natural Resources Meeting of February 22, 2008
Amendments to Conservation District Use Permit OA-2670 to Construct a Marina Entrance
Channel at Honouliuli-HASEKO
6. **Date of Public Hearing/Board Meeting:** February 22, 2008
7. **Legal Authority under which hearing, proceeding or action is being made:** Section 13-1-31,
HAR, Supreme Court: Kohanaiki vs. Planning Director, County of Hawai'i, Section 1-1 and 7-1,
HRS, Ka Pa'akai o Ka 'Aina v. Land Use Commission
8. **Nature of your specific legal interest in the above matter, including tax map key of property
affected:** Plat (1) 9-1-012, Established Native Hawaiian Traditional Cultural Practitioner in 'Ewa
region protected by State of Hawai'i, Hawai'i Revised Statutes and judicial opinion.
9. **The specific disagreement, denial or grievance with the above matter:** Inadequate and
inefficient government regulatory oversight of public trust resources thereby irreparably and
unreasonably harming my ability to exercise my traditional and customary Native Hawaiian
practices. DLNR/SHPD admission that 3-4 years of developer self-monitoring activities and loss
and destruction of irreplaceable resources.
10. **Outline of specific issues to be raised:** Efficacy of DLNR/BLNR in properly identifying, assessing,
mitigating natural, cultural and historical resources and traditional and customary Native
Hawaiian practices.
11. **Outline of basic facts:** Significant Ali'i burial site identified in beach are to be destroyed by
construction of marina entrance. Improper regulatory oversight and archaeological investigation
of cultural and historic resources. *This includes a failure to properly identify and protect the
waihuna (fresh water springs) in the area of the proposed marina which can impact the shoreline
area via alteration of the ebb and flow of fresh water into the ocean which is a critical
component of the viability of the limu resources and diversity of marine life, all resources which
my traditional Hawaiian practices rely upon, as well as impact the stability of the underground
network of coral and limestone caverns and tubes which may impact cultural resources in the
beach area as well. Fresh water, as the embodiment of the Hawaiian akua Kane, was and is still
sacred as a life giving element. The impacts to the fresh water and brackish water lens is still
indeterminate since issues were raised over fifteen years ago. The obliteration of the historic and
cultural sites, the "accidental" destruction and alteration of sites committed to be preserved, the*

EXHIBIT 5

December 18, 2008

“accidental” destruction of the endangered candidate opae’ula sinkhole, the discovery of a highly significant ali’i burial site at the proposed marina entrance, the high potential for toxicity and anoxic conditions to develop in a reduced marina with more stagnant water and less circulation, and the SHPD admission that it failed to monitor the destruction of the cultural landscape for years should raise a serious red flag with the BLNR as to the upholding of constitutional, statutory and judicial mandates in this matter.

12. The relief or remedy to which you seek or deem yourself entitled: Proper identification and protection of historic and cultural sites. Protection of exercise of my religious and traditional and customary native Hawaiian practices and historical, cultural and natural resources my practices rely upon. *As noted by OHA, the remedies of which the BLNR could administer as conditions of its permit review or approval include, but are not limited to:*

- *Require further and extensive archaeological investigation of the area of the proposed marina entrance prior to HASEKO coming back to the BLNR to request the final approval to break through the beach;*
- *Require restoration of the historic sites destroyed by HASEKO;*
- *Require restoration of the opae’ula habitat as initially conditioned by the Army Corps of Engineers in their agreement;*
- *Require the SHPD to fulfill their statutory responsibilities in investigating, monitoring, identifying and protecting the traditional cultural landscape in One’ula;*
- *Require a supplemental EIS or advanced study of the potentially anoxic effects of reducing the water volume in the reduced marina.*
- *Development of a five-point model for measuring oxygen levels throughout the reduced marina design plan to address the potential for anoxic conditions.*

The above named person hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above. Dated: 1-29-08 (Amended 12/18/08)



Michael Kumukauoha Lee, Petitioner Pro Se

MORIHARA LAU & FONG LLP

A LIMITED LIABILITY LAW PARTNERSHIP

January 15, 2009

Ms. Laura Thielen, Chairperson,
and Members of the Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Amendments to CDUP OA-2670

Dear Chairperson Thielen and Board Members:

This is to inform the Board of Land and Natural Resources (Board) that Haseko (Ewa), Inc., the holder of CDUP OA-2670, authorizing the construction of a marina entrance channel for the Hoakalei Marina at Honouliuli, Oahu, hereby withdraws its request to reduce the size of the marina from 70 acres to 53.76 acres.

Haseko's request to reduce the size of the marina to 53.76 acres was submitted to the Board in October 2006. The purpose for reducing the amount of wetted area was to increase the amount of open public spaces around the marina waterway to provide opportunities for an array of diverse activities inviting not only to persons interested in boating and ocean recreation, but also drawing people there for cultural and community gatherings. Haseko envisioned that a promenade around the marina waterway would include venues for cultural programs, displays, educational signs and kiosks, and other features concentrating on `Ewa's prehistory and history, coastal and maritime matters, and Native Hawaiian cultural and natural resources.

On February 22, 2008, the Board approved the reduction in the size of the marina to 53.76 acres, along with amendments to three conditions of CDUP OA-2670. During the February 22 meeting, Michael Lee orally requested a contested case on the reduced-size marina. Mr. Lee perfected his request by filing a written petition for a contested case within the required time period, identifying as his concern the protection and preservation of archaeological and cultural sites.

At the Board meeting held on December 12, 2008, the Office of Conservation and Coastal Lands (OCCL) recommended that Mr. Lee's request be denied for lack of standing because his identified interests are not affected by the Board's action in approving the reduced-size marina. At that December 12 meeting, however, Mr. Lee raised additional and different reasons why he should be entitled to a contested case hearing. Notwithstanding the fact that it was many months after the time for filing a

EXHIBIT 6

Ms. Laura Thielen, Chairperson,
and Members of the Board of Land and Natural Resources
January 15, 2009
Page 2

petition for contested case had elapsed, the Board allowed Mr. Lee to file an amended petition, which he did on December 18, 2008.

Haseko is confident that Mr. Lee's objections to a reduced-size marina are without merit. In these difficult economic times, however, Haseko believes that going through yet another contested case (or, alternatively, defending a denial of standing on appeal to the courts) is not the most productive use of either Haseko's or the department's resources. Haseko, therefore, withdraws its request to reduce the size of the marina to 53.76 acres and, instead, will, at least for the time being, retain its permit for the 70-acre marina, which was granted by the Board in 2001.

Haseko will take this opportunity to reconsider whether the public benefits it envisioned with a smaller wetted area and larger open space land area outweighs the costs of having to endure another round of litigation. Additionally, we will explore the possibility of utilizing the Hoakalei Marina as a ferry terminal, as requested by some government officials. Depending on the outcome of the reconsideration of its land plans, Haseko may, at a later time, renew this request for a 53.76-acre marina, or for a marina of a different size. Alternatively, Haseko may continue to excavate a 70-acre marina.

As an administrative matter, it is Haseko's understanding that Mr. Lee's request for a contested case referred only to the change in size of the marina, and that the amendments to Conditions #11 (recordation of CDUP), #22 (updating language regarding regional drainage), and #26 (providing quarterly reports to SHPD and OHA on compliance with the archaeological MOA) that were approved by the Board on February 22, 2008 were not also subject to Mr. Lee's request for a contested case. On that basis, may we assume that the amended Conditions #11, #22, and #26 remain in effect?

Haseko appreciates the time that the Board and OCCL devoted to consideration of the request to reduce the size of the marina and regrets that circumstances have resulted in this outcome. We will keep the Board apprised of the status of the Hoakalei Marina. Please do not hesitate to contact me if you have any questions or comments.

Very truly yours,



Yvonne Y. Izu
Attorney for Haseko (Ewa), Inc.

Cc: Haseko
Michael Lee