

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

November 10, 2016

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

HAWAII

REQUEST APPROVAL FOR CANCELATION OF THE OFFSHORE
MOORING PERMIT ISSUED TO SARAH MACINNES LOCATED AT
KEAUHOU BAY SMALL BOAT HARBOR, KEAUHOU BAY, HAWAII,
AND ISSUANCE OF THE OFFSHORE MOORING PERMIT TO THE NEXT
QUALIFIED APPLICANT ON THE WAITLIST

Background:

There are 9 offshore moorings currently in Keauhou Bay small boat harbor. Over past years, the Division of Boating and Ocean Recreation (DOBOR) has received requests for additional offshore moorings in Keauhou Bay small boat harbor (Harbor), Hawaii. DOBOR researched the history of moorings in the Harbor and found that in September 1985, the Army Corp of Engineers documented the state small craft navigation facilities which showed that there was a capacity of 24 moorings and 4 berthing slips in water 10-15 feet. Also, a 1992 R.M. Towill report that documented the facilities that were to transfer from the Department of Transportation to the Department of Land and Natural Resources indicated that the Harbor could accommodate up to 19 moorings. It is not clear whether this level of capacity was occupied historically.

Based on this information, DOBOR determined to move ahead to expand the moorings in Keauhou Bay from the current 9 medium depth moorings to a larger number.

DOBOR issued a conditional offer to eight applicants on the waitlist for an offshore mooring permit on September 7, 2012,¹ and subsequently to a ninth, conditioned on the additional boaters obtaining all proper permits prior to installing their moorings.²

Eight of the applicants on the waitlist requested and were given an extension of time to decide on whether to proceed with moorings. When the multiple offers were sent out, DOBOR did not have a formal mooring plan. Staff does not recall the order in which the offerees responded to DOBOR, but they all took an extension of time to place their vessel on a mooring

¹ DOBOR's normal process is to send out one offer at a time and allow it to go through the process before making a subsequent offer. It is unclear why multiple offers were done; presumably it was based on the anticipation of expanded moorings, though there was not a final mooring plan at the time.

² Nainoa Murtaugh was number 6 on the waitlist on 9/7/2012 when the offers were sent out, but was not offered a mooring. He was a minor. DOBOR believed that he was not entitled to a permit. That was determined to be incorrect under then-existing law. The applicable statute has been changed.

at Keauhou with the exception of Sarah MacInnes. Staff was uncertain of where to assign these new mooring locations so the actual mooring was not clear to those on the waitlist. Also, having been on the waitlist for a while, the other offerees were not prepared to secure a mooring permit in the 14 days response period.

Ms. Sarah MacInnes, the ninth person on the waitlist, accepted the conditional mooring offer and secured a mooring permit on or about September 28, 2012. One new offshore mooring permit was issued to her. Initially Ms. MacInnes intended to moor a canoe, the tour sailing canoe *Kinikini*, in shallow water that none of the other boats could use. One of the nine existing moorings then became available. Because the other boaters had requested the extension of time, DOBOR staff moved Ms. MacInnes to the newly available mooring and she moored the *Kinikini* there for a time.

On or about December 2012, DOBOR became aware that the *Kinikini* was not owned by Sarah MacInnes individually, but was owned by EKA LLC, a corporation of which Ms. MacInnes was the owner; the *Kinikini* is operated by Kalani Nakoa who runs tours from it.

At DOBOR's direction Ms. MacInnes removed the *Kinikini* from that mooring, and brought in a small 14-foot vessel that she personally owns. That boat has been using the mooring ever since. No shallow water mooring was ever installed. The *Kinikini* is moored in Kailua Bay and has a "Vessel Moored Elsewhere (VME) commercial permit to pick passengers up in Keauhou Bay, and does so on a near daily basis.

During this time, DOBOR became aware that none of the existing offshore moorings were properly permitted with the Army Corp of Engineers. DOBOR determined it would be simplest and most cost effective to combine the application processes. DOBOR informed the nine existing permittees that it would design a new mooring layout, obtain the proper permits, and install the new offshore moorings.

On November 1, 2012, a contract was awarded to Sea Engineering to survey the existing moorings and conditions within Keauhou Bay to determine the feasibility of installing up to 18 moorings within the Harbor. An initial survey and mapping of existing conditions was conducted on November 29, 2012, followed up with a second feasibility survey on March 6 & 7, 2013 and followed up again with a final survey on June 12, 2013.

A lawsuit was filed regarding the proposed project by the Keauhou Bay Canoe Club stating that an Environmental Assessment (EA) needed to be done. In an abundance of caution DOBOR agreed to conduct the EA.

No action was taken on the remaining eight conditional mooring offers until the findings of the EA were complete.

The draft EA was completed and presented to the community on April 15, 2016. Community input in the EA process expressed strong opposition by the Keauhou Bay Canoe Club and six commercial operators, and others, to the addition of offshore moorings.

Through review of the potential environmental impacts via the EA process, DLNR determined to take the no action alternative of the EA and no new offshore moorings would be added to the Harbor.

Now that it has been determined that no new offshore moorings would be added to the Harbor, DOBOR will need to rescind the conditional offers for offshore moorings that had been made to the individuals and reinstate them on the waitlist.

Ms. MacInnes has a permit based on the conditional offer. For reasons of fairness, DOBOR believes Ms. MacInnes should be treated the same as the other applicants who were given conditional offers based on the expectation of new moorings.

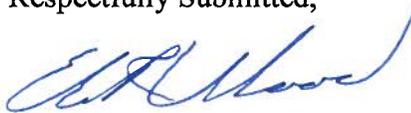
DOBOR recommends the Board cancel the permit issued to Sarah MacInnes, allowing DOBOR to reinstate everyone to the waitlist and offer the offshore mooring that had been issued to Sarah MacInnes to the next qualified applicant on the waitlist.

RECOMMENDATION:

That the Board:

1. Approve the cancellation of the mooring permit for Keauhou Bay small boat harbor, Hawaii, issued to Sarah MacInnes and issuance of the offshore mooring permit to the next qualified applicant on the waitlist.

Respectfully Submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case
Chairperson