

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

February 9, 2018

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

Land Board Members:

SUBJECT: REPAIR OF EXISTING LOADING PLATFORM STRUCTURE;
REIMBURSE APPLICANT FOR COSTS TO REPAIR EXISTING
LOADING PLATFORM STRUCTURE; AND DECLARE PROJECT
EXEMPT FROM REQUIREMENTS OF CHAPTER 343, HRS, AND
TITLE 11, CHAPTER 200, HAWAII ADMINISTRATIVE RULES FOR
MAKA KAI CHARTERS, INC. SLIP NO. 99, MAALAEA SMALL
BOAT HARBOR, ISLAND OF MAUI, HAWAII

REQUEST:

The Division of Boating and Ocean Recreation (DOBOR) is requesting that the Board of Land and Natural Resources (Board) approve the repair of an existing loading platform structure located at Slip No. 99 at Maalaea Small Boat Harbor, Island of Maui, Hawaii by the applicant, Maka Kai Charters, Inc. ("Applicant"), pursuant to Hawaii Administrative Rule (HAR) 13-232-43. Pursuant to HAR 13-234-14, the Applicant is also requesting reimbursement for the costs to repair the loading platform structure through a reduction in their mooring fees for a period of approximately two (2) years. It is further requested that the proposed project be declared exempt from the requirements of Hawaii Revised Statutes (HRS), Chapter 343 and HAR 11-200 to prepare an Environmental Assessment (EA), due to the use of State land. The Applicant's request is attached as Exhibit A.

PROJECT DESCRIPTION:

The Applicant is proposing to remove the existing 9-foot by 20-foot loading platform consisting of steel beams and wood decking. The existing steel beams are supported by 12-inch diameter steel piles filled with concrete, which will be reused for the proposed repair. The steel beams will be replaced with 6-inch x 14-inch wooden girders and 6-inch x 8-inch wooden beams. The wood decking will be replaced with new 4-inch x 6-inch wood decking secured to the beams and girders with stainless steel screws. Construction plans, prepared by a licensed structural engineer, have been reviewed and approved by the DOBOR Engineering Branch and are attached as Exhibit B.

PERMITS:

The Applicant has obtained a Nationwide Permit No. 3 (Maintenance) from the U.S. Army Corps of Engineers Permit and a Section 401 Water Quality Certification from the Department of Health as required for this type of construction, both of which are attached as Exhibit C.

ENVIRONMENTAL ASSESSMENT EXEMPTION:

In accordance with HAR 11-200-8(A) and the Exemption List for the Department of Land and Natural Resources (DLNR), approved by the Environmental Council, on June 5, 2015, it has been determined that the proposed project is exempt from the preparation of an Environmental Assessment (EA) pursuant to the following exemptions:

Item No. 6 of Exemption Class 2: “Replacement or reconstruction of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar structures, not to exceed the footprint of the existing facility, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under Nationwide Permit No. 3 (Maintenance).”

Consultations with the U.S. Army Corps of Engineers and State Department of Health for this EA Exemption have been conducted as required by HAR 11-200-8.

CONTRACTOR’S BONDING AND PREVAILING WAGE REQUIREMENTS:

This request was deferred at the August 11, 2017 Board Meeting due to questions from the Board as to whether the applicant’s contractor should be required to be bonded and pay their employees at prevailing wage rates. It was recommended to consult with the State’s Deputy Attorney General’s (AG) Office for their opinion. The Deputy AG’s office has been consulted and it was determined that the contractor should be bonded for the full amount of the repair cost and their employees shall be paid at prevailing wages according to Department of Labor and Industrial Relation’s Prevailing Wage Rate Schedule.

RECOMMENDATION:

That the Board of Land and Natural Resources:

Approve the proposed repair to the loading platform at Slip No. 99, Maalaea Small Boat Harbor, Island of Maui, Hawaii; reimburse costs to perform the repairs through reduction in mooring fees for approximately two (2) years; and declare that, after considering the potential effects of the project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



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

Attachment:

- A. Applicant's request
- B. Construction Plans
- C. U.S. Army Corps of Engineers Permit and Department of Health Section 401 Water Quality Certification

MAKA KAI CHARTERS, INC.
P O BOX 1119 LAHAINA, HAWAII 96767

June 19, 2017

Mr. Ed Underwood
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawai'i 96819

Re: Request for Approval of Construction, Slip 99 Repair, Maalaea Small Boat Harbor

Dear Mr. Ed Underwood:

Maka Kai Charters, Inc. ("Maka Kai") has received the necessary permits from the Department of Health and the US Army Corps of Engineers for the construction project to repair Slip 99 located in Maalaea Small Boat Harbor. Maka Kai is seeking approval of the project from the Division of Boating and Ocean Recreation.

Maka Kai would like to request that the project be submitted to the Board of Land of Natural Resources at the earliest opportunity for final authorization and a permit to carry out the construction. In addition, Maka Kai requests that it be allowed to recover the costs of the project (est. \$30k-35k) pursuant to HAR § 13-234-14, which states, "Where a mooring facility is constructed by others pursuant to section 13-232-43 the mooring rate shall be thirty per cent of the fee established in section 13-234-3 for a period of time as established by the department which will allow the permittee to amortize the capital most of the improvements." Accordingly, Maka Kai wishes the approval of a period of two years of reduced mooring fees to recover its costs. Once the costs have been recovered, the thirty percent reduction in fees would cease, even if prior to the end of the allotted two-year period. Maka Kai will provide the Department with the necessary information regarding the total cost upon the project completion.

Please feel free to reach out me if you have any questions or concerns. My number is (808) 283-2169 and my email is denver.coon@sailtrilogy.com

Sincerely,



Denver S. Coon
Assistant Vice President
Maka Kai Charters, Inc.

EXHIBIT A



DEPARTMENT OF THE ARMY
HONOLULU DISTRICT, U.S. ARMY CORPS OF ENGINEERS
FORT SHAFTER, HAWAII 96858-5440

February 14, 2017

**SUBJECT: Nationwide Permit Verification for Maalaea Small Boat Harbor Slip #99
Loading Platform Repair Project; DA Number POH-2015-00105**

James Coon
Maka Kai Charters, Inc.
P.O. Box 1119
Lahaina, HI 96767

Dear Mr. Coon:

The U.S. Army Corps of Engineers, Honolulu District (Corps) Regulatory Office, has completed review of your request for authorization dated March 13, 2015 for the proposed Maalaea Small Boat Harbor Slip #99 Loading Platform Repair Project located in Wailuku, Hawaii. This office has verified that your proposed activity complies with the terms and conditions of Nationwide Permit (NWP) 3 (Maintenance) and the overall NWP program issued on March 17, 2012 pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Please reference Department of the Army (DA) file number POH-2015-00105 in any future correspondence relating to this verification.

On February 13, 2017 we determined your proposed work complies with the terms and conditions of Nationwide Permit NWP 3 (Maintenance) and the overall NWP Program issued on March 17, 2012. This NWP verification is being issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and authorizes the following work as described below and as depicted on the enclosed drawings (Enclosure 1):

Remove and replace original loading platform (9-feet X 20-feet) that consists of steel beams and wood decking. The original steel beams are attached by welds to existing 12-inch concrete filled piles. The steel beams which are badly rusted will be replaced by 6-inch by 14-inch Borax-treated wood girders and 6-inch by 8-inch beams. The wood decking (4-inch by 6-inch) will be attached to wood beams with S.S. decking screws. The steel framing of the loading platform will be removed by means of a torch. Once the steel framing has been cut, the entire platform will be lifted by a crane onto a 20-foot long trailer. The platform will be disposed of in a construction landfill approximately 2 miles from the harbor. There will be no in-water work associated with this project. Construction for this project is expected to take between 30-40 hours.

In order for this NWP authorization to be valid, you must ensure that the work is performed in accordance with the *Nationwide Permit General Conditions* and the

EXHIBIT C

Honolulu District Regional Conditions (Enclosure 2), and the following project-specific Special Conditions:

1. Incidents where any individuals of Green Sea Turtle (*Chelonia mydas*), Hawksbill Turtle (*Eretmochelys imbricata*), Humpback Whale, (*Megaptera novaeangliae*), Loggerhead Sea Turtle (*Caretta caretta*), Hawaiian Monk Seal, (*Monachus schauinslandi*) listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Honolulu District of the U.S. Army Corps of Engineers at (808) 835-4303. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measurements to ensure that evidence intrinsic to the specimen is preserved.
2. The project area will be surveyed by a qualified biologist prior to commencement or resumption of construction activity to ensure that no federally-protected species are in the project area. If federally-protected species are detected construction activities should be postponed until the animal(s) voluntarily leave the area.
3. All work will be conducted between 7:00am and 6:00pm so that federally-protected sea turtles and seabirds are not disturbed or attracted to artificial lights. Any lights used during the construction will be turned off during the evening hours.

In addition, a Section 401 Water Quality Certification WQC0897 was issued to you for this project on February 9, 2017 by the State of Hawaii Department of Health, Clean Water Branch and expiring on March 18, 2017. Be advised, expiration of your WQC invalidates this authorization. The State of Hawaii Department of Business, Economic Development and Tourism, Office of Planning issued a Coastal Zone Management consistency general concurrence for the 2012 NWPs on March 16, 2012.

This NWP verification is valid until **March 18, 2017** unless this NWP is modified, reissued, or revoked prior to that date. If the work authorized under this permit has commenced or is under contract to commence by March 18, 2017, the work will remain

authorized provided the work is completed by March 18, 2018. This one year extension is automatically granted and cannot be further extended. If the authorized work has not commenced or is not under contract to commence by March 18, 2017, you must apply for verification under the 2017 NWP, if reissued, or authorization under an individual permit. It is incumbent upon you to remain informed of changes to the NWPs. If the Corps modifies, reissues, or revokes any NWP at an earlier date, we will issue a public notice announcing the changes. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of the Clean Water Act and subsequent enforcement action. This authorization does not relieve you of the responsibility to obtain any other Federal, State, and/or local authorizations required by law.

Finally, General Condition #30 requires a signed certification be submitted to this office upon completion of work. Therefore, please sign, date and return the enclosed Compliance Certification form (Enclosure 2) within 7 days of completion of work to CEPOH-RO@usace.army.mil.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this determination, please contact Carol Heidsiek of this office at 808-835-4305 or via e-mail at CEPOH-RO@usace.army.mil. You are encouraged to provide comments on your experience with the Honolulu District Regulatory Office by accessing our web-based customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0.

Sincerely,



Digitally signed by
MCELWAIN.TUNIS.W.1239553008
DN: cn=US, o=U.S. Government, ou=DoD,
ou=PKLOU=USA,
c=MCELWAIN.TUNIS.W.1239553008
Date: 2017.02.14 11:05:17 -10'00'

Tunis W. McElwain
Acting Chief, Regulatory Branch

Enclosure(s)

cc:

State of Hawaii DBEDT Office of Planning (John Nakagawa)
State of Hawaii DOH-CWB (Darryl Lum)
NOAA-NMFS, Habitat Conservation Division (Gerry Davis)
USCG (Nicolas A. Jarboe, Jason Olney)

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
EMDCWB

WQC0897.EXT.17

February 27, 2017

Mr. James E. Coon
Vice President
Maka Kai Charters, Inc.
207 Kupuohi Street
Lahaina, Hawaii 96761

Dear Mr. Coon:

**Subject: Extension to Section 401 Water Quality Certification (WQC)
Maalaea Small Boat Harbor Slip #99 Loading Platform Repair
Wailuku, Island of Maui, Hawaii
WQC0897/DA File No. POH-2015-00105**

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges your request for an extension of the Section 401 WQC for the subject project, which expires on March 18, 2017.

This letter serves to inform you that the DOH-CWB has agreed to administratively extend the expiration date of the subject Section 401 WQC to **March 18, 2018** for the purpose of allowing you to complete the construction activities authorized under the Department of the Army (DA) Nationwide Permit (NWP) #3 (Maintenance Activities) and Section 10 of the Rivers and Harbors Act of 1899 under File No. POH-2015-00105. All other conditions contained in the February 9, 2017 issued Section 401 WQC (Doc. No. WQC0897.FNL.17) shall remain unchanged.

Please include the **File No. WQC0897** and the following certification statement in all future correspondence with the DOH for the subject project:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. James E. Coon
February 27, 2017
Page 2

WQC0897.EXT.17

If you have any questions, please contact Mr. Matthew Kurano of the Enforcement Section or Mr. Darryl Lum of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,



STUART YAMADA, P.E., CHIEF
Environmental Management Division

EC:bk

- c: Regulatory Office, POH, COE [via e-mail cepoh-ro@usace.army.mil only]
Mr. Tunis W. McElwain, POH, COE [via e-mail Tunis.W.McElwain@usace.army.mil only]
Ms. Carol Heidsiek, POH, COE [via e-mail Carol.A.Heidsiek@usace.army.mil only]
Mr. John Nakagawa, CZM Program, Office of Planning, DBEDT
[via e-mail john.d.nakagawa@hawaii.gov only]
Dr. Wendy Wiltse, EPA, R9, PICO [via e-mail wiltse.wendy@epa.gov only]

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
EMD/CWB

WQC0897.FNL.17

February 9, 2017

Mr. James E. Coon
Vice President
Maka Kai Charters, Inc.
207 Kupuohi Street
Lahaina, Hawaii 96767

Dear Mr. Coon:

Subject: Section 401 Water Quality Certification (WQC) for the Department of the Army (DA), Section 10 of the Rivers and Harbors Act of 1899 (RHA) Nationwide Permit (NWP) #3 for the Maalaea Small Boat Harbor Slip #99 Loading Platform Repair Wailuku, Island of Maui, Hawaii WQC0897/DA File No. POH-2015-00105

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of your revised Section 401 WQC Application (hereafter the "revised Application") transmitted with your letter of October 25, 2016 for the subject project.

You stated in your letter of October 25, 2016 that:

"In the event that the revised WQC application meets the necessary requirements and can be processed, we request that the DOH-CWB to waive the public participation process pursuant to HAR§ 1-54-9.1.04(b). The project is covered by a nationwide permit (POH-2015-00108) (SIC) and is small in scale and scope, and minor and noncontroversial."

The "Provisional Nationwide Permit Verification for Maalaea Small Boat Harbor Slip #99 Loading Platform Repair Project; DA Number POH-2015-00105" issued by the U.S. Army Corps of Engineers, Honolulu District (Corps) Regulatory Office on August 24, 2015 stated that:

"This letter is to inform you that although the Corps has completed its review of your application, we cannot issue a final verification for NWP 3 (Maintenance) until the State of Hawaii Department of Health, Clean Water Branch (DOH-CWB) issues a Section 401 Water Quality Certification (WQC) or waiver for the regulated discharges associated with your proposed action. Therefore, this letter is a Provisional NWP Verification. Upon receipt of the WQC and submittal of a copy to the Corps, the Corps will, within 30 days of receipt, send you a final NWP verification letter. You may not begin work within a waters of the U.S. until you receive the final NWP verification letter from the Corps. You are advised that substantial legal penalties may be incurred if you proceed with the work in the absence of the above required State and Federal approvals."

In consideration of the Maka Kai Charters, Inc. October 25, 2016 waiver request; the Corps' Nationwide Permit (NWP) #3 determination; and in accordance with Hawaii Administrative Rules (HAR), Paragraph 11-54-9.1.04(b), the DOH-CWB waives the public notification requirements for the processing of your revised Application for a Section 401 WQC for the subject project with the following conditions:

1. The determination of waiving the public notification requirements for the processing of an Application for a Section 401 WQC for the subject project:
 - a. Shall become invalid if the project construction activity is found to be controversial after the effective date of this determination. Maka Kai Charters, Inc. and the contractor(s) shall cease all discharge activities as specified in Item Nos. 7.c and 7.d for the purposes as specified in Item No. 7.c of the Application. Maka Kai Charters, Inc., the General Contractor (GC, Riedel Construction, Inc.) and the subcontractor(s), if any, shall not hold the DOH responsible for any damages or costs incurred due to the cessation of the discharge activity.
 - b. Shall become effective on **February 9, 2017**, and shall expire at midnight on **March 18, 2017**, or until the applicable Water Quality Standards (WQS) are revised or modified, or the Department of the Army (DA) Nationwide Permit #3 (File No. POH-2015-00105) expires or is revised or modified, or the mandatory requirements in implementing the Total Maximum Daily Load (TMDL) Implementation Plan for the Pacific Ocean is established by the DOH and approved by the U.S. Environmental Protection Agency (EPA), or when the project construction is completed, whichever is earliest. If the applicable State WQS are revised or modified before **March 18, 2017**, and the discharge activity complies with the revisions or modifications, or the discharge activity complies with the TMDL implementation requirements established by the DOH and approved by the EPA, this Section 401 WQC shall continue to be valid until **March 18, 2017**.

The expiration date of this determination may be administratively extended by the Director of Health (Director) for no more than 12 months beyond midnight, **March 18, 2017**, if Maka Kai Charters, Inc. submits an extension request through the e-Permitting Section 401 WQC Compliance Form by **February 17, 2017** and the Corps has not modified, suspended, or revoked the 2012 Nationwide Permits per 33 CFR 330.4(e) and 33 CFR 330.5(c) and (d). The submission shall include appropriate color photographs (including the date/time and narrative description) demonstrating that the project is in fact under physical construction and the purpose of extending the expiration date is to allow the contractor to complete the project construction. The decision by DOH-CWB to allow an administrative extension will be made on a case-by-case basis taking into account compliance history and impact to water quality.

c. May be revoked when:

- i. New State WQS are subsequently established before the activity is completed and/or the Director determines that the activity is violating or in non-compliance with new State WQS. DOH-CWB will notify Maka Kai Charters, Inc. of the violation/non-compliance. Maka Kai Charters, Inc. shall cease the violation/non-compliance within 180 calendar days of the date of the notice. If Maka Kai Charters, Inc. fails within 180 calendar days of the date of the notice to cease the violation, the Director may revoke this certification; or
- ii. The Director determines that the discharge(s) from the activity is violating or in non-compliance with the existing State WQS or any condition specified in this letter. The Director will notify Maka Kai Charters, Inc. violation/non-compliance. Maka Kai Charters, Inc. shall cease the violation/non-compliance within seven (7) calendar days of the date of the notice. If Maka Kai Charters, Inc. fails within seven (7) calendar days of the date of the notice to cease the violation/ non-compliance, the Director may revoke this certification.

These actions shall not preclude DOH-CWB from taking appropriate enforcement action authorized by law.

Written notification by the Director under this section is complete upon mailing or sending a facsimile transmission/email of the document or actual receipt of the document by Maka Kai Charters, Inc. and/or the contractor(s).

2. Discharge activities that you are seeking coverage under this revised Application, evaluated under Item No. 7.d of this revised Application include:
 - a. Removal of wood planks and steel beams above water.
 - b. Installation of borate treated wooden beams, planks, and girders above water.
 - c. Drilling holes in concrete-filled piles and filling holes with epoxy above water.
3. Maka Kai Charters, Inc. shall:
 - a. Notify the DOH-CWB via the e-Permitting Section 401 WQC Compliance Form (on the e-Permitting Portal located at <https://eha-cloud.doh.hawaii.gov/epermit/>) of the following:

- i. Commencement date within seven (7) calendar days before the start of any construction activities.
 - ii. Completion date within 14 calendar days after the completion of the proposed construction activities (including the disturbed areas restoration activities).
 - iii. Updated construction schedule within seven (7) calendar days before the start of construction activities.
- b. Comply with all information, requirements, specifications, figures, project plans, Applicable Monitoring and Assessment Plan and Best Management Practices Plan contained in the revised Application. This Best Management Practices (BMP) Plan represents the minimum BMP measures required to be implemented in the construction of the subject project. Upon approval by DOH-CWB, the General Contractor may furnish additional BMP measures as deemed necessary.
- c. The potential discharge activities will last four (4) days and there will be no in-water activities. Color photographs shall be taken three (3) times daily during project construction to document daily visual observation/monitoring results. Daily color photographs shall show the condition of the project staging area, the stockpile area, the installed BMPs measures, the construction activity, and the receiving State waters.

Color photographs shall be taken before, during, and after completion of the proposed construction activities. A photo orientation map shall be submitted.

Copies of the color photographs taken should note the date and time the photos were taken. Photographs taken before the project construction shall be submitted to the CWB prior to the commencement of the project construction. Photographs taken after the construction shall be submitted to the CWB within 14 calendar days after the completion of the construction project

Field measurement results (if any) and color photographs taken during the construction period shall be submitted to the CWB, before the closing of the next business day the field samples and photographs were taken, via e-mail in excel and pdf format to cleanwaterbranch@doh.hawaii.gov. All communication, including but not limited to the e-mail with the CWB shall include File No. WQC0897 and the certification statement below.

- d. Ensure that all "discharges" associated with the proposed construction activities are conducted in a manner that will comply with "Basic Water Quality Criteria Applicable to All Waters" as specified in HAR, Section 11-54-4.
- e. Ensure that all material(s) placed or to be placed in State waters are free of waste material, heavy metals, organic materials, debris and any water pollutants at toxic or potentially hazardous concentrations to aquatic life as specified in HAR, Section 11-54-4(b).
- f. Ensure that the permitted activity will not result in non-compliance or violations to the applicable State WQS. Although temporary increases in turbidity level is expected, any visible floating debris, oil, grease, scum, other floating materials, or objectionable color, or turbidity plume, detected outside the confined/isolated construction areas constitutes a violation of HAR, Subsection 11-54-4(a) requirements.

Maka Kai Charters, Inc. and/or the contractor(s) shall immediately cease the portion of the construction work if monitoring or daily inspection or observation result(s) indicates that non-compliance to HAR, Section 11-54-4(a) or Section 11-54-4(b), will occur or is occurring. The construction activity shall not resume until adequate measures are implemented and appropriate corrective actions are taken.

Maka Kai Charters, Inc. shall not hold the DOH responsible for any damages or costs incurred due to the temporary cessation of the construction operations.

These actions shall not preclude the DOH-CWB from taking enforcement action authorized by law.

- g. Immediately report any spill(s) or other contamination(s) that occurs at the project site to DOH-CWB via telephone number (808) 586-4309 or through e-mail to: cleanwaterbranch@doh.hawaii.gov.
- h. Ensure that:
 - i. Erosion and Sediment Control Measures are in place and functional before earth moving operations begin;
 - ii. Temporary soil stabilization shall be applied on areas that will remain unfinished for more than 30 calendar days; and

- iii. Permanent soil stabilization shall be applied as soon as practicable after final grading.

Maka Kai Charters, Inc. and the contractor(s) shall maintain, at the construction site or in the nearby field office, a record that these requirements have been fully complied with.

- i. Ensure that all temporarily constructed structures, including implemented BMPs measures such as construction debris containment device(s) and/or soil erosion control structures, are properly removed immediately after the completion of the construction work and when the affected water body has returned to its pre-construction condition or better, as demonstrated by the color photograph documentation.
 - j. Not discharge construction site dewatering effluent, hydrotesting effluent, concrete truck wash water, and any other types of effluent without first obtaining the required National Pollutant Discharge Elimination System permit from the DOH.
 - k. Not allow any concrete truck wash water (if any) to be disposed by percolation into the ground or into State waters.
 - l. Maintain, or require the contractor(s) and the subcontractor(s), if any, to maintain a copy of the Application package and this letter at the construction site or in the nearby field office. Ensure that all areas impacted, either directly or indirectly, by the project construction activities are fully restored.
 - m. Work shall be discontinued during storm events or during flood condition.
 - n. Clearing and grubbing shall be held to the minimum, if any.
- 4. Maka Kai Charters, Inc. shall review and update the effectiveness and adequacy of the implemented site-specific BMP measures and other environmental protection measures as often as needed. Maka Kai Charters, Inc. shall modify the BMP Plan and/or other environmental protection measures upon request or when instructed by the Director.
 - 5. By applying for and accepting this Section 401 WQC determination, Maka Kai Charters, Inc. agrees that the DOH-CWB may conduct routine inspection of the construction site in accordance with Hawaii Revised Statutes, Section 342D-8.

6. Construction debris, waste products, and material removed from the construction site shall be disposed of at the upland State and County approved sites. A Solid Waste Disclosure Form for Construction Sites shall be completed and returned to the DOH, Solid and Hazardous Waste Branch, Solid Waste Section. The form can be downloaded at:
<http://health.hawaii.gov/shwb/files/2013/06/swdiscformnov2008.pdf>. No construction material or construction activity-related materials shall be stockpiled, stored, or placed in State waters or in ways that will disturb or adversely impact the aquatic environment.
7. Runoff, return flow, or airborne particulate pollutants, if any, from any construction related activities or from the stockpiling site shall be contained on land and not be allowed to enter State waters.
8. Maka Kai Charters, Inc. shall comply with all new State WQS adopted by the DOH after the effective date of this letter.
9. DOH-CWB reserves the right of taking appropriate enforcement action authorized by law against any non-compliance of conditions contained in this letter and applicable State statutes and WQS requirements.
10. Know that Mr. James E. Coon shall submit all information/documents for compliance with the conditions of this WQC.

Please include the **File No. WQC0897** and the following certification statement in all future correspondence with the DOH for the subject project:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. James E. Coon
February 9, 2017
Page 8

WQC0897.FNL.17

If you have any questions, please contact Mr. Matthew Kurano of the Enforcement Section or Mr. Darryl Lum of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,

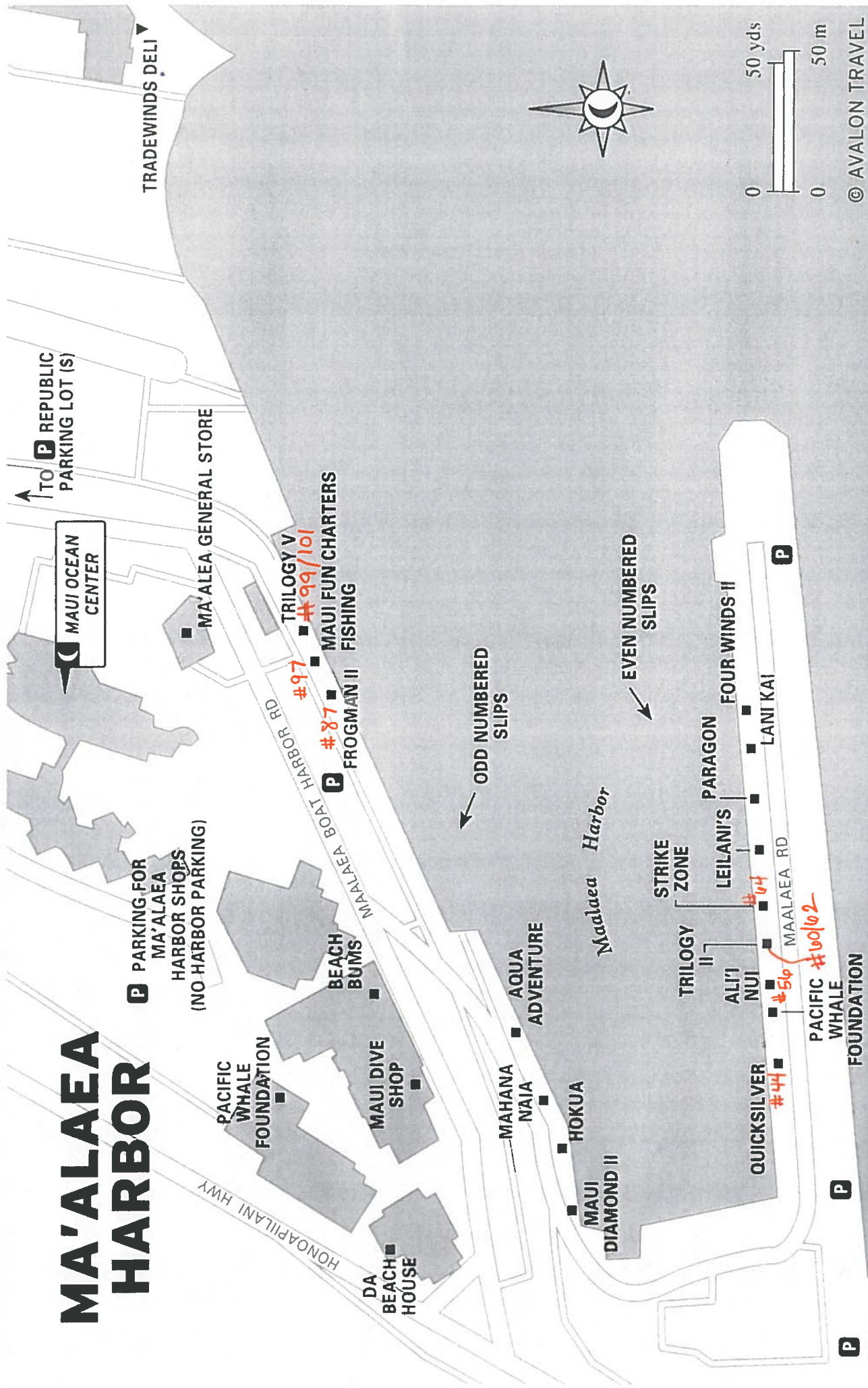


STUART YAMADA, P.E., CHIEF
Environmental Management Division

EC:bk

- c: Regulatory Office, POH, COE [via e-mail cepoh-ro@usace.army.mil only]
Mr. John Nakagawa, CZM Program, Office of Planning, DBEDT
[via e-mail john.d.nakagawa@hawaii.gov only]
Dr. Wendy Wiltse, EPA, R9, PICO [via e-mail wiltse.wendy@epa.gov only]

MA'ALAEA HARBOR



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