

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: APPROVE INSTALLATION OF AN EXISTING MOORING WITHIN REED'S BAY, OUTSIDE OF AN ESTABLISHED OFFSHORE MOORING AREA, AND DECLARE INSTALLATION EXEMPT FROM REQUIREMENTS OF CHAPTER 343, HAWAII REVISED STATUTES, AND TITLE 11, CHAPTER 200, HAWAII ADMINISTRATIVE RULES, HILO, ISLAND OF HAWAII, HAWAII, FOR BRUCE MCCULLOUGH

REQUEST:

The Division of Boating and Ocean Recreation ("DOBOR") is requesting that the Board of Land and Natural Resources ("Board") approve the installation of an existing offshore mooring within Reed's Bay on the Island of Hawaii, which is not an established offshore mooring area as defined in HAR 13-235. As required by HAR 13-235-9, any applicant requesting to moor a vessel outside of an established offshore mooring area must obtain approval from the Board.

Reed's Bay is a designated offshore mooring area identified in the "Documentation of Facilities for the Boating Program Transfer to the Department of Land and Natural Resources," when the Boating Program was transferred from the Department of Transportation to DLNR. However, Reed's Bay was never established as an offshore mooring area in HAR 13-235. Therefore, as required by HAR 13-235-9, the installation of all moorings within Reed's Bay must obtain approval from Board.

DOBOR is also requesting that the Board declare the installation of the existing offshore mooring exempt from the requirements of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawaii Administrative Rules, to prepare an Environmental Assessment ("EA"), due to the use of submerged State Land.

The applicant, Bruce McCullough ("Applicant"), uses an existing offshore mooring installed in Reed's Bay in Hilo on the Island of Hawaii that has been in place for several years. He is requesting that the Board declare the installation of his privately owned and maintained mooring exempt from the requirement to prepare an EA, as required by Chapter 343, HRS, and Chapter 11-200, HAR due to the use of submerged State land. In addition, the Applicant is requesting that the Board approve the mooring installation outside of an established offshore mooring, as required by HAR 13-235-9, as there are no established DOBOR offshore mooring areas on the Island of Hawaii. The Applicant's request is attached as Exhibit A.

Item J-6

PERMITS AND COMPLIANCE WITH STATE AND FEDERAL LAW:

In order to comply with Federal Law (Section 10 of the Rivers and Harbors act of 1899), DOBOR is requiring that all offshore moorings under their jurisdiction obtain a permit from the U.S. Army Corps of Engineers ("ACOE"). In addition, to ensure that the mooring system is structurally sound, DOBOR is requiring that all offshore mooring permittees submit an Offshore Mooring Installation Plan, prepared by a licensed structural engineer, for approval.

The Applicant has obtained a Nationwide Permit Verification from the ACOE authorizing the installation and use of the existing mooring. A Mooring Installation Plan, prepared by a licensed structural engineer, has also been submitted to and approved by DOBOR Engineering Branch. The ACOE Permit and approved Mooring Installation Plan are also attached with Exhibit A.

In accordance with HAR 13-235-6, the National Marine Fisheries Service (NMFS) and DLNR, Division of Aquatic Resources (DAR) must determine whether an offshore mooring is detrimental to the habitat or spawning ground of marine life. Through the ACOE permitting process, NMFS has been consulted and determined the offshore mooring has no detrimental effect to the habitat or spawning ground of marine life. DAR has also been consulted and concurred that the offshore mooring has no detrimental effect to the habitat or spawning ground of marine life.

ENVIRONMENTAL ASSESSMENT EXEMPTION

In accordance with Hawaii Administrative Rule (HAR) Section 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 installation of the existing mooring is exempt from the preparation of an EA pursuant to the following exemptions:

Item No. 13 of Exemption Class 6: "Placement or construction of accessory structures such as utility sheds, storage or maintenance sheds, office trailers, trash enclosures, comfort stations or sanitation facilities and related individual wastewater disposal systems, bus shelters, pavilions or picnic shelters, parking and fee collection facilities, checking stations, interpretive kiosks and displays, dock boxes, mooring cleats, bumpers, and mooring buoys, blocks, and piles, and other similar structures accessory to existing facilities on state land and waters."

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

RECOMMENDATION:

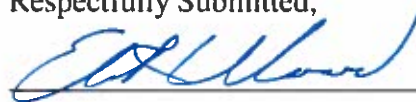
That the Board of Land and Natural Resources:

Approve the installation of the existing offshore mooring within Reed's Bay, located outside of an established offshore mooring zone, and declare that, after considering the potential effects of the installed mooring 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.

Declare Existing Offshore Mooring
Exempt from EA Requirements
Bruce McCullough
Reed's Bay, Hilo, Island of Hawaii


February 9, 2018
Item J-6

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 for approval of mooring, approved Mooring Installation Plan,
Nationwide Permit Verification Letter from Army Corps of Engineers

Bruce McCullough
188 Hale St. Apt. 7A
Hilo, Hawaii 96720

December 12, 2017

Request for Exemption from Requirement for Preparation of Environmental Assessment
for Installation of an Existing Offshore Mooring, in Reed's Bay, Hilo, Hawaii.

Submitted in compliance with Hawaii Revised Statue Chapter 343 and HAR Sections 11-
200-8; 11-200(b)

Submitted to:

Board of Land & Natural Resources, State of Hawaii, Department of Land & Natural
Resources (DLNR) Division of Boating and Ocean Recreation, 4 Sand Island Access
Road, Honolulu, HI 96819

Email: finn.d.McCall@hawaii.gov Phone (808) 587-3520

Submitted by:

Bruce McCullough, 188 Hale St. Apt. 7A, Hilo, Hawaii 96720. Phone(808) 443-8646

Email: brucemccullough@gmail.com

Request:

Bruce McCullough (hereinafter referred to as "Petitioner") requests approval for an
Existing Offshore Mooring (that does not require modification) in the Mooring Zone in
Reed's Bay, Hilo, Hawaii and exemption from requirement assessment report associated
with the mooring installation; as the mooring will have little or no environmental impact,
as discussed herein below:

Reasoning and Justification for Request

Environmental Assessment Exemption

- 1) The reason for the Environmental Assessment is due to the use of State submerged
lands.
- 2) Petitioner requests exemption from requirement for environmental assessment report
associated with the proposed mooring installation, as the proposed installation will have
Little or no impact on the environment in the proposed location.

EXHIBIT A

3) The current exemption list for the Department of Land & Natural Resources dated June 5, 2015 provides as follows under Exemption Class 6:

“13. Placement or construction of accessory structures such as ... mooring, cleats, bumpers, and mooring buoys, blocks and piles, and other similar structures accessory to existing facilities on state land and waters.”

Project Description -

Installation of a private offshore mooring buoy in Reed's Bay, Hilo, Hawaii.

Technical Description of Proposed Installation -

A single, non-commercial mooring located approximately 300 yards off Reed's Bay Beach Park in approximately 10 - foot depth. The 18" nylon mooring buoy (on surface) is anchored by a 14 foot, ½" long link chain to 2 concrete blocks through a center hole in each block (each block weighs in at 5625 lbs) with an intermediate 14" buoy midway between the concrete blocks and surface buoy to keep the chain suspended above the concrete blocks.

The mooring features two (2) 30 - foot long 1¼ polypropylene rope (5' on deck and 25' to surface buoy) for securing the vessel to mooring.

Location of Proposed Installation -

The proposed mooring buoy would be (is) located at center coordinates:
Latitude: 19.43807 degrees North and 155.03661 degrees West.

Purpose of Proposed Installation -

The proposed mooring will be used by the Petitioner solely for the purpose of mooring a sailboat for non-commercial purposes.

Impact on Coastal Ecosystems -

NEGLIGIBLE The proposed mooring site is approximately 300 yards from the nearest shore is not within the Special Management Area or Shoreline Setback Area, nor is the site within a State Conservation District. This site does not provide habitat for any known endangered species of plants, birds, or mammals. This site is not within, and does not border any National Area Reserve, Marine Conservation District, or estuary. This site is not on or close to any reef or coral colonies. No material will be placed or discharged in the project area (except for the 2 concrete blocks which were set on silt and small rocks). No dredge or fill activities will be involved in the installation of the mooring. The mooring will be placed within an existing designated DLNR "Offshore" mooring area.

Impact on Marine Resources -

NONE The proposed mooring does not involve or affect the use or development of any marine or coastal resources.

Impact on Historic Resources -

NONE The project site is not within a designated historic or cultural district and has not been listed or nominated for the Hawaii or National a Register of Historic Places. The proposed project site contains no known historic or archeological resources and is not within or adjacent to any Hawaiian Fishpond or historic settlement area.

Impact on Scenic and Open Space Resources -

NEGLIGIBLE A sailboat will be located at the proposed mooring location and will be visible. The mooring ball will be visible floating on the surface of the water.

Respectfully submitted by:



Bruce McCullough
(808) 443-8646

EXHIBIT A



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

December 8, 2017

SUBJECT: Nationwide Permit Verification for McCullough Reeds Bay Mooring 32, Reeds Bay, Hilo Bay, Hilo, Hawaii, Department of the Army File No. POH-2017-00097

Bruce McCullough
188 Hale St. #7A
Hilo, HI

Dear Mr. McCullough:

The Honolulu District, U.S. Army Corps of Engineers (Corps), Regulatory Branch has completed review of your Pre-Construction Notification dated May 25, 2017 requesting authorization for the proposed Offshore Mooring for McCullough Reeds Bay Mooring 32, Hilo Bay, Hilo, Hawaii. Please reference Department of the Army (DA) file number POH-2017-00097 in any future correspondence related to this permit.

This letter verifies your activity complies with the terms and conditions of Nationwide Permit (NWP) #10, (Mooring Buoys) issued on March 19, 2017 (82 FR 1860, January 6, 2017). This NWP verification letter is being issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 for work or structures in or affecting navigable waters of the U.S. You are authorized to conduct the following work as described below and as depicted on the enclosed drawings (Enclosure 1):

This project is an after-the-fact verification of an existing mooring deployed in approximately 8 feet of water in Reeds Bay. The bottom in this area consists of flat lava rock, covered in 1"-3" of silt with a few small rocks. Water quality is poor, consisting of a mixture of brackish and salt water with low visibility. 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* (Enclosure 2), the *Honolulu District Regional Conditions* (Enclosure 3), and the following project-specific Special Conditions:

1. **Essential Fish Habitat.** You must comply with the following conditions to avoid and/or minimize adverse impacts to EFH resources:
 - a) Chains and downlines should be supported with mid-water floats that prevent contact with the bottom if the surface float is compromised.
 - b) The anchors should be properly weighted to support the moored vessel in all conditions that are likely to occur without dragging along the bottom.
 - c) The Applicant should have a long term maintenance plan for each mooring and buoy to ensure its integrity. Once it is no longer needed, the applicant is responsible for removing all components of the mooring buoy to ensure that it does not become marine debris. This will avoid impacts to nearby resources from broken and derelict buoys and vessels.

d) The applicant should have plans in place to avoid the discharge of any potential pollutants from mooring installation vessel, installation activities, and the moored vessel. This will avoid a contribution to reduced water quality of the water column EFH in the area.

Rationale: This conditions is required to reflect any agreements made during the EFH consultation.

2. Endangered Species. You must comply with the following conditions to avoid and/or minimize adverse impacts to threatened and endangered species, including designated critical habitat:

a) Incidents where any individuals of Green Sea Turtle (*Chelonia mydas*), Hawksbill Turtle (*Eretmochelys imbricata*), 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 U.S. or structures or work in navigable waters of the U.S. authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Branch of the Honolulu District, 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.

b) You must comply with the attached Standard Local Operating Procedures for Endangered Species in the Central and Western Pacific Region (Pac-SLOPES) general conditions and best management practices (BMPs) (Enclosure 4).

Rationale: This is a required permit condition serving as a protective measure listed in the ASA(CW)'s 6 March 2014 letter to NOAA modifying the proposed action for the re-initiated programmatic Endangered Species Act Section 7 consultation on the 2012 and 2017 NWPs with NOAA Fisheries Service. While the biological opinion expires at the expiration of the 2012 NWPs, March 18, 2017, direction from HQUSACE is to continue to include the condition to notify

3. You must implement and abide by the conditions of the Coastal Zone Management Consistency Concurrence issued for this NWP on February 22, 2017 by the State of Hawaii Department of Health, Clean Water Branch and

expiring on March 18, 2022. Expiration of your CZM Consistency Concurrence invalidates this authorization.

Rationale: This conditions is required per 33 CFR 330.4(d)(6)

Verification of your project under this NWP is valid until **March 19, 2022** unless this NWP is modified, reissued, or revoked prior to that date. 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 or Rivers and Harbors 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 5) within 7 days of completion of work to the email address specified below or to the mailing address indicated on the letterhead above.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this authorization, please contact me at 808-835-4307 or via e-mail at Rebecca.m.fragger@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,

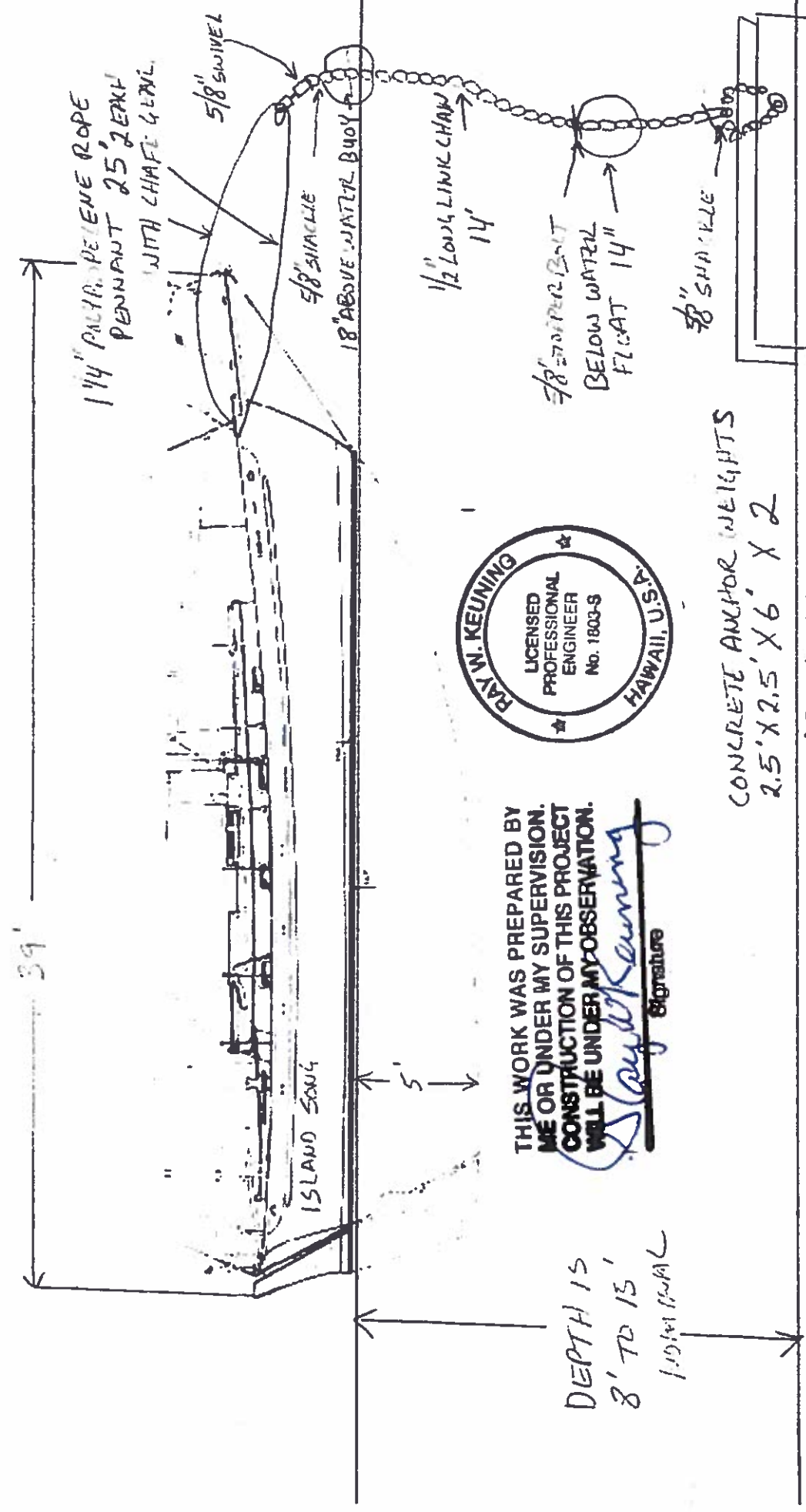
Becca Frager
Biologist, Regulatory Branch

Enclosures

cc:

USCG (John Bannon, Jason Olney)
State of Hawaii Department of Health, Clean Water Branch (DOH-CWB)
State of Hawaii Office of Planning, Coastal Zone Management Program (Hawaii CZM Program)

SECTION VIEW FOR: BRUCE C McCULLOUGH, REEDS BAY HILO HAWAII, HILO HARBOR
 VESSEL NAME: ISLAND SONG HA# 7538F MAKE: WESTSAIL 32 LOA 37' 0" BOW TO STERN
 LOCATION: N 19° 43.807 W 155° 03.661 BEAM 11' DRAFTS' DISPLACEMENT 19500 LBS
 BALLAST 7000 LBS



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION. CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION.
Ray M. Keuning
 Signature

DEPTH IS 8' TO 15'
 1.0 M BOWAL

CONCRETE ANCHOR WEIGHTS 2.5' X 2.5' X 6' X 2

APPROXIMATE WEIGHT = 5625 LBS
 SILT LAYER 1'-3' THICK VARIES WITH SMALL ROCKS EA PARTS 5/16" DIA
 1/2" CHAIN TRU HOLES IN WEIGHT SHACKLED W 1/2" SHACKLE