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

March 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 OUTSIDE MALA WHARF OFFSHORE MOORING AREA AND DECLARE INSTALLATION EXEMPT FROM REQUIREMENTS OF CHAPTER 343, HAWAII REVISED STATUES, AND TITLE 11, CHAPTER 200, HAWAII ADMINISTRATIVE RULES, LAHAINA, ISLAND OF MAUI, HAWAII, FOR MARK E. PAUL

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 outside of the Mala Wharf Offshore Mooring Zone. 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.

DOBOR is also requesting that the Board declare the installation exempt from the requirements of Hawaii Revised Statutes, Chapter 343 to prepare an Environmental Assessment (“EA”), due to the use of submerged State land.

The applicant, Mark E. Paul (“Applicant”), uses an existing offshore mooring installed outside of the Mala Wharf Offshore Mooring Area in Lahaina on the Island of Maui that has been in place for several years. He is requesting that the Board declare the installation of his offshore 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 the Mala Wharf Offshore Mooring Zone, as required by HAR 13-235-9, due to the water depths there being too shallow and congestion of vessels within the mooring zone, both of which present a risk of damage to his vessel and possible grounding during large storm and ocean swell events. The Applicant’s request is attached as Exhibit A.

PERMITS AND COMPLIANCE WITH FEDERAL AND STATE 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.

Item J-3
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

Approve the installation of the existing offshore mooring outside the Mala Wharf 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.

Respectfully Submitted,

EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation
APPROVED FOR SUBMITTAL:

[Signature]

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
Request for Exemption from Requirement for Preparation of Environmental Assessment for and Approval for the Installation and Modification of an Existing Offshore Mooring within Mala Wharf / Lahaina Hawaii

Submitted in compliance with Hawaii Revised Status Chapter 343 and HAR §§11-200-8; 11-200-8(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:
Mark E. Paul, M/V CHASING TAIL, email Captmarkpaul@gmail.com, Cell#702-501-3804

Request: (hereinafter referred to as “Petitioner”) requests approval for installation and modification of an existing offshore mooring within Lahaina Hawaii and exemption from requirement for environmental assessment report associated with the proposed mooring installation, as the proposed mooring will have little to 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.

3) The current exemption list for the Department of Land and Natural Resources data 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 the Mala Wharf / Lahaina, Hawaii

Location of Proposed Installation – See attached mooring diagram, in accordance with ARMY CORPS of ENGINEERS PERMIT

The proposed mooring buoy would be located at center coordinates: Latitude: 20°53.544 N & Longitude 156°41.393 W The location is approximately ¼ mile from the nearest shore.

Purpose of Proposed Installation –
The proposed mooring will be used by the Petitioner solely for the purpose of mooring a 1979 40’ VIKING SPORTFISHERMAN for recreational purposes only.
Impact on Coastal Ecosystems –

NEGLIGIBLE The proposed mooring site is ¼ mile t from the nearest shore and 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. The site is not within, and does not border any National Area Reserve, Marine Conservation District, or estuary. The site is not on or close to any reef or coral colonies. No material will be placed or discharged in the project area. A cement block anchor is an environmentally friendly anchor system that installs easily under water with conventional equipment. No dredge or fill activities will be involved in the installation of the cement block mooring anchor. 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 Register of Historic Places. The proposed project site contains no known historic or archaeological resources and is not within or adjacent to any Hawaiian fishpond or historic settlement area.

Impact on Scenic and Open Space Resources –

NEGLIGIBLE A 1979 40’ VIKING SPORTFISHERMAN 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.

Enclosure: As Stated.

Thank you,

Mark E. Paul
SUBJECT: After-the-Fact Nationwide Permit Verification for Paul, Mark – Mooring Buoy in Lahaina, Island of Maui, Hawaii; Department of the Army File No. POH-2107-217

Mr. Mark Paul
910 Honoapiilani Hwy #7 Box 343
Lahaina, Hawaii 96761

Dear Mr. Paul:

The Honolulu District, U.S. Army Corps of Engineers (Corps), Regulatory Branch has completed review of your Pre-Construction Notification requesting after-the-fact authorization for a mooring buoy and associated anchoring system located in the Pacific Ocean at the Mala Wharf mooring zone in Lahaina, Island of Maui, Hawaii. Please reference Department of the Army (DA) file number POH-2017-217 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 dated November 22, 2017 (Enclosure 1):

After-the-fact authorization for the installation of a mooring buoy for a recreational vessel deployed in approximately 46 feet of water over sandy substrate approximately ¼ mile from the shoreline in the Mala Wharf mooring zone. The existing anchoring system is comprised of a 4,000-pound concrete block weight. The buoy is attached to the anchor with an 80-foot long 5/8-inch galvanized long link chain. The chain contains a mid-depth float. The 24-inch mooring buoy contains two 30-inch blue steel pendants.

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

1. 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.

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.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this authorization, please contact me at 671-339-2108 or at karen.m.urelius@usace.army.mil.

Sincerely,

Karen M. Urelius
Senior Project Manager, Regulatory Branch
properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permits, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permits should be aware that section 110k of the NHPA (54 U.S.C. 308113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO, or Indian tribe if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archaeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 48, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at

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Enclosure 2
DISTRICT ENGINEER DECISION

In accordance with the requirements of 33 CFR 101.32(b), the Act for the Protection of Waterways, the District Engineer hereby approves an alteration of the 100-year floodplain by the construction of the project described in Attachment A, which is hereby submitted to the Service for consideration. The construction of this project is expected to provide significant floodplain protection benefits. The District Engineer has reviewed the proposal and finds it to be consistent with the principles of the Act and the regulations of the Service.
DEFINITIONS

1. Definitions of terms used throughout the Regional Conditions and General Conditions can be found in the Regional Conditions and General Conditions.

2. NWP Definitions:
   - Section 3: Definitions of terms used throughout the Regional Conditions and General Conditions can be found in the Regional Conditions and General Conditions.
   - Section 4: NWP Definitions:
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FURTHER INFORMATION

The Regional Conditions and General Conditions of the regional controller's agreement.

The terms defined in the NWP Definitions:

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DA Reference #: POH-2017-217
Applicant: Mr. Mark Paul
22 Nov 2017
Mooring Buoy, Mala Wharf
Page 2 of 2
Project Location Map

DA Reference #: POH-2017-217
Applicant: Mr. Mark Paul
22 Nov 2017
Mooring Buoy, Mala Wharf
Page 1 of 2
OFFSHORE MOORING: MALA WHARF OFFSHORE MOORING ZONE
FOR: MARK E. PAUL

GPS COORDINATES OF MOORING: 20°53.544'N, 156°41.393'W
APPROXIMATE WATER DEPTH: 46'

Title Sheet

Department of Land and Natural Resources
Division of Boating and Ocean Recreation
PLAN REVIEW:

☑ Approved  ☐ Approved, as noted  ☐ Rejected  ☐ Revise & Resubmit

By: __________________ Date: 8/9/17

Corrections, comments or approval of plans shall not relieve the contractor from other local, state, federal or other agency regulations or permit conditions. This review is for general conformance with engineering design guidelines. The contractor is responsible for confirming all dimensions, quantities, fabrication requirements, and coordination with all other trades.
MOORING PLAN

PHREE CREATIONS, LLC.

SWING CIRCLE

SCALE 1:100