

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

June 22, 2018

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

Land Board Members:

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

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, Donald Kelger ("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, due to Reed's Bay not being an established offshore mooring area as defined in HAR 13-235. The Applicant's request is attached as Exhibit A.

Item J-3

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:

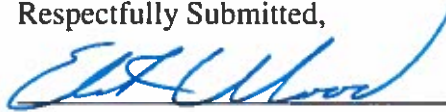
That the Board approve:

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.

Approve Existing Offshore Mooring and
Declare Exempt from EA Requirements
Donald Kegler, Reed's Bay, Hilo, Island of Hawaii

June 22, 2018
Item J-3

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

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

| | |
|--|--|
| Project Title: | Offshore Mooring in Reed's Bay, Hilo, Island of Hawaii, for Mr. Donald Kegler |
| Project / Reference No.: | N/A |
| Project Location: | Reed's Bay, Hilo, Island of Hawaii |
| Project Description: | Installation of an offshore mooring for a privately owned vessel |
| Chap. 343 Trigger(s): | Use of State (submerged) lands |
| Exemption Class No(s).: | Class No. 6, Item 13: "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." |
| Cumulative Impact of Planned Successive Actions in Same Place Significant? | No. There are no planned successive actions to be undertaken at the same location. |
| Action May have Significant Impact on Particularly Sensitive Environment? | No. The environment in the area of the existing offshore mooring is silty bottom with no coral reefs or marine features that are critical for aquatic species habitat or spawning areas. |
| Analysis: | The materials installed for the offshore mooring are chemically inert and do not pose a threat to essential marine habitat or endangered species and do not pose any hazard or obstruction to existing uses of the ocean in the area. |
| Consulted Parties: | - U.S. Army Corps of Engineers, Honolulu District, Regulatory Branch. See attached Permit No. POH-2017-00089. |
| Declaration | The Board finds that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment. |

Donald Kegler

40 Hina Street

Hilo Hawaii, 96720

May 10, 2018

Request for Exemption from Requirements for Preparation of Environmental Assessment for installation of an Existing Offshore Mooring, in Reed's Bay Offshore Mooring Area, Hilo, on the Island of Hawaii.

Submitted in compliance with Hawaii Revised Statute Chapter 343 and HAR sections 11 – 200 – *; 11 – 200(b).

Submitted to:

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

Submitted by:

Donald Kegler email:dkegler@hawaii.rr.com

Phone (808) 227 – 3960

Request:

Donald Kegler (hereinafter referred to as "Petitioner") requests approval for an existing offshore mooring (that does not require modification) in the Reed's Bay Mooring Area and exemption from requirements for environmental 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 requirements for environmental assessment report associated with the proposed (existing) 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 dated June 5, 2015 provides as follows under exemption class 6:
- 4) "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 (existing) of a private offshore mooring in Reed's Bay, Hilo, Hawaii, Offshore Mooring Area.

Technical Description of Proposed Installation-

A noncommercial existing bow/Stern mooring (DA Compliant-NWP-POH2017- Kegler Reed's Bay Mooring #12) is located in the Reed's Bay offshore mooring area in approximately 15 feet depth. The 18 inch mooring buoy is anchored by 15 feet of 5/8 inch galvanized long line attached to a three-quarter inch galvanized shackle which is then attached to a 1 inch swivel which is then attached to a 24 foot 5/8 inch long line galvanized chain attached to a 7/8 inch galvanized shackle to a cement rebar with a 1 inch steel loop 2.5 feet times 2.5 feet times 6 feet approximate weight 5400 pounds. The mooring features to 20 feet long nylon pennant lines to secure the vessel at the bow.

Location of Proposed Installation-

The proposed(existing) mooring buoy is located at Bow at coordinates:

Latitude N 19043. 823 W 155° 03. 638

Purpose of Proposed Installation-

The proposed(existing) mooring will be used by the petitioner solely for the purpose of mooring a sailboat for noncommercial purposes.

Impact on Coastal Ecosystems-

NEGLIGIBLE The proposed site 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 R, 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. 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 (existing) 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 historical or archaeological resources and is not within or adjacent to any Hawaiian fish pond 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:

Donald Kegler

808 – 227 – 3960

Don Kegler

From: Frager, Rebecca M CIV USARMY CEPOH (US) <Rebecca.M.Frager@usace.army.mil>
Sent: Friday, October 06, 2017 10:54 AM
To: Don Kegler
Cc: Bannon, John E LCDR; Olney, Jason R BMC; Nakagawa, John D; Lum, Darryl C
Subject: Permit Verification: POH-2017-00089, Offshore Mooring Kegler Reeds Bay Mooring 12, Reeds Bay, Hilo Bay, Hilo, Hawaii
Attachments: Encl 2. 2017NWP_Terms_GeneralConditions_Definitions.pdf; Encl 3. POH 2017 NWP RCs_FINAL.pdf; Encl 4. 2017 PacSLOPES General Conditions and BMPs.pdf; Encl 5. POH-2017-00089_Compliance_Certification.docx; Encl. 1 POH-2017-89_PCN with drawing and Pictures.pdf; poh-2017-00089_NWP_Verification.pdf

Dear Mr. Kegler,

The U.S. Army Corps of Engineers, Honolulu District, has completed its review of your request for authorization dated May 25, 2017 for the proposed Offshore Mooring in Kegler Reeds Bay Mooring 12, Reeds Bay, Hilo Bay, Hilo, Hawaii. Please reference Department of the Army (DA) file number POH-2017-00089 in any future correspondence related to this permit. This office has verified that your proposed activity complies with the terms and conditions of Nationwide Permit 10 (NWP-10), Mooring Buoys, and the overall NWP Program issued in March, 2017.

The Honolulu District Regulatory Office is digitally transmitting the attached documents for your convenience. Please retain these documents for your records. If you require a hard copy mailed to you, please notify me at your earliest convenience.

Thank you for your cooperation with the Honolulu Regulatory Office. Please let me know if you have any questions or comments.

Becca Frager
Biologist
U.S. Army Corps of Engineers
Honolulu District Regulatory Office
Building 230
Fort Shafter, HI 96858-5440
808-835-4307



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

October 6, 2017

SUBJECT: Nationwide Permit Verification for Kegler Reeds Bay Mooring 12, Reeds Bay, Hilo Bay, Hilo, Hawaii, Department of the Army File No. POH-2017-00089

Don Kegler
40 Hina St
Hilo, HI 96720

Dear Mr. Kegler:

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 Kegler Reeds Bay Mooring 12 located at Reeds Bay, Hilo Bay, Hilo, Hawaii. Please reference Department of the Army (DA) file number POH-2017-00089 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):

The work under review is for an after-the-fact installation of an existing single point mooring buoy for a single private vessel deployed in 8-foot deep, sandy bottom approximately 400 yards from the shoreline in Reeds Bay. The mooring consists of an 18-inch mooring buoy connected to an approximately 5400 pound cement block with dimensions of 2¹/₂-feet x 2¹/₂-feet x 6-feet. The cement block has a single 1-inch metal attachment loop attached to a 7/8-inch shackle which attaches to a 24-foot long 5/8-inch long-link chain. The chain is attached to an underwater swivel. Attached to this is a 15-foot, 5/8-inch long-link chain. This chain attaches to the buoy using a 3/4-inch shackle. The buoy is attached to two 2¹/₂-inch nylon ropes. No discharge of dredged or fill material will be required. See plans for details.

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. Pre-Construction Meeting. You must extend an invitation to the Corps to attend a pre-construction meeting to discuss the terms and conditions of this permit. The pre-construction meeting must be scheduled a minimum of 7-days prior to commencement of the authorized work. The pre-construction meeting must be

attended by the following individuals, the permittee or duly authorized agent (as identified on your PCN) and your construction contractor. The Corps may attend the pre-construction meeting in person or via teleconference. The intent of the pre-construction meeting is to ensure all parties are aware of the permit terms and conditions and so the Corps may obtain verbal confirmation from the permittee and construction contractor of the ability to comply with the permit terms and conditions. Any modifications to the scope of work must be identified at this meeting so the Corps may determine if the proposed modification requires modification of your permit.

Rationale: The intent of the pre-construction meeting is to ensure all parties are aware of the permit terms and conditions and so the Corps may obtain verbal confirmation from the permittee and construction contractor of the ability to comply with the permit terms and conditions. Meeting prior to commencement allows the Corps to

2. Notification. You must notify this office of your intent to proceed with the authorized work in waters of the U.S. a minimum of 3 days prior to commencement. Your notification should be transmitted via email or phone number using the contact information provided on your verification letter.

Rationale: The intent of this special condition is to ensure the Corps is informed of the construction start date to afford the Corps the opportunity to schedule an on-site compliance inspection during construction.

3. Essential Fish Habitat. You must comply with the following conditions to avoid and/or minimize adverse impacts to EFH resources:
 1. Chains and downlines should be supported with mid-water floats that prevent contact with the bottom if the surface float is compromised.
 2. The anchors should be properly weighted to support the moored vessel in all conditions that are likely to occur without dragging along the bottom.
 3. 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.
 4. 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 condition is required to reflect any agreements made during the EFH consultation.

4. 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.

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

- 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 requirement under the Pac-SLOPES ESA Section 7 programmatic agreement between the Corps and NMFS.

5. Water Quality Certification: You must implement and abide by the conditions of the Section 401 Water Quality Certification Consistency Concurrence issued by email to this office for this NWP on September 7, 2017 by the State of Hawaii Department of Health, Clean Water Branch and expiring on March 18, 2022. Expiration of your WQC invalidates this authorization.

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

6. Coastal Zone Management Consistency Determination.

You must implement and abide by the conditions of the Coastal Zone Management Consistency Concurrence issued for this NWP on 22 February 2017 by the State of Hawaii Department of Health, Clean Water Branch and expiring on 18 March 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 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,

FRAGER.REBECCA.

MABLE.1508149111

Becca Frager

Project Manager, Regulatory Branch

Digitally signed by
FRAGER.REBECCA.MABLE.1508149111
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=USA, cn=FRAGER.REBECCA.MABLE.1508149111
Date: 2017.10.06 10:44:15 -10'00'

Enclosures

cc:

USCG (John Bannon, Jason Olney)

State of Hawaii Department of Health, Clean Water Branch (DOH-CWB)

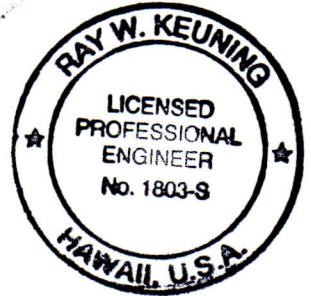
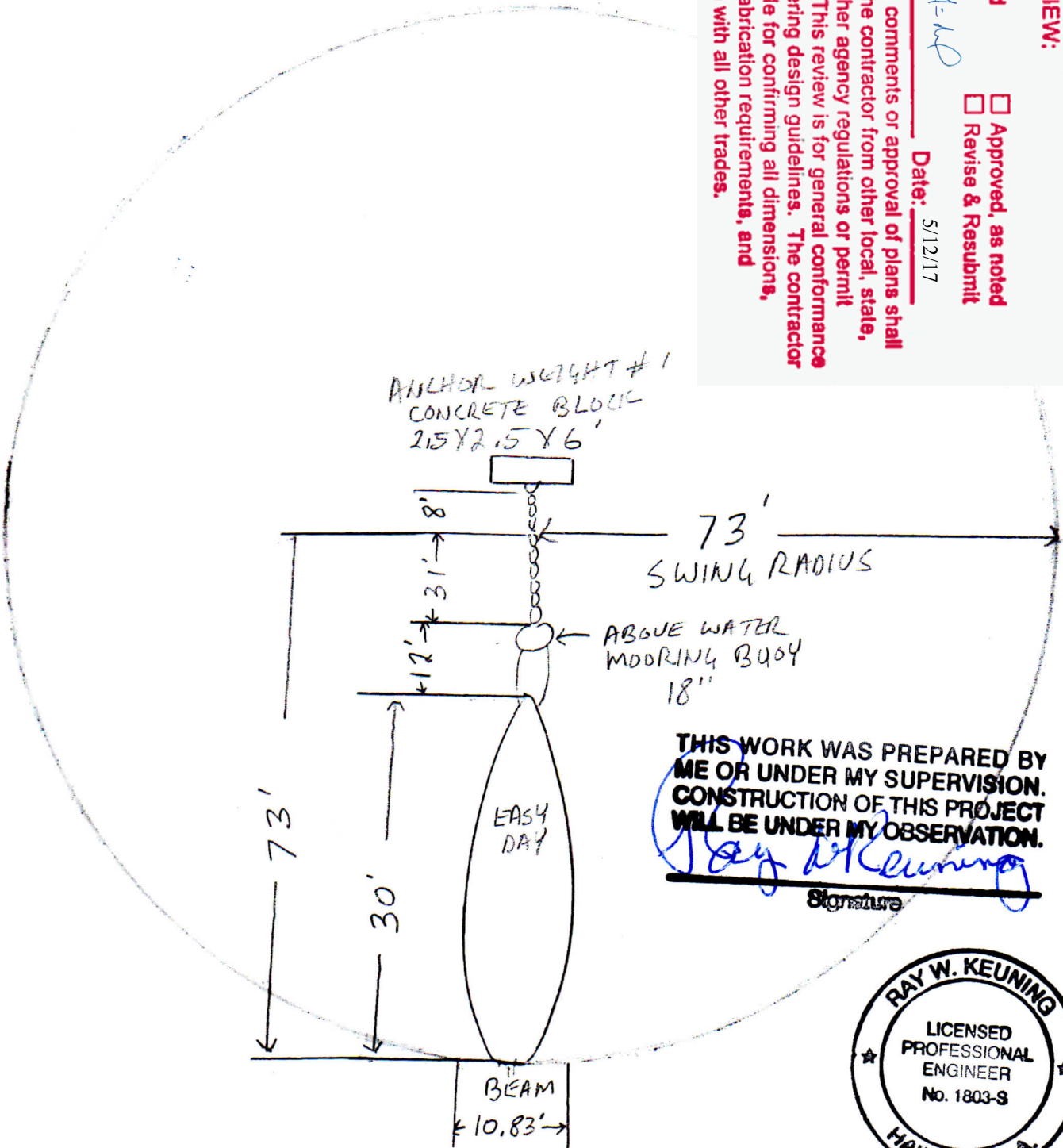
SITE PLAN FOR: DON KEGLER REEDSBAY, HILO HAWAII, HILO HARBOR
 VESSEL NAME: EASY DAY. DOC# 928190 LOA: 30' BEAM 10.83'
 ANCHOR WEIGHT LOCATION N19°43.823 W 155°03.638

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

Approved
 Rejected
 Approved, as noted
 Revise & Resubmit

By: f-w Date: 5/12/17

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.



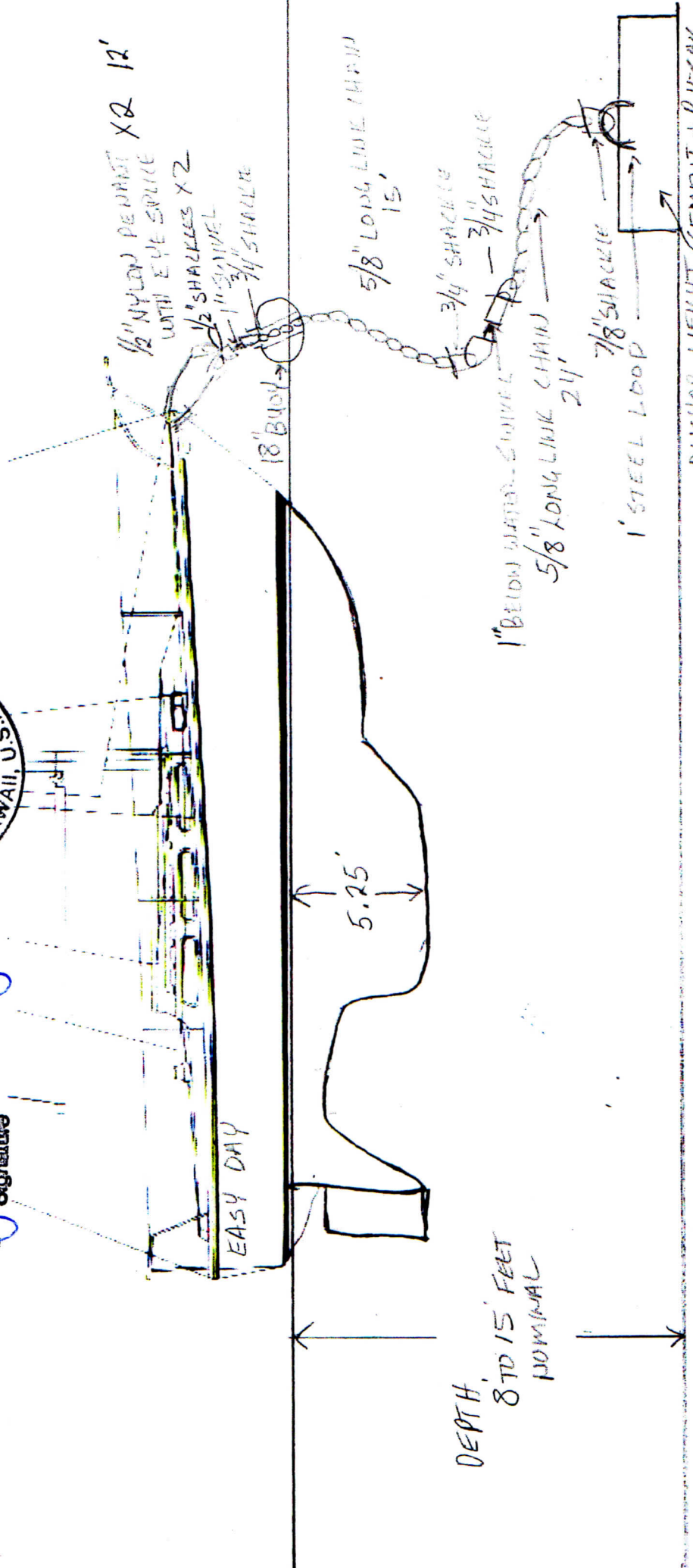
SWING RADIUS CALCULATED AT MEAN LOW TIDE - 8'
 THIS DRAWING IS NOT TO SCALE

SECTION VIEW FOR: DON KEGLER VESSEL NAME: EASY DAY MAKE: CATALANA 30
 DOC# 928190 REEDS BAY, PALIFOLEN, HILO HARBOR DISPLACEMENT 10200 LBS
 BALLAST 4250 LBS
 GPS LOCATION: N19° 43.823 W155° 03.638 DRAFT 5'25" BEAM 10.83'
 LOA 30'



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

Ray W. Keuning
 Signature



ANCHOR - WEIGHT CEMENT + RIASAK
 SIZE 2.5' X 2.5' X 6'
 APPROX WEIGHT = 5,400 LBS
 SILT LAYER 1-3' THICK VARIES
 FLAT ROCK BOTTOM