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

Land Board Members:

SUBJECT: APPROVE INSTALLATION OUTSIDE OF AN ESTABLISHED OFFSHORE MOORING AREA AFTER-THE-FACT, KAILUA BAY, KAILUA-KONA, ISLAND OF HAWAII, HAWAII, FOR PUEO BAY LLC

AND

DECLARE AN EXISTING OFFSHORE MOORING EXEMPT FROM REQUIREMENTS OF CHAPTER 343, HAWAII REVISED STATUTES, AND TITLE 11, CHAPTER 200, HAWAII ADMINISTRATIVE RULES

REQUEST:

The Division of Boating and Ocean Recreation (“DOBOR”) is requesting that the Board of Land and Natural Resources (“Board”) declare the installation of an 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.

DOBOR is also is requesting that the Board approve the installation of the existing offshore mooring within Kailua Bay on the Island of Hawaii. 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.

Kailua 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, Kailua 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 Kailua Bay must obtain approval from Board.

The applicant, Pueo Bay LLC (“Applicant”), uses an existing offshore mooring Kailua Bay on the Island of Hawaii that has been in place for several years. They are requesting that the Board declare the installation of their 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 zone, as required by HAR 13-235-9. The Applicant’s request is attached as Exhibit A.

Item J-10
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 State of Hawaii, Office of Planning, Coastal Zone Management Program and State of Hawaii, DLNR, Office of Conservation and Coastal Lands for this EA Exemption have been conducted as required by HAR 11-200-8.

RECOMMENDATION:

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 and approve the installation of the existing offshore mooring within Kailua Bay, Kailua-Kona, Island of Hawaii, located outside of an established offshore mooring area, after-the-fact.
Approve Existing Offshore Mooring and Declare Exempt from EA Requirements
Pueo Bay LLC, Kailua-Kona, Island of Hawaii

Respectfully Submitted,

[Signature]
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
**EXEMPTION NOTIFICATION**

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

<table>
<thead>
<tr>
<th>Project Title:</th>
<th>Offshore Mooring within Kailua Bay, Kailua-Kona, Island of Hawaii, for Pueo Bay LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project / Reference No.:</td>
<td>N/A</td>
</tr>
<tr>
<td>Project Location:</td>
<td>Kailua Bay, Kailua-Kona, Island of Hawaii</td>
</tr>
<tr>
<td>Project Description:</td>
<td>Installation of an offshore mooring for a privately-owned vessel</td>
</tr>
<tr>
<td>Chap. 343 Trigger(s):</td>
<td>Use of State (submerged) lands</td>
</tr>
<tr>
<td>Exemption Class No(s.):</td>
<td>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.”</td>
</tr>
<tr>
<td>Cumulative Impact of Planned Successive Actions in Same Place Significant?</td>
<td>No. There are no planned successive actions to be undertaken at the same location.</td>
</tr>
<tr>
<td>Action May have Significant Impact on Particularly Sensitive Environment?</td>
<td>No. The environment in the existing offshore mooring is sand bottom with no coral reefs or marine features that are critical for aquatic species habitat or spawning areas.</td>
</tr>
<tr>
<td>Analysis:</td>
<td>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.</td>
</tr>
</tbody>
</table>
| Consulted Parties: | - State Office of Planning, Coastal Zone Management  
- State DLNR, Office of Conservation and Coastal Lands |
| 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. |
Request for Exemption from Requirement for Preparation of Environmental Assessment for and Approval for the Modification of an Existing Offshore Mooring within Kailua Bay Mooring Field, Kona on the Island of Hawaii.

Submitted in compliance with the Hawaii Revised Status Chapter 343 and HAR §§11-200-8; 11-200-8 (b).

Submitted to:
Board of Land and Natural Resources, State of Hawai‘i, Department of Land and Natural Resources (DNLR) Division of Boating and Recreation, 4 Sand Island Access Road, Honolulu, HI 96819 Email: finn.d.mccall@hawaii.gov Phone: (808) 587-3520

Submitted by:
Pueo Bay LLC, John Swanson john@bigislanddivers.com phone: (808) 329-5367

Request:
Pueo Bay LLC (hereinafter referred to as “Petitioner”) requests approval for the modification of an existing offshore mooring within Kailua Bay Mooring Field and exemption from requirement for environmental assessment report associated with the proposed mooring modification, as the proposed mooring will have little to no environmental impact, as discussed herein below:

Reasoning and Justification for Request

Environment 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 and land waters.*

PROJECT DESCRIPTION
Modification of an offshore mooring in Kailua Bay Mooring Field, Kona, Hawaii, HI.

Technical Description of Proposed Modification

This project is in reference to an existing mooring deployed in 60 feet of water, approximately 1/2 mile from Kailua Pier in the Kailua Bay Mooring Zone. The bottom in this area consists of flat lava rock, covered in 1’+ of sand. The existing mooring anchoring system is comprised of one 200 pound (lb.) danforth anchor and one 200 lb. cement anchor block with pin. The rest of the mooring structure consists of two 100-foot long sections of 1-inch long galvanized link chain connecting the danforth anchor and the cement anchor block to 60’ of ¾-inch stud link chain. The stud link chain attaches to an inflatable mooring buoy.

Location of Proposed Modification

19.6315278, -155.98499

Purpose of Proposed Modification

The purposed mooring will be used by the petitioner solely for the purpose of mooring the platform.

Impact on Coastal Ecosystems

NEGLIGIBLE- The purposed mooring site is approximately 1,300 linear feet 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. The site does not provide habitat for any known endangered species, 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. No dredge or fill activities will be involved. The mooring is placed in an existing designated DLNR “Offshore” mooring area.
SUBJECT: Nationwide Permit Verification for POH-2013-100 FKW Kailua-Kona Offshore Mooring

Pueo Bay, LLC
Mr. John Swanson
P.O. Box 1928
Kailua-Kona, Hawaii, 96745

Dear Mr. Swanson:

The Honolulu District, U.S. Army Corps of Engineers (Corps), Regulatory Branch is in receipt of your Pre-Construction Notification requesting authorization for the proposed removal of existing mooring and platform and the installation and maintenance of a new mooring buoy and attached platform. Located at USGS Quad Map Kailua; Latitude 19.6315° N., Longitude 155.9949° W.; approximately 1/2 mile offshore of the Kailua Pier, Kailua Bay, Kailua-Kona, Hawaii. Based upon a review of the information you submitted to this office, we have verified that your proposed activity complies with the terms and conditions of Nationwide Permit (NWP) 9, Structures in Fleeting and Anchorage Areas and the overall NWP Program issued on March 19, 2017. Please reference Department of the Army (DA) file number in any future correspondence related to this permit.

We have determined your proposed work involves work in or affecting navigable waters and requires prior authorization from the Corps in accordance with Section 10 of the Rivers & Harbors Act of 1899 (Section 10). This letter verifies your use of this NWP pursuant to Section 10, authorizing the following work as described below and as depicted on the enclosed drawings (Enclosure 1): Removal and replacement of an existing 32 foot x 55 floating platform with attached mooring buoy with the installation and maintenance of a four-point seaflex mooring buoy and attached 80-foot by 40 foot metal platform with foam floatation.

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

For compliance with Section 7 of the Endangered Species Act you must comply with the following special conditions #1 through 4:

1. Incidents where any individuals of Green Sea Turtle (Chelonia mydas), Hawksbill
Turtle (*Eretmochelys imbricata*), Loggerhead Sea Turtle (*Caretta caretta*), Hawaiian Monk Seal, (*Neomonachus schauinslandi*) and Hawaiian Insular false killer whale (*Psuedora crassidens*), Endangered listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of work and/or structures in navigable waters of the U.S. authorized by these NWP’s 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.

2. Best Management Practices (BMPs) required for activity types that may result in collision with vessels:
   a. Vessel operators shall alter course to remain at least 100 yards from whales, and at least 50 yards from other marine mammals and sea turtles.
   b. Vessel operators shall reduce vessel speed to 10 knots or less when piloting vessels in the proximity of marine mammals, and to 5 knots or less when piloting vessels in areas of known or suspected turtle activity.
   c. If approached by a marine mammal or turtle, the vessel operator shall put the engine in neutral and allow the animal to pass.
   d. Vessel operators shall not encircle or trap marine mammals or sea turtles between multiple vessels or between vessels and the shore.

3. BMPs required for activity types that may result in direct physical impact:
   a. Before any equipment, anchor(s), or material enters the water, a responsible party, i.e., permittee/site manager/project supervisor, shall verify that no ESA-listed species are in the area where the equipment, anchor(s), or materials are expected to contact the substrate. If practicable, the use of divers to visually confirm that the area is clear is preferred.
   b. Equipment operators shall employ “soft starts” when initiating work each day and after each break of 30 minutes or more that directly impacts the bottom. Buckets and other equipment shall be sent to the bottom in a slow and controlled manner for the first several cycles before achieving full operational impact strength or tempo.
   c. All objects lowered to the bottom shall be lowered in a controlled manner. This can be achieved by the use of buoyancy controls such as lift bags, or the use of cranes, winches, or other equipment that affect positive control over the rate of descent.
   d. Equipment, anchor(s), or materials shall not be deployed in areas containing live corals, sea grass beds, or other significant resources.

4. BMPs required for activity types that may result in entanglement:
a. Mooring systems shall employ the minimum line length necessary to account for expected fluctuations in water depth due to tides and waves.
   b. Mooring systems shall be designed to keep the line as tight as possible, with the intent to eliminate the potential for loops to form.
   c. Mooring lines shall consist of a single line. No additional lines or material capable of entangling marine life may be attached to the mooring line or to any other part of the deployed system.
   d. Mooring systems shall be designed to keep the gear off the bottom, by use of a mid-line float when appropriate, with the intent to eliminate scouring of corals or entanglement of the line on the substrate.

5. For compliance with Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and to ensure adverse effects to essential fish habitat (EFH) are minimal, you must implement the following conservation measures:
   a. The authorized structures shall not be located within or over coral reefs.
   b. A long term maintenance plan shall be implemented for the authorized structures.

6. The State of Hawaii Department of Business, Economic Development and Tourism, Office of Planning issued a Coastal Zone Management consistency general concurrence for this NWP on February 22 2017. Be advised, expiration of either of these state certifications invalidates this authorization.

7. If a Water Quality Certification is received, you must implement and abide by the conditions of you individual Section 401 Water Quality Certification issued for this project by the State of Hawaii Department of Health, Clean Water Branch. Expiration of your WQC invalidates this authorization.

8. 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 transmitted via email or phone number using the contact information provided on this verification letter.

    Verification of your project under this NWP is valid until June 30, 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 and Rivers and Harbors Act 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 determination, please contact me at 808-835-4300, or by email at tunis.w.mcelwain@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://corpsmap.usace.army.mil/cm_apex/f?p=136:4:0.

Sincerely,

For

Tunis W. McElwain
Chief, Regulatory Branch

Enclosure(s)

cc:

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

State of Hawaii Office of Planning, Coastal Zone Management Program (Hawaii CZM Program)

USCG (Nicolas Jarboe, Jason Olney)
OFFSHORE MOORING - KAILUA-KONA MOORING ZONE
FOR: PUEO BAY, LLC - FLOATING PLATFORM

POINT OF CONTACT: JOHN SWANSON

GPS COORDINATES OF MOORING: 19°37.894’N, 155°59.700’W
APPROXIMATE WATER DEPTH: 60’

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

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

By:       Date: 1/9/17

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.