

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

July 27, 2012

KAUAI

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

Amend General Lease No. H-89-7 to the United States Coast Guard For Addition of Submerged land for Permanent Mooring Purposes and Immediate Construction Right of Entry For Installation of Mooring and Wharf Improvements, Nawiliwili Small Boat Harbor, Island of Kauai, TMK (4)3-2-03

APPLICANT:

The United States Coast Guard (Coast Guard) whose address is: USCG, MLC PAC (STN) Ronald V. Dellums Federal Building, 1301 Clay St., Suite 700, N Oakland, CA 94612-5203

LEGAL REFERENCE:

Sections 171-95, Hawaii Revised Statutes.

LOCATION AND AREA:

Portion of Government lands within the Nawiliwili Small Boat Harbor, Kauai, Tax Map Key: (4)3-2-03: as shown on the attached map (Exhibit A), to include submerged lands extending seaward from the wharf bulkhead and present mooring area of approximately 4,320 square feet, more or less. The site plan for the Coast Guard station on Kauai is attached as Exhibit B.

TRUST LAND STATUS:

Sections 5 (b) lands of the Hawaii Admissions Act
DHHL 20% entitlement lands pursuant to the Hawaii State
Constitution: YES __ NO X

USE:

Under General Lease No. H-89-7, 2.:

“The UNITED STATES shall have the right to locate its mooring facilities on the Lease premises, to moor its boats there, and otherwise to conduct its marine operations. The UNITED STATES is authorized to construct a shore support building and mooring facilities, including dolphins. It is also authorized to perform dredging, if necessary.”

COMMENCEMENT DATE:

To be determined by the Chairperson.

MONTHLY RENTAL:

The Federal Government is exempt in this Lease.

CHAPTER 343 - ENVIROMENTAL ASSESSMENT

In accordance with the "Division of Boating and Ocean Recreation's Environmental List, approved by the Environmental Council and dated March 22, 1995, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operation, repairs, or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond previously existing." B. Facilities, 3. Repairs or improvements to catwalks, subsidences, loading docks and mooring facilities."

DCCA VERIFICATION:

Not applicable-Federal Government.

REMARKS:

The United States Coast Guard currently operates the Coast Guard Station on Kauai at the Division of Boating and Ocean Recreation's (DOBOR) Nawiliwili Small Boat Harbor facility.

The Coast Guard has historically moored vessels in various configurations, although normally rafting/side tying multiple vessels abeam, and along the wharf face. This side-tie and rafting configuration along the wharf face would ultimately over time cause damage and stress to each vessel as well as damage to the wharf. This would accelerate wear especially during times of high surf and storm surge. During these times of heavy weather or due to operational logistics, the vessels would be required to be removed from the wharf then tethered to a mooring ball offshore within the harbor. This would create a

security risk for the vessel in addition to delays when transiting gear and personnel, as well as requiring additional maneuvering and anchoring.

The Coast Guard wishes to make certain mooring improvements to its facility that will provide a safe and secure long term solution for mooring its new 45-foot (MLB) Cutters. The new vessels will be arriving within the next few months and are presently replacing two 47-foot vessels. These efficient MLB vessels are noted for their ability to self right should it rolled over in heavy sea conditions, designed to be self bailing, and to be quick in rough water, with a range of 200 miles. The new design will dramatically enhance the Search and Rescue (SAR) mission capabilities on Kauai and its surrounding waters.

The Coast Guard proposes a permanent reconfiguration of the mooring system to expedite ingress and egress from its slip and most importantly allow for safe mooring reducing damage to the vessel. The two new piers (floating docks), would be installed in a perpendicular configuration from the wharf face with the vessels bow facing out toward the channel, thus allowing for immediate response time. The position would facilitate easier loading and unloading of crew, gear, emergency personnel, gurneys, and passengers with greater safety and care. The configuration will allow better visibility from the station for security.

The enhanced mooring will be made up of two floating docks/piers to be anchored to the bottom and connected directly to the shore by a gang way to the existing wharf bulkhead. This design would allow the docks to float with the vessel up and down with the tide, or surge. These floating docks are essentially moored and not requiring the need to drive piles. The mooring of the floating docks would be anchored to the bottom with a stretch line called a "Seaflex system." There will not be a need for fixed concrete piles or dolphins as in the past. DOBOR has found success with its use of the Seaflex System in its small boat harbors replacing old fixed piers whenever possible. This design essentially uses a unique connection called a helical anchor designed to be literally screwed into the harbor bottom, exposing just a loop for connection. Should there be a catastrophic event the docks could easily be replaced in the same component configuration.

During the process of the installation of the Coast Guard will perform repairs to the eroded shoreline riprap and upgrade of the floating docks's utilities. All riprap stones would be individually placed with equipment operating from the shore, and a silt curtain would be installed around the work area so as to capture suspended sediment. The environmental impacts on benthic communities in the harbor resulting from suspended solids would therefore be negligible.

To accomplish this task the U. S. Coast Guard is requesting an immediate construction right of entry to do the installation of mooring improvements, upgrade utility improvements and repairs to the shoreline riprap.

The lease provides for mooring, although was not specific as to the area boundaries. The requested amendment to General Lease No. H-89-7 (U.S. Coast Guard Lease No. DTCG89-94-L-4-03-32) is for the exclusive use of the seaward area of the wharf bulkhead extending approximately 65 feet out with an area totaling approximately 4,320 square feet, more or less to be made part of Lease H-89-7, until 2053. The new mooring would allow for greater security of the vessels. The Coast Guard will prepare and submit a required survey at its cost and which must comply with DAG's survey standards to be made part of the amendment.

General Lease No. H-89-7 Lease states under section:

"2. The UNITED STATES shall have the right to locate its mooring facilities on the Lease premises, to moor its boats there, and otherwise to conduct its marine operations. The UNITED STATES is authorized to construct a shore support building and mooring facilities, including dolphins. It is also authorized to perform dredging, if necessary."

When the Coast Guard approached DOBOR for an amendment to its Maui Station in 2005, DOBOR made a request to the Attorney General's office for review, and a recommendation regarding the best path addressing the use of submerged land at Maalaea Small Boat Harbor for the Federal Government. The Attorney General responded saying, "Based on our review of the applicable statutes, we believe that while you may wish to file a Concurrent Resolution with the Legislature, as provided for in section 171-95 (a)(2), HRS, provides as follows:

"(a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:

(2) Lease to the governments, agencies, and public utilities, and renewable energy producers public lands for terms up to, but not in excess of sixty-five years at such rental and on such other terms and conditions as the board may determine;"

Public Lands are defined in section 171-2, HRS, as including "Submerged Lands, and land beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter..."

As a governmental agency, the Coast Guard would fall under 171-95(a)(2) exception to public auction provisions, and the Board of Land and Natural Resources would be permitted to negotiate a direct lease to the Coast Guard for the submerged land at Nawiliwili Small Boat Harbor.

The Coast Guard understands they are required to comply with all Federal, State and County requirements as needed, although it requests to be exempt from an Environmental Assessment based on the fact that there has been continuity in use by the Coast Guard in utilizing the immediate submerged land area extending from the wharf for mooring in various configurations and would fall under DOBOR's Exemptions Exemption Class No. 1 B. Facilities, 3 as noted above.

The Coast Guard has performed a National Environmental Policy Act (NEPA) review and noted in its U. S. Coast Guard Categorical Exclusion Determination, that the action is not expected to result in any significant adverse environmental impacts as described in the attached Environmental Check List, prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (Exhibit C).

The Coast Guard also sought review and comment from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS). The Agency concurred with the Coast Guard's determination that conducting the proposed facility upgrades at the Coast Guard's Station on Kauai is not likely to adversely affect Endangered Species Act (ESA)-listed marine species or their designated habitat. The Coast Guard will comply with Best Management Practices (BMP) provided by the NMFS to avoid impacts to endangered species. The Coast Guard will also obtain a permit for this project from the Army Corps of Engineers, and will comply with the environmental requirements for the permit when issued. The Coast Guard reported that it has done a preliminary dive inspection on the bottom of the subject area and found no coral (Exhibit D).

The Small Boat Harbor was created by dredging the boat slip and channel areas and using fill to create the land to support the harbor; therefore, there are no locally designated natural communities, agricultural lands, or wetlands in the project's region of influence to be affected by the project.

Based on the uninterrupted use for mooring as allowed under the lease, the findings as provided in the Coast Guard's NEPA review and determination, NOAA concurrence, the Coast Guard feels that this project would fall under allowable exemptions as stated above under DOBOR's Exemption Class No. 1, B.3. DOBOR recommends the Board's approval and concurrence of an exemption of environmental assessment and authorization to proceed with a construction right of entry, and the amendment of the Lease.

The Lessee will be required to provide survey maps and descriptions according to State DAGS standards, along with prescribed requirements in preparation for the Lease Amendment. The Coast Guard has ensured DOBOR that it would continue to work closely with the Division of Boating and Ocean Recreation during the mooring improvement project for the safe and orderly operation of the harbor.

RECOMMENDATION:

1. Declare that after considering the potential effects of the proposed disposition 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.
2. Amend General Lease No. H-89-7 to the United States Coast Guard for addition of submerged land for permanent mooring purposes and immediate construction right-of-entry for installation of mooring and wharf improvements for Nawiliwili Small Boat Harbor, Island of Kauai, subject to the following:
 - a. The terms and conditions set forth above, which are by this reference incorporated herein;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



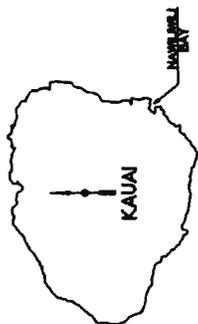
Edward R. Underwood
Administrator

Attachment: Exhibit A – Location Map
Exhibit B – USCG Site Plan
Exhibit C – USCG Categorical Exclusion Determination
Exhibit D – July 5, 2012 letter from NOAA, NMFS

Approved for submittal:

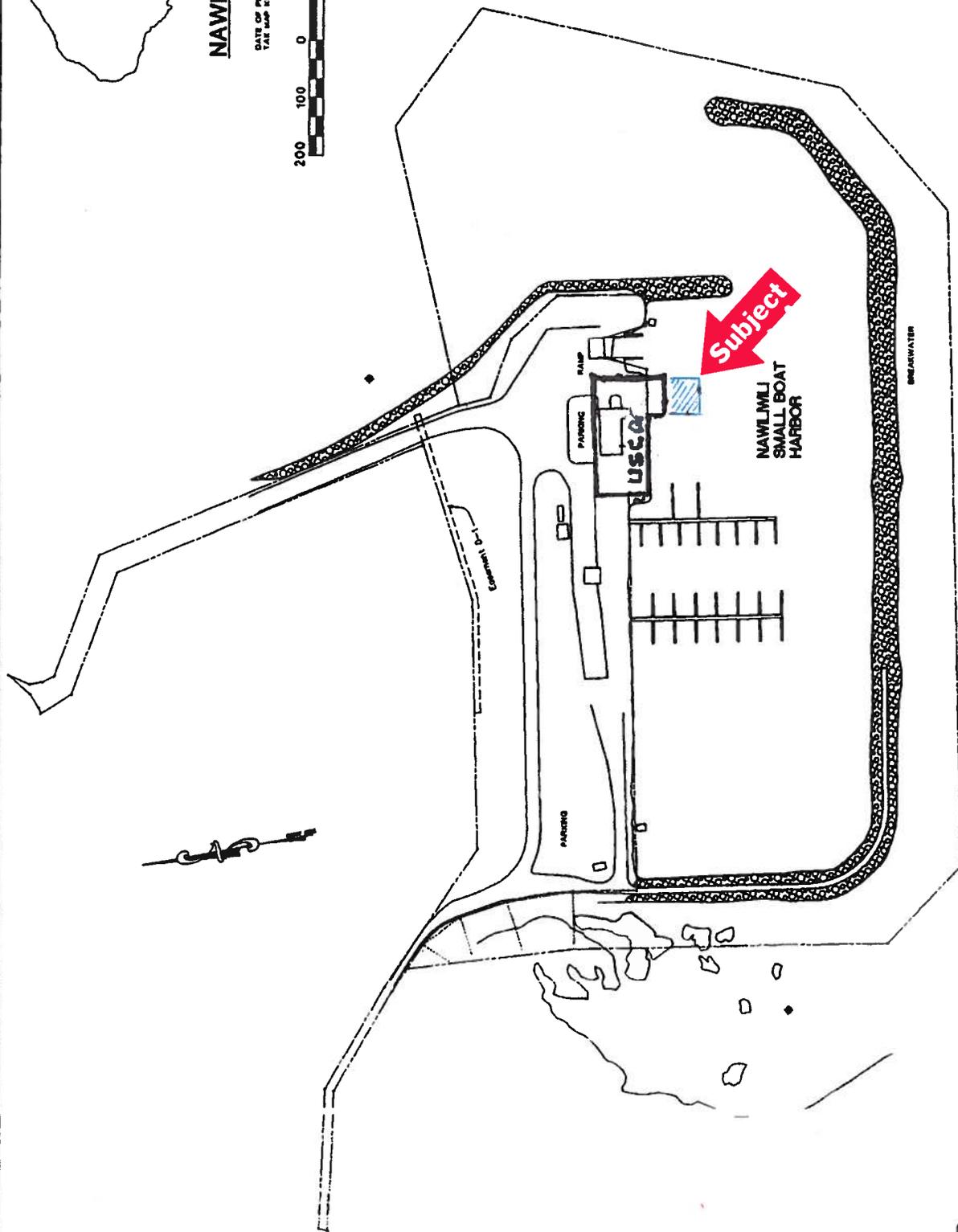


William J. Aila, Jr.
Chairperson



NAWILIWILI SBH

DATE OF PHOTO: JANUARY 8, 1982
 TAT MAP REV. 3-1-75



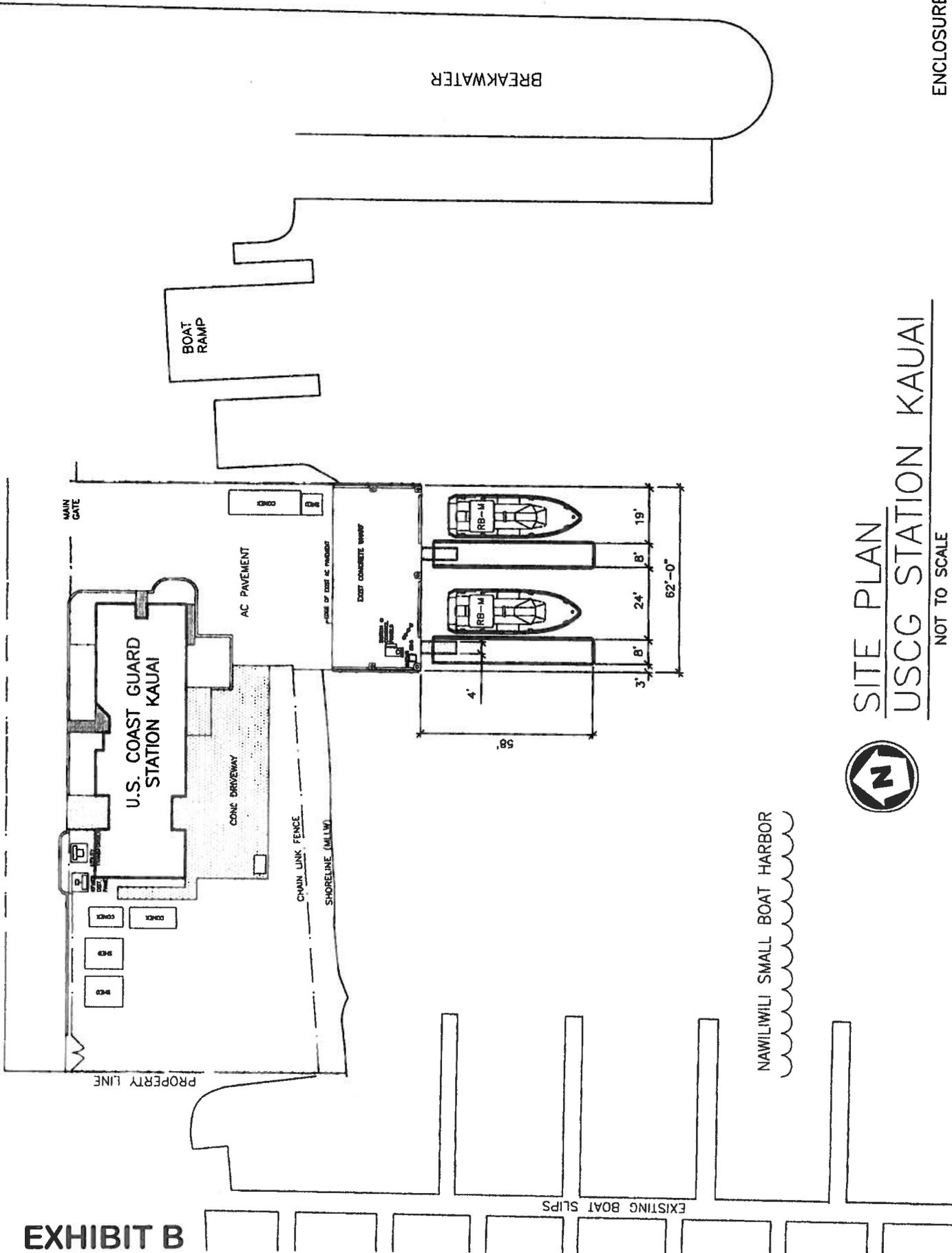
PROJECT: DOCUMENTATION OF FACILITIES FOR BOATING PROGRAM TRANSFER TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES

FOR: STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 HARBOUR DIVISION

SHEET TITLE: NAWILIWILI ISLAND OF KAUAI

BY: FMTC
 P. H. TOMALL CORPORATION
 1100 KALANANAKU AVE., #11
 HONOLULU, HI 96817-1821
 August, 1982

EXHIBIT B



SITE PLAN
USCG STATION KAUAU
NOT TO SCALE

U. S. COAST GUARD
 CATEGORICAL EXCLUSION DETERMINATION
 MOTOR LIFEBOAT SUPPORT FACILITIES
 USCG STATION KAUAI
 NAWILIWILI HARBOR, KAUAI, STATE OF HAWAII

Two new 45-foot vessels will be assigned to U. S. Coast Guard (USCG) Station Kauai, to replace the existing 47-foot vessels. USCG is proposing to install two 58-foot floating finger piers and associated shore ties to adequately berth the two new vessels. USCG is also proposing to remove and reinstall the existing riprap along 130 feet of the property with hard stone for stabilization of that portion of the shoreline.

The proposed finger piers would be installed perpendicular to the existing concrete pier face, and each floating finger pier would be secured to the harbor bottom with a screw device, so as to avoid noise impacts from pile driving. All riprap stones would be individually placed with equipment operating from the shore, and a silt curtain would be installed around the work area to capture suspended sediments.

This action is not expected to result in any significant adverse environmental impacts as described in the attached Environmental Checklist, prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the USCG, and the undersigned have determined this action to be categorically excluded from further environmental documentation under 67 FR 48243, Appendix, categorical exclusions #7 and #8, in accordance with Section 2.B.2 and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D, since implementation of this action will not result in any:

1. Significant cumulative impacts on the human environment;
2. Substantial controversy or substantial change to existing environmental conditions;
3. Impacts which are more than minimal on properties protected under Section 106 of the National Historic Preservation Act;
4. Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment.

<p><u>19 July 2012</u> Date</p>	<p><u>[Signature]</u> Preparer</p>	<p><u>Envr Prot Specialist</u> Title/Position</p>
<p><u>19 July 2012</u> Date</p>	<p><u>[Signature]</u> Environmental Reviewer</p>	<p><u>CIVIL ENGINEER</u> Title/Position</p>
<p><u>19 July 2012</u> Date</p>	<p><u>[Signature]</u> Responsible Official</p>	<p><u>CO CEM Honolulu, HI</u> Title/Position</p>

ENVIRONMENTAL CHECKLIST

NOTE: This checklist should be completed by the decision-maker in consultation with an **ENVIRONMENTAL PROTECTION SPECIALIST**. Please read the information on how to properly complete this checklist on pages 4-10 and make sure each question is answered using the accompanying explanations found on the pages cited after each question. Attempting to answer these questions without reading the accompanying explanations may result in an incorrect or incomplete environmental analysis.

***Project Description:**

Two new 45-foot vessels will be assigned to U. S. Coast Guard (USCG) Station Kauai, to replace the existing 47-foot vessels. USCG is proposing to install two 58-foot floating finger piers and associated shore ties to adequately berth the two new vessels. USCG is also proposing to remove and reinstall the existing riprap along 130 feet of the property with hard stone for stabilization of that portion of the shoreline.

The proposed finger piers would be installed perpendicular to the existing concrete pier face, and each floating finger pier would be secured to the harbor bottom with a screw device, so as to avoid noise impacts from pile driving. All riprap stones would be individually placed with equipment operating from the shore, and a silt curtain would be installed around the work area to capture suspended sediments.

This action is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA).

Activity Year:

(*Note: Checklist preparer may want to attach additional descriptive information on the proposed action such as: diagrams, site maps, and photographs.)

<u>Part I. Checklist Analysis.</u>	<u>YES</u>	<u>NO</u>	<u>NEED DATA</u>
1. Is there likely to be a significant effect on public health or safety? (p. 5)		X	
2. Does the proposed action occur on or near a unique characteristic of the geographic area, such as a historic or cultural resource, park land, prime farmland, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c)? (p. 5-6)		X	
3. Is there a potential for effects on the quality of the environment that are likely to be highly controversial in terms of scientific validity or public opinion? (p. 7)		X	
4. Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks? (p. 7)		X	
5. Will the action set a precedent for future actions with significant effects or a decision in principle about a future consideration? (p. 7)		X	
6. Are the action's impacts individually insignificant, but cumulatively significant when considered along with other past, present, and reasonably foreseeable future actions? (p. 7-8)		X	
7. Is the proposed action likely to have a significant impact on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource? (p.8)		X	
8. Will the proposed action have a significant effect on species or habitats protected by Federal law or Executive Order ? (p. 9)		X	
9. Is there a potential or threatened violation of a Federal, State, or local law or requirement imposed for the protection of the environment? (p. 9-10)		X	
10. Is the action likely to have other significant effects on public health and safety or on any other environmental media or resources that are not specifically identified in this checklist? (p. 10)		X	

Part II. Comments or Additional Information Related to Part I:

The proposed project would have an overall beneficial impact. Construction of the two piers would allow the Coast Guard to adequately secure its two proposed 45-foot vessels, which will make them better capable of serving the USCG Station Kauai and its jurisdiction in spill response and search and rescue (SAR) missions.

The proposed project would not increase impervious surfaces at the site, and so would not affect groundwater recharge. The Small Boat Harbor was created by dredging the boat slip and channel areas and using fill to create the land to support the harbor; therefore, there are no locally designated natural communities, agricultural lands, or wetlands in the project's region of influence to be affected by the project.

Construction impacts would be minor, and would be minimized as follows:

1. the piers would be secured to the harbor bottom with a screw device, so as to avoid noise and sedimentation impacts from pile driving.
2. All riprap stones would be individually placed with equipment operating from the shore, so as to avoid in-water construction impacts. Creation of suspended solids from riprap repair would be confined to the immediate vicinity of the construction activity and dissipate rapidly at the completion of the operation. These would be short-term impacts, and would be further minimized by placing a silt curtain around the construction activity to capture suspended sediments. Placement of the silt curtain could reduce the suspended solids level in the water column outside the curtain by as much as 80 to 90 percent. The environmental impacts on benthic communities in the harbor resulting from suspended solids would therefore be negligible.
3. USCG will comply with the attached Best Management Practices (BMPs) provided by the National Marine Fisheries Service (NMFS) to avoid impacts to endangered species.
4. USCG will also be obtaining a permit for this project from the Army Corps of Engineers, and will comply with the environmental requirements of the permit when issued.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700
(808) 944-2200 • Fax: (808) 973-2941

JUL - 5 2012

LCDR Andrew J. Wright
Fourteenth Coast Guard District
Civil Engineering Unit
300 Ala Moana Blvd. Room 8-134
Honolulu, Hawaii 96850

Dear Commander Wright:

This letter responds to your May 31, 2012 letter regarding the United States Coast Guard's (USCG) proposed facility upgrades at USCG Station Kauai Nawiliwili Small Boat Harbor (NSBH), Lihue, Kauai. In the letter, the USCG determined that the proposed action is not likely to adversely affect endangered or threatened species under our jurisdiction, and requested our concurrence under section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. §1531 et seq.), with that determination.

Proposed Action/Action Area: The action is described in your letter with the attached Biological Evaluation (BE) (USCG 2012) and project Site Plans and Design Drawings (Kai Hawaii 2012 a & b). In summary, the proposed action consists of the USCG's contractors operating shore-based heavy equipment to install two 60-foot long floating finger piers, and to reinstall rock riprap along about 130 feet of hardened shoreline in the NSBH. Divers and small support vessels would also be employed during this work. The project also includes above-water work to repair or replace the existing electrical system and to install water service to the new finger piers. The project is expected to last about 3 months, including about 1 month of in-water work, and the USCG's contractors would be required to comply with the NMFS-recommended best management practices (BMP) (NMFS 2011). The action area for this project is estimated to be the in-water area within a 50-yard radius arc around project activities, including around support vessels as they transit to and from the project site, and also includes the down-current extent of any plumes that may result from elevated turbidity and discharges of wastes or toxic chemicals such as fuels and/or lubricants.

Listed Species/Critical Habitat: The Coast Guard determined that following ESA-listed species under NMFS jurisdiction may be affected by the proposed action: green sea turtles (*Chelonia mydas*), hawksbill sea turtles (*Eretmochelys imbricata*), and Hawaiian monk seals (*Monachus schauinslandi*). Detailed information to describe the biology, habitat, and conservation status for sea turtles can be found in the recovery plans and other sources at <http://www.nmfs.noaa.gov/pr/species/turtles/>, and for marine mammals at <http://www.nmfs.noaa.gov/pr/species/mammals/>.

EXHIBIT D



Critical Habitat: There is no designated critical habitat for any listed marine species within or adjacent to the action area. Therefore, this action would have no effect on designated critical habitat.

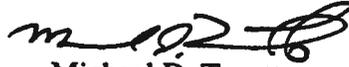
Analysis of Effects: In order to determine that a proposed action is not likely to adversely affect listed species, NMFS must find that the effects of the proposed action are expected to be insignificant, discountable, or beneficial as defined in the joint USFWS-NMFS Endangered Species Consultation Handbook: (1) insignificant effects relate to the size of the impact and should never reach the scale where take occurs; (2) discountable effects are those that are extremely unlikely to occur; and (3) beneficial effects are positive effects without any adverse effects (USFWS & NMFS 1998). This standard, as well as consideration of the probable duration, frequency, and severity of potential interactions, was applied during the analysis of effects of the proposed action on ESA-listed marine species, as is described in detail in the USCG BE. In the BE, the USCG determined that the risk of collision with vessels and of direct physical impact would be discountable, and that any project-related disturbance from human activity and equipment operation, as well as exposure to turbidity and wastes and discharges would result in insignificant effects on ESA-listed sea turtles and marine mammals. Based on the description of the proposed action, including the required BMP, and on the best information available to describe the behaviors and biological needs of the species considered here, NMFS agrees with the USCG that the proposed action would have insignificant impacts, or the likelihood of impacts would be discountable, for green and hawksbill sea turtles and Hawaiian monk seals.

Conclusion: NMFS concurs with your determination that conducting the proposed facility upgrades at USCG Station Kauai Nawiliwili Small Boat Harbor, Lihue, Kauai is not likely to adversely affect ESA-listed marine species or their designated critical habitat. Our concurrence is based on the finding that the effects of the proposed action are expected to be insignificant, discountable, or beneficial as defined in the joint USFWS-NMFS Endangered Species Consultation Handbook (USFWS-NMFS 1998) and summarized at the beginning of the Analysis of Effects section above. This concludes your consultation responsibilities under the ESA for species under NMFS's jurisdiction. However, this consultation focused solely on compliance with the ESA. Any additional compliance review that may be required of NMFS for this action (such as assessing impacts on Essential Fish Habitat) would be completed by NMFS Habitat Conservation Division in separate communication, if applicable.

ESA Consultation must be reinitiated if: 1) a take occurs; 2) new information reveals effects of the action that may affect listed species or designated critical habitat in a manner or to an extent not previously considered; 3) the identified action is subsequently modified in a manner causing effects to listed species or designated critical habitat not previously considered; or 4) a new species is listed or critical habitat designated that may be affected by the identified action.

If you have further questions please contact Donald Hubner on my staff at (808) 944-2233.
Thank you for working with NMFS to protect our nation's living marine resources.

Sincerely,



Michael D. Tosatto
Regional Administrator

cc: Patrice Ashfield, ESA Section 7 Program Coordinator, USFWS, Honolulu
Tony Montgomery, Coastal Conservation, USFWS, Honolulu

NMFS File No. (PCTS): I/PIR/2012/02534
PIRO Reference No.: I-PI-12-992-LVA

Literature Cited

Kai Hawaii Structural & Forensic Engineers (Kai Hawaii). 2012a. Station Kauai Repairs and Improvements, USCG Station Kauai, Kauai, Hawaii – Basis of Design – 35% Resubmittal. April 2012.

Kai Hawaii. 2012b. Station Kauai Repairs and Improvements, USCG Station Kauai, Nawiliwili Harbor, Kauai, Hawaii – Project Drawings. May 2012.

US Coast Guard (USCG). 2012. Biological Evaluation - USCG Nawiliwili Small Boat Harbor Project. June 2012.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Consultation Handbook. Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act.

http://www.nmfs.noaa.gov/pr/pdfs/laws/esa_section7_handbook.pdf