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State of Hawaii	DEPARTMENT OF LAND AND NATURAL RESOURCES POST OFFICE BOX 621	
	HONOLULU, HAWAII 96809	
	MAR 1 3 72018	
MEMORAN	DUM Sq _ R	
10:	Scott Glenn, Director	
	Office of Environmental Quality Control	
F	Summe D. Cons Chairman 1/10	
From:	Suzanne D. Case, Chairperson	
12	Board of Land and Natural Resources	
Subject:	Draft Environmental Assessment (EA) for Catamaran Landings Located at	
-	Maluaka Beach, Makawao, Maui, makai of Tax Map Key:	

The Department of Land and Natural Resources has reviewed the draft EA for the subject project, and anticipates a Finding of No Significant Impact (FONSI) determination. Please publish notice of availability for this draft EA in the March 23, 2018 issue of the *Environmental Notice*. We have enclosed 1 hard copy of the draft EA and the OEQC publication form, as well as one CD of the draft EA in searchable pdf format. A separate e-mail shall be sent with the OEQC publication form in word document format for publication purposes.

Please contact Tiger Mills at 587-0386 should you have any questions regarding this matter.

(2) 2-1-006:059 [submerged land]

Attachments: Draft EA, OEQC Pub Form, CD

18-437

APPLICANT PUBLICATION FORM

Project Short Name:Catamaran Landings, Maluaka BeachHRS §343-5 Trigger(s):Catamaran LandingsIsland(s):MauiJudicial District(s):MakawaoTMK(s):Offshore ocean waters adjacent to TMK (2)2-1-006:59Permit(s)/Approval(s):Land DispositionApproving Agency:Department of Land and Natural ResourcesContact Name, Email, Telephone, AddressK. Tiger MillsKimberly.Mills@hawaii.gov (808) 587-0377 P.O. Box 621.Hangeluku, Haurgii 06800
HRS §343-5 Trigger(s): Catamaran Landings Island(s): Maui Judicial District(s): Makawao TMK(s): Offshore ocean waters adjacent to TMK (2)2-1-006:59 Permit(s)/Approval(s): Land Disposition Approving Agency: Department of Land and Natural Resources Contact Name, Email, K. Tiger Mills Telephone, Address Kimberly.Mills@hawaii.gov (808) 587-0377 P.O. Box 621. Handluku, Hawaii 06800 Handluku, Hawaii 06800
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Contact Name, Email, Telephone, Address Kimberly.Mills@hawaii.gov (808) 587-0377 P.O. Box 621 Heneluku Hawaii 06800
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(808) 521-5631
1001 Bishop Street, Suite 650
Honolulu, Hawaii 96813
Status (solast and) Submittal Paguiraments
Status (select one) Submit a Requirements x DEA_AENSI Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead 2)
PDE of the DEA: a 30-day comment period follows from the date of publication in the Notice.
FEA-FONSI Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2)
this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable
PDF of the FEA; no comment period follows from publication in the Notice.
FEA-EISPN Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2)
this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable
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DEIS Submit 1) a transmittal letter to the OEQC and to the approving agency, 2) this completed OEQC
publication form as a Word file, 3) a hard copy of the DEIS, 4) a searchable PDF of the DEIS, and 5) a
searchable PDF of the distribution list; a 45-day comment period follows from the date of publication
in the Notice.
FEIS Submit 1) a transmittal letter to the OEQC and to the approving agency. 2) this completed OEOC
publication form as a Word file, 3) a hard copy of the FEIS, 4) a searchable PDF of the FEIS, and 5) a
searchable PDF of the distribution list; no comment period follows from publication in the Notice.

Office of Environmental Quality Control

FEIS Acceptance Determination	The approving agency simultaneously transmits to both the OEQC and the applicant a letter of its determination of acceptance or nonacceptance (pursuant to Section 11-200-23, HAR) of the FEIS; no comment period ensues upon publication in the Notice.
EIS Statutory Acceptance	The approving agency simultaneously transmits to both the OEQC and the applicant a notice that it did not make a timely determination on the acceptance or nonacceptance of the applicant's FEIS under Section 343-5(c), HRS, and therefore the applicant's FEIS is deemed accepted as a matter of law.
Supplemental EIS Determination	The approving agency simultaneously transmits its notice to both the applicant and the OEQC that it has reviewed (pursuant to Section 11-200-27, HAR) the previously accepted FEIS and determines that a supplemental EIS is or is not required; no EA is required and no comment period ensues upon publication in the Notice.
Withdrawal	Identify the specific document(s) to withdraw and explain in the project summary section.
Other	Contact the OEQC if your action is not one of the above items.

Project Summary

Provide a description of the proposed action and purpose and need in 200 words or less.

This 2nd Draft Environmental Assessment (2nd DEA) – Anticipated Finding of No Significant Impact (AFONSI) addresses continued use of Maluaka Beach (a public beach) by Makena Boat Partners (MBP) to board and disembark passengers and crew of the catamaran Kai Kanani II. The use of the beach consists of passengers and crew walking across the beach into shallow water to access the catamaran. Boarding or disembarking requires no more than ten minutes. There may be up to 4 loadings and disembarkings per day.

This 2nd DEA is provided in addition to the DEA published in December 2015 for the same project (2015 DEA). This 2nd DEA has been prepared to allow agencies and the public to comment on information that was not available in the 2015 DEA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel. Comments received on the 2015 DEA have been responded to and are included in this 2nd DEA.

SECOND DRAFT ENVIRONMENTAL ASSESSMENT Anticipated Finding of No Significant Impact (HRS 343)

Catamaran Landings

Maluaka Beach Makawao District, Maui

State of Hawai'i

March 2018

Prepared for:

Makena Boat Partners

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Preface

This Second Draft Environmental Assessment (2nd DEA) – Anticipated Finding of No Significant Impact (AFONSI) addresses continued use of Maluaka Beach by Makena Boat Partners (MBP) to board and disembark passengers and crew of the catamaran Kai Kanani II.

This 2nd DEA is provided in addition to the Draft Environmental Assessment published in December 2015 for the same project (2015 DEA). This 2nd DEA has been prepared to allow agencies and the public to comment on information that was not available in the 2015 DEA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

In response to comments received on the 2015 DEA, MBP hired biological consultant AECOS, Inc. to conduct a benthic habitat survey around the mooring area and assess the potential effect of a proposed improved mooring system on the marine environment. Following recommendations in the marine report, MBP replaced the mooring system in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016.

Comments received on the 2015 DEA have been responded to and are included in this 2nd DEA.

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General Information & Summary Sheet

Proposed Action: This Environmental Assessment (EA) addresses continued use of Maluaka Beach by Makena Boat Partners (MBP) to board and disembark passengers and crew of the catamaran Kai Kanani II (the Vessel). Passengers and crew access the Vessel by walking across the public beach into shallow water and board by means of a retractable ladder. The process is repeated on the Vessel's return. Boarding or disembarking requires no more than ten minutes. The Vessel remains afloat and under power throughout each cycle. These cycles, or "Landings," may be repeated up to four times a day. The first excursion begins at 6:30 am and returns two hours later; the second begins at 9:00 am and returns at 1:00 pm. Seasonal whale watch, sunset and special charters are also offered but the Vessel is never present more than 90 minutes on even the busiest days of the year.

MBP has made Landings at Maluaka Beach continuously since the 1980s. In 1986, the U.S. Army Corps of Engineers (USACE) authorized MBP to install the mooring from which the Vessel operated until 2016. In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. MBP replaced the mooring in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016.

A special condition of the 1986 federal permit required MBP to "acquire a Conservation District Use Permit from the State Department of Land and Natural Resources." In 1988, the Board of Land and Natural Resources granted "after-the-fact" approval of the use of conservation lands for the subject vessel mooring. As for the use of the public beach for loading/offloading of passengers, MBP was directed to obtain "appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State Lands." This EA is prepared in conjunction with an Application for Use of Government Lands through which MBP shall seek a non-exclusive easement for the occupancy of State lands at Maluaka Beach for the limited purpose of Landings.

Location	Makawao District, Maui, Hawai'i. County of Maui.
Тах Мар Кеу	Offshore ocean waters, adjacent to (2)2-1-006:59 (ATC Makena Hotel LLC)
Site	Proposed disposition (Landing Zone) is 1.43 acres.
State Land Use District & Zoning	State Land Use Conservation District (offshore); no County zoning.
Ownership	State of Hawai'i.
Council Residency Area.	South Maui
Approving Agency	Department of Land and Natural Resources
Applicant	Makena Boat Partners
Attorney	Gilbert Keith-Agaran, 24 North Church St., Ste 409, Wailuku, Hawai'i 96793; Telephone 808-242-4049; Email gilagaran@gmail.com
Consultant	Tom Schnell, AICP, Principal, PBR HAWAII & Associates, Inc. 1001 Bishop Street, Suite 650, Honolulu, Hawai'i 96813; Telephone: 808-521-5631; tschnell@pbrhawaii.com.
Required Permits and Approvals	Non-exclusive easement or other disposition allowing continued Landings at Maluaka Beach.

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Appendices

- A. Biological and Benthic Assessments
 - A1 May 2016 Marine Biological Survey
 - A2 October 2015 Biological Evaluation and Essential Fish Habitat Assessment
- B. Archaeological and Cultural Impact Assessment
- C. Beach Activity Measurement
- D. Regulatory Approvals
 - Conservation District Use Permit, Board of Land and Natural Resources Commercial and Mooring Permits, Division of Boating and Ocean Recreation Certificate of Inspection, U.S. Coast Guard
 - Mooring Permit (Nationwide Permit Verification), U.S. Army Corps of Engineers
- E. Correspondence
 - E1 Pre-Assessment Consultation Correspondence
 - E2 2015 Draft Environmental Assessment Consultation Correspondence
- F. Request for State Lands (Form LD-1)
- G. Pre-trip Briefing (Makena Boat Partners)
- H. Photographs of Maluaka Beach Access Areas and MBP Passenger Access Route
- I. MBP 2017 Vessel Schedule
- J. Parking Agreement with Adjacent Property Landowner Hawaii Development, L.L.C.

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1 Description of the Proposed Action

1.1 Technical Characteristics.

This section describes the location and purpose of the proposed action and how it would be accomplished.

1.1.1 Proposed Action.

MBP seeks authorization in the form of a non-exclusive easement (the Disposition) for occupancy of State lands to continue Vessel landings at Maluaka Beach (Figure 1). The specific area of the proposed Disposition is depicted in Figures 2 and 3 and is referred to as the "Landing Zone." The "Landing Zone" is a 250 by 250 foot area makai of and adjacent to TMK (2)2-1-006:59 (ATC Makena Hotel LLC) (Figures 2 and 3).

1.1.2 Background.

The U.S. Army Corps of Engineers (USACE) first authorized MBP to install three commercial moorings at Makena, Maui, Hawai'i in 1986. A special condition of the federal permit was the requirement that MBP "acquire a Conservation District Use Permit (CDUP) from the State Department of Land and Natural Resources." In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. MBP replaced the mooring in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016. See Appendix D. Figure 4 shows the Vessel mooring area.

In 1988, the Board of Land and Natural Resources granted "after-the-fact" approval of a CDUP for use of conservation lands for two moorings. The Harbors Division of the Department of Transportation thereupon began issuing MBP renewable annual permits for the moorings. In 1992 jurisdiction over small boat moorings passed to DLNR. DLNR began administering mooring permits and has renewed MBP's mooring permit every year since. The permitted mooring is located within a DLNR designated mooring area (see Figure 4). The 2016 renewal of the mooring permit is attached in Appendix D. The Vessel uses the mooring nightly.

In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. See Appendix D. Following recommendations in a 2016 marine biological report, MBP replaced the mooring system in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016. See Appendix A for the 2016 marine biological report.

As for use of the public beach for loading/offloading of passengers, MBP was directed to obtain "appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State Lands."

In a June 13, 2012 memorandum from the DLNR Office of Conservation and Coastal Lands (OCCL) to other Divisions of DLNR OCCL stated:

"The OCCL wishes to make this known to our fellow Divisions...Makena Boat Partners does have Board authorization to use the noted moorings and non-exclusive use of public beach for loading/offloading."

In 2013, MBP was notified it had not yet obtained the required authorization for the occupancy of state lands. MBP was advised to submit an "Application for Use of Government Lands", and that the "...disposition of government lands for landing and mooring purposes via an easement or revocable permit is considered a 'trigger' under Chapter 343, Hawaii Revised Statutes, requiring compliance by the applicant." Approval of the application attached as Appendix E shall satisfy this unmet condition and will be referred to herein as the "Disposition."

1.1.3 Location of the Disposition.

The site of the Disposition is at Makena, Maui (See Figures 1 & 2) and involves a portion of submerged lands and beach adjacent to Lot 5 of the Maui Prince Hotel Subdivision, TMK 2-1-006:059 (See Figures 2, 3, and 5).

1.1.4 Requested Disposition of State Lands.

MBP seeks the Disposition to continue Landings at the beach. See Appendix F.

1.1.5 Description of the Vessel.

The Vessel is a 64-foot auxiliary powered sailing catamaran. Figure 6 depicts the Vessel with dagger boards (stabilizing fins) extended. The Vessel draws five (5) feet of water and does not operate with dagger boards extended while conducting excursions from Maluaka. The Vessel is inspected by the U.S. Coast Guard at 18 month intervals and is certified to carry up to 80 passengers with a crew of three (however, MBP limits the number of passengers to 70). The current Certificate of Inspection is in Appendix D.

1.1.6 Description of Continued Landings.

The Vessel initiates a Landing by slowly approaching Maluaka Beach. Under power, the Vessel remains afloat and seaward of the "wrack line"¹ for the few minutes passengers require to walk from the beach through the water (approximately knee-deep) to the Vessel for boarding. Passengers return to shore via the same process. The captain maintains the position of the Vessel by applying power to one or both engines. Landings do not require the Vessel to make contact with the bottom although a hull may make momentary contact in response to wave action. Such physical contact while rare does not involve beach mauka of the wrack line.

Conditions in the Landing Zone and on the beach within the Landing Zone were recorded daily during two week-long periods (Appendix C). Figure 7

¹ The wrack line is the line of debris left on the beach by the action of tides and waves.

depicts the beach user count area. Appendix C includes photographs of Vessel Landing cycles during the two weeklong periods, and during a summer week, MBP counted persons present in the Landing Zone. The count showed that very few persons were present who were not guests at the then-operational hotel, or MBP passengers or crew. The photographs also give a visual indication of the level of use on the beach during landings. (Subsequent to the performance of the Beach Activity survey (Appendix C), the Makena Beach & Golf Resort hotel ceased operations (July 1, 2016). With the closure of the Hotel, there may be have been a significant decrease in the number of users that arrive by foot.)

1.1.7 Schedule.

There are up to four Vessel trips or cycles (a cycle consists of two actual "Landings" (embarking and disembarking) per day. Each landing generally does not exceed 10 minutes, a total of 20 minutes per cycle. The first trip begins at 6:30 AM and returns at 8:30 AM. The second begins at 9:00 AM and returns at 1:00 PM. Sunset dinner cruises are not daily, but typically on Monday, Wednesday and Friday. Also, there are seasonal whale watch cruises for five months (December through April) and there may be an occasional "special" tour. Also, landings may not occur during times or days with unfavorable weather. The Vessel is unlikely to be present at the landing more than 90 minutes (4 cycles X 20 minutes per cycle plus a 10 minute "margin" equals 90 minutes) on even the busiest days of the year. A MBP 2017 schedule is included in Appendix I.

MBP desires to conclude the Disposition by May 2018.

1.1.8 Cost.

There is no public cost to the Landings. MBP maintains the mooring at its sole cost and expense. MBP pays a temporary mooring fee whenever the Vessel uses the loading dock at Maalaea Small Boat Harbor.

1.2 Socio-economic characteristics.

This section discusses the impacts of the proposed action on the community in terms of both social and economic effects.

1.2.1 Economic impacts on the community at large.

Landings have a beneficial economic impact on the community at large by providing continued employment for residents and ocean-based activities for residents and visitors. MBP also pays rent for its retail store and business offices, and purchases a variety of goods and services consumed in conducting tour boat excursions and maintaining the Vessel.

1.2.2 Provision of income for the county or state and creation of employment opportunities in areas with high unemployment rates.

The gross earnings of the Vessel are subject to General Excise Taxation and commercial vessel use fees, currently 4% and 3% respectively. The incomes of MBP's owners and employees are subject to state income taxation.

Approval of the Disposition will ensure continued full-time employment of MBP's employees.

1.2.3 Population density.

The Disposition will have no effect on population density because no added housing is proposed.

1.2.4 Recreational facilities.

The proposed action benefits residents and visitors alike who choose this type of ocean activity.

1.2.5 Child care provisions.

There are no child care provisions in relation to the Disposition although lifesaving equipment suitable for children is on board the Vessel.

1.2.6 Targeted segment of the population.

No specific segment of the population is targeted because continued Landings will have general public benefit.

1.2.7 Relocation of residences.

No relocation of residences would occur.

1.2.8 Costs of the proposed action and economic analysis.

There is no public economic cost to the proposed action. There are economic benefits in terms of employment, income and general excise taxes, and commercial use fees paid to DLNR, and the contribution to Maui's (and the State's) tourism opportunities.

1.3 Environmental characteristics.

This section discusses the potential effects of the proposed action on the physical environment.

1.3.1 Aesthetics and viewplanes.

Continued Landings will not adversely affect aesthetics or view planes. The Disposition does not involve construction of structures. The presence of the Vessel near the wrack line during Landings may have a negative visual effect on some beachgoers but any such effect would be temporary lasting between 7 and 10 minutes.

1.3.2 Air pollution.

The Disposition will not have a material effect on air quality. The Vessel's engines meet federal emission standards for marine compression ignition engines. There is no applicable state standard.

1.3.3 Traffic congestion & bus stops.

The Disposition will not add to the volume of traffic in the Kihei-Makena area. Passengers may travel to the site by shuttle vans operated by MBP or nearby

hotels or resort condominiums, taxis, or private automobile. There is no public transportation to the area.

1.3.4 Noise levels.

The Vessel is powered by two diesel engines. Engine exhaust gases and cooling seawater are discharged through ports located inboard on each hull. There is no known standard applicable to sound emanating from the Vessel's machinery. It is not believed to reach a level that would be offensive to someone standing or swimming nearby during the few minutes of a Landing cycle.

1.3.5 Effects on water quality and the marine environment.

Continued Landings are not expected to negatively impact water quality or the marine environment. Engine exhaust gases and cooling seawater discharged by the Vessel quickly dissipate. Such discharges while the Vessel is within the Landing Zone do not have a deleterious effect on beachgoers or swimmers. The Vessel and its machinery are operated to ensure any release does not violate applicable federal standards.

The Disposition does not involve use of State lands to moor the Vessel. The Department of Transportation commenced issuing renewable annual permits for the mooring following Land Board approval of a CDUP in 1988. In 2008, the DLNR Division of Boating and Ocean Recreation authorized mooring of the Vessel within the designated mooring area "on owner's own buoy or anchor." ² The mooring permit has been renewed every year since. The 2016 renewal (Appendix D) stipulates the permit is subject to "all rules promulgated by the Department of Land and Natural Resources." See Appendix D. DLNR has not set standards for the design of offshore mooring systems or standards by which to assess the impact of an offshore mooring system on benthic habitat. The Disposition MBP seeks for continued Landings does not require further action concerning the use of submerged lands to moor the Vessel.

In response to comments received on the 2015 DEA regarding the mooring system in place at the time, MBP hired biological consultant AECOS, Inc. to conduct a benthic habitat survey around the mooring area and assess the potential effect of a proposed improved mooring system on the marine environment. Comments received on the 2015 DEA had indicated that the mooring chain surrounding the anchor point may be scouring surrounding coral. The marine environment in the mooring area. The report determined that no coral damage was observed around the former mooring system. The

² In 2007, DLNR-DOBOR issued MBP a Commercial Operating Area Use authorizing "the loading and offloading of [the Vessel's] passengers at the public beach fronting the Maui Prince Hotel as stipulated by the CDUA issued by the Board of Land & Natural Resources on August 14, 1987." The commercial permit has also been renewed every year since.

only scouring observed was that occurring immediately around the former central anchor. AECOS, Inc. determined that the improved mooring system















Source: ESRI Online Basemap. Makena Boat Partners, 2017. County of Maui, 2017.

was designed to further reduce scour damage, and recommended installation strategies to minimize environmental impact. See Appendix A. In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. See Appendix D. Following recommendations in the marine report, MBP replaced the mooring system in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016. See Appendix A.

1.3.6 Other environmental effects.

While the diesel fuel consumed by the Vessel is carbon-based, continued Landings are not expected to materially affect long term atmospheric conditions. The effect on marine mammals is addressed in Section 2.7 and Appendix A. Landings are suspended in the event of a hurricane, tsunami or severe flooding.

1.3.7 Drainage.

The Disposition will not result in construction of structures, alteration of topography, or other changes affecting drainage.

2 Description of the Affected Environment

2.1 Location.

The Landing Zone is within Makena Bay and involves a portion of Maluaka Beach seaward of the wrack line (see below). The surface area of the Landing Zone (a rectangle with dimensions of 250 feet by 250 feet) is 62,500 square feet (1.43 acres). Maluaka Beach TMK parcels 2-1-006:059, 111, and 112 (Figure 3).

2.2 Land ownership and tenancy.

The affected lands are owned by the State of Hawai'i and administered by the Department of Land and Natural Resources. Parcel 59 is owned by ATC Makena Hotel LLC. Parcel 111 is owned by ATC Makena. A 20-foot wide public access easement connects cul-de-sacs at the ends of Makena-Keoneoio Road and separates Parcels 59 and 111 from the adjoining former hotel (Makena Beach & Golf Resort) property. A photograph of the southern cul-de-sac is attached as Appendix H, Figure 1.

MBP passengers formerly accessed Maluaka Beach through Parcel 59 with the consent of ATC Makena Services, LLC, the lessee of the properties that made up the hotel resort known as Makena Beach & Golf Resort (now closed). Given the recent closure of the hotel, MBP passengers currently access Maluaka Beach through Parcel 111 on an existing public access on the south end of the beach (See Figure 5).

Parcel 111 (Maui Prince Subdivision Lot 4) provides amenities and public access to the south end of Maluaka Beach (See Figure 5). A photograph of the paved path leading to the beach across Lot 4 is attached as Appendix H, Figure 4. Public access to the north end of Maluaka Beach is available across Parcel 112 (See Figure 5).

2.3 County Zoning, State Land Use District.

The proposed action is in a State Conservation district seaward of the shoreline. The land mauka of the shoreline is in a State Urban District and is subject to zoning by Maui County.

2.4 Special Management Area, Coastal Zone Management Consistency, Shoreline Setback Area.

The site of the proposed action is seaward of the wrack line. Passengers cross a public beach to board the Vessel. Via email correspondence on August 11, 2015 (Appendix E), Maui County has advised that a special management area (SMA) permit is not required for continued Landings. Via correspondence from the U.S. Army Corps of Engineers dated August 3, 2015 (Appendix E), the requested Disposition does not require a federal permit thus a CZM consistency declaration is not required. No structure or construction is proposed within the shoreline setback area.

2.5 Land, beach and water use.

The land uses adjacent to Maluaka Beach are hotel-resort. Maluaka Beach has two public access points (north and south). See Figure 5. MBP passengers formerly accessed the Landing Zone via Parcel 59 with the consent of ATC Makena Services, LLC, the lessee of the properties that made up the now-closed hotel resort known as Makena Beach & Golf Resort, ATC Makena Hotel LLC. Given the recent closure of the

hotel, MBP passengers currently access Maluaka Beach through Parcel 111 on an existing public access on the south end of the beach (See Figure 5).

To address potential effects of the private and commercial use by MBP of the public land and water which contain the Landing Zone, the level of beach use in and near the Landing Zone was documented on two separate occasions preceding and during the summer of 2015. MBP staff photographed the immediate Landing Zone and during the summer counted persons on the beach or in the water during specific landing events. The counts show the immediate Landing Zone area during the landing events was populated predominantly by guests and staff of the Makena Beach & Golf Resort (which ceased operations July 1, 2016). The photographs show light beach use in the area of the Landing Zone during both pre-summer and summer periods. It was expected that the summer vacation, but there seemed to less of an increase, at least not in the Landing Zone itself. (See Appendix C). These photographs and counts seem consistent with the Commercial Ocean Recreational Activity Study (CORA) report (See 2.6.1, below).

The portion of the Landing Zone typically used by MBP is closest to the public access and amenities of Parcel 111 to the south (where MBP passengers currently access the beach). The public access includes a 20-foot wide pedestrian walkway from the nearby cul-de-sac and parking area. The amenities include a restroom, outdoor showers and paved access to the shoreline. See Photographs (Appendix H). Due to these amenities, and the short walk from the parking area, beach goers tend to congregate on the south side of Maluaka Beach away from the Landing Zone. This degree of separation coupled with the short duration of Landings has minimized the risk of user conflict. As noted, Vessel passengers shared use of Parcel 59 and a narrow stretch of beach with hotel guests (from Makena Beach & Golf Resort - which ceased operations July 1, 2016) as they walk to and from the Landing Zone. MBP has not received reports of conflict with beachgoers using the Landing Zone or the mauka stretch of beach lying between the wrack line and certified shoreline.

Respondents to the pre-consultation letters discussed the potential need for "carryingcapacity study" (Appendix E). Study of social impacts such as crowding might be appropriate if there were significant conflicts presently occurring at the Landing Zone. Evidence of such conflict is lacking. This is attributable to the amenities and convenient access to the north and south ends of Maluaka Beach provided by the owners of Parcels 111 and 112, areas well away from the Landing Zone and the close proximity of the Makena Beach & Golf Resort (which ceased operations July 1, 2016) on Parcel 59. Additionally, the five businesses that once held Commercial Ocean Recreation Activity (CORA) permits for Maluaka Beach for scuba, snorkeling, and kayak activities no longer hold permits.

Respondents also voiced concern that other vessels might want to use the nonexclusive easement or Landing Zone sought by MBP. The granting of MBP's request for a non-exclusive easement is not expected to result in the issuance of additional commercial permits for Maluaka Beach. A potential competitor would be required first to obtain an offshore mooring permit from the U.S. Army Corps of Engineers. The effectiveness of that permit would be conditioned on the applicant obtaining a State commercial operating area use permit and mooring permit. No law obligates DLNR to issue additional permits. Before issuing an additional permit, DLNR would be required to investigate and set standards of quality (i.e., crowding). The new permit applicant would be then required to demonstrate that Maluaka Beach could accommodate another passenger vessel in light of those standards. The applicant would be required also to present an engineered plan for the proposed mooring system that addresses the potential impact on benthic habitat. Only if those conditions were met would DLNR consider issuing a second commercial permit for the area.

As to crowding, a recent study used questionnaires to evaluate "crowding and encounters" at six coastal and marine areas on Oahu (Needham, 2013). Respondents reported a "normative standard for the maximum use density they felt should be allowed at each site" to be 206 to 381 people per 500-yard by 200-yard section of beach. This is equivalent to 14 to 26 people on a beach and water area the same size as the proposed disposition of 62,500 square feet (250 feet X 250 feet). The beach count reported in Appendix C found only 1 or 3 people on occasion who were not guests or staff at the then-operational hotel, or MBP passengers or personnel. The implication of these figures is that current levels of public use do not pose a risk of significant adverse social impact in the form saof crowding. As for any future increase in the number of vessels allowed to operate from Maluaka Beach, Needham's observation seems to apply, "It remains an issue for managers and researchers to specify clear objectives for a site and then collaborate to determine and monitor indicators and standards of quality that met these objections." (Needham, p.32.³

Needham also wrote about the importance of ocean recreation to a healthy economy noting "[m]arine areas attract more than 80% of the annual visitors to Hawai'i." (Needham, p.9).

2.6 Land and related water use plans.

Following is a discussion of land and water use plans which are related to the proposed action.

2.6.1 County of Maui.

Kihei-Makena Community Plan (1998)

The proposed action is consonant with the Kihei–Makena Community which states:

Kihei-Makena's shoreline resources require protection. They not only benefit Kihei-Makena's residents but also serve as an attraction for visitors and residents from other areas of Maui. (p. 16)

The above statement illustrates the intention of Maui County to offer use of shoreline resources to visitors as well as to residents.

Permit recreational activities in the shoreline zone which respond to shoreline characteristics and principles of sound resource management. Activities which damage or deplete shoreline resources, or are incompatible with ecological systems, shall not be permitted. (p. 21)

Continued Landings do not damage or deplete shoreline resources and are compatible with ecological systems. They require a few minutes and are limited to walking a narrow path to and from the Vessel. Passengers have no difficulty avoiding other beachgoers.

³ The study was supported by DLNR's Division of Aquatic Resources and the Hawaii Coral Reef Initiative Research Program.

Commercial Ocean Recreational Activity Study (2006)

CORA is a comprehensive effort by Maui County to manage "...Commercial Ocean Recreation Activities...on County property, including both beach parks and beach access points." The purpose of CORA is to ensure County beach parks and other County property "...are utilized for the community's maximum recreational, environmental and economic benefit." (CORA, p. 1) MBP does not conduct ocean recreational activity in or on County property. Passengers check in at a gravel lot on TMK (2) 2-1-005:085, before walking to the beach. See Appendix J for a signed license agreement with the landowner of the gravel lot area. There they complete the form required by DLNR of visitors to Molokini and an 8" X 11" manifest card which is handed to the Vessel crew on boarding. The manifest card has the name of the passenger. The crew uses the manifest card to keep track of passengers throughout the excursion such as when they return from snorkeling.

The CORA report notes that "...the primary beach park users during the week are mainly guests of the Maui Prince Resort and a few other tourists, while local residents were observed to utilize the beach park mainly during weekend and holidays." At the time there were five businesses which held CORA permits for Parcel 111; in light of community group concerns at the time, the County suspended issuing CORA permits for this lot and nearby Makena Landing. Suspension of the CORA permits restricted commercial operations, but not public beach access.

Maui Island Plan (2012)

The Plan includes adoption of a Directed Growth Plan and provides for Protection of Watersheds and Coastal Resources and includes Economic Diversification (including "niche tourism"). Makena (including the Landing Zone) is within the "Urban Growth Boundary Area" and is designated as a "Directed Growth" area. A focus of the Plan is diversification to reduce the reliance on tourism and to foster "sustainability". In this context, the proposed action, even though a tourism component, is also an educational tool which, by providing transport to marine resource areas, aids in education of visitors and residents to the value of these natural resources. The Disposition by allowing continued Landings will support a sustainable business.

Furthermore, the Disposition involves activity in a designated "Directed Growth" area, and is adjacent to a major hotel (which ceased operations July 1, 2016, but will be redeveloped). As such, the proposed action accords with the Plan.

2.6.2 State of Hawai'i.

State Conservation Lands Plan – Technical Reference Document (November 1981)

The Disposition complies with objectives and policies established by the Department of Land and Natural Resources as part of the Hawai'i State Plan:

Relationship to Objectives and Policies of the State Plan - Ocean Habitat:

1. Planning for the State's economy be directed towards potential growth activities which increased and diversify Hawai'i's economic base. Nature of relationship – Complementary (significant);

2. Prudent use of Hawai'i's land-based, shoreline and marine resources. Nature of relationship – To be implemented (highly significant). (p. 11, Table A)

Hawai'i State Plan Tourism Functional Plan (1991)

The Hawai'i State Plan originated in legislation in 1978 (Act 100, Ninth State Legislature) and it emphasized the importance of the State's economy and in particular, the visitor industry. Economic growth in the visitor industry was to be encouraged, but is was to be balanced by protection and preservation of natural, human and cultural resources. The State Plan required preparation of "Functional Plans" which were to detail objectives and specify implementation actions. In this context, the proposed action of MBP with its benefits of tax revenues, employment and education about the marine environment which is available both to visitors and residents appears to meet the specifications of the Hawai'i State Plan and in particular the Tourism Functional Plan. This plan notes:

- A major theme of the functional plans is the "...promotion of a balanced growth approach in the use of our limited resources." (p. 3)

- Tourism is the primary engine driving the State's economic development (p. 6)

- Optimum growth rate of tourism "....must be a rate which balances the economic, social and environmental objectives of the State.

(p. 12)

- "Ensure that visitor industry growth maximizes benefits to the residents of the State in general and revenues to State and County governments specifically" (p. 13)

- "Ensure that the benefits of tourism development are spread evenly throughout the State, to the extent desired by the counties, by making special efforts to distribute growth to the neighbor islands." (p.17)

- "Acquire beaches....Maui, Makena..." and "It must be noted that acquisition of these beaches will assist in addressing the problem of saturation of the capacity of beach parks and nearshore waters as a result of high volume of use by both residents and visitors." (p. 25)

Recreation Functional Plan (1991)

As part of the Hawai'i State Plan, the Recreation Function Plan addressed concerns over potential user conflicts (between residents and the visitor industry) at popular beach and ocean areas. The Plan recommended acquisition of beach parks in crowded areas including Makena (P. 15, 16) and specifically recommended that the State, "Work with the appropriate government agencies, private landowners, business interests and community organizations to implement and update the Statewide Ocean Recreation Management Plan" (P. 19, now known as HORMP, see following section). The

risk of user conflict is minimal. Vessel passengers typically walk a more or less direct line across the Landing Zone going to and returning from the Vessel. While awaiting commencement of boarding, they may gather on the beach for a few minutes. But their doing so in an area fronting the now-closed beach activity center has not impaired beach use by others. The vast majority of beachgoers reach the beach from the north or south parking and walkways, and tend to congregate nearby.

Maluaka Beach is in the South Maui Ocean Recreation Management Area (ORMA), administered by the Division of Boating and Ocean Recreation, which has issued a permit to MBP for its operation. MBP's activities are consistent with the purpose and intent of the ORMA and all applicable requirements of Chapter 13-256, HAR. See Appendix D.

Report to the Hawai'i Department of Land and Natural Resources: Recommended Strategies for Addressing Ocean Recreation User Conflicts, Appendix 4, South Maui (Island of Maui) Focus Site Report (March 1, 2007)

This report does not mention any specific user conflicts or issues at Maluaka Beach. It notes that there is a designated mooring area offshore. The South Maui Focus group was composed of the following: State Government (Office of Hawaiian Affairs, DLNR (Office of the Chairperson, DAR, DOBOR, DOCARE, DOFAW, Division of State Parks); Maui County (Ocean Safety, Parks and Recreation); Non-profits (Ocean Tourism Coalition, Maui Hawaiian Civic Club, Maui Tomorrow, Maui Reef Fund, HWF, Project S.E.A.-Link, Kihei Community Assoc. (Parks Committee), Activities and Attractions Assoc.; Businesses (Kite School of Maui, Maui Dreams Dive Shop, Octopus Reef Dive Shop, Maui Thrills Eco Tours, Maui Hotel Assoc., Maui Beach Services, Kayak Association of Maui); Others (NOAA (Hawaiian Islands Humpback Whale NMS), Governor's Liaison for Maui, MACZAC, fishermen, concerned citizens)

Hawai'i Ocean Resources Management Plan (1991, 2013). HORMP is concerned with marine wastes. The Vessel is subject to inspection by the U.S. Coast Guard and holds a Certificate of Inspection issued by the US Coast Guard. HORMP also focuses on potential user conflicts at beaches especially between visitors, residents, or hotel guests. Based on CORA and the two week period of photographs and observations (see Appendix C), and the South Maui Focus Site Report, conflict between users or impediments to public access does not seem present at Maluaka Beach. The public access points differ from the access to the Landing Zone. As previously noted, responses to the preconsultation letter asked about a "carrying-capacity study" for Maluaka Beach. Such study is beyond the scope of this EA. HORMP tasks DLNR with this activity.

Action 8: Provide appropriate waste management infrastructure to support commercial and recreational marine facilities.

Action 9: Strengthen and expand marine protected area management and conservation, develop ecosystem-based approaches for nearshore fisheries management, and establish and institutionalize approaches for restoration of ancient Hawaiian coastal fishponds and salt ponds. [Note; DLNR is tasked with conducting "...carrying-capacity analyses for priority marine protected areas and identify limits of acceptable change with local stakeholder involvement."]

Strategy 2.5: Promote appropriate and responsible ocean recreation and tourism that provide culturally informed and environmentally sustainable uses for visitors and residents.

(HORMP, 2013, Appendix B)

The Hawai'i 2050 Sustainability Plan notes that tourism generates a quarter of the state's tax revenue. The Sustainability Plan also notes that the State must provide incentives for industries to operate in more sustainable ways, recognizing that the visitor industry is a strong component of the state's economy.

2.6.3 Federal.

There are no federal plans for this location and the proposed action does not require federal funds, lands or permits. On August 13, 2015, the U.S. Army Corps of Engineers wrote:

"Based on our review of the submitted information, this office has determined the proposed activities do not affect the course, capacity, condition, or location of a navigable WOUS as defined by Section 10 and would not result in the discharge of dredged or fill material into WOUS as defined by Section 404. Therefore, a DA permit is not required for the proposed work activities."

2.7 Flora and Fauna.

Humpback whales, monk seals, green and hawksbill turtles are known to frequent these waters and Maluaka Beach is within the Critical Habitat designated by the National Marine Fisheries Service. Monk seals have not been observed resting on Maluaka Beach but on one occasion a seal was reported in the designated mooring area. Turtles, although they are occasionally observed in the bay and may feed in or near the Landing Zone, have not been known to use Maluaka Beach for nesting. Should these animals be present on the beach or nearshore, the Vessel has a set of best management practices it follows to avoid contact and to maintain required distances. Effects on Essential Fish Habitat are considered minor. Such effects could occur during the Vessel's propeller movements within the Landing Zone when propeller wash may create a small plume off the stern. No fish were observed at the Landing Zone during a biological survey. It is likely that fish would move away from the Vessel and its propeller wash. (See Appendix A.)

Follow-up Marine Biological Survey and Replacement Mooring System.

In response to comments received on the 2015 DEA regarding the mooring system in place at the time, MBP hired biological consultant AECOS, Inc. to conduct a benthic habitat survey around the mooring area and assess the potential effect of a proposed improved mooring system on the marine environment. Comments received on the 2015 DEA had indicated that the mooring chain surrounding the anchor point may be scouring surrounding coral. The marine report describes the former and new mooring systems and discusses the marine environment in the mooring area. The report determined that no coral damage was observed around the former mooring system. The only scouring
observed was that occurring immediately around the former central anchor. AECOS, Inc. determined that the improved mooring system was designed to further reduce scour damage, and recommended installation strategies to minimize environmental impact. See Appendix A. In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. See Appendix D. Following recommendations in the marine report, MBP replaced the mooring system in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016. See Appendix A.

2.8 Coastal Setting and Beach Stability.

According to a report by the Coastal Geology Group, School of Ocean and Earth Science and Technology, University of Hawai'i at Manoa (www.soesthawaii.edu/coasts), Maluaka Beach has experienced the highest erosion rates in the Kihei-Makena area with an average annual erosion hazard rate of -1.1 feet per year and the average beach width (the average horizontal distance from the vegetation line to the low water mark) at Maluaka Beach has decreased 31% between 1949 and 1997. The implication of this report is that Maluaka Beach appears to have experienced a decrease in its width during the last 48 years of record. Given long-term prognostications of sea level rise, further narrowing of this beach may occur. The Disposition will not cause geologic or climatic change.

2.9 Water Quality.

Water quality within the Landing Zone is generally good in this area. "High count" alerts for bacteria are uncommon.

2.10 Historical, archeological, traditional and cultural sites.

There are no listed sites at the Landing Zone. Historic, archeological, traditional and cultural sites may be found mauka of the shoreline. The consulting archaeologist (See Appendix B) stated that previous archaeological surveys, including the testing for the "King's trail" and monitoring during cul-de-sac construction and installation of landscaping irrigation "encountered no significant subsurface deposition or other evidence of any archaeological or cultural remains. No new clearing or any other modifications are proposed for the land-based access and gathering localities for the passengers. Existing public access corridors and employed and will continued to be used for this purpose near the southern terminus of Maluaka Beach. Thus, this study concludes that the proposed continuation of loading and off-loading of passengers onto and from the Vessel poses no adverse effect on any potential archaeological or historic resources in the immediate adjoining land areas." It is likely that fishing and boating took place in Makena Bay with canoes launched from Maluaka Beach during prehistoric times. Continued Landings are not expected to interfere with traditional or cultural practices such as fishing or gathering of marine life. (See Appendix B)

2.11 Sensitive habitats or bodies of water adjacent to the proposed action.

The waters of Makena Bay are classified as "A" (embayment) by the State of Hawai'i. Activities by motorized vessels in this area of Maui are common. Maluaka Beach is subject to classification as "sensitive" due to human uses and the potential for seals or turtles to be present.

2.12 Flooding and Tsunami.

The Landing Zone is in a tsunami inundation zone, but not a flood (land origin) zone. No structure is proposed. Landings are suspended whenever unreasonable wind or sea conditions are present or forecast. The Vessel's mobility allows it to the threat of tsunami.

2.13 Soils.

The proposed action site which is seaward of the wrack line consists of beach sand and some coral rubble.

2.14 Drainage.

The proposed action has no effect on drainage because the site and the Vessel are seaward of the shoreline, and not on the land.

2.15 Traffic and Access.

MBP provides a shuttle service for passengers who book any of the daily trips. MBP operates four 11-passenger vans for this purpose. Passengers may board a shuttle van at the MBP retail store located at Wailea Gateway Plaza, or may be picked up at a south Maui hotel or condominium. Passengers are offloaded at the gravel lot at the end of the public road off Makena Alanui Road (See Figure 1 in Appendix H). According to MBP, approximately 50-65% of their passengers use the shuttle service. See Appendix J for a signed license agreement allowing MBP to use the gravel lot area. Passengers are given a briefing of the sensitive marine habitat and the boarding process, and then escorted by a MBP crew member down the walkway to the beach. At the entrance to the beach, they remove their footwear and walk barefoot onto the beach. (See Figure 5 and Appendix H.)

MBP signed a license agreement with Hawaii Land Development, L.L.C. allowing limited parking by MBP and passengers on adjacent property TMK (2)2-1-005:85, located south of the now-closed hotel. See Appendix J for a map of the parking area. Up to four vans and 15 automobiles may park on said property between 4:45 a.m. and 8:15 p.m. See Appendix J. This amount of parking is anticipated to be sufficient to accommodate MBP's parking demand, given that at least half of MBP's passengers opt to arrive by shuttle van.

Passengers are discouraged from using the public parking areas adjacent to the north and south of the cul-de-sacs, because of the potential for difficulty in finding parking (compared to parking at the Wailea Gateway Plaza, or their hotel or condominium and taking advantage of MBP's shuttle service). MBP passengers formerly accessed Maluaka Beach through Parcel 59 with the consent of ATC Makena Services, LLC, the lessee of the properties that made up the hotel resort known as Makena Beach & Golf Resort (now closed). Given the recent closure of the hotel, MBP passengers currently access Maluaka Beach through Parcel 111 on an existing public access on the south end of the beach (See Figure 5).

3 Impacts and Alternatives Considered

3.1 Positive impacts.

The proposed action provides jobs, tax and commercial use fee revenues, contributes to the local economy, and adds to Maui's ocean activity venues.

3.2 Negative impacts.

Continued Landings at Maluaka do not threaten significant negative impact. The Vessel is present during Landings for a few minutes no more than four times a day. Occupancy of state lands for this purpose typically does not exceed 90⁴ minutes total during the busiest days. The success MBP has enjoyed for decades testifies to public acceptance of the Vessel and continued Landings. The Disposition will not result in any significant effect on listed, threatened or endangered species.

3.3 Alternatives Considered.

There is no alternative to a disposition that allows continued Landings. DLNR mooring and commercial use permits that MBP would require to operate elsewhere are unavailable and subject to lengthy waiting lists. Maui County stopped issuing CORA permits for Parcel 111 and Makena Landing years ago. (See Section 2.6.1.)

3.4 Alternatives.

3.4.1 Alternative 1 - No-Action Alternative.

Operators of commercial vessels must hold a commercial use permit issued by DLNR-DOBOR⁵. The applicant for such permit must be in compliance with the applicable provisions of Hawai'i Administrative Rules, Ocean Waters, Navigable Streams and Beaches, Sections 13-251-1 through 13-251- 20. These provisions in turn require the applicant to comply with all other applicable state law. DOBOR permits are generally subject to annual renewal. Failure to secure the Disposition could be deemed a violation of the 1988 CDUP and result in denial of renewal of MBP's current commercial use permit and revocation of the federal mooring permit. Without these permits MBP could not lawfully carry passengers for hire. The result would be a loss of 22 full-time and 8 part-time jobs for Maui residents, and the loss to the State of more than \$200,000 in annual general excise taxes and commercial use fees, as well as the Hawai'i personal income tax paid by MBP's employees and owners.

3.4.2 Alternative 2 – Grant the Disposition.

The Disposition will allow continuation of the business with its attendant beneficial effects. The effects on the physical environment are slight. There are no significant adverse effects on listed, threatened or endangered species

⁴ Boarding (10 minutes) plus disembarking (10 minutes) equals 20 minutes per tour cycle. Maximum of 4 tour cycles per day equals 80 minutes (20 minutes per cycle X 4 cycles plus 10 minutes contingency = 90 minutes).

⁵ DOBOR (Division of Boating and Ocean Recreation, Department of Land and Natural Resources).

and no significant conflicts with other users of the public beach and park. The effects on traffic are slight.

Table 1 – Comparison of Alternatives					
Alternative	Listed, threatened or endangered species	Jobs	Taxes	Beneficial Effects	Adverse Effects
1. No Action	No significant effect	Lost jobs	Lost tax revenues and commercial use fees	None	Loss of jobs, taxes and fee, and loss of an attractive ocean activity and educational experience it provides
2. Continued non-exclusive use	No significant effect	Jobs remain	Tax revenue continues	Jobs, tax revenue, tourism component	None

3.5 Preferred Alternative.

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Alternative 2 is the preferred alternative. It has no significant adverse effects and continues to provide benefits in the form of local employment and tourism opportunities and tax revenues.

3.6 Impacts Relative to the CZM Objectives & Policies and the SMA Guidelines (Maui County).

The following table displays the review guidelines in relation to the potential impacts of the proposed action (Table 4).

Table 2 Impacts Relative to Maui County CZM Goals and Objectives .				
Resource Amenity	Goals & Objectives	Impact of Proposed action		
Recreational Resources	Provides coastal recreation to the public and protects coastal resources uniquely suited for recreational activities that cannot be provided elsewhere	The proposed action does not impair or deter public recreation and there is no adverse effect on wildlife or habitat. There is no effect on beaches or reduction of public recreation areas. There are brief periods when passenger boarding takes place.		
Historic Resources	Protects, preserves, and restores Hawaiian and American cultural or historical resources	There is no effect on cultural or historic resources. There are no archaeological sites impacted by the proposed action.		
Marine Resources	Implements the State's Ocean Resources Management Plan (ORMP)	The proposed action is consonant with the ORMP		

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Table 2 Impacts Relative to Maui County CZM Goals and Objectives .				
Resource Amenity	Goals & Objectives	Impact of Proposed action		
Scenic & Open Space Resources	Protects, preserves, restores, and improves the quality of coastal scenic and open spaces	There is no change to landforms or vegetation and the only effect on scenic values is the brief presence of the Vessel in nearshore waters during boarding.		
Beach Protection & Accessibility	Conserves open space, minimizes beach loss due to erosion, preserves public beach access, and protects beaches for public use	Continued Landings will not hinder public access because the Landing Zone is away from the public access available at the north and south ends of the beach.		
Coastal Ecosystems	Minimizes adverse impacts and protects coastal ecosystems	The proposed action does not include any construction or structural changes and consists of the short-term presence of a vessel seaward of the shoreline and the crossing of a public beach by passengers as they board.		
Economic Uses	Provides for coastal dependent facilities and minimizes their negative impacts	Continued Landings provide a coastal dependent activity (not a constructed facility) with a presence of less than 90 minutes total throughout the day. Any negative impact on the beach and adjacent shore waters that may be attributed to the activity is insignificant.		
Managing Development	Enhances & streamlines Permitting & decision-making Processes	The proposed action is a regulated activity and by this EA seeks to fulfill the permitting and decision-making processes.		
Public Participation	Stimulates public awareness, education, and participation	MBP excursions provide education, awareness and participation involving the marine and coastal environment to residents and visitors alike.		

3.7 Impacts Relative to the Coastal Zone Management Objectives & Policies per Act 205A-2 (Table 3) and 205A (Table 5).

The following table displays the objectives and policies of the State's CZM program, and provides comments concerning the proposed action in relation to those objectives and policies.

	Table 3 – Coastal Zone Management Objectives (205A-2)			
	Objective	Comment		
1	Recreational resources; (A) Provide coastal recreational opportunities accessible to the public.	MBP provides ocean recreational opportunities via its ocean tours which are open to the public		
2	Historic resources; (A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.	No historic or prehistoric features are impacted by the proposed action.		
3	Scenic and open space resources; (A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources	The Vessel's transient presence in the Landing Zone does not detract from scenic or open space resources given the hotel-resort context.		
4	Coastal ecosystems; (A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.	MBP values these resources, and conducts the Vessel's operations to protect, preserve and display them to the public.		
5	Economic uses; (A) Provide public or private facilities and improvements important to the State's economy in suitable locations.	The proposed action provides jobs, tax revenues, and is a valuable component of the State's visitor industry.		
6	Coastal hazards; (A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.	The proposed action does not cause any of these hazards.		
7	Managing development; (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards	Consultation letters (Appendix E) were sent to individuals, groups and agencies to solicit their input in the drafting of this EA.		
8	Public participation; (A) Stimulate public awareness, education, and participation in coastal management.	The consultation process included correspondence with interested individuals and groups asking for comment.		
9	Beach protection; (A) Protect beaches for public use and recreation	Although continued Landings involve limited occupancy of Maluaka Beach, public use and access to the shoreline is unhindered.		
10	Marine resources; (A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability.	The proposed action provides for educational tours which promote and enhance public knowledge of marine and coastal resources and which encourage sustainability.		

	Table 4 – Coastal Zone Management Policies (205A)				
	Policy	Comment			
1	Recreational resources; (A) Improve coordination and funding of coastal recreational planning and management;	The proposed action contributes to coordination of coastal recreational planning and management by adding to opportunities for public education and access to offshore coastal natural resources.			
1B	Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:	The proposed action contributes to coordination of coastal recreational planning and management by adding to opportunities for public education and access to offshore coastal natural resources.			
i	Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;	Continued Landings at Maluaka provides a unique opportunity for visitors and residents of the Makena-Wailea area to participate in ocean activities aboard a modern large and stable catamaran. The nearest alternative access to such vessels is Maalaea Small Boat Harbor.			
ii	Requiring replacement of coastal resources having significant recreational value including, but not limited to surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;	The proposed action does not damage, develop or displace valuable coastal resources. Fees are paid to the State for use of Maluaka Beach and the brief boarding activity.			
iii	Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;	Continued Landings will not interfere or detract from public use or access to Maluaka Beach.			
iv	Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;	Continued Landings will not interfere or detract from public use or access to Maluaka Beach.			
V	Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;	The proposed disposition contributes to this objective by contributing to the opportunities available to visitors and residents to visit offshore coastal resources and by meeting safety and conservation standards of the U. S. government.			
vi	Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;	The proposed action contributes to the recreational value of coastal waters by providing opportunities for learning about offshore coastal resources for visitors and residents. The proposed action is not a source of pollution.			
vii	Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing;	The proposed action does not involve new artificial recreational opportunities.			

	Table 4 – Coastal Zone Management Policies (205A)				
	Policy	Comment			
vii	Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6;	This policy applies because continued Landings will not take away shoreline areas from public use, rather the Disposition will ensure continued opportunity on Maui for visitors and residents to experience coastal offshore natural resources; it will not hinder public use of Maluaka Beach.			
2	Historic resources; (A) Identify and analyze significant archaeological resources;	The environmental assessment for the proposed action includes an archaeological report which identifies and analyzes the historic resources. No effects are anticipated.			
	 (B) Maximize information retention through preservation of remains and artifacts or salvage operations; 	The proposed action has no effect on historic resources.			
	(C) Support state goals for protection, restoration, interpretation, and display of historic resources	There are no historic resources present at the site of the proposed action.			
3	Scenic and open space resources; (A) Identify valued scenic resources in the coastal zone management area;	The proposed action does not include any structures or impediments to scenes or open space other than the brief presence of the Vessel at Maluaka Beach.			
	(B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;	The proposed action is not a "new" development, rather it would allow an existing activity to continue. MBP is not aware of complaints about the visual presence of the Vessel.			
	(C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources;	The proposed action does not include construction of any structures at the shoreline. The proposed action consists only of the brief presence of the Vessel.			
	 (D) Encourage those developments that are not coastal dependent to locate in inland areas; 	It is not possible to relocate inland activities occurring aboard the Vessel. Tour boat activities are marine dependent.			
4	Coastal ecosystems; (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;	The proposed action has a minimal effect on coastal ecosystems and uses the existing storm drain system.			
	 (B) Improve the technical basis for natural resource management; 	The proposed action follows rules and guidelines to avoid listed species and provides educational opportunities onboard for visitors and residents.			
	 (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance; 	The proposed action does not damage reefs. Rather it provides a learning experience for passengers to understand the reef ecosystem.			
	 (D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; 	The proposed action is not land-based and has no effect on coastal ecosystems from stream diversions or other land-based activities.			

	Table 4 – Coastal Zone Management Policies (205A)				
	Policy	Comment			
	(E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures;	The proposed action is not a source of pollution.			
5	Economic uses; (A) Concentrate coastal dependent development in appropriate areas;	The proposed action is not a "development", rather it is a coastal dependent economic activity which provides benefits to the community in the form of employment and taxes.			
	(B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area;	The proposed action has been in operation for nearly two decades, the boarding process requires only a few minutes, no damage is incurred to the beach. Beach use seems slight at the boarding location based on two weeks of data collection, probably because the activity takes place away from the designated public access points to the beach.			
	(C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long- term growth at such areas, and permit coastal dependent development outside of presently designated areas when:	The proposed action occurs adjacent to a major hotel resort and is compatible with that land use and in an appropriate context of Maui's tourism economic sector.			
5C	(i) Use of presently designated locations is not feasible;	Use of the present location appears feasible and is a consistent and compatible with adjacent land uses.			
	 (ii) Adverse environmental effects are minimized; 	The adverse environmental effects of the proposed action are minimal.			
	(iii) The development is important to the State's economy	The proposed action is important to the State's economy via the provision of employment, taxes and a component of the visitor industry.			
6	Coastal hazards; (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;	The proposed action takes place for a few minutes in a coastal hazard (tsunami) area. The Vessel can retreat from the shoreline in the event of a tsunami alert and it can choose to remain offshore during such an event.			
	(B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;	The proposed action does not "add" development to this area, rather it continues a long-term activity.			
	 (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; 	The proposed action is not bound by flood insurance requirements because it consists of vessel access at the shoreline.			
	 (D) Prevent coastal flooding from inland proposed actions; 	The proposed action does not alter the flood plain at this location because the Vessel is offshore.			

	Table 4 – Coastal Zone Management Policies (205A)				
	Policy	Comment			
7	Managing development; (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;	The proposed action does not involve development, but rather an existing activity.			
	(B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements;	The proposed action involves a term of a previously issued Conservation District Use Permit. The Disposition will establish a non-exclusive Landing Zone in areas subject to regulation by two DLNR divisions; comparable Landing Zones at Kaanapali Beach are subject to regulation by DOBOR alone.			
	(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process;	The environmental assessment and permit process for the proposed action includes public information and review opportunities (pre-consultation and DEA consultation, and formal review and approval of a Final EA).			
8	Public participation; (A) Promote public involvement in coastal zone management processes;	The environmental assessment and permit process for the proposed action includes public information and review opportunities (pre-consultation letters, DEA review process).			
	(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities;	The environmental assessment and permit process for the proposed action includes public information and review opportunities (pre-consultation letters, DEA review process).			
	(C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts;	The environmental assessment and permit process for the proposed action includes public information and review opportunities (pre-consultation letters, DEA review process).			
9	Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;	The proposed action does not involve structures and does not affect natural shoreline processes.			
	(B) Prohibit construction of private erosion- protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities;	No such private erosion-protection structure is proposed as part of the proposed action.			
	(C) Minimize the construction of public erosion-protection structures seaward of the shoreline;	No such private erosion-protection structure is proposed as part of the proposed action.			

	Table 4 – Coastal Zone Ma	anagement Policies (205A)
	Policy	Comment
	(D) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor;	Does not apply.
	(E) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor;	Does not apply.
10	Marine resources; (A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;	The proposed action makes beneficial use of marine and coastal resources through the operation of the Vessel in an environmentally sensitive manner, and by including education as a component of its excursions, and by promoting the educational efforts of the Hawaii Wildlife Fund.
	 (B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency; 	The environmental assessment and permit process for the proposed action includes public review opportunities.
	(C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;	In this situation, the interests of the State, as well as those of Maui County, including residents and visitors are promoted and benefit from the educational opportunities offered by the MBP tours.
	(D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources;	The tours provided via the proposed action incorporate marine environmental education and foster respect for endangered species and corals.
	(E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.	MBP via the proposed action encourages learning experiences which aid in exploring, using and protecting marine and coastal resources.

3.8 Stormwater Impacts.⁶

The Office of State Planning has published guidance to assist reviewers of environmental assessments with regard to the primary, secondary and cumulative effects of a proposed action. The guidance evolved as a reaction to the environmental impact documentation accompanying State Land Use redistricting proposals for large developments such as subdivisions, malls, visitor facilities (hotels, golf courses) and other changes in land use from agriculture or conservation to urban.

There are no primary effects of the proposed action because the Vessel is offshore and the Vessel itself captures very little rainfall due to its small surface area. The proposed

⁶ Office of State Planning, *Stormwater Impact Assessments*, May 2013.

disposition involves a Landing Zone of 1.43 acres seaward of the vegetation line. The Landing Zone consists of a sandy beach and ocean water. No structures, paving or physical modification to these surfaces is proposed.

Minor secondary effects may occur as the result of the use of existing paved roadways by vehicles transporting Vessel passengers. Such effects are typical of the use of roadways by vehicles generally.

3.9 Environmental Permits and Approvals

This environmental assessment supports a disposition of state lands that will enable MBP to continue vessel landings at Maluaka Beach.

Table 5 – Environmental Permits and Approvals		
Agency	Permit	Action
Department of Land and Natural Resources	Easement	Agency approval of the appropriate disposition.

4 **Proposed Mitigation Measures**

4.1 Potential problems and appropriate mitigation including best management practices.

Continued Landings involve an inherent risk of contact with marine mammals, swimmers and other beachgoers. MBP has successfully mitigated such risks through adherence to Best Management Practices and compliance with federal marine mammal approach limits and the requirement of prudence in the operation of the Vessel.

4.2 Best Management Practices (BMP).

Best management practices are followed by the Captain and crew of the Vessel at all times. During approach and departures from the Landing Zone, crew are stationed to observe areas fore and aft of the Vessel to watch for humans as well as for monk seals and turtles. Vigilant lookout ensures compliance with the federal⁷ "100 yard humpback whale approach" rule and the "50 yard monk seal approach" rule. MBP staff on the beach also maintain vigilant watch for swimmers or beachgoers in proximity to the Landing Zone so that Vessel crew may be warned of their presence. The Vessel will abort an approach whenever necessary to avoid swimmers and other beach users. Risk of collision is reduced further by limiting the speed of the Vessel to 5 knots while traversing the area between the permanent mooring buoy and Landing Zone. There is no evidence of the Vessel having contact with an ocean user. See Appendix A for additional details of BMPs related to the preservation and protection of endangered species.

⁷ The Vessel's Certificate of Inspection requires adherence to the 100 yard and 50 yard separation minimums, and requires further, "[p]rudent course and/or speed alterations shall be made to minimize contact with marine mammals." See Appendix D.

5 Anticipated Determination

5.1 Finding of No Significant Impact (FONSI).

The Disposition and continued Landings will not have a significant effect on the environment and therefore preparation of an environmental impact statement is not required. This document anticipates a Notice of Negative Declaration/Finding of No Significant Impact for the proposed action. This anticipated determination is based on review and analysis of the "Significance Criteria" in Section 11-200-12, Hawai'i Administrative Rules, as documented below.

5.2 Findings and reasons supporting the determination including justifying evidence.

5.2.1 No irrevocable commitment to loss or destruction of any natural or cultural resource would result.

Continued Landings will not entail an irrevocable commitment, loss or destruction at the Landing Zone or elsewhere. Landings are few in number (never more than eight in a day) and short in duration (typically 7 to 10 minutes).

5.2.2 The proposed action would not curtail the range of beneficial uses of the environment.

Continued Landings will not curtail other beneficial uses of Maluaka Beach generally or the Landing Zone specifically. Existing public access to the beach and adjoining shore waters will not be affected by the transient presence of the Vessel or its passengers.

5.2.3 The proposed action would not conflict with the state's long-term environmental policies or goals and guidelines.

The State's environmental policies and guidelines as set forth in Chapter 344, Hawai'i Revised Statutes, "State Environmental Policy", encompass two broad policies: conservation of natural resources, and enhancement of the quality of life. Continued Landings will not degrade the quality of life as related to the public's enjoyment of Maluaka Beach. The Disposition may enhance conservation of natural resources through MBP educational initiatives which are designed to inform passengers about natural resources and listed, threatened or endangered species. In effect, tours on the Vessel are "nature" tours which serve to inform passengers of the importance of preserving and protecting natural resources and the quality of life on Maui.

5.2.4 The proposed action will improve the economic and social welfare of the community and the state.

The proposed disposition will continue the benefits available to residents and visitors to Maui alike. By enhancing visitor experience, the general welfare of the state is improved. Tourism is a major component of the state's economy. Residents of Maui who are employed by MBP benefit directly through their employment. The State benefits through the collection of taxes and use fees.

5.2.5 The proposed action would not substantially affect public health.

Continued Landings will have no effect on public health. The Vessel equipment and machinery meet federal standards. No Vessel crewmember or passenger may dispose of plastic, paper goods, rags, glass, metal, crockery, dunnage or food, or similar wastes from the Vessel. When generated during an excursion these waste materials are bagged and taken ashore by crew for disposal at the conclusion of the day's final excursion. The Vessel has Coast Guard approved holding tanks for waste water. Otherwise permissible discharge of dishwater or graywater does not occur within one mile of Makena Bay. Blackwater (water from toilets and urinals) may be discharged from time to time but only outside of the three mile limit as permitted by federal law.

5.2.6 No substantial secondary impacts, such as population changes or effects on public facilities, are expected.

Continued Landings will not burden public facilities and is not expected to result in the issuance of additional commercial permits for Maluaka Beach. A potential competitor would be required first to obtain an offshore mooring permit from the U.S. Army Corps of Engineers. The effectiveness of that permit would be conditioned on the applicant obtaining a State commercial operating area use permit and mooring permit. No law obligates DLNR to issue Before issuing an additional permit DLNR would be additional permits. required to investigate and set standards of guality (i.e., crowding). The permit applicant would be then required to demonstrate that Maluaka Beach could accommodate another passenger vessel in light of those standards. The applicant would be required also to present an engineered plan for the proposed mooring system that addresses the potential impact on benthic habitat. Only if those conditions were met could DLNR consider issuing a second commercial permit for the area. MBP deems that possibility to be remote.

5.2.7 No substantial degradation of environmental quality is expected due to the proposed action.

The proposed disposition does not involve construction or alterations to the environment. Degradation of the environment does not occur now and is not likely to occur in the future.

5.2.8 No cumulative effect on the environment or commitment to larger actions will be involved.

The proposed activity is not part of any other proposed action or larger action. MBP's permits are limited to one vessel. The burden of obtaining a second set of permit precludes consideration of expansion. Vessel Landings have been ongoing for nearly three decades without manifestations of adverse impact; MBP's business model is fixed. The effect of continued Landings is deemed insignificant and will not require commitment to any larger actions.

5.2.9 No rare, threatened or endangered species or their habitats are affected.

No impacts are anticipated on any candidate, proposed or listed endangered species or their habitats. MBP follows best management practices including lookouts and slow speeds in the Landing Zone and areas where the Vessel may encounter turtles, seals or whales. Green sea turtles frequent the area but

the Vessel has been successful avoiding them through best management practices and adherence to the requirements of the Vessel's Certificate of Inspection. Monk seals have not been observed on Maluaka Beach nor have turtle nests. In the unlikely event of the presence on the beach of a monk seal or turtle nesting, MBP does not expect difficulty controlling passengers and avoiding disturbance.

5.2.10 The proposed action will not detrimentally affect air or water quality or ambient noise levels.

Continued Landings will not detrimentally affect ambient air, water quality or noise levels. It is an ongoing activity which meets applicable standards.

5.2.11 The proposed action will not detrimentally affect environmentally sensitive areas such as flood plains, tsunami zones, beaches, erosion-prone areas, geologically hazardous lands, estuaries, fresh waters or coastal waters.

Continued Landings will not detrimentally affect Maluaka Beach or nearby coastal waters. The engines are cooled by centrifugal fresh water pump and rubber impeller seawater pump. Exhaust gas and seawater pumped through a heat exchanger (a "wet" exhaust system) are discharged through ports on each hull positioned above the water line on the inboard side of each hull. This heated water quickly dissipates and does not affect water quality. As noted each engine drives a four blade propeller located just forward of the transom. The rotation of the propeller disturbs the substrate material resulting in a transient plume. The plume quickly dissipates and is easily avoided by marine life without lasting effect.

5.2.12 The proposed action will improve scenic vistas and view planes identified in county or state plans or studies.

The proposed activity may not improve, nor may it detract from scenic vistas or view planes.

5.2.13 There will be no requirement for substantial energy consumption.

Continued Landings will not result in an increase in consumption of diesel fuel. The close proximity of the Landing Zone to Molokini Islet affords MBP a fuel consumption advantage over the many similar vessels that must travel from Maalaea Small Boat Harbor at higher speeds resulting in increased fuel consumption. If the requested Disposition is denied, passengers who might prefer to travel with MBP would be forced to depart from Maalaea resulting in increased fleet fuel consumption.

6 Consultation

6.1 Pre-Consultation

Pre-consultation was extended to a number of elected officials, individuals, agencies, and groups. Recipients that provided comments are marked win an asterisk. Comments were received from some parties who were not consulted directly. The complete mailing list, a copy of the consultation letter, comments received, and the corresponding responses are included in Appendix E1.

6.1.1 State of Hawai'i

Department of Business, Economic Development & Tourism (DBEDT) DBEDT – Strategic Industries Division DBEDT - Office of Planning* Hawai'i State Library – Hawai'i Documents Center Kahului Regional Library Kihei-Makena Library Department of Health – Environmental Health Administration* (response from Environmental Planning Office) Department of Land and Natural Resources - Office of Conservation and Coastal Lands* Department of Land and Natural Resources - Land Division Department of Land and Natural Resources - Division of Boating and Outdoor Recreation Department of Land and Natural Resources – State Historic Preservation Division* Department of Land and Natural Resources – Division of Aquatic Resources* Department of Land and Natural Resources - Land Division, Maui District Branch* Department of Transportation – Harbors Division* University of Hawai'i – Maui College Library Office of Hawaiian Affairs

6.1.2 County of Maui

Department of Parks and Recreation Planning Department*

6.1.3 Federal

National Marine Fisheries Service (NOAA Fisheries) Department of Homeland Security – 14th Coast Guard District U.S. Army Corps of Engineers* U.S. Fish and Wildlife Service (USFWS)*

6.1.4 Elected Officials

Senator Rosalyn Baker Representative Kaniela Ing Maui County Councilmember Donald Couch

6.1.5 Individuals, Groups/Businesses, and Other Consulted Parties

Ms. Christine Andrews Mr. Don Bloom Mr. Doug Rice Bill & Sylvia Sales* (did not receive a letter directly from MBP) Phillip Schultz* (did not receive a letter directly from MBP) Patricia Stillwell* (did not receive a letter directly from MBP)

ATC Makena Holding, LLC ATC Makena Hotel, LLC Hawaii Wildlife Fund* (did not receive a letter directly from MBP) Hui Alanaui o Makena & Dana Naone Hall, from Isaac Davis Hall, attorney* (did not receive a letter directly from MBP) Malama Kahakai Maui Masters Swim Club Maui Tomorrow Foundation Play Pacific Surfrider Foundation

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6.2 2015 DEA Consultation

The 2015 DEA was published on December 23, 2015. Consultation on the 2015 DEA was extended to the following elected officials, individuals, agencies, and groups. Recipients that provided comments are marked win an asterisk. Comments received and the corresponding responses are included in Appendix E2.

6.2.1 State of Hawai'i

Department of Business, Economic Development & Tourism (DBEDT) DBEDT – Strategic Industries Division DBEDT - Office of Planning* Hawai'i State Library – Hawai'i Documents Center Kahului Regional Library Kihei-Makena Library Department of Health – Environmental Health Administration* (responses from Environmental Planning Office and Clean Water Branch) Department of Land and Natural Resources - Office of Conservation and Coastal Lands Department of Land and Natural Resources – Land Division* Department of Land and Natural Resources – Division of Boating and Outdoor Recreation Department of Land and Natural Resources – State Historic Preservation Division Department of Land and Natural Resources – Division of Aquatic Resources* Department of Land and Natural Resources – Land Division, Maui District Branch Department of Transportation - Harbors Division* University of Hawai'i – Maui College Library

Office of Hawaiian Affairs

6.2.2 County of Maui

Department of Parks and Recreation Planning Department*

6.2.3 Federal

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6.2.4 Elected Officials

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Tourism Functional Plan, 1991.

Recreation Functional Plan, 1991.

Hawaii Ocean Resources Management Plan, 1991, 2013

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APPENDIX A: BIOLOGICAL AND BENTHIC ASSESSMENTS

A1 MAY 2016 MARINE BIOLOGICAL SURVEY (INCLUDING BENTHIC ASSESSMENT) A2 OCTOBER 2015 BIOLOGICAL EVALUATION AND ESSENTIAL FISH HABITAT ASSESSMENT

A1 MAY 2016 MARINE BIOLOGICAL SURVEY (INCLUDING BENTHIC ASSESSMENT)

Marine biological survey of Makena Boat Partners offshore mooring at Mākena, Maui



Prepared By

AECOS, Inc. 45-939 Kamehameha Hwy, Suite 104 Kāne'ohe, Hawai'i 96744

> March 17, 2016 *Revised May 12, 2016*

Marine biological survey of Makena Boat Partners offshore mooring at Mākena, Maui

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Introduction

Makena Boat Partners (MBP) owns and operates the 65-foot catamaran, *Kai Kanani II* (herein, the "Vessel") under permits issued by the State of Hawai'i, Department of Land and Natural Resources (HDLNR). The *Kai Kanani II* offers snorkeling, whale watching, and dinner cruises in the coastal waters off southwest Maui and around Molokini. The commercial vessel departs from Maluaka Beach and has an offshore mooring permit for Mākena Bay (Figure 1). MBP submitted an Application for Use of State Lands through which it seeks authorization in the form of a non-exclusive easement to continue vessel landings at Maluaka Beach. The area affected by vessel landings at Maluaka Beach is referred to as the "Landing zone."



Figure 1. Project area in Mākena, Maui.

A marine biological survey of the Landing zone off Maluaka Beach was conducted in March 2014 (*AECOS*, 2014). A Biological Evaluation (BE) and Essential Fish Habitat Assessment (EFHA), completed in October 2015, provided supplemental information to the 2014 report (*AECOS*, 2015). In November 2015, a Draft Environmental Assessment (DEA) was prepared that

addressed the continued use of Maluaka Beach by MBP to board and disembark passengers and crew of the *Kai Kanani II* (Environmental Planning Services, 2015). Comments received on the DEA included concerns about the impacts on hard bottom habitats at the offshore mooring used by MBP, specifically by the mooring chain "scour(ing) the hard bottom area, removing and/or killing any living coral and crushing much of the hard bottom habitat." A thorough biological assessment of the offshore habitats where the vessel is currently moored and/or could be moored was requested. Additionally, MBP is proposing a new mooring system, reducing the length of chain on the seafloor (so-called "ground chain"). *AECOS* Inc. was contracted by MBP's attorney, Dennis Niles, to investigate biological resources at the offshore mooring design in light of the biological findings. On March 1, 2016, *AECOS* biologists conducted field surveys in the existing mooring area.

Background information

Passengers and crew board and disembark the Vessel from Maluaka Beach. They access the Vessel by walking from the beach into shallow water and board using a retractable ladder. The process is repeated on the Vessel's return. Landing or disembarking requires no more than 10 minutes; the Vessel remains afloat and under power throughout. These cycles, or "Landings," may be repeated up to four times a day. BMP has made Landings at Maluaka Beach continuously since the 1980s (Environmental Planning Services, 2015).

In 1986, the U.S. Army Corps of Engineers (USACE) authorized MBP to install three commercial moorings at Mākena. A special condition of the federal permit was the requirement that MBP "acquire a Conservation District Use Permit (CDUP) from the State Department of Land and Natural Resources." In 1988, the Board of Land and Natural Resources granted "after-the-fact" approval of a CDUP for use of conservation lands for two moorings. The Harbors Division of the Department of Transportation thereupon began issuing MBP renewable annual permits for the moorings. In 1992 jurisdiction over small boat moorings passed to HDLNR and HDLNR has renewed MBP's mooring permit every year since. The permitted mooring is located within a HDLNR designated mooring area, approximately 300 m (984 ft) offshore from Maluaka Beach (see Figure 2).

NOAA-NOS benthic habitat maps (Battista et al., 2007) can be used to identify physical zones (i.e., reef flat, channel, reef crest, fore reef, and bank/shelf) and biological cover (i.e., % coral, % macroalgae, % turf, % coralline algae, and uncolonized bottom). The NOAA-NOS benthic habitat map (Figure 3) shows the mooring site to be located in an area of uncolonized sand and hard bottom with 10-50% coral cover.



Figure 2. Map showing Vessel landing and mooring areas.

Project description

The proposed project ("Project") involves the removal of the existing mooring system and installation of a new mooring system in the same location. The existing mooring system, as designed in 2009, is shown in Figure 4. On the seafloor at the center of the anchor system is a concrete-filled tire.



Figure 3. Mākena Bay benthic habitat characterization (Battista et al, 2007). Uncolonized sand (brown) and hard bottom with coral cover between 10 and 50% (light pink) characterize the bottom around the mooring site.

Attached to the concrete-filled tire is a single vertical chain (so-called "riding chain"), which is attached to a buoy at the surface, and three ground chains laying on the seafloor: one extending approximately 23 m (75 ft) from the center in a northerly direction, and a pair extending approximately 33 m (108 ft¹) from the center in a southwesterly direction. At the terminus of each

¹ Our March 2016 field survey found the southwest chains to be greater in length than indicated in the 2009 mooring system plan.

ground chain is a large ship anchor, which secures the chains to the seafloor. The water depth at the mooring system is 6 to 8 m (20 to 25 ft). Figure 5 presents the proposed mooring system. This system is designed using two subsurface buoys to ensure the chains remain above the seafloor. Three $1\frac{1}{4}$ " x 20" long steel eye bolt anchors will be drilled into the seafloor. The proposed mooring system includes reusing the existing ship anchors and chains, as applicable.



Figure 4. MBP existing mooring system off Maluaka Beach.

Methods

On March 1, 2016, *AECOS* biologists conducted a survey to inventory marine assemblages at the existing mooring location: qualitative surveys of the ship anchors and chain lines, and quantitative surveys of the seafloor adjacent to the existing chain lines and the surrounding area. Our biological survey began at 9:00 AM, 240 minutes after a predicted +0.94 high tide relative to mean lower low water (MLLW; Makena, Station ID: 1615202; NOAA, 2014). An inventory was made for corals, invasive species, seagrass, marine protected species (HDLNR, 2009, 2014, 2015; USFWS, 2015), and non-coral macro-invertebrates. A list of species observed, including relative abundance by location, is presented





Figure 5. MBP proposed mooring system.
Transect placement

The precise location of the new mooring system is unknown, so our survey covered an area 10 m (33 ft) wide surrounding the ground chains of the existing mooring system. Quantitative surveys of corals and bottom composition were conducted on the seafloor along two primary transects: 1) transect "North," measuring 23 m (76 ft) in length; and 2) transect "Southwest," 33 m (108 ft) in length. The North transect was laid on the seafloor adjacent to and along the length of the existing ground chain. The Southwest chain line consists of two equal length parallel ground chains, approximately 2-m (6-ft) apart. Therefore, the Southwest primary transect was laid on the seafloor between the ground chains (Figure 6).



Figure 6. The southwest chain transect was laid between the parallel chains.

The primary transects were used to position 10-m transects centered on and placed perpendicular to the primary transects. Placement of these secondary transects was at predetermined random meter marks off the primary transects, either to the "right" or "left", and offset 0.5 m from the primary. A total of five

10-m transects were placed perpendicular to the North transect and six 10-m transects were placed perpendicular to the Southwest transect.

Benthic composition

The point intercept method (also termed a line-point intercept method) was used to assess benthic composition at the mooring site. This protocol uses meter marks on the transect lines as sample points. At 1-m intervals, the nature of the bottom at each point was identified and assigned to one of the following categories: sand, limestone rubble, limestone boulder, bare limestone, or live coral. Benthic composition using the point-intercept method was recorded for the North and Southwest primary transects, with 23 and 33 points sampled per transect, respectively, for a total of 56 sample points. Total for the 10-m transects was 121 points (11 transects with 11 sampling points each). Benthic percent cover was calculated by dividing the total number of points for a category by the total number of points sampled (times 100). This protocol identified the bottom type under each transect line, not that present on or under the ground chains.

Coral abundance and size-class distribution

A one-meter belt survey of coral colonies was conducted on all transects. For this method, all coral heads 0.5 m to either side of a transect line were counted. Coral abundance was determined as the number of individuals observed for each transect normalized to number of individuals per m². For the areas surrounding the chains, coral was surveyed on five 10-m transects in the North chain area and six 10-m transects in the Southwest chain area, producing a survey area of 110 m². Corals were also surveyed on the primary transects, for a total survey area of 56 m². The primary transect survey area included the actual chains, but the 10-m transects did not, being offset 0.5 m to one side or the other of the primary transect.

Corals were identified to species level and assigned to a size class (1- to 5-cm; 6to 10-cm; 11- to 20-cm; 21- to 40-cm; 41- to 80-cm; 81- to 160-cm; or >160-cm) based on the greatest horizontal dimension of a colony. Coral size-class distribution was determined for each coral species recorded. Percent morbidity (amount of coral colony not alive) and any signs of disease or scour damage from the chains were also recorded.

Results

Existing ship anchors

At the terminus of the North chain and the Southwest chains is a large ship anchor (two total). These ship anchors are coated in a thin layer of silt and have scattered hoof-shell snails (*Hipponix conicus*), Hawaiian oyster (*Dendostrea sandvichensis*), and small (<5 cm) encrusting corals (*Porites* spp. and *Pocillopora* spp.) attached (Figure 7).



Figure 7. The existing ship anchors host small encrusting corals.

Existing ground chains

<u>General observations</u> — The existing ground chains are coated in a thin layer of silt and host small (<5 cm) encrusting corals (*Porites* spp. and *Pocillopora* spp.), hydroids (*Pennaria disticha*), cyanobacteria, and turf algae (Figure 8A). A limestone outcrop occurs close beside the North chain, some 15 m (50 ft) from the center point. The outcrop consists of mostly coral heads, with only about 10% live coral (Fig. 8B). Various sea urchins (*Echinometra mathaei, E. oblonga, Heterocentrotus mammillatus, Diadema paucispinum,* and *Echinothrix calamaris*) occur on the outcrop.



Figure 8. A). The ground chains are coated in a thin layer of silt, hydroids (*P. disticha*), and small corals (*Pocillopora* spp). B). Outcrop beside the North chain.

<u>Benthic composition</u> — The results of the point-intercept surveys on the primary transects are presented in Figure 9. The category "bare substrate" indicates flat limestone with little relief, lacking biological growth. The "rubble," "boulder," and "bare substrate" include bottom that may also have up to 3 cm (1 in) of sand cover. The dominant bottom types along both transects are bare substrate and rubble, with a combined total cover of 70% for the North transect and 76% for the Southwest transect. Sand cover is similar on both transects. Boulder bottom type was only observed at the North transect, at 9%. Recorded coral cover was 0% on both transects.



Figure 9. Percent benthic cover as measured using point-intercept along two primary (chain line) transects.

<u>Coral abundance</u> — Coral abundance determined on each of the primary transects is presented in Table 1: total coral counts and coral abundance for each chain line transect. The total number of coral colonies counted on the chain transects was 125; 79 on North transect and 46 on Southwest transect. Based on the two transects, mean coral abundance was 2.4 colonies/m².

<u>Coral size-class distribution</u> — Results of the coral size-class survey are presented Table 2 and Figure 10. A total of 125 coral colonies representing three coral taxa (*Porites lobata, Pocillopora* spp, and *Montipora capitata*) were

recorded along the primary transects. By far, the most common coral species was *Porites* spp., with 120 colonies (96% of the total). The most common colony size was the 1- to 5-cm class (82% of the total). The largest colony observed was in the 11- to 20-cm size class. All corals had encrusting morphologies and none showed signs of scour damage.

Table 1. Total number of coral colonies and coral colony abundance(mean colonies per m²) counted on primary transects.

Transect	Survey area (m²)	Coral count (colonies)	Coral abundance (no./m²)
North chain	23	79	3.4
Southwest chain	33	46	1.4
Total	56	125	2.4

Table 2. Number of coral colonies in each size class by speciesfrom combined primary transects.

	Size class (cm)						_	Doncont
Таха	1 to 5	6 to 10	11 to 20	21 to 40	41 to 80	81 to 160	Total	of total
Porites lobata	98	19	3				120	96
M. capitata	1						1	0.8
<i>Pocillopora</i> spp	4						4	3.2
Total count	103	19	3	0	0	0	125	
Percent of total	82%	15%	2%	0%	0%	0%	0%	

Area surrounding ground chains

<u>General observations</u> — The area surrounding (10-m or 33-ft wide) the ground chain is mostly flat, and the bottom is a mix of rubble, bare limestone, and sand. Most of the hard bottom has at least a veneer of sand on it. Small (<20 cm) *Porites lobata* coral colonies and vagabond boring sponges (*Spirastrella vagabunda*) are scattered throughout the survey area. Other macro-invertebrates observed include sea urchins (*E. mathaei, H. mammillatus, D.*



Figure 10. Coral colony size by size-class (cm) for the chain transects, as measured on one 23-m² transect and one 33-m² transect. (n = total number of colonies measured).

paucispinum, E. calamaris, and *Tripneustes gratilla*), sea cushion (*Culcita novaeguineae*), sea star (*Linckia guildingi*), and black sea cucumber (*Holothuria atra*). Shell remains of winged arc (*Arca ventricosa*) are littered on the seafloor throughout the survey area. At the center-point of the anchoring system, rubble appears to be abraded by chain movement. No corals occur on this rubble. Representative photos of the area surrounding the ground chains are presented in Figure 11.

<u>Benthic composition</u>— The results of point-intercept surveys on the 10-m transects are presented in Figure 12. The dominant bottom types in both areas are bare substrate and sand, with a combined total of 78% at the area surrounding the North chain line and 83% at the area surrounding the Southwest chain line. Rubble cover is similar at both chain lines: 18% at the area surrounding the North chain and 12% at the area surrounding the Southwest chain. Boulder bottom type is low in both areas, around 3%. Coral cover was only observed at the area surrounding the Southwest chain line, at 1.5%.



Figure 11. A and B): Areas surrounding the ground chains is a mix of rubble, bare limestone, and sand, with only minimal topographic relief. C): Scattered small *P. lobata* colonies and vagabond boring sponge are present. D): Rubble abraded by chain movement at the center-point of the anchoring system.

<u>Coral abundance</u>— Coral abundance was determined on the eleven 10-m transects. Total coral counts and coral abundance for each area are presented in Table 3. The total number of coral colonies counted on the 10-m transects was 157: 39 in the area surrounding the North chain and 118 in the area surrounding the Southwest chain. Combining the two areas gives a mean coral abundance of 1.3 colonies/m².



Figure 12. Percent benthic cover as measured using point-intercept measured on 10-m transects for areas around the North and Southwest chains.

Table 3. Total number of coral colonies and coral colony abundance(colonies/m²) counted from secondary or 10-m transects.

Area	Survey area (m²)	Coral count (colonies)	Mean coral abundance
Area surrounding North chain Area surrounding Southwest chain Total	55	39	0.7
	66	118	1.8
	121	157	1.3

<u>Coral size-class distribution</u> —Results of coral size-class distribution are presented Table 4 and Figure 13. A total of five coral taxa (*Porites lobata*, *Pocillopora* spp, *M. capitata*, *M. patula*, and *Cyphastrea ocellina*), representing 125 coral colonies, were recorded. By far, the most common coral species was *Porites* spp., with 120 colonies (96% of the total). The most common colony size was between 1 and 5 cm across (82% of the total). The largest colony observed was in the 11- to 20-cm size class.

Table 4. Number of coral colonies in each size class by species from eleven 10-mtransects (110 m²) recorded in the area around the chains.

Size class (cm)							Doncont	
Таха	1 to 5	6 to 10	11 to 20	21 to 40	41 to 80	81 to 160	Total	of total
Porites lobata	92	41	12	0	0	0	145	92.4%
M. capitata	8	0	0	0	0	0	8	5.1%
M. patula	1						1	0.6%
Pocillopora sp.	2						2	1.3%
Cyphastrea ocellina	1						1	0.6%
Total count	104	41	12	0	0	0	157	100
Percent of total	66%	26%	8%	0%	0%	0%	0%	



Figure 13. Coral colony size by size-class (cm) as measured on the secondary $(10-m^2)$ transects, here broken out by species and presented as percent of each species encountered (n = number of colonies).

Fish assemblage

Few fishes are present in the survey area, and most are associated with the outcrop observed beside the North chain line (Fig. 8B). A total of 30 fish taxa was observed during our survey. Of these 30 taxa, 8 are species endemic to Hawai'i (found only in the Hawaiian Islands). Well-represented genera across the survey area are triggerfishes (Balistidae) and wrasses (Labridae), with 4 species each, followed by surgeonfishes (Acanthuridae) and damselfishes (Pomacentridae), with 3 species each. Appendix A contains a checklist of marine organisms observed in the survey area in 2015.

Common fishes are surgeonfishes, including orangeband surgeonfish (*A. olivaceus*) and brown tang (*A. nigrofuscus*); oval chromis (*Chromis ovalis*) blackfin chromis (*C. vanderbiliti*), and threespot chromis (*C. verater*); lagoon triggerfish (*Rhinecanthus rectangulus*), and reef triggerfish (*R. aculeatus*); and manybar goatfish (*Parupeneus multifasciatus*).

Hawkfish (*Paracirrhites arcatus, P. forsteri* and *Cirrhitus pinnulatus*) occur sheltered in coral heads. Filefish (*Cantherhines dumerilii*), boxfish (*Ostracion meleagris*), thornback cowfish (*Lactoria fornasini*), bluefin trevally (*Caranx melampygus*), whitemouth moray (*Gymnothorax meleagris*), bigscale soldierfish (*Myripristis berndti*), juvenile spot-tail dartfish (*Ptereleotris heteroptera*) juvenile Hawaiian hogfish (*Bodianus albotaeniatus*), and juvenile rockmover wrasse (*Novaculichthys taeniourus*), are present but tend to be rare in the survey area.

Discussion

Protected and Listed Species

The Project includes work in marine waters where ESA-listed species may be exposed to project-related activity. Two listed (endangered or threatened; HDLNR, 2015; NOAA-NMFS, 2011a, 2015; USFWS, 2015) species were observed in the March 2016 survey: green sea turtle (*Chelonia mydas*) and humpback whale (*Megaptera novaeangliae*). Spinner dolphins, protected under the Marine Mammal Protection Act (MMPA), were also sighted in nearby waters.

Sea turtles and marine mammals typically avoid human activity, so exposure to such activity and equipment operation would be infrequent and non-injurious, resulting in insignificant effects on the ESA-listed marine species. Additionally, protected species BMPs require that the project manager and contractor reduce the likelihood of interactions by watching for and avoiding protected species before commencing work and by postponing or halting operations when protected species are within 50 yards of project activities (USACE, 2012).

<u>Sea turtles</u> — Of the sea turtles found in the Hawaiian Islands, only green sea turtle is likely in the Project vicinity. Hawksbill sea turtle (Eretmochelys *imbricata*) is rare in the Hawaiian Islands and only known to nest in the southern reaches of the state (NOAA-PIFSC, 2010). The green sea turtle was listed as a threatened species under the Endangered Species Act in 1978. Since protection, the green sea turtle has become the most common sea turtle in the Hawaiian Islands with a steadily growing population (Chaloupka et al., 2008). On February 16, 2012, NMFS and the USFWS received a petition from the Association of Hawaiian Civic Clubs to identify the Hawaiian green turtle population as a distinct population segment (DPS) and delist the Hawai'i DPS under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). In March 2015, NOAA-NMFS published a proposed rule to reclassify the green sea turtle into 11 DPS, but continue protection of the Hawai'i DPS as a threatened species under the ESA (NOAA & USFWS, 2015a). The public comment period for this proposal ended September 25, 2015 (NOAA & USFWS, 2015b).

Threats to the green sea turtle in Hawai'i include: disease and parasites, accidental fishing take, boat collisions, entanglement in marine debris, loss of foraging habitat to development, and ingestion of marine debris (NMFS-USFWS, 1998).

The green sea turtle diet consists primarily of benthic macroalgae (Arthur and Balazs, 2008), which the shallow reefs of the main Hawaiian Islands provide in abundance. Red macroalgae generally make up 78% of their diet, whereas green macroalgae make up 12% (Arthur and Balazs, 2008). The single most consumed algal species is *Acanthophora spicifera*, which is an introduced species first recorded in Hawai'i in 1950 (Huisman et al., 2007). Very little algal cover was observed in the mooring site, and no *A. spicifera*. Despite the lack of preferred foraging resources, one green sea turtle was observed in our March 2016 survey. This turtle had visible severe fibropapillomas² tumors. The turtle was seen resting on and near one of the ground chains.

Turbidity (murky water) does not appear to deter green sea turtles from foraging and resting areas, and construction projects in Hawai'i have found sea

² Fibropapillomatosis is a disease specific to sea turtles. The condition is characterized by benign epithelia tumors that debilitate the turtles, causing anemia, progressive immunosuppression, and increased susceptibility to other disease.

turtles adaptable and tolerant of construction-related disturbances (Brock, 1998a,b).

<u>Shellfishes</u> — Shellfishes, including pearl oyster (*Pinctada margaritifera*), are regulated throughout the State of Hawai'i, where it is prohibited to "catch, take, kill, possess, remove, sell or offer for sale", without a permit, pearl oysters and 6 other shellfishes (HDLNR, 2009). One pearl oysters was observed in our survey.

<u>Monk Seal</u> — The endangered Hawaiian monk seal (*Monachus schauinslandi*) is known to occur in the waters of the mooring site. The majority of monk seal sighting information collected in the main Hawaiian Islands is reported by the general public and is highly biased by location and reporting effort. Systematic monk seal count data come from aerial surveys conducted by the Pacific Islands Fisheries Science Center (PIFSC). Aerial surveys of all the main Hawaiian Islands were conducted in 2000-2001 and in 2008 (Baker and Johanos, 2004; PIFSC, unpublished data). One complete survey of Maui was conducted for each of these years. No Hawaiian monk seals were sighted in the area from Makena Landing to Makena State Beach during these three aerial surveys (PIFSC, 2015).

Location	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Totals
Big Beach, Makena State Park	1	7	9	5	3	2	4	3	4	7	45
Little Beach, Makena State Park	0	8	9	4	1	0	1	0	0	2	25
Makena Landing	0	0	3	3	3	3	8	8	2	20	50
Maluaka Beach Park	0	0	0	0	0	0	3	1	0	2	6
Oneuli Beach	0	0	0	0	0	0	12	0	0	1	13
Puuolai	0	0	1	0	0	0	0	0	0	5	6
Totals	1	15	22	12	7	5	28	12	6	37	145

Table 5. Number of reported Hawaiian monk seal sightings from Makena Landing toBig Beach at Makena State Park from 2005 through 2014.

Reports by the general public, which are non-systematic and not representative of overall seal use of main Hawaiian Island shorelines, have been collected in the main Hawaiian Islands since the early 1980s. For the purposes of this report, a sighting is defined as a calendar day during which an individual seal is documented as present at a specific location. There have been 145 reported sightings of monk seals between Makena Landing and Big Beach at Makena State Park from 2005 to 2014, with 6 reported sightings at Maluaka Beach (Table 5 above). Of these sightings, 39 reports can be attributed to 9 uniquely identifiable seals (Table 6). No monk seal births have been documented in the area from Makena Landing to Makena State Park.

Table 6.	Number of sightings of uniquely-identified Hawaiian monk seals reported
from	Mākena Landing to Big Beach, Mākena State Park, Maui (2005 - 2014).

Seal ID	Size	Sex	Sightings
R304	Adult	Male	2
R305	Adult	Female	6
R308	Adult	Female	2
RA20	Immature	Female	2
RH44	Adult	Female	13
RK66	Immature	Male	1
RW34	Adult	Female	11
RV16	Adult	Female	1
Т990	Adult	Male	1
Total			39

Critical habitat for Hawaiian monk seals has been designated (NOAA-NMFS, 2015c). Hawaiian monk seal critical habitat includes the seafloor and marine habitat to 10 m above the seafloor from the 200 m depth contour through the shoreline and extending into terrestrial habitat 5 m inland from the shoreline between identified boundary points. The mooring site occurs in designated monk seal marine critical habitat. Inshore from the mooring site, the shoreline falls within boundary points defined as preferred pupping areas and significant haul-out areas: boundary points MA101 to MA102: South of Kihei Boat Ramp through 'Ahihi Bay; 20°42'27" N to 20°37'39" N (NOAA-NMFS, 2015c), and is therefore included in monk seal terrestrial critical habitat.

<u>Spinner dolphin</u> — The spinner dolphin (*S. longirostris*) gained protection under the Marine Mammal Protection Act (MMPA) in 1972, although they are not considered depleted in waters of the Pacific Islands Region. Spinner dolphins are frequently encountered around the main Hawaiian Islands. Currently, the Protected Resources Division of the NOAA-NMFS Pacific Islands Regional Office (PIRO) is working on an Environmental Impact Statement (EIS) on the potential rulemaking under the MMPA to provide more protection to Hawaiian spinner dolphins (NOAA-NMFS, 2006). The MMPA states that the essential habitats used by marine mammals should be protected, and marine mammals should be protected from the harmful actions of man. NOAA-NMFS PIRO recommended guidelines for interactions with spinner dolphins include: 1) remain at least 50 yards from dolphin; 2) limit observation time to $\frac{1}{2}$ hour; and 3) if approached by a spinner dolphin while on a boat, put the engine in neutral and allow the animal to pass. Boat movement should be from the rear of the animal (NOAA-NMFS, 2011b).

<u>Humpback whale</u> — The humpback whale or *koholā* (*Megaptera novaeangliae*) was listed as endangered in 1970 under the ESA. In 1993 it was estimated that there were 6,000 humpback whales in the North Pacific Ocean, and that 4,000 of those regularly came to the Hawaiian Islands. The population is estimated to be growing at between 4 and 7% per year. Today, as many as 10,000 humpback whales may visit Hawai'i each year (HIHWNMS, 2014). Humpback whales typically arrive in the Hawaiian Islands as early as October and may stay as late as May or early June. They are generally found in water less than 600 ft (182 m) deep, and cow-calf pairs appear to prefer even shallower water. The mooring site occurs in waters included in the Humpback Whale National Marine Sanctuary. During the March 2016 surveys, humpback whale vocalization or "song" was heard by biologists during the underwater survey. Additionally, several whales were observed breaching in surrounding areas.

<u>Coral</u> — Coral species are protected under Hawai'i state law, which prohibits "breaking or damaging, with any implement, any stony coral from our waters, including any reef or mushroom coral" (HAR §13-95-70; HDLNR, 2014). It is also unlawful to take, break or damage with any implement, any rock or coral to which marine life of any type is visibly attached (HAR §13-95-71, HDLNR, 2014). On August 27, 2014, NOAA issued a final rule for listing 20 coral species as threatened under ESA (NOAA-NMFS, 2014). None of these newly listed corals occurs in the Hawaiian Islands.

Essential Fish Habitat

The 1996 Sustainable Fishery Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and subsequent Essential Fish Habitat (EFH) Regulatory Guidelines (NOAA, 2002) describe provisions to identify and protect habitats of federally-managed marine and anadromous fish species. Under the various provisions, federal agencies that fund, permit, or undertake activities that may adversely affect EFH are required to consult with the National Marine Fisheries Service (NMFS).

Congress defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" (MSFCMA, 1996; NOAA, 2002). EFH provisions in MSFCMA designate that species harvested in sufficient quantities to require fisheries management are to be subdivided into similar Management Unit Species (MUS). Five MUS groups are currently managed in Hawaiian waters: bottomfish, pelagics, precious corals, crustaceans, and coral reef ecosystem (Table 7). In waters surrounding the Hawaiian Islands, EFH for coral reef ecosystem MUS, as defined by the Final Coral Reef Ecosystem Fishery Management Plan (WPRFMC, 2001) and subsequent Fishery Ecosystem Plan for the Hawaiian Archipelago (WPRFMC, 2005), "includes all waters and habitat at depths from the sea surface to 50 fathoms extending from the shoreline (including state and territorial land and waters) to the outer boundary of the Exclusive Economic Zone (EEZ)."

Management Unit	Species Complex	EFH
Pelagic	Temperate species Tropical species Sharks Savid	Eggs and larvae: the water column extending from the shoreline to the outer limit of the EEZ down to a depth of 656 ft. (200 m)
	Squiu	Juvenile/adults: the water column extending from the shoreline to a depth of 3,280 ft. (1,000 m)
Bottomfish and Seamount Groundfish	Shallow-water species (0 to 50 fm)	Eggs and larvae: the water column extending from the shoreline to the outer limit of the EEZ down to a depth of 1,310 ft. (400 m)
		Juvenile/adults: the water column and all bottom habitat extending from the shoreline to a depth of 1,310 ft. (400 m)
Bottomfish and Seamount Groundfish	Deep-water species (50 to 200 fm)	Eggs and larvae: the water column extending from the shoreline to the outer limit of the EEZ down to a depth of 1,310 ft. (400 m)
		Juvenile/adults: the water column and all bottom habitat extending from the shoreline to a depth of 1,310 ft. (400 m)
Crustacean	Spiny and slipper lobster complex Kona crab	Eggs and larvae: the water column from the shoreline to the outer limit of the EEZ down to a depth of 490 ft. (150 m)
		Juvenile/adults: all of the bottom habitat from the shoreline to a depth of 330 ft. (100 m)

Table 7. EFH Designations for Hawai'i Archipelago FEP Management Unit

Table 7 (continued).

Coral Reef	All Currently Harvested	EFH for the Coral Reef Ecosystem MUS includes the	
Ecosystem	Coral Reef Taxa (CHCRT)	water column and all benthic substrate to a depth of 330 ft. (100 m) from the shoreline to the outer	
	All Potentially Harvested Coral Reef Taxa (PHCRT)	limit of the EEZ for eggs, larvae, juveniles and adults	

The mooring site is located within waters designated as EFH (including water column and all bottom areas) for coral reef ecosystem, bottomfish, pelagic and crustacean MUS. Of the thousands of species which are federally managed under the coral reef FMP, at least 50 juvenile and adult life stages are known to occur in waters surrounding the mooring site (*AECOS*, 2014). No pelagic, bottomfish, or crustacean MUS were observed in the 2016 survey.

Assessment

Our March 2016 surveys found the chain lines of the existing mooring system to be stable on the seafloor. Scour damage was observed only on rubble immediately around the center concrete-filled tire. No coral damage was observed. Small, encrusting corals occur on the existing ground chains and ship anchors. If these chains and anchors are to be reused for the new mooring system (as indicated on proposed plans), care need be taken to ensure corals are not damaged during the process. Leaving the existing chain lines and ship anchors in place would minimize or avoid coral colony losses.

The bottom type at the existing mooring site and surrounding area is limestone rubble, bare limestone, and sand. In this area, coral cover is low, with a mean abundance of 1.4 colonies per m². Three $1\frac{1}{4}$ " x 20" eye bolt anchors are to be drilled into the seafloor. Environmental impacts from the installation of the anchors can be avoided by placing the anchors in locations not occupied by living coral colonies. In-water sounds produced by pile-driving or drilling into the seafloor should be minimal given the small size of the bolts and the short duration of the installation activity. It is anticipated that no marine mammals, fishes, or sea turtles would be exposed to noise levels that approach the threshold for physical impacts to these animals.

If possible, the large outcrop located beside the North ground chain should be relocated away from the chain. Most fishes observed in the March 2016 survey were associated with this outcrop. Relocating the outcrop prior to any work on the chains would avoid and minimize impacts to fishes and other coral resources. Fishes living in the Project vicinity are expected to actively avoid direct impacts from Project activities. Some impairment of ability of EFH managed species to find prey items could occur, but this effect should be minimal, temporary, and spatially limited to the immediate vicinity of mooring installation activities.

If the existing chains and anchors remain in place for the new mooring system and the location of the drilled anchors avoid coral colonies, little, if any, adverse impacts are expected to occur from installation of a new mooring system. Furthermore, the new system is designed to reduce the amount of chain movement occurring across the seafloor, thereby reducing potential damage from scouring. Best management practices (BMPs), including environmental protection specifications and endangered species protection, as described below, may be applicable.

<u>Endangered Species Protection</u> - The following endangered species BMPs may be applicable during the anchor installation:

- Each day, conduct a survey for marine protected species before any work starts, and postpone work if a species is observed. If a marine protected species is in the area, observe a 150-ft (46-m) buffer with no human encroachment. If a monk seal/pup pair is seen, a 300-ft (92-m) buffer must be observed.
- Monitor for marine protected species 30 min prior to, during, and 30 min after any in-water Project activity. Record information on the species, numbers, behavior, sex or age class (if possible), location, time of observation, start and end times of project activity and any other disturbances (visual or acoustic).
- In the event a marine protected species enters the Project area and activity cannot be halted, conduct observations and immediately contact NOAA/NMFS. For monk seals contact Marine Mammal Response Coordinator at (808) 944-2269 and the monk seal hotline at (888) 256-9840. For turtles, contact the turtle hotline at (808) 983-5730.

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Appendix A

Inventory of marine biota observed in the Makena Boat Partners offshore mooring location and vicinity, Mākena, Maui.

PHYLUM, CLASS, ORDER, FAMILY Genus species	Common name & Hawaiian name	Status	Abundance
	ALGAE		
СУАПОРНУТА	CYANOBACTERIA		
Lyngbya majuscula		Ind.	0
CHLOROPHYTA	GREEN ALGAE		
Neomeris sp.			
RHODOPHYTA	RED ALGAE		
Hydrolithon gardineri		Ind.	0
Hydrolithon onkodes		Ind.	R
	INVERTEBRATES		
CHONDRILLIDAE			
Spirastrella vagabunda	vagabond boring	Nat.	А
CNIDARIA, HYDROZOA, ANTHOATHECATA	HYDROIDS		
Pennaria disticha	Christmas tree hydroid	Nat	С
CNIDARIA, ANTHOZOA,		i i i i i i i i i i i i i i i i i i i	ŭ
SCELRACTINIA	HARD CORALS		
POCILLOPORIDAE			
Pocillopora meandrina	cauliflower coral	Ind.	R
<i>Pocillopora</i> spp.		Ind.	R
PORITIDAE			
Devites labots	lobe coral,		
Porites lobata	pohaku puna	Ind.	С
FAVIDAE			
Cyphastrea ocellina	ocellated coral	Ind.	R
ACROPORIDAE			
Montipora capitata	rice coral	Ind.	R
Montipora patula	sandpaper coral	End.	R
ANNELIDA, POLYCHAETA, SERPULIDAE	WORMS		
Spirobranchus aigantaus	Christmas-tree worm,		
Spirobranchus gigunteus	kio	Ind.	0
MOLLUSCA, BIVALVIA, PTERIIDAE	MOLLUSKS		
Pinctada margaritifera	black-lipped pearl oyster	Ind.	R
OSTREIDAE			
Dendostrea sandvichensis	Hawaiian oyster	End.	U
HIPPONIX	-		
Hipponix conicus	hoof shell	Ind.	U

PHYLUM, CLASS, ORDER,	Common name &	Chabaa	
FAMILY	Hawaiian name	Status	Abundance
Genus species			
MOLLUSCA, GASTROPODA,			
ARCIDAE			
Arca ventricosa	winged arc	Ind.	C†
ARTHROPODA, CRUSTACEA,			
DECAPODA, DIOGENIDAE			
Calcinus laevimanus	left-handed hermit crab	Ind.	R
ECHINODERMATA,			
ECHNOIDEA,	SEA URCHINS		
ECHINOMETRIDAE			
Echinomatra mathaai	rock boring urchin		
Echnometra mathaer	ʻina kea	Ind.	С
Echinometra oblonga	oblong boring urchin;		
Echinometra obioliga	ʻina	Ind.	0
Hataro controtus mammillatus	red pencil urchin;		
neterocentrotus mummiutus	hā'uke'uke'ula'ula	Ind.	С
DIADEMATIDAE			
Diadoma naucisninum	long-spined urchin;		
Diddema padcispinam	wana hālula	Ind.	0
Echinothrix calamaris	banded urchin	Ind.	С
TOXOPNEUSTIDAE			
Trippoustos gratilla	collector urchin; <i>hāwa'e</i>		
Tripneusies grutinu	maoli	Ind.	С
ECHINODERMATA	βριττι ε ςταρς		
OPHIUROIDEA	DRITTLE STARS		
Ophiocoma erinaceus	spiny brittle star	Ind.	R
ECHINODERMATA,	SEΔ STΔRS		
ASTEROIDEA	SLASTARS		
Culcita novaeguineae	cushion star	Ind.	R
ECHINASTERIDAE	green linckia		
Linckia guildingi		Ind.	R
HOLOTHUROIDEA,	SEA CUCUMBERS		
HOLOTHURIDAE	SEA COCOMDENS		
Holothuria atra	black sea cucumber; <i>loli</i>		
noiothana atra	okuhi kuhi	Ind.	R
VERTEBRATA,	BONY FISHES		
ACTINOPTERYGII	2011111011110		
GOBIIDAE	GOBIES		
Gnatholepis anjerensis	eyebar goby	Ind.	R

PHYLUM, CLASS, ORDER, FAMILY	Common name & <i>Hawaiian name</i>	Status	Abundance
Genus species			
	SURGEONFISHES and		
ACANTHURIDAE	UNICORNFISH		
Acanthurus nigrofuscus	brown tang, <i>māʻiʻiʻi</i>	Ind.	С
A (1)	orangebar surgeonfish;		U U
Acanthurus olivaceus	na'ena'e	Ind.	С
Ctenochaetus strigosus	goldring surgeonfish	End.	0
POMACENTRIDAE	DAMSELFISH		
Chromis ovalis	oval chromis	End.	С
Chromis vanderbilti	blackfin chromis	Ind	C
Chromis verater	threespot chromis	Fnd	C
LABRIDAE		Liiu.	C
	saddle wrasse: <i>hingleg</i>		
Thalassoma duperrey	lanwili	Fnd	0
Bodianus albotaeniatus	i du win	Liid.	0
(iuvenile)	Hawaiian hogfish, <i>'a'awa</i>	End.	R
Novaculichthys taeniourus	rockmover wrasse	Ind.	R
Comphonyoyariya	bird wrasse; <i>hīnālea</i>		
Gomphosus varias	ʻi'iwi	Ind.	
SCARIDAE	PARROTFISH		
Calatamus savalinus	stareye parrotfish,		
Calotomus carolinus	pōnuhunuhu	Ind.	
CHAETODONTIDAE	BUTTERFLYFISH		
Chaetodon kleinii	sunburst butterflyfish	Ind.	0
	Threadfin butterflyfish:		
Chaetodon auriga	kīkākanu	End.	0
TETRAODONTIDAE		2	0
Canthigaster amboinensis	ambon toby	Ind	
0	Hawaijan whitespotted	ind.	
Canthigaster jactator	toby	End	0
BALISTIDAF		Liiu.	0
	I RIGGERFISH		
Melichthys vidua	humuhumu hi'u kole	Ind	0
	lagoon triggerfish:	ma.	0
Rhinecanthus aculeatus	humuhumu nukunuku		
	apua'a	Ind.	С
	reeftriggerfish		
Rhinecanthus rectangulus	humuhumu nukunuku		
	apua'a	Ind.	С
Sufflamen hursa	lei triggerfish		
Sujjiunion bulsu	humuhumu lei	Ind.	R

PHYLUM, CLASS, ORDER,	Common name &	Status	Abundance
FAMILY	Hawaiian name		
Genus species			
PTERELEOTRIDAE			
Ptereleotris heteroptera	spot-tail dartfish	Ind.	R
CIRRHITIDAE			
Paracirrhites arcatus	arc-eye hawkfish;		
	pilikoʻa	Ind.	U
Paracirrhites forsteri	blackside nawkfish; <i>hilu</i>	Ind	II
MONACANTHIDAE	FILEFISH	ma.	0
Cantherhines dumerilii	barred filefish: <i>'ō'ili</i>	Ind.	0
OSTRACIIDAE		-	-
Lactoria fornasini	thornback cowfish;		
	makukana	Ind.	R
Ostracion meleagris	spotted boxfish	Ind	D
MULLIDAE	COATEISH	ma.	ĸ
Paruneneus nleurostiama	sidespot goatfish: malu	Ind	П
Paruneneus multifasciatus	manybar goatfish mogno	Ind. Ind	C
HOLOCENTRIDAE	SOLDIERFISH	ma.	G
Myripristis berndti	bigscale soldierfish; $'\bar{u}'\bar{u}$	Ind.	R
MURAENIDAE	MORAY EELS		
Gymnothorax meleagris	whitemouth moray; <i>puhi</i>		
	'ōni'o	Ind.	R
CARANGIDAE			
Caranx melampygus	bluefin trevally; <i>'ōmilu</i>	Ind.	R
	ΔΕΔΤΗ Ες		
CHORDATA REPTILIA	REF HLES		
CHELONIDAE			
Chelonia mydas	green sea turtle, <i>honu</i>	Ind	P
MAMMALIA.	<u>B. con con our cre, none</u>	mu.	K
CETARTIODACTYLA,	MAMMALS		
BALAENOPTERIDAE			
Megaptera novaeangliae	humpback whale; <i>koholā</i>	End.	С
CETACEA, DELPHINIDAE			
Stenella longirostris	spinner dolphin; <i>naiʻa</i>	Ind.	0
KEY TO SYMBOLS USED:			

Abundance categories: R – Rare – only one or two individuals observed.

U – Uncommon – several to a dozen individuals observed.

0 – Occasional – seen irregularly in small numbers

C – Common -observed everywhere, although generally not in large numbers.

A – Abundant – observed in large numbers and widely distributed.

Status categories:

- End. Endemic species found only in Hawaii Ind. Indigenous species found in Hawaii and elsewhere Nat. Naturalized species were introduced to Hawaii intentionally or accidentally.

A2 OCTOBER 2015 BIOLOGICAL EVALUATION AND ESSENTIAL FISH HABITAT ASSESSMENT

Biological Evaluation and Essential Fish Habitat Assessment, Maluaka Beach, Mākena, Maui



Prepared for: Makena Boat Partners

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October 24. 2015

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1.0 Background/History

1.1 Purpose

Makena Boat Partners (MBP) owns and operates the 65 foot catamaran Kai Kanani II (the "Vessel") under permits issued by the Department of Land and Natural Resources. Passengers and crew board and disembark the Vessel from Maluaka Beach. They access the Vessel by walking from the beach into shallow water and board using a retractable ladder. The process is repeated on the Vessel's return as seen in the cover photo. Landing or disembarking requires no more than 10 minutes; the Vessel remains afloat and under power throughout. These cycles, or "Landings," may be repeated up to four times a day. This combined Biological Evaluation (BE) and Essential Fish Habitat addresses the impact of continued Landings on Endangered Species Act (ESA) listed species and designated critical habitats. This use of the shoreline has the potential to impact the following endangered species: green sea turtle (Chelonia mydas), hawksbill turtle (Eretmochelys imbricata), Hawaiian monk seal (Monachus schauinslandii), and humpback whale (Megaptera novaeangliae), and their habitats. In March 2014, a marine biological survey of the Landing zone was conducted (included as Attachment A; AECOS, 2014). This combined BE and EFHA provides supplemental information to the 2014 report.

1.2 Early coordination and preconsultation

Early coordination and preconsultation with the National Oceanographic and Atmospheric Administration, National Marine Fisheries Service (NOAA-NMFS) and U. S. Fish and Wildlife Service (USFWS) was conducted through a series of email/mail communications and a response letter from USFWS (July 30, 2015).

This BE/EFHA addresses the proposed action in compliance with Section 7(c) of the ESA of 1973, as amended, for species under the jurisdiction of the NMFS. Section 7 of the ESA assures that, through consultation with NMFS and the USFWS, federal actions do not jeopardize the continued existence of any threatened, endangered, or proposed for listing species, or result in the destruction or adverse modifications to critical habitat. MBP has submitted an Application for Use of State Lands through which it seeks authorization in the form of a non-exclusive easement to continue Vessel Landings at Maluaka Beach. Approval of that application will be referred to herein as the "Disposition." The area affected by the Disposition is depicted in Figure 1-1, referred to as the "Landing Zone." The Disposition is not a federal action, but this BE/EFHA addresses whether approval will jeopardize ESA species or critical habitat.

2.0 Description of the Action

2.1 Description

MBP moors the Vessel at offshore Maluaka Beach, pursuant to a permit issued by the U.S. Army Corps of Engineers in the 1980s. Since assuming jurisdiction over the state boating program in the early 1990s, the Department of Land and Natural Resources, through the Division of Boating and Ocean Recreation, has issued MBP permits to operate its Vessel for commercial purposes.

Passengers access the Vessel by wading through shallow (approximately or 3 ft or 1 m deep) water. Upon reaching the Vessel, they board by means of a retractable ladder positioned between the two hulls of the Vessel. Passengers are assisted by crewmembers standing on submerged land at the foot of the ladder. This cycle repeats on the return of the Vessel. The first excursion boards at 6:30 am and returns to the shoreline two hours later. The second trip of the day departs at 9:00 am and return at 1:00 pm. MBP also offers an afternoon whale watch or other short duration excursions during winter months. Operations conclude with provisioning and trash removal immediately following the last excursion of the day. Figure 1-1 presents the Vessel Landing zone and Landing area and general features of Maluaka Beach.

2.2 Potential impacts

Potential impacts to ESA-listed species associated with the Vessel Landing zone include:

- physical injury from Vessel contact;
- behavioral changes in response to the presence of Vessel
- behavioral changes in response to presence of passengers and crew;
- physical and behavioral changes in response to elevated turbidity;
- effects of exposure to wastes and discharges;
- compromise of monk seal critical habitat

2.3 Best Management Practices (BMPs)

MBP adheres to the NOAA Fisheries Hawai'i Viewing Guidelines: For Boat Operators¹ and Hawaiian Islands Humpback Whale National Marine Sanctuary Guidelines for Whale Protection and Human Safety². The Vessel also follows the requirements of the United States Coast Guard Certificate of Inspection that

¹ http://www.nmfs.noaa.gov/pr/education/hawaii/boat.htm)

² http://hawaiihumpbackwhale.noaa.gov/explore/whale_guidelines.html

"...the vessel remain at least 100 yards from humpback whales, and at least 50 yards from other marine mammals. Prudent course and/or speed alterations shall be made to minimize contact with marine mammals."



Figure 1-1. Catamaran Landing zone and Maluaka Beach features.

Because daily excursions may include a visit to Molokini Islet, every Vessel passenger is required to review and sign the Molokini Shoal Marine Life Conservation District Use Permit Pre-Trip Briefing and Acknowledgment Form required by DLNR³. The briefing form includes standards of conduct applicable to passenger use of Maluaka Beach to board or disembark the Vessel.

These measures are enhanced by the following Best Management Practices (BMPs):

- All excursions include on-board naturalist who educates the passengers in wildlife viewing protocols;
- A designated lookout is maintained on the bow to watch for turtles (or other marine species and humans) when approaching or leaving the loading area;
- Passengers are instructed to keep a 10-ft (3-m) distance from all marine species when in the water and a 15-ft (4.5-m) distance from all marine species when on land (basking turtles).
- Vessel speed does not exceed 5 knots in the loading zone (see Fig. 1-1).

3.0 Listed Species and Critical Habitat in the Landing Zone

The following ESA-listed marine species may occur within the action area and may be affected by the Landings:

- Green sea turtle or honu (Chelonia mydas) threatened
- Hawksbill sea turtle or *honu* (*Eretmochelys imbricata*) endangered
- Hawaiian monk seal (Monachus schauinslandi) endangered
- Humpback whale or *koholā* (*Megaptera novaeangliae*) endangered
- Hawaiian monk seal (*M. schauinslandi*) critical habitat

3.1 Green Sea Turtle

Although rare, the green sea turtle was observed in the water at the Vessel Landing vicinity in the 2014 survey (*AECOS*, 2014). Green turtles are known to "graze" around the rock obstruction (see Fig. 1 of uses at beach area). Additionally, green sea turtle basking sites at Makena Landing and Mokuha have been recorded (NOAA-NMFS, 2010). Over the course of 10 years, an estimated 6 basking green sea turtles have been observed on Maluaka Beach, approximately 50 m (164 ft) from the Vessel Landing area (H. Bernard, pers. comm., 2015). Postrecruitment juvenile and adult green turtles sheltering and foraging in and near Maluaka beach are the life stages most likely to be affected

³ http://dlnr.hawaii.gov/dar/files/2014/05/Pre-trip.pdf

by the Vessel Landing. Although the number of green sea turtles around the MHI appears to be increasing, and resident juveniles and adults are considered ubiquitous in local waters, data are insufficient to estimate their density within the Vessel Landing area.

Green sea turtles are distributed across the Pacific, Indian, and Atlantic oceans as well as in the Mediterranean Sea. All green turtle populations are listed as threatened under the ESA in 1978, except for the breeding populations in Florida and on the Pacific Coast of Mexico, which are listed as endangered (USFWS, 1978, 2001). On February 16, 2012, NMFS and the USFWS received a petition from the Association of Hawaiian Civic Clubs to identify the Hawaiian green turtle population as a distinct population segment (DPS) and delist the Hawai'i DPS under the ESA, as amended (ESA; 16 U.S.C. 1531 et seq.). In March, 2015, NOAA-NMFS published a proposed rule to reclassify the green sea turtle into 11 DPS, and continue protection of the Hawai'i DPS as a threatened species under the ESA (NOAA & USFWS, 2015a). The public comment period for this proposal ended September 25, 2015 (NOAA & USFWS, 2015b).

Following hatching at their natal beaches, green turtle hatchlings spend several years of early development in the pelagic zone followed by recruitment to coastal areas where postrecruitment juveniles and adults forage and mature in shallow coastal waters, feeding primarily on algae and seagrasses. While in nearshore waters, the majority of sea turtles spend their time at depths less than 16 ft (5 m) below the surface (Schofield et al., 2010; Hazel et al., 2009). When on foraging grounds, postrecruitment green turtles are often referred to as residents. Most green turtles show strong long-term site fidelity (over years) to preferred nearshore foraging and sheltering habitats, often until the habitat can no longer support their increasing size (Balazs and Chaloupka, 2004; Balazs et al., 1987, 1998; Chaloupka and Limpus, 2001; Godley et al., 2003; Grant et al., 1997; Seminoff et al., 2003). Upon reaching sexual maturity, adult green sea turtles typically undertake long migrations between their resident foraging grounds and their natal nesting areas, where they mate and females nest. Nesting females are referred to as "nesters," which distinguishes them from "resident" turtles that regularly forage in an area. Males making mating migrations do not haul out on a beach as the females do and are nearly impossible to distinguish from resident males.

Unlike most other green turtle populations, greens that forage within the Hawaiian Archipelago nest exclusively within the Hawaiian Archipelago, with over 90% of the nesting occurring at French Frigate Shoals (FFS) in the Northwestern Hawaiian Islands (NWHI). Adults migrate more than 621 miles (1,000 km) between foraging areas in the Main Hawaiian Islands (MHI) and the

FFS nesting area (Balazs et al., 1994). Long-term monitoring and tagging studies show that green turtles in Hawai'i reside with a strong degree of island fidelity (Balazs, 1976, 1980, 1983; Dutton et al., 2008). No green sea turtle nesting activity has been documented at the Vessel Landing zone (NOAA-NMFS, 2010).

The major global threats to the species are alteration of nesting and foraging habitat, fishing bycatch, and direct harvest. Climate change also appears to be a growing threat to this species. Destruction and alteration of green turtle nesting and foraging habitats is occurring throughout the species' global range, especially by coastal development, beach armoring, beachfront lighting, vehicular/pedestrian traffic, invasive species, and pollution from discharges and runoff. Coastal development increases artificial lighting, which may disorient emerging hatchlings, causing them to crawl inland towards lights instead of seaward. Coastal development improves beach access for humans, resulting in more vehicular and foot traffic on beaches, causing compaction of nests and reducing emergence success. Adult green turtles forage in shallow nearshore areas and coral reefs. Contamination from effluent discharges and runoff has degraded these habitats, and invasive species may reduce native algae species preferred by green turtles or could exacerbate susceptibility to, or development of disease (NMFS & USFWS, 2007a; Guimaraes dos Santos et al., 2010). Fibropapillomatosis, a disease characterized by the presence of internal and/or external tumors that may grow large enough to hamper swimming, vision, feeding, and potential escape from predators continues to be a major threat to green sea turtles. Extremely high incidence has been reported in Hawai'i, where affliction rates peaked at 47-69% in some foraging areas (Murakawa et al., 2000).

3.2 Hawksbill Sea Turtle

Hawksbill sea turtles are much less common than green sea turtles. Hawksbill turtles are distributed across the Pacific, Indian, and Atlantic oceans. All hawksbill turtles were listed as endangered under the ESA in 1978. The global population has declined by more than 80% over the last 30 years. Hawksbill turtles face many of the same threats affecting green sea turtles. In addition, there remains a commercial market for hawksbill shell products, despite protections afforded this species under U.S. law and international conventions (NMFS and USFWS, 2007b).

Similar to green turtles, hawksbills hatch at natal beaches, and spend several years of early development in the oceanic zone. At about 14 in (35 cm) carapace length, juveniles recruit to coastal waters where postrecruitment
juveniles and adults forage and mature, feeding primarily on sponges, but also on other benthic invertebrates, coral, and algae. Hawksbill turtles in Hawai'i have been documented feeding on a variety of prey, including octopus, various algal species, fire worms, black sponges, fish roe, and urchins (King, 2011). Upon reaching sexual maturity, adult hawksbills typically undertake long migrations between their resident foraging grounds and their natal nesting areas, where they mate and females nest. Males also make mating migrations, but because they do not crawl out on the beach as the females do, males are nearly impossible to distinguish from resident males.

As with green turtles, hawksbill forage grounds and natal nesting areas are frequently located in different island groups, and residents at a given island group may originate from multiple natal nesting areas (NMFS & USFWS, 2007b). However, tagging studies suggest that hawksbills nesting in Hawai'i remain within the MHI. Genetic samples collected and analyzed suggest that Hawai'i's hawksbill sea turtles may be genetically and geographically distinct from other populations in the Pacific (Dutton and Leroux, 2008). Parker et al. (2009) report that the tracks of nine postnesting tagged females have all remained within the MHI, further supporting the possibility that Hawai'i's hawksbill sea turtles may be a discrete central Pacific population.

Nearly all hawksbill nesting and foraging in Hawai'i occurs in the MHI, although the full extent of hawksbill nesting in Hawai'i is undetermined. Females nest in a variety of habitats including black and white sand beaches, small pocket coves covered in cobbles or rugged lava, and up in beach vegetation. Since monitoring began in 1989, hawksbill nesting activity has been confirmed at 22 sites in the MHI; 13 on the Island of Hawai'i, 8 on Maui, and 1 on Moloka'i. There also may be occasional nesting on the windward coast of O'ahu. Over 90% of the documented hawksbill nesting activity in Hawai'i occurs along the Ka'ū Coast of the Island of Hawai'i. Regular nesting also occurs on Maui and Moloka'i. According to satellite tracking, the Hamakua Coast of the Island of Hawai'i appears to be an important foraging area for hawksbill sea turtles.

Hawksbill nesting activities were first documented on Maui in 1991 at Kealia (King, 2015). No nesting activity has been documented at Maluaka Beach (King, 2015). Hawksbill turtle nesting has been documented southwest of the Vessel Landing area, at Little Beach (approximately 4,500 ft or 1372 m from the Vessel Landing area) and Oneloa (approximately 5,000 ft or 1524 m from the Vessel Landing area; King, 2015). Post-recruitment juvenile and adult hawksbills sheltering and foraging in and near Maluaka beach are the life stages most likely to be affected by the continued Landings. Data are insufficient to estimate hawksbill density in Hawaiian waters and within the Vessel Landing zone.

As with green turtles, destruction and alteration of habitat, as well as direct harvest are considered the major threats to hawksbills. Climate change also appears to be a growing threat. Destruction and alteration of hawksbill nesting and foraging habitats is occurring throughout the species' global range, especially through coastal development, beach armoring, beachfront lighting, vehicular/pedestrian traffic, invasive species, and pollution from discharges and runoff. The adverse impacts of these threats described for green sea turtles are the same for hawksbill sea turtles (NMFS & USFWS, 2007b). Although hawksbills interact with some fisheries, the bycatch rates are much lower than for the other sea turtle species. Harvest of hawksbill shells and eggs continues to be a major threat. Due to the beauty of their shells, hawksbill adults may be harvested more heavily than other sea turtle species. Despite protections under CITES, the "tortoise shell" trade continues in many areas. As with other sea turtle species, egg harvest continues unabated in parts of the Pacific, including Southeast Asia, Melanesia, and Polynesia (NMFS & USFWS, 2007b).

3.3 Hawaiian Monk Seal

Hawaiian monk seals consist of a single population that is distributed throughout the Hawaiian Archipelago and Johnston Atoll (NMFS-NOAA, 2011a). They are found primarily in the NWHI, but sightings are becoming increasingly common in the MHI, and births have been documented on most of the major islands (NMFS, 2007). Hawaiian monk seals were listed as endangered under the ESA in 1976. The Hawaiian monk seal population has been in decline for more than 20 years. The 2007 recovery plan estimated the population at about 1,200 individuals, and stated that there is concern for the long term maintenance of genetic diversity (NMFS, 2007). The recovery plan further reported the annual rate of decline at 3.9%. In 2008, the population was estimated at 1,161 seals, with minimum population estimates of 913 seals in the NWHI and 113 seals in the MHI (NMFS, 2009).

Hawaiian monk seals spend the majority of their time in the ocean, and may remain at sea for several consecutive days or more. They utilize the marine aquatic environment to forage, socialize, mate, rest, and travel. They can travel hundreds of miles in a few days (Littnan et al., 2006) and can dive to depths of more than 1,600 feet (500 m; Parrish et al., 2002). They also rely on terrestrial habitats to rest, avoid predators, molt, give birth (pup), and nurse young. Unlike many other pinnipeds that often haul out in large groups, Hawaiian monk seals are considered solitary, both on land and in the water, most often hauling out singly or in small groups. Their life span in the wild is about 30 years. Adults can reach a length of 7.5 feet (2.3 m) and weigh up to 600 pounds (273 kg), with males typically smaller than females (NMFS, 2007). Adult monk seals undergo annual catastrophic molts, where the entire pelage layer (skin and hair) is shed. They stay ashore for 10 to 14 days during molting. The first molt occurs for pups at about the same time as weaning.

Hawaiian monk seals mate at sea, and gestation lasts about 11 months. Females give birth on land, bearing single pups, most commonly between February and August, but pupping has been documented during all times of the year. Pups are able to swim at birth, but normally stay on land for the first few days. Mothers stay in close proximity to their pups during nursing, which occurs on land. Mothers and pups gradually begin swimming together in protected shallows, and mothers are protective of their young. Mother-pup pairs spend increasing amounts of time swimming and venturing farther from shore as weaning approaches. After about 6 weeks, mothers leave their pups and return to the sea to forage. Pups typically spend several more weeks near the nursing area before they venture out into deeper forage areas. Weaned pups live off their fat stores while they learn to forage for themselves, during which time they experience considerable weight loss. Juveniles in the NWHI are typically 2 years old before they regain their post-weaning weight (Johanos et al., 1994).

Hawaiian monk seals consume a wide range of prey species, including small eels, wrasses, cephalopods, and other benthic species that are usually less than 8 inches (20 cm) long. They forage at depths up to 1640 ft (500 m), but a large portion of their effort is spent in bank and slope habitats between 164 and 984 ft (50 and 300 m). Preferred forage habitat appears to be low relief substrates such as sand and talus areas where prey are afforded limited shelter once flushed (Parrish and Littnan, 2007). Juveniles appear to feed in shallow atoll lagoons at 30 to 100 ft (10 to 30 m), as well as on sandy deep reef slopes between 160 and 325 ft (50 to 100 m). Juveniles are capable of similar dive depths as adults, but seem to lack the strength and experience to successfully engage in the large talus forage behaviors of adults (Parrish et al., 2005).

The main sites for reproduction are in the NWHI, where the population is declining at an annual rate of 4.5% (NMFS, 2009). The current population decline in the NWHI seems to be driven by food limitation and other sources of mortality that disproportionately impact the survivorship of juvenile seals. This in turn affects recruitment to the breeding age classes, and is expected to result in NWHI declines for at least the next decade (Baker et al., 2010). Sightings confirm at least occasional monk seal presence in the MHI since 1900, and a small naturally occurring population has been confirmed in the MHI since the mid-1990s. Since then, documented sightings and annual births continue to rise as the MHI portion of the population increases (Baker and Johanos, 2004). Based on systematic surveys or sightings of uniquely identified individuals, the

estimated seal population within the MHI was 45 in 2000, 77 in 2005, and 113 in 2008 (NMFS, 2007, 2009), suggesting an annual increase of about 5.6%. Unpublished NMFS data for 2011, estimates the MHI population at about 150 monk seals.

Recent tagging studies have shown individuals sometimes travel between breeding populations in the NWHI, between islands in the MHI, and on rare occasions, between the NWHI and the MHI (NMFS, 2009; Littnan et al., 2006). However, since regular tagging was started in the 1980s, only 5 seals have been documented to migrate to the MHI from the NWHI (Baker et al., 2010). This supports the understanding that increases in the MHI population is mostly the result of increased births and dispersal of individuals from under-documented areas, such as Ni'ihau (Baker and Johanos, 2004). In general, monk seals in the MHI are in better physical condition than those in the NWHI; with earlier years of first birth and higher birth rates (Baker et al., 2010), more robust pups (Baker and Johanos, 2004; Baker et al., 2006), and a higher estimated rate of survival from weaning to age 1 (77% in the MHI vs. 42-57% in the NWHI; Baker et al., 2010).

No specific information is available to quantify the number of monk seals in the Vessel Landing area. The majority of Hawaiian monk seal sighting information collected in the main Hawaiian Islands is reported by the general public and is highly biased by location and reporting effort. The only truly systematic monk seal count data available are from aerial surveys conducted by the Pacific Islands Fisheries Science Center (PIFSC) in 2000-2001 and 2008.

Aerial surveys of all the main Hawaiian Islands were conducted in 2000, 2001 and in 2008 (Baker and Johanos 20042, PIFSC unpublished data). One complete survey of Maui was conducted for each of these years. No Hawaiian monk seals were sighted in the area from Makena Landing to Makena State Beach during these three aerial surveys (PIFSC, 2015).

Reports by the general public, which are non-systematic and not representative of overall seal use of main Hawaiian Island shorelines, have been collected in the main Hawaiian Islands since the early 1980s. For the purposes of this report, a sighting is defined as a calendar day during which an individual seal is documented as present at a specific location. There have been 145 reported sightings of monk seals between Makena Landing and Big Beach at Makena State Park from 2005 to 2014, with 6 reported sightings at Maluaka Beach (Table 3-1). Of these sightings, 39 reports can be attributed to 9 uniquely identifiable seals (Table 3-2). No monk seal births have been documented in the area from Makena Landing to Makena State Park.

Table 3-	1. Number	r of reported H	awaiian mon	k seal sigł	ntings from	Makena Lan	ding
t	o Big Beacl	n, Makena State	e Park on the	island of I	Maui (2005	to 2014).	

Location	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Big Beach, Makena State Park	1	7	9	5	3	2	4	3	4	7	45
Little Beach, Makena State Park	0	8	9	4	1	0	1	0	0	2	25
Makena Landing	0	0	3	3	3	3	8	8	2	20	50
Maluaka Beach Park	0	0	0	0	0	0	3	1	0	2	6
Oneuli Beach	0	0	0	0	0	0	12	0	0	1	13
Puuolai	0	0	1	0	0	0	0	0	0	5	6
Total	1	15	22	12	7	5	28	12	6	37	145

Table 3-2. Number of reported Hawaiian monk seal sightings from Makena Landing to Big Beach, Makena State Park on the island of Maui (2005 to 2014).

Seal ID	Size	Sex	Sightings
R304	Adult	Male	2
R305	Adult	Female	6
R308	Adult	Female	2
RA20	Immature	Female	2
RH44	Adult	Female	13
RK66	Immature	Male	1
RW34	Adult	Female	11
RV16	Adult	Female	1
Т990	Adult	Male	1
Total			39

Food limitation plays a primary role in the failure of sufficient numbers of pups in the NWHI to survive and recruit into the reproductive age classes. Monk seals also have one of the highest rates of entanglement Derelict fishing gear, such as nets, lines, straps, and rings are the material most commonly involved with monk seal entanglement, but many other sources of marine debris also cause entanglement. Proportionally, newly weaned pups are the age class most commonly observed entangled (NMFS, 2007). Injuries and scars of past shark attacks have been observed on seals of all age classes, and occasionally, active predation has been observed directly. Most of the attacks have been attributed to tiger sharks. In recent years, there has been a marked increase in the observed targeting of preweaned pups by Galapagos sharks at French Frigate Shoals (FFS). This may be a "learned behavior", and appears to be limited to FFS (NMFS, 2007). Pup mortality peaked between 1997 and 1999, at 18 to 28 probable annual mortalities.

Disease effects on Hawaiian monk seal demographic trends are uncertain, and no infectious disease epidemics have yet been documented. However, there is concern that monk seals may be vulnerable to infectious diseases for which they may have no natural resistance. Diseases of most concern include leptospirosis, toxoplasmosis, and West Nile virus, all of which may be spread by domestic and feral animals, and by humans (NMFS, 2007).

Loss of terrestrial habitat is another concern. Many of the islands, atolls, and sand bars used by monk seals are low-lying and vulnerable to erosion. Recent loss of Whaleskate Island ("Islet") in FFS reduced available parturition sites, dramatically increasing the density of mother-pup pairs at Trig Island ("Islet"). Environmental factors such as storms and sea level rise could further exacerbate this problem (NMFS, 2007). Most of the MHI beaches that would be used by monk seals are now used to some degree by humans for recreational purposes. Additionally, many coastal areas are being developed or are under consideration for development. Although a small number of monk seals have successfully pupped at popular MHI beaches, Hawaiian monk seals tend to avoid areas where human disturbance occurs regularly. This could limit available preferred habitat for monk seals in the MHI, and displace them to less optimal areas (NMFS, 2007).

Monk seals are injured and killed as the result of direct interactions with fisheries, predominantly in the MHI. Between 1982 and 2006, 48 hookings, 5 gillnet entanglements, 1 entanglement with a lobster pot, and 1 bait stealing were recorded in the Hawaiian archipelago. Thirty-eight hookings and all 5 gillnet entanglements occurred in the MHI; since the creation of the Papahānaumokuākea Marine National Monument in 2006, virtually all commercial and recreational fishing has been eliminated in the NWHI. A response system is in place to respond to hooked and entangled seals in the MHI. However, injury and mortality due to hooking and net entanglement continues to occur in the MHI (NMFS, 2007).

Male aggression has caused the injury and death of adult females and pups of both sexes in the NWHI. Multiple-male-aggression or "mobbing" is thought to result from the imbalance in the adult sex ratio, where males outnumber females. The attacks involve a number of males repeatedly attempting to mount and mate with a single seal (an adult female or a juvenile of either sex), often resulting in the death of the assaulted animal. Attacks by single adult males range from normal adult male pinniped harassment of younger animals to aberrant levels of focused aggression directed toward weaned pups, and have resulted in several mortalities, most notably at FFS (NMFS, 2007).

Human interactions have ranged from unintentional disturbances at haul-out sites, to the deliberate injuring and killing of Hawaiian monk seals. As mentioned above, monk seals are prone to abandon or avoid preferred haul-out or pupping areas if sufficiently disturbed (NMFS, 2007). In the MHI, unintentional disturbance is increasingly common due to co-occurrence at beaches used as haul-out or pupping habitat, and numerous malicious interactions including shootings have been documented and continue. Vessel strikes of monk seals are uncommon, but have also been documented in the MHI. Biotoxin-induced mortality has not been confirmed in monk seals, and is considered a less serious threat. However, both ciguatoxin and maitotoxin have been detected in the tissues of dead monk seals (NMFS, 2007).

3.4 Humpback Whale

Humpback whales are distributed in all ocean basins of the world. All humpback whales were listed as endangered under the ESA in 1970. Humpback whales in the North Pacific migrate seasonally between warmer, tropical or subtropical waters in winter months (where they socialize, give birth, and mate) and cooler, temperate or sub-Arctic waters in summer months (where they feed on small crustaceans and small fish). In their summer foraging areas and winter calving areas, humpback whales tend to occupy shallow, coastal waters; during their seasonal migrations, humpback whales disperse widely in deep, pelagic waters. Breeding areas in the North Pacific Ocean include regions offshore of mainland Central America, Baja California, and Mexico; Hawai'i; and Asia. About half of the humpback whales in the North Pacific Ocean breed and calve in the U.S. territorial waters off Hawai'i, and more than half feed in U.S. territorial waters (NMFS, 2011a). In the North Pacific Ocean, population structure is complex with mixing between feeding grounds and breeding grounds.

Stock structure of humpback whales is defined based on feeding areas, and at least three stocks make up the north Pacific population(s). These stocks are: 1) the California, Oregon, Washington, and Mexico stock, consisting of

winter/spring populations in coastal Central America and Mexico which migrate to California and British Columbia; 2) the central North Pacific (CNP) stock that migrates between the Hawaiian Islands and northern British Columbia/Southeast Alaska, Gulf of Alaska, and the Bering Sea/Aleutian Islands; and 3) the western North Pacific stock, consisting of winter/spring populations off Asia which migrate primarily to Russia and the Bering Sea/Aleutian Islands (NMFS, 2011b). The annual growth rate for the North Pacific population over the last several decades is estimated at 4.9 to 6.8 percent, depending on which area and time frame are considered (Calambokidis et al., 2008). In 2010, the North Pacific population was estimated at about 21,000 individuals, with 7,500 to 10,100 humpback whales in the central North Pacific stock (NMFS, 2011a). In Hawai'i, humpback whales have been sighted as early in the season as October and as late as June, with most mating and calving occurring from December to April. They are generally found in water less than 600 ft (182 m) deep, and cow-calf pairs appear to prefer even shallower water. The waters of Maluaka beach are within the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS, 2012). However, due to the shallow water depths present at the Landing zone and nearby areas, the occurrence of humpback whales at the Landing zone is highly unlikely.

Current threats include fishing interactions, ship strikes, tourism, noise, and potentially the effects of anthropogenic climate change. Humpback whales are likely hooked or entangled by fishing gear throughout their global range, but data are scarce outside the U.S., especially in the Pacific. Reports of entangled humpback whales found swimming, floating, or stranded with fishing gear attached have increased in recent years in both Alaskan and Hawaiian waters. A total of 95 entanglement reports were confirmed in Hawai'i from 2002 to 2011. Thirty-eight confirmed reports occurred during the 2008-2009 and 2009-2010 field seasons alone (Lyman, 2011). Many of the entangled whales that are reported in Hawaiian waters most likely brought the gear with them from higher latitude feeding grounds.

While the whales are not typically at risk from drowning or immediate death, they are at increased risk of starvation, infection, physical trauma from the gear, and ship strikes as a result of entanglement. Available evidence from entangled humpback whales indicates that many are able to extricate themselves from the gear. A study of the CNP humpback whale stock in southeast Alaska estimated that about 71% showed evidence of past entanglement that was survived, which exceeds the number of reported disentanglements (Neilson et al., 2009). However, from 2003 through 2007, a total of 17 confirmed serious injuries and mortalities (16 in Alaska, 1 in Hawai'i) resulted from interactions between commercial fishing operations and the CNP stock, resulting in an annual average

take of 3.6 animals. Nine whales were observed entangled in Hawaiian waters with injuries that could be serious. The gear entangling these whales did not originate in Hawaiian waters, so some of these whales may be included among the entangled humpback whales seen and documented in Alaska. Based on this information it is estimated that there were 5.6 commercial fishery-caused mortalities or serious injuries of CNP humpback whales per year over the period 2003-2007 (NMFS, 2010). Interactions with humpback whales in the Hawai'i-based shallow-set fishery accounted for 0.2 of the 5.6 mortalities during that time period (NMFS, 2011b).

Many humpback whales are killed by ship strikes throughout the world, including along both coasts of the U.S. On the Pacific coast, one humpback whale is killed about every other year by ship strikes. Worldwide records of Vessel collisions and stranding information indicate that humpback whales are one of the species more commonly struck by ships (Jensen and Silber, 2003; Laist et al., 2001). Humpback whales, especially calves and juveniles, are highly vulnerable to ship strikes and other interactions with non-fishing Vessels. Younger whales tend to be closer to shore, spend more time at the surface, and are less visible than adults, thereby making them more susceptible to collisions. Humpback whale distribution overlaps significantly with the transit routes of large commercial Vessels in Alaskan waters. Records of Vessel collisions with large whales in Alaska indicate that strikes have involved cruise ships, recreational cruisers, whale watching catamarans, fishing Vessels, and skiffs. Vessel lengths associated with these records ranged from approximately 20 ft (6 m) to over 250 ft (76 m), indicating that all types and sizes of watercraft pose a threat of collision for whales. Between 2001 and 2005, reports of Vessel collisions with humpback whales indicate an average of five whales struck per year in Alaska, whereas in Hawai'i three to four Vessel collisions with humpback whales were reported per year for 2001 through 2006. Reported Vessel collisions with humpback whales in Hawai'i between 2007 and 2011 increased to an average of 6.8 whales struck annually. During the 2009 humpback whale season in Hawai'i, 13 ship-strikes with humpbacks were reported; ten of these reports were confirmed (Lyman, 2011).

Several other threats affect humpback whales throughout their range. For example, the CNP stock is the focus of a large whale watching industry in both Hawai'i and Alaska. The growth of the whale watching industry is a concern because harassment may occur, preferred habitats may be abandoned, and fitness or survivability may be compromised if disturbance levels become too high. Also humpback whales seem to respond to moving sound sources, such as whale-watching Vessels, fishing Vessels, recreational Vessels, and low-flying aircraft. Their responses to noise are variable and have been correlated with the size and behavior of the whales when the noise occurs. Anthropogenic sound has increased in all oceans over the last 50 years and it is thought to have doubled each decade in some areas of the ocean over the last 30 years. Low-frequency sound comprises a significant portion of this and stems from a variety of sources including shipping, hydrographic research, naval activities, and oil and gas exploration (NMFS, 2006; NMFS, 2008; NMFS, 2011a).

3.5 Critical Habitat

Critical habitat for Hawaiian monk seals has been designated (NOAA-NMFS, 2015c). Hawaiian monk seal critical habitat includes the seafloor and marine habitat to 10 m above the seafloor from the 200 m depth contour through the shoreline and extending into terrestrial habitat 5 m inland from the shoreline between identified boundary points. These boundary points define preferred pupping areas and significant haul-out areas. Maluaka Beach falls within boundary points MA101 to MA102: South of Kihei Boat Ramp through 'Ahihi Bay; 20°42'27" N to 20°37'39" N (NOAA-NMFS, 2015c), and is therefore designated monk seal critical habitat.

4.0 Environmental Baseline Conditions

The coastline from Wailea to Makena is part of the dry lower slopes of East Maui Mountain, and one of the driest in the Hawaiian Islands (Giambelluca et al, 2013). There are no perennial streams, although episodic flooding can occur during infrequent heavy rains. In Wailea and Makena, the sheltering of the coastal waters afforded by West Maui Mountain ends, and the shore faces the open ocean. Maluaka Beach faces west and is situated a half mile north of Pu'u Ōla'i cinder cone. The beach is a quarter mile long and composed of medium and coarse grain sand of both remnant limestone reef and volcanic origin. This brown sand beach is bordered to the north and south by lava rock shorelines.

In March, 2014, a marine biological survey was conducted (*AECOS*, 2014). During the survey, *AECOS* biologists were able to observe the Vessel approach the shoreline and land to offload passengers, motor offshore for a few minutes while the crew prepared the Vessel for another voyage, approach and land to board passengers, and finally motor offshore towards the islet of Molokini. Figures 4-1 and 4-2 depict the survey area along with published benthic habitat and benthic biotic coverage at Maluaka Beach (NOS, 2007).

The Vessel Landing zone comprises sand substratum and a rock feature. The sand appears to be highly migratory and no macroinvertebrates were present in

the Landing area during the March 11, 2014 survey. The area is exposed to swell and surge and these factors create ripple features in the sand bottom. The only invertebrate observed near the Landing zone in the 2014 survey was a ghost crab (*Ocypode pallidula; AECOS,* 2014). A rock feature (see Fig.1-1), not present on NOS benthic habitat maps (Figures 4-1 and 4-2), is colonized by algae and a few invertebrates. The rocks attract several species of fishes but are not colonized by any hard corals. The closest coral colonies to the Landing zone are located on limestone outcrop located approximately 130 ft (40 m) offshore from the Landing zone.

A group of small rocks (See Fig. 1-1) approximately 33 ft (10 m) wide is located a few meters seaward of the shoreline near the center (north to south, alongshore) of the beach. The rocks are located in the tidal and sub-tidal zones and are colonized by red algae (primarily *Pterocladiella capillacea*) and purple shingle urchin (*Colobocentrotus atratus*). Schools of 'āholehole (*Kuhlia sandvicensis*), *kūpīpī* (*Abudefduf sordidus*), *manini* (*Acanthurus triostegus*) and a few other surgeonfish congregate over the boulder field. The rocks are not colonized by any hard corals.

Further offshore, near the seaward terminus of the sand bottom, mollusks inhabit the sand. A few auger shells are present, including *Hasutla inconstans* and *Triplostephanus elliscrossi*, and a spitelful cone (*Conus livdius*) was spotted on the sand adjacent to a limestone platform that begins 130 ft (40 m) from the shore.

The limestone outcrop is intermittent, with sand channels extending seaward in several locations. The reef is host to several species of hard coral. Lobe coral (*Porites lobata*), finger coral (*Porites compressa*), and mound coral (*Porites evermanni*) colonies are most common with massive colonies greater than 160 cm (>5 ft). Cauliflower coral (*Pocillopora meadrina*) and sandpaper rice coral (*Montipora patula*) are sighted regularly, the latter forming spreading crusts on the limestone bedrock or over dead massive *Porites* spp. skeletons. As is typical in Hawaiian waters, cauliflower corals on the reef comprise an assemblage of symbionts among the coral branches: common coral guard crab (*Trapezia intermedia*), arc-eye hawkfish (*Paracirrhites arcatus*), and Hawaiian orbicular velvetfish (*Caracanthus typicus*). Herbivorous collector urchins (*Tripneustes gratilla*) are seen in small numbers on the reef, despite the area appearing nearly devoid of macroalgae during the survey.



Figure 4-1. The locations of the Landing zone and survey area with reported benthic habitat type (NOS, 2007) at Maluaka Beach.



Figure 4-2. The locations of the Landing zone and survey area with reported benthic biotic cover type (NOS, 2007) at Maluaka Beach.

A large sand channel extends seaward from the shore near the south end of Maluaka Beach. The channel is inhabited by a small white auger (unid. Terebridae) and yellow-stripe goatfish (*Mulloidicthys flavolineatus*) forage for polychaetes and small crustaceans in the sand. South of the channel, an extensive limestone bottom is present. This substratum is not interrupted by sand channels, and corals cover nearly the entire bottom on the seaward half of the reef. The landward half of the reef is home to large numbers of sea urchins, including red pencil urchins (*Heterocentrotus mammilatus*), banded urchins (*Echinothrix calamaris*), and collector urchins. A typical assemblage of reef fishes inhabit the offshore area of this reef, with yellow stripe goatfish, saddle wrasse (*Thalassoma duperrey*), blackfin chromis (*Chromis vanderbilti*), and brown surgeonfish (*Acanthurus nigrofuscus*) most common.

5.0 Essential Fish Habitat Assessment

The 1996 Sustainable Fishery Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act and subsequent Essential Fish Habitat (EFH) Regulatory Guidelines (NOAA, 2002) describe provisions to identify and protect habitats of federally-managed marine and anadromous fish species. Under the various provisions, federal agencies that fund, permit, or undertake activities that may adversely affect EFH are required to consult with the National Marine Fisheries Service (NMFS).

Congress defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." EFH is further defined by the existing regulations (MSFCMA, 1996; NOAA, 2002). "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" is defined as required to support a sustainable fishery and the managed species contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species life cycle.

5.1 EFH and Federally Managed Fish Species

EFH provisions in MSFCMA designate that species harvested in sufficient quantities to require fisheries management may be subdivided into similar Management Unit Species (MUS). Five MUS groups are currently managed in Hawaiian waters: bottomfish, pelagics, precious corals, crustaceans, and coral reef ecosystem (Table 5-1).

Management		
Unit	Species Complex	EFH
Pelagic	Temperate species Tropical species Sharks Savid	Eggs and larvae: the water column extending from the shoreline to the outer limit of the EEZ down to a depth of 656 ft. (200 m)
	Squiu	Juvenile/adults: the water column extending from the shoreline to a depth of 3,280 ft. (1,000 m)
Bottomfish and Seamount Groundfish	Shallow-water species (0 to 50 fm)	Eggs and larvae: the water column extending from the shoreline to the outer limit of the EEZ down to a depth of 1,310 ft. (400 m)
		Juvenile/adults: the water column and all bottom habitat extending from the shoreline to a depth of 1,310 ft. (400 m)
Bottomfish and Seamount Groundfish	Deep-water species (50 to 200 fm)	Eggs and larvae: the water column extending from the shoreline to the outer limit of the EEZ down to a depth of 1,310 ft. (400 m)
		Juvenile/adults: the water column and all bottom habitat extending from the shoreline to a depth of 1,310 ft. (400 m)
Crustacean	Spiny and slipper lobster complex Kona crab	Eggs and larvae: the water column from the shoreline to the outer limit of the EEZ down to a depth of 490 ft. (150 m)
		Juvenile/adults: all of the bottom habitat from the shoreline to a depth of 330 ft. (100 m)
Coral Reef Ecosystem	All Currently Harvested Coral Reef Taxa (CHCRT)	EFH for the Coral Reef Ecosystem MUS includes the water column and all benthic substrate to a depth of 330 ft. (100 m) from the shoreline to the outer
	All Potentially Harvested Coral Reef Taxa (PHCRT)	limit of the EEZ for eggs, larvae, juveniles and adults

Table 5-1. EFH Designations for Hawai'i Archipelago FEP Management Unit

The Western Pacific Regional Fishery Management Council (WPRFMC) is moving towards an ecosystem-based approach to fisheries management and has restructured its management framework from species-based fishery management plans (FMPs) to place-based fishery ecosystem plans (FEPs). The Hawaii Archipelago FEP establishes the framework under which the WPRFMC will manage fishery resources, and begin the integration and implementation of ecosystem approaches to management in the Hawaii Archipelago. This FEP does not establish any new fishery management regulations, but rather consolidates existing fishery regulations for demersal species. Specifically, this FEP identifies as MUS those species known to be present in waters around the Hawaii Archipelago and incorporates all of the management provisions of the Bottomfish and Seamount Groundfish FMP, the Crustaceans FMP, the Precious Corals FMP, and the Coral Reef Ecosystems FMP that are applicable to the area.

In addition to EFH, the WPRFMC identifies Habitat Areas of Particular Concern (HAPCs) within EFH for all FEPs. Specific subsets of EFH, HAPCs are areas within EFH that are essential to the life cycle of federally managed coral reef species. In determining whether a type or area of EFH should be designated as a HAPC, one or more of the following criteria established by NMFS should be met: (a) the ecological function provided by the habitat is important; (b) the habitat is sensitive to human-induced environmental degradation; (c) development activities are, or will be, stressing the habitat type; or (d) the habitat type is rare.

The Vessel Landing zone is located within waters designated as EFH (including water column and all bottom areas) for coral reef ecosystem, bottomfish, pelagic and crustacean MUS. Of the thousands of species which are federally managed under the coral reef FMP, at least 50 (specifically adult life stages) are known to occur in the general vicinity of Maluaka Beach (*AECOS*, 2014).

5.2 Fishes and Habitats in the Vessel Landing Area

The seafloor and water column of the loading zone are considered EFH for coral reef, bottomfish, pelagics, and crustaceans (see Table 5-1). The fishes and habitats around Maluaka Beach are described in previous survey report of the area (*AECOS*, 2014). The report is summarized here. Section 4, above, provides environmental baseline conditions. Fish and habitat resource conditions are reiterated here for EFH analysis. Table 5-2 provides a listing of fish species observed in the Vessel Landing vicinity.

<u>Vessel Landing zone</u> – The Vessel Landing zone is comprised entirely of sand bottom, with the exception of the rock outcrop. The sand body extends offshore for over 130 ft (40 m). The area is exposed to swell and surge and these factors create ripple features in the sand bottom. The rock outcrop is approximately 33 ft (10 m) wide and located a few meters seaward of the wrack line⁴ near the center (north to south, alongshore) of the beach. The rock outcrop is located in

⁴ wrack line is part of the shore just above the mean high tide line where algae and debris are deposited on the sand.

the tidal and sub-tidal zones and is colonized by red algae (primarily *Pterocladiella capillacea*) and purple shingle urchin (*Colobocentrotus atratus*). Schools of 'āholehole (*Kuhlia sandvicensis*), *kūpīpī* (*Abudefduf sordidus*), *manini* (*Acanthurus triostegus*) and a few other surgeonfish congregate over the rock outcrop. The outcrop is colonized by any hard corals (*AECOS*, 2014).

<u>Offshore reef</u> – The 2014 survey (*AECOS*, 2014) observed a typical assemblage of reef fishes inhabit the offshore area of this reef, with yellow stripe goatfish, saddle wrasse (*Thalassoma duperrey*), blackfin chromis (*Chromis vanderbilti*), and brown surgeonfish (*Acanthurus nigrofuscus*) most common.

Table 5-2. Fisheries management plan (FMP) and managed species observed i	in
the Vessel Landing vicinity (AECOS, 2014).	

PHYLUM, CLASS, ORDER, FAMILY

Genus species	Common name	Abundance	Status
CHORDATA, ACTINOPTERYGII			
ENGRAULIDAE			
Encrasicholina purpurea Fowler	Hawaiian anchovy; <i>nehu</i>	R	End
AULUSTOMIDAE			
Aulstomus chinensis Linnaeus	trumpetfish; <i>nūnū</i>	R	Ind
CARACANTHIDAE			
	Hawaiian orbicular	_	
Caracanthus typicus Kroyer	velvetfish	R	End
KUHLIIDAE			- 1
Kuhlia sandvicensis Steindachner	Hawaiian flagtail, <i>āholehole</i>	U	End
CIRRHITIDAE			
	arc-eye nawkfish	D	T., J
Paracirrnites arcatus Cuvier	ριιικό α	K	Ind
MULLIDAE Mulloidighthug flavolingatus	vellow string goatfigh		
Mullolaichthys Jlavolineatus	webe \bar{a}	C	Ind
Lacepede	were u blue goatfich	L	mu
Parunanaus cuclosotmus I aconodo	moana ukali ulua	P	Ind
Paruneneus insularis Randall & Myers	island goatfish: munu	II	Ind
Ineneus arae Jordan & Evermann	handtail goatfsh	0	Ind
KYPHOSIDAE	Sundan Soutish	0	ma
Kyphosus vagiensis Quoy & Gaimard	brassy chub: <i>nenue</i>	R	Ind.
CHAETODONTIDAE			
Chaetodon lunula Lacepede	racoon butterfly <i>kīkākapu</i>	0	Ind
•	oval butterfly fish		
Chaetodon lunulatus Quoy & Gaimard	kapuhili	0	Ind

Table 5-2 (cont.)

PHYLUM, CLASS, ORDER, FAMILY

Genus species	Common name	Abundance	Status
	ornate butterflyfish		
Chaetodon ornatissimus Cuvier	kikākapu	0	Ind
	four spot butterflyfish		
Chaetodon quadrimaculatus Gray	lauhau	0	Ind
POMOCENTRIDAE			
Abudefduf abdominalis Quoy &			
Gaimard	Hwn. seargent; <i>mamo</i>	R	End
Abudefduf sordidus Forsskal	blackspot seargent, <i>kūpīpī</i>	0	Ind
	Indo-Pacific seargent;		
Abudefduf vaigiensis Quoy & Gaimard	тато	R	Ind
<i>Chromis vanderbilti</i> Fowler	blackfin chromis	С	Ind
	Hawaiian damselfish		
Dascyllus albisella Gill	ʻāloʻiloʻi	R	End
Plectroglyphidodon imparipennis			
Vaillant & Savage	brighteye damselfish	R	Ind
Plectroglyphidodon johnstonianus			
Fowler & Ball	blue-eyed damselfish	R	Ind
Stegastes marginatus Jenkins	Hwn. gregory	R	End
LABRIDAE			
	yellow tail coris		
Coris gaimard Quoy & Gaimard	hinālea 'akilolo	R	Ind
Gomphosus varius Lacepede	bird wrasse; <i>hināleai'iwi</i>	R	Ind
Haliocheres ornatissmis Garrett	ornate wrasse; ' <i>ōhua</i>	R	Ind
Labroides phthirophagus Randall	Hwn. cleaner wrasse	0	End
Stethojulis baleata Quoy & Gaimard	belted wrasse; 'omaka	R	End
Thalassoma duperrey Quoy &	saddle wrasse		
Gaimard	hinalea lauwili	С	End
SCARIDAE			
Scarus psittacus Forsskal	palenose parrotfish; <i>uhu</i>	0	Ind
	red lip parrotfish		
Scarus rubroviolaceus Bleeker	pālukaluka	R	Ind
BLENNIDAE			
	shortbodied blenny paoʻo		
<i>Exallias brevis</i> Kner	kauila	R	Ind
ZANCLIDAE			
Zanclus cornutus Linnaeus	Moorish idol; <i>kihikihi</i>	R	Ind
ACANTHURIDAE			
	ringtail surgeonfish		
Acanthurus blochii Valenciennes	pualu	0	Ind
	whitebar surgeonfish		
Acanthurus leucopareius Jenkins	māikoiko	U	Ind
	brown surgeonfish		
Acanthurus nigrofuscus Forsskal	mā 'i'i'i	С	Ind

Table 5-2 (cont.)

PHYLUM, CLASS, ORDER,

FAMILY

Genus species	Common name	Abundance	Status
	orangeband surgeonfish,		
Acanthurus olivaceus Forster	na'ena'e	R	Ind
Acanthurus triostegus sandvicensis	convict surgeonfish		
Linnaeus	manini	0	End
Acanthurus xanthopterus	yellowfin surgeonfish,		
Valenciennes	pualu	0	Ind
	goldring surgeonfish		
Ctenchaetus strigosus Bennett	kole	R	Ind
	paletail unicornfish <i>kala</i>		
Naso brevirostris Cuvier	lōlō	R	Ind
ACANTHURIDAE continued			
	orange spine unicornfish,		
Naso lituratus Forster	umaumalei	U	Ind
<i>Naso unicornis</i> Forsskal	bluespine unicornfish, <i>kala</i>	R	Ind
Zebrasoma flavescens Bennett	yellow tang, <i>lauʻipala</i>	R	Ind
BALISTIDAE			
	pinktail triggerfish		
Melichthys vidua Richardson	humuhumu hi'u kole	U	Ind
	lagoon triggerfish		
	humuhumu nukunuku		
Rhinecanthus aculeatus Linnaeus	apua'a	U	Ind
	reef triggerfish		
Rhinecanthus rectangulus Bloch &	humuhumu nukunuku		
Schneider	apua'a	U	Ind
	lei triggerfish		
Sufflamen bursa Bloch & Schneider	humhumu lei	0	Ind
HEMIRAMPHIDAE			
unid.	indet. halfbeak	U	Ind
TETRADONTIDAE			
Canthigaster amboinensis Bleeker	ambon toby	U	Ind
<i>Canthigaster jactator</i> Jenkins	white spotted toby	R	End

KEY TO SYMBOLS USED IN TABLE 2:

Abundance categories:

R – Rare – only one or two individuals observed.

U – Uncommon – several to a dozen individuals observed.

0 – Occasional – seen irregularly in small numbers

C – Common – observed everywhere, although generally not in large numbers.

A - Abundant - observed in large numbers and widely distributed.

Status categories:

End – Endemic – species found only in Hawai'i

Ind. - Indigenous - species found in Hawai'i and elsewhere

Nat. - Naturalized - species were introduced to Hawai'i intentionally, or accidentally.

5.3 Assessment of Potential EFH Impacts

The following section discusses potential impacts resulting of continued Landings on EFH. Direct impacts to EFH resources may result when propeller wash creates a small plume off the stern of the Vessel, suspending sediments. No indirect impacts are expected.

No fishes were observed at the Vessel Landing zone (*AECOS*, 2015). Any fishes that may traverse the Vessel Landing zone would actively avoid the Vessel activities, including sediments suspended in the immediate vicinity of the Vessel Landing. Some impairment of ability of EFH managed species to find prey items could occur, but any adverse effects of Landings would be temporary and spatially limited to the immediate vicinity of the Vessel Landing operations. For these reasons and those elaborated on further below, the adverse effects created by the Vessel Landing would be temporary and minimal.

Potential impacts to fish populations from Vessel Landing operations may occur from temporary degradation of water quality. As the Vessel loads and offloads passengers, surge at the site requires the captain to engage the engine at times to hold the Vessel safely in place. During these instances, the wash from the propeller creates a small plume off the stern of the Vessel. Due to the absence of particles smaller than sand at the site, the plume settles out quickly. This causes a very brief increase in the amount of suspended sediment in the water column. In the unlikely event that fishes are present during Landings, it is anticipated that most demersal and pelagic fishes will avoid the instances when propeller wash creates a small plume. As such, the potential impact would be temporary and minor, resulting in minimal (if any) displacement of fishes.

5.4 Conclusion

Impacts of continued beach Landings would be minimal localized and temporary. Vessel operation BMPs are expected to minimize and avoid impacts to EFH, and with effective implementation, will ensure minimal adverse impacts to EFH. As such, the proposed action is not expected to result in significant adverse effects to EFH.

6.0 Effects of the Action on ESA-listed Species

This section analyzes the potential impacts of continued Landings on green and hawksbill sea turtle, Hawaiian monk seal, and humpback whale. Each subsection addresses the potential individual stressors specific to the Vessel. The analyses are based on Vessel Landings, required permit conditions and BMPs, and the biology and life history characteristics of the protected species.

During Landings, the Vessel is not expected to interact directly or indirectly with ESA-listed species. The following are potential stressors that the Vessel may have on ESA-listed species:

- physical injury from Vessel contact;
- behavioral changes in response to the presence of Vessel
- behavioral changes in response to presence of passengers and crew;
- physical and behavioral changes in response to elevated turbidity;
- exposure to wastes and discharges;
- compromise of monk seal critical habitat

6.1 Collision with the Vessel

The Vessel operates in nearshore waters and loads and offloads passengers at Maluaka Beach. Sea turtles and marine mammals must surface to breathe and they are known to rest or bask at the surface. Therefore, when at or near the surface of the water, these animals are at risk of being struck by vessels or their propellers as the vessel transits to and from as well as in and around the Vessel Landing zone. No strikes or Vessel collisions have been documented to date (H. Bernard, pers. comm., 2015). Potential injuries and their severity would depend on a number of factors: the size and speed of the vessel, the part of the vessel which strikes the animal, and the body part impacted. Injuries may include bruising, broken bones or carapaces, and lacerations. In the case of smaller animals, such as sea turtles and seals, collisions with even small vessels could result in death.

The recovery plan for green sea turtles indicates that boat collision is a major threat to these turtles in the main Hawaiian Islands (NMFS & USFWS 1998). Boat collision is not identified as a significant risk for hawksbills, monk seals, or humpback whales. However, the recovery plans for all of these ESA-listed animals suggests that the incidence of collision is expected to increase as Vessel size, speed, traffic density, and animal density increase.

Existing information about sea turtle sensory biology suggests that sea turtles rely more heavily on visual cues, rather than auditory, to initiate threat avoidance. Research also suggests that sea turtles cannot be expected to consistently notice and avoid vessels that are traveling faster than 2 knots (Hazel et al., 2007). Vanderlaan and Taggart (2007) report that the severity of injury to large whales is directly related to vessel speed. They found that the probability of lethal injury increased from 21% (for vessels traveling at 8.6

knots) to over 79% (for vessels traveling at 15 knots or more). Additionally, since collisions with whales have been reported for both slow and fast moving vessels, it appears that, in at least some situations, whales may either be unaware of a vessel's presence or are unable to determine the vessel's proximity and/or vector of approach based on available acoustic cues. Consequently, vessel operators are responsible to actively watch for and avoid sea turtles and marine mammals, and to adjust their speed based on expected animal density and on lighting and turbidity conditions to allow adequate reaction time to avoid marine mammals.

Continuation of the Vessel Landings at Maluaka Beach is not expected to increase the risk of adverse interaction with humpback whales. The Vessel is one of many commercial vessels that are permitted to operate within the Molokini Shoal Marine Life Conservation District (MLCD)⁵, a principal destination of tour boats operating, within the South Maui Ocean Recreation Management Area. There is nothing unique about the Vessel's design or means of propulsion. However, the risk of interaction would appear to be significantly less than that for competing vessels operating from Ma'alaea Small Boat Harbor. These vessels must travel at higher speeds over a larger portion of the Maui humpback whale protected waters in traveling to and from Molokini Islet. In contrast, close proximity of Maluaka to Molokini MLCD allows the Vessel to travel at slower speeds.

Based on the current operations and the expectation that the Vessel will be operated in accordance with state and federal law, as well as USFWS and NMFS/PRD-recommended BMP, we consider the risk of collision between the Vessel and protected species to be discountable.

6.3 Disturbance from Human Activity and Vessel Operation

As detailed above, Landings occur in and above marine waters where ESA-listed species may be present. These animals may experience a startle reaction and resulting stress if they encounter certain activities. The reaction could range from an animal approaching to investigate the activity, to panicked flight when an animal injures itself in an attempt to flee. Because sea turtles and marine mammals typically avoid human activity, the expected effect of this interaction would be an avoidance behavior leading to an exposed animal rapidly but temporarily leaving the Vessel Landing zone without injury.

⁵ In 2010, according to DLNR- DAR, there were more than 40 permits issued to commercial boats for mooring use at Molokini Crater.

The BMPs reduce the likelihood of this interaction by, among other things, watching for and staying clear of protected marine life. The Vessel maintains a designated lookout on the bow to spot wildlife and assist in maneuvering around them. As such, we have determined that disturbances due to exposure to human activity and continued Landings would be infrequent and non-injurious, and would result in insignificant effects on the ESA-listed marine species.

6.5 Exposure to Elevated Turbidity

Continued Landings are expected to result in small-scale, short-term in-water substrate disturbances. As the Vessel loads and offloads passengers, wave action at the site requires the captain to engage one or both engines to maintain position. Doing so creates a small plume off the stern of the Vessel, and these activities could result in sediments becoming mobilized in the water column. Given that sea turtles and marine mammals breathe air instead of water, increased turbidity should not adversely affect their respiration or other biological functions. Although these animals may be found in turbid waters, they are not expected to be found in dense turbidity plumes. As such, the potential effect of Vessel related turbidity on ESA-listed sea turtles and marine mammals is not expected to be significant.

6.6 Exposure to Wastes and Discharges

Vessel wastes may include plastic trash bags that may be ingested and cause digestive blockage or suffocation, or if large enough, along with discarded sections of rope or lines, may entangle marine life. Local and federal regulations prohibit the intentional discharge of toxic wastes and plastics into the marine environment. MBP is diligent in preventing the release of wastes and toxicants within the Landing zone. Based on this information, we expect that discharges and spills are unlikely, or would be small, infrequent, and quickly cleaned. Therefore, exposure to accidental wastes and discharges that may result from continued Landings is not expected to result in significant effects on ESA-listed sea turtles and marine mammals.

6.7 Effects on Hawaiian Monk Seal Critical Habitat

Continued Landings are not expected to have long-term effect on the foraging characteristics of monk seals or upon the quality or quantity of monk seal prey. Hawaiian monk seal critical habitat includes the seafloor and marine habitat to 10 m above the seafloor from the 200 m depth contour through the shoreline and extending into terrestrial habitat 5 m inland from the shoreline, including

Maluaka Beach. The terrestrial habitat is defined for preferred pupping areas and significant haul-out areas (NOAA-NMFS, 2015c). Since 2005, a total of six monk seals have been reported at Maluaka Beach (PIFSC, 2015).

Landings are not anticipated to affect the characteristics of any pupping, nursing, or haul-out areas. Terrestrial areas 5m inland from the shoreline are the only essential feature of proposed monk seal critical habitat that may be impacted by the continued Landings. The area that might be avoided is not known to provide significant monk seal forage resources, and the continued Landings are not expected to have any impact on monk seal forage resources. Therefore, because the only impact on monk seals would be the possible short term avoidance of an area with no known significant resource value, the impacts of the proposed action on the accessibility of the area for Hawaiian monk seals would be insignificant.

7.0 Conclusions

Based on the analysis of the possible impacts on ESA-listed species and critical habitat provided above, the potential stressors posed by continued Landing operations at Maluaka Beach are not expected to result in significant, discountable impacts on ESA-listed sea turtles and marine mammals or on critical habitat for Hawaiian monk seals. As such, it has been determined that the proposed action may affect, but is not likely to adversely affect, any ESA-listed marine species under NMFS jurisdiction.

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Attachment A

AECOS, Inc. (AECOS). 2014. Marine biological survey for a vessel Landing site at

Maluaka Beach, ! š§; ^aš, Maui. *AECOS* No. 1387. 16 pp.

Marine biological survey for a vessel landing site at Maluaka Beach, Makena, Maui



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April 9, 2014

Marine biological survey for a vessel landing site Maluaka Beach, Makena, Maui

April 9, 2014

AECOS No. 1387

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Introduction

The *Kai Kanani II* sailing vessel, operated by Makena Boat Partners, offers snorkeling, whale watching, and dinner cruises in the coastal waters of southwest Maui and Molokini. The commercial vessel departs from Maluaka Beach and has an offshore mooring permit in Mākena Bay. Passenger loading and offloading is achieved via a staircase lowered from the front of the catamaran, as there is no pier or similar structure. A marine biological survey of the landing area has been requested to facilitate permitting of the vessel's "land use" at Maluaka Beach.

AECOS Inc. was contracted by Denis Niles Consulting to investigate biological resources at the landing site and on March 11, 2014, *AECOS* biologists conducted field surveys in the area. Roger Gildersleeve, general manager for Kai Kanani, met *AECOS* personnel on site to discuss vessel operations at Maluaka Beach. This report details the findings of that survey.

Maluaka Beach

The coastline from Wailea to Mākena is part of the dry lower slopes of East Maui Mountain, and one of the driest in the Hawaiian Islands (Giambelluca et al, 2013). There are no perennial streams, although episodic flooding can occur during infrequent heavy rains. In Wailea and Mākena, the sheltering of the coastal waters afforded by West Maui Mountain ends, and the shore faces the open ocean. Maluaka Beach faces west and is situated a half mile north of Pu'u Ōla'i cinder cone. The beach is a quarter mile long and composed of medium and coarse grain sand of both remnant limestone reef and volcanic origin. This brown sand beach is bordered to the north and south by lava rock shorelines.



Figure 1. General location of the project on the Island of Maui.

Methods

The marine biological survey was conducted on March 11, 2014 from 0700 to 1100 hrs coinciding with a morning low tide of +0'4" at 0825 hrs. Light northeast winds ("Trades") and 1 to 2-ft waves resulted in excellent underwater visibility (\approx 50 ft) during the survey. Due to the shallow water depths present at the landing site and nearby areas, the survey was conducted using mask and snorkel. During the survey, *AECOS* biologists were able to observe the *Kai Kanani II* approach the shoreline and land to offload passengers, motor offshore for a few minutes while the crew prepared the vessel for another voyage, approach and land to board passengers, and finally motor offshore towards the islet of Molokini. Figures 2 and 3 depict the survey area along with published benthic habitat and benthic biotic coverage at Maluaka Beach (NOS, 2007).



Figure 2. The locations of the landing site and survey area with reported benthic habitat type (NOS, 2007) at Maluaka Beach.


Figure 3. The locations of the landing site and survey area with reported benthic biotic cover type (NOS, 2007) at Maluaka Beach.

All species identifications were conducted in the field and verified with various resource texts: algae (Huisman et al., 2007), corals and macroinvertebrates (Hoover, 1999), and fishes (Hoover, 2008; Randall, 1996). A list of species observed in the survey area is presented in Appendix A.

Survey Results

The vessel landing site and surrounding area is comprised entirely of sand bottom and this sand body extends offshore for over 130 ft (40 m). The area is exposed to swell and surge and these factors create ripple features in the sand bottom (Figure 4, bottom). Numerous attempts to hand comb the sand in search of mollusks or other invertebrates living the sand at the landing did not produce results. The only invertebrate observed near the landing site was a ghost crab (*Ocypode pallidula*), whose burrow is situated near the waterline.



Figure 4. The sand substratum at the landing site photographed on March 11, 2014.

A grouping of small boulders some 33 ft (10 m) wide is located a few meters seaward of the shoreline near the center (north to south, alongshore) of the beach. The boulders are located in the tidal and sub-tidal zones and are colonized by red algae (primarily *Pterocladiella capillacea*) and purple shingle urchin (*Colobocentrotus atratus*). Schools of 'āholehole (*Kuhlia sandvicensis*), $k\bar{u}p\bar{i}p\bar{i}$ (*Abudefduf sordidus*), manini (*Acanthurus triostegus*) and a few other surgeonfish congregate just off the shore over the boulder field.

Further offshore, near the seaward terminus of the sand bottom, mollusks inhabit the sand. A few auger shells are present, including *Hasutla inconstans* and *Triplostephanus elliscrossi*, and a spitelful cone (*Conus livdius*) was spotted on the sand adjacent to a limestone platform that begins 130 ft (40 m) from the shore.

The limestone outcrop is intermittent, with sand channels extending seaward in several locations (Fig. 5., top). The reef is host to several species of hard coral. Lobe coral (*Porites lobata*), finger coral (*Porites compressa*), and mound coral (*Porites evermanni*) colonies are most common with massive colonies greater than 160 cm (>5 ft). Cauliflower coral (*Pocillopora meadrina*) and sandpaper rice coral (*Montipora patula*) are sighted regularly, the latter forming spreading crusts on the limestone bedrock or over dead massive *Porites* spp. skeletons. As is typical in Hawaiian waters, cauliflower corals on the reef comprise an assemblage of symbionts among the coral branches: common coral guard crab (*Trapezia intermedia*), arc-eye hawkfish (*Paracirrhites arcatus*), and Hawaiian orbicular velvetfish (*Caracanthus typicus*). Herbivorous collector urchins (*Tripneustes gratilla*) are seen in small numbers on the reef, despite the area appearing nearly devoid of macroalgae during the survey.

A large sand channel extends seaward from the shore near the south end of Maluaka Beach. The channel is inhabited by a small white auger (unid. Terebridae) and yellow-stripe goatfish (*Mulloidicthys flavolineatus*) forage for polychaetes and small crustaceans in the sand. South of the channel, an extensive limestone bottom is present (Fig 5., bottom). This substratum is not interrupted by sand channels, and corals cover nearly the entire bottom on the seaward half of the reef. The landward half of the reef is home to conspicuously large numbers of sea urchins, including red pencil urchins (*Heterocentrotus mammilatus*), banded urchins (*Echinothrix calamaris*), and collector urchins.

A typical assemblage of reef fishes inhabit the offshore area of this reef, with yellow stripe goatfish, saddle wrasse (*Thalassoma duperrey*), blackfin chromis (*Chromis vanderbilti*), and brown surgeonfish (*Acanthurus nigrofuscus*) most common. A listing of all species identified in the survey attached in Appendix A.



Figure 5. Interupted limestone substratum with large coral colonies seaward of the landing site (top) and extensive coral bottom off the south end of Maluaka Beach (bottom).

Assessment

The *Kai Kanani II* vessel landing area comprises only sand substratum. The sand appears to be highly migratory and no macroinvertebrates were present in the landing area during the March 11, 2014 survey. A boulder feature, not present on NOS benthic habitat maps (Figures 2 and 3), is colonized by algae and a few invertebrates. The boulders attract several species of fishes but are not colonized by any hard corals. The closest coral colonies to the landing area (pictured in Fig. 5., top), are located on limestone outcrop located approximately 130 ft (40 m) offshore from the landing site.

As the *Kai Kanani II* loads and offloads passengers, surge at the site requires the captain to engage the engine at times to hold the vessel safely in place. During these instances, the propeller wash creates a small plume off the stern of the vessel. Due to the absence of particles smaller than sand at the site, the plume created settles out immediately.

On rare occasions the *Kai Kanani II*, due to shoreline morphology or crowds of people at the landing site, will land north of the boulder structure near the center of Maluaka Beach (Roger Gildersleeve pers. comm.). The area is very similar to the normal landing site, consisting entirely of sand. Offshore from this alternate landing site, hard substratum, and hence corals and invertebrates, are less abundant than off of the regular landing site.

Vessel operations appear to have no impact on the marine resources at or near the landing sites. No coral colonies are present in the vicinity of the landing areas. The landings are not located in any State of Hawai'i natural preserve or any critical habitat as designated by U.S. Fish and Wildlife Service. With the exception of a solitary green sea turtle or *honu* (*Chelonia mydas*) sighted offshore, no threatened or endangered species (USFWS, 2014) were encountered during our survey. One species of coral (*M. patula*) located on the reef offshore from the landing site is proposed for listing under the federal Endangered Species Act (NOAA-NMFS, 2010).

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Attachment A

Marine Species identified in the survey area

PHYLUM, CLASS, ORDER,

FAMILY

Genus species	Common name	Abundance	Status
	ALGAE		
RHODOPHYTA			
Coelothrix irregularis(Harvey)		0	Ind
Borgesen			
Hydrolithon onkodes (Heydrich)		R	Ind
Penrsoe & Chamberlain			
<i>Hydrolithon reinboldii</i> (Weber-van		R	Ind
Bosse) Foslie			
Pterocladiella capillacea (Gmelin)		R	Ind
Snatelices & Hommersand			
CHLOROPHYTA			
Ulva compressa Linnaeus		R	Ind
Neomeris annulata Dickie		R	Ind
РНАЕОРНТҮА			
<i>Colpomenia sinuosa</i> (Mertens Ex		R	Ind
Roth) Derbes and Solier			
Ralfsia expansa ([Agardh)] Agardh		R	Ind
	INVERTEBRATES		
PORIFERA, DEMOSPONGIA			
HADROMERIDA			
SPIRASTRELLIDAE			
<i>Spirastrella vaaabunda</i> Ridlev	vagabond boring sponge	R	Ind?
CNIDARIA, ANTHOZOA, ACTINARIA	5 51 5		
ZOONTHIDAE			
Palythoa caesia Dana	blue-grey zooanthid	С	Ind
Zooanthus pacifcus Walsh & Bowers	zooanthid	R	Ind
CNIDARIA, ANTHOZOA,			
SCLERACTINIA			
POCILLOPORIDAE			
<i>Pocillopora eydouxi</i> Milne-Edwards &	antler coral	R	Ind
Haime			
Pocillopora meandrina Dana	cauliflower coral	С	Ind
ACROPORIDAE			
<i>Montipora capitata</i> Dana	rice coral	0	Ind
Montipora flabellata Studer	blue rice coral	U	End
Montipora patula Verrill	sandpaper rice coral	С	End
PORITIDAE	* *		
Porites compressa Dana	finger coral	С	Ind
Porites lobata Dana	lobe coral,	С	Ind
	pohaku puna		
Porites evermanni Vaughn	mound coral	0	Ind
AGARICIIDAE		-	-
Pavona duerdeni Vaughn	porkchop coral	0	Ind
Pavona varians Verrill	corrugated coral	R	Ind
ANNELIDA. POLYCHAETA			
SERPULIDAE			
Spirobranchus ajaanteus, Grube	Christmas tree worm: <i>kio</i>	R	Ind
-Filosi anonao gigantoao arabe			

PHYLUM, CLASS, ORDER, FAMILY

Genus species	Common name	Abundance	Status
	Gommon name	Tibulluliee	Btatab
Loimia medusa Savigny	medusa spaghetti worm, kauna'oa	R	Ind.
MOLLUSCA, GASTROPODA			
NERITIDAE			
<i>Nerita picea</i> Recluz	nerite snail; pipipi	R	Ind.
ARCIDAE			
Arca ventricosa Lamarck	winged arc	R	Ind
VERMETIDAE			
Serpulorbis variabilis Hadfield&Kay	variable worm snail <i>kauna'oa</i>	R	End
CYPRAEIDAE			
Cypraea caputserpentis Linnaeus	snakehead cowry <i>leho kupa</i>	R	Ind
CONIDAE	•		
<i>Conus ebraeus</i> Linneaus	Hebrew cone	R	Ind
Conus lividus Hwass	spiteful cone	R	Ind
TEREBRIDAE			
Hastula inconstans Hinds	marbled auger	R	End
Triplostephanus elliscrossi Bratcher	auger	R	Ind
indet.	unid. auger	R	
MOLLUSCA, GASTROPODA			
NUDIBRANCHIA			
PHYLLIDIDAE			
indet.	unid. phyllidia	0	
MOLLUSCA, BIVALVIA MYTILOIDA			
MYTILIDAE			
Branchiodontes crebristriatus Conran	Hawaiian. mussel nahawele li'i li'i	R	End
ARTHROPODA, CRUSTACEA,			
DECAPODA			
ALPHEIDAE			
Alpheus deuteropus Hilgendorf	petroglyph shrimp	R	Ind
DIOGENIDAE			
indet.	unid. hermit crab	R	Ind
TRAPEZIIDAE			
<i>Trapezia intermedia</i> Miers	common guard crab	R	Ind
GRAPSIDAE			
Perconon planissinum Herbst	flat rock crab; <i>pāpā</i>	R	Ind
OCYPODIDAE			
Ocypode pallidula Jacquinot	pallid ghost crab; <i>ōhiki</i>	R	Ind
ECHINODERMATA, ASTEROIDEA			
VALVATIDA			
OPHIODASTERIDA			
<i>Culcita novaeguineae</i> Muller & Troschel	cushion star	R	Ind
<i>Linckia guildingi</i> Gray	green linkia	R	Ind
<i>Linckia multifora</i> Lamarck	spotted linkia	R	Ind

PHYLUM, CLASS, ORDER, FAMILY

Genus species	Common name	Abundance	Status
ECHINODERMATA, OPHIUROIDEA,			
OPHIURIDA			
OPHIOCOMIDAE			
Ophiocoma erinaceus Muller &	spiny brittle star	R	Ind
DIADEMATIDAE			
<i>Echinothrix calamaris</i> Pallas	banded urchin, wana	0	Ind
ECHINOMETRIDAE			
Colobocentrotus atratus Linnaeus	helmet urchin; <i>hāʻukeʻuke</i> kaupali	R	Ind
<i>Echinometra mathaei</i> de Blainville	rock boring urchin, <i>'ina kea</i>	С	Ind
<i>Echinometra oblonga</i> de Blainville	oblong boring urchin, 'ina	R	Ind
Heterocentrotus mammillatus	red pencil urchin;	0	Ind
Linnaeus	hā'uke'uke'ula'ula		
TOXOPNEUSTIDAE			
Tripneustes gratilla Linnaeus	collector urchin, <i>'hāwa'e maoli</i>	0	Ind
	FISHES		
CHORDATA, ACTINOPTERYGII			
ENGRAULIDAE			
Encrasicholina purpurea Fowler	Hawaijan anchovy: <i>nehu</i>	R	End
AULUSTOMIDAE			
Aulstomus chinensis Linnaeus	trumpetfish; nunu	R	Ind
CARACANTHIDAE		-	- 1
Caracanthus typicus Kroyer	Hawaiian orbicular velvetfish	R	End
KUHLIIDAE			
Kuhlia sandvicensis Steindachner	Hawaiian flagtail, <i>āholehole</i>	U	End
CIRRHITIDAE			
Paracirrhites arcatus Cuvier	arc-eye hawkfish	R	Ind
MULLIDAE	printo u		
Mulloidichthys flavolineatus	yellow stripe goatfish weke'ā	С	Ind
Paruneneus cyclosotmus Lacanada	hlue goatfish	R	Ind
i ai apeneas cyclosounias Lacepede	moana ukali ulua	IX IX	mu
Darupopous insularis Dondoll & Myoro	island goatfish munu	TT	Ind
<i>Ful upeneus insului is</i> Kaliuali & Myels	handtail goatfah	0	Ind
KYPHOSIDAE	bandtan goatish	0	ma
Kyphosus vagiensis Quoy & Gaimard CHAETODONTIDAE	brassy chub; nenue	R	Ind.
Chaetodon lunula Lacepede	racoon butterfly <i>kīkākapu</i>	0	Ind
Chaetodon lunulatus Quoy & Gaimard	oval butterfly fish kapuhili	0	Ind
Chaetodon ornatissimus Cuvier	ornate butterflyfish	0	Ind
Chaetodon quadrimaculatus Gray	four spot butterflyfish	0	Ind

PHYLUM, CLASS, ORDER, FAMILY

Genus species	Common name	Abundance	Status
POMOCENTRIDAE			
<i>Abudefduf abdominalis</i> Quoy & Gaimard	Hwn. seargent; mamo	R	End
Abudefduf sordidus Forsskal	blackspot seargent, <i>kūpīpī</i>	0	Ind
Abudefduf vaigiensis Quoy & Gaimard	Indo-Pacific seargent; mamo	R	Ind
<i>Chromis vanderbilti</i> Fowler	blackfin chromis	С	Ind
Dascyllus albisella Gill	Hawaiian damselfish <i>ʻāloʻiloʻi</i>	R	End
Plectroglyphidodon imparipennis Vaillant & Savage	brighteye damselfish	R	Ind
Plectroglyphidodon johnstonianus Fowler & Ball	blue-eyed damselfish	R	Ind
Stegastes marginatus Jenkins LABRIDAE	Hwn. gregory	R	End
Coris gaimard Quoy & Gaimard	yellow tail coris hinālea 'akilolo	R	Ind
Gomphosus varius Lacepede	bird wrasse; <i>hināleai'iwi</i>	R	Ind
Haliocheres ornatissmis Garrett	ornate wrasse; ' <i>ōhua</i>	R	Ind
Labroides phthirophagus Randall	Hwn. cleaner wrasse	0	End
Stethojulis baleata Quoy & Gaimard	belted wrasse; 'omaka	R	End
<i>Thalassoma duperrey</i> Quoy & Gaimard	saddle wrasse hinalea lauwili	С	End
SCARIDAE			
Scarus psittacus Forsskal	palenose parrotfish; <i>uhu</i>	0	Ind
Scarus rubroviolaceus Bleeker	red lip parrotfish <i>pālukaluka</i>	R	Ind
BLENNIDAE			
<i>Exallias brevis</i> Kner	shortbodied blenny <i>paoʻo</i> <i>kauila</i>	R	Ind
ZANCLIDAE			
Zanclus cornutus Linnaeus ACANTHURIDAE	Moorish idol; <i>kihikihi</i>	R	Ind
Acanthurus blochii Valenciennes	ringtail surgeonfish pualu	0	Ind
Acanthurus leucopareius Jenkins	whitebar surgeonfish <i>māikoiko</i>	U	Ind
Acanthurus nigrofuscus Forsskal	brown surgeonfish mā 'i'i'i	С	Ind
Acanthurus olivaceus Forster	orangeband surgeonfish, <i>na'ena'e</i>	R	Ind
Acanthurus triostegus sandvicensis Linnaeus	convict surgeonfish <i>manini</i>	0	End
<i>Acanthurus xanthopterus</i> Valenciennes	yellowfin surgeonfish, pualu	0	Ind
<i>Ctenchaetus strigosus</i> Bennett	goldring surgeonfish <i>kole</i>	R	Ind
Naso brevirostris Cuvier	paletail unicornfish <i>kala</i> <i>lōlō</i>	R	Ind

PHYLUM, CLASS, ORDER,

Genus species	Common name	Abundance	Status
ACANTHURIDAE continued			
Naso lituratus Forster	orange spine unicornfish, <i>umaumalei</i>	U	Ind
<i>Naso unicornis</i> Forsskal	bluespine unicornfish, <i>kala</i>	R	Ind
Zebrasoma flavescens Bennett BALISTIDAE	yellow tang, <i>lau'ipala</i>	R	Ind
<i>Melichthys vidua</i> Richardson	pinktail triggerfish humuhumu hiʻu kole	U	Ind
<i>Rhinecanthus aculeatus</i> Linnaeus	lagoon triggerfish humuhumu nukunuku apua'a	U	Ind
<i>Rhinecanthus rectangulus</i> Bloch & Schneider	reef triggerfish humuhumu nukunuku apua'a	U	Ind
Sufflamen bursa Bloch & Schneider	lei triggerfish humhumu lei	0	Ind
HEMIRAMPHIDAE			
unid.	indet. halfbeak	U	Ind
TETRADONTIDAE			
Canthigaster amboinensis Bleeker	ambon toby	U	Ind
Canthigaster jactator Jenkins	white spotted toby	R	End
	REPTILES		
CHORDATA, REPTILIA CHELONIIDAE			
Chelonia mydas Linnaeus	green sea turtle, honu	R	Ind
KEY TO SYMBOLS USED: Abundance categories: R – Rare – only one or tv U – Uncommon – several O – Occasional – seen irr	vo individuals observed. l to a dozen individuals observed egularly in small numbers	l.	

C – Common -observed everywhere, although generally not in large numbers.

A – Abundant – observed in large numbers and widely distributed.

Status categories:

End. – Endemic – species found only in Hawaii

Ind. – Indigenous – species found in Hawaii and elsewhere

Nat. – Naturalized – species were introduced to Hawaii intentionally or accidentally.

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APPENDIX B: ARCHAEOLOGICAL ASSESSMENT AND CULTURAL IMPACT ASSESSMENT

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ASC102415

Archaeological Assessment: Surface Assessment of Adjoining Lands for Continued Passenger Loading and Unloading of Kai Kanani II Catamaran at Maluaka Beach, Ka`eo and Maluaka *ahupua`a*, Makawao District, Maui Island TMK: (2) 2-1-006: 59 por.



October 2015

Aki Sinoto Consulting 2333 Kapiolani Blvd., No. 2704 Honolulu, Hawai`i 96826

ASC10242015

Archaeological Assessment: Surface Assessment of Adjoining Lands for Continued Passenger Loading and Unloading of Kai Kanani II Catamaran at Maluaka Beach, Ka'eo and Maluaka *ahupua'a*, Makawao District, Maui Island TMK: (2) 2-1-006: 59 por.

For:

Makena Boat Partners 34 Wailea Gateway Place Suite A105 Wailea, Hawaii 96753

By:

Aki Sinoto and Eugene Dashiell

October 2015

Aki Sinoto Consulting 2333 Kapiolani Blvd. No. 2704 Honolulu, Hawai`i 96826

ABSTRACT

On Wednesday, February 9, 2015, archaeological surface assessment was conducted in the land area (TMK: (2) 2-1-006:059 por.) immediately adjoining Maluaka Beach in Makena, Ka`eo and Maluaka *ahupua`a*, Makawao District, Maui Island. The field task was followed by literature review of reports from previous archaeological investigations in the vicinity of the current project area. The subject project area is located in the ocean fronting Maluaka Beach in shallow near-shore waters. The client, Makena Boat Partners, is seeking to obtain a permit to continue passenger loading and off-loading of the Kai Kanani II catamaran.

Both the surface assessment and literature review resulted in negative findings. No previous discoveries of significant archaeological or historic remains have been documented in the land areas immediately adjoining the in-shore area fronting Maluaka Beach. In addition, the current proposal does not involve any alteration either on land or in the sea. The continuation of the activities that have been taking place for at least three decades will not involve any changes or new developments shoreside or in the shallow waters.

No further archaeological procedures are warranted.

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INTRODUCTION

At the request of Makena Boat Partners of Wailea, Aki Sinoto Consulting of Honolulu undertook archaeological inventory-level procedures in conjunction with a permit application for continued passenger boarding of the catamaran, Kai Kanani II, at Maluaka Beach in Makena, Maui Island. The State Historic Preservation Division in their letter of July 15, 2015 (Log No:2015.02588/Doc No:1507MD20 Archaeology) stated that although archaeological inventory survey has not been conducted within the immediately adjacent land parcel, "We found no records that the past decades' use as a boarding spot has resulted in exposure of any remains however. The ship does not reach the land and passengers wade out to the ship to a retractable ladder that does not reach the surface." The negative results of the current AIS procedures warranted the preparation of this archaeological assessment survey report in accordance to HAR 13-284-5(A).

PROJECT AREA

The project area is located in the shallow, near-shore waters of Maluaka Beach (Figs. 1 & 2), Makena, Ka'eo and Maluaka *ahupua'a*, Makawao District, Maui Island (adjacent to TMK: (2) 2-1-006:059 por.). The boarding area is a rectangular area measuring 225 ft. (68.6 m) NE to SW by 150 ft. (45.7 m) NW to SE immediately off shore of the central section of the sandy beach (Fig. 3) fronting the Makena Beach Golf and Resort Hotel (formerly the Maui Prince Hotel).

ENVIRONMENTAL SETTING

The environment of Makena is similar to arid leeward regions of the other Hawaiian Islands. The project area receives approximately 20 inches of annual rainfall with January being the wettest month and July the driest (Armstrong 1973). The project area is in the near-shore waters with the immediately adjacent beach and berm areas ranging from about 0 to about 10 feet above mean-sea-level. The topography of the adjacent land area varies from gently-sloping sandy beach in the *makai* portions to a sand berm area between the beach and the pedestrian path section of the Makena-Keone`o`io (Old Makena) Road. Evidence of previous land modifications in the form of clearing, grading for road building, and resort landscaping are evident within this adjacent land parcel. The current use of the area is primarily marine recreation and sun bathing. The soils in the area consist exclusively of beach sand which are light-colored sands derived from coral and seashells and are washed and rewashed by wave action (Foote et al. 1972:28).

Vegetation in the project area consists largely of lowland shrubs (Armstrong 1973:64). The majority of the vegetation is xerophytic; consisting of common exotics such as *kiawe* (*Prosopis*



Figure 1. Location of Project Area on USGS Makena Quadrangle



Figure 2. Tax Map of Land Parcel Adjacent to Project Area TMK: (2) 2-1-006:059 (por.) outlined in green



Figure 3. Project Area Depicted (red dashed line) on Bing Image.

pallida) as the dominant high cover with koa haole (Leucaena leucocephala) with intermittent, isolated stands of endemic wiliwili (Erythrina sandwichensis) trees. Common ground cover includes endemic `ilima (Sida fallax), exotics such as basil (Ocimum basilicum), lantana (Lantana camara), the ubiquitous beggar's tick (Bidens pilosa), castor bean (Ricinus communis), and various dry grasses. Some of the other vegetation, including those planted as landscaping consists of the usual beach fringe flora with coconut (Cocos nucifera), milo (Thespesia populnea), naupaka kahakai (Scaevola sericea), and ground cover of turf grass.

BRIEF SUMMARY OF HISTORIC BACKGROUND

Historical background data regarding the Wailea/Makena region has been well-summarized in previous studies such as Barrere (1975), Clark and Kelly (1985), Cordy and Athens (1988), Schilt (1988), Gosser et al. (1993 & 1996), Maly and Maly (2005), Donham (2006), and most recently by Lee-Grieg (2013). The reader is thus referred to these studies for detailed information and a brief summary of selected topics shall be discussed here.

Land Use in Makena

The earliest prehistoric settlement on Maui Island is postulated to have occurred between A.D. 300-600 along the windward regions where abundant rainfall and fertile soil supported crop cultivation and human populations (Kirch 1985, Cordy and Athens 1988, Gosser et al. 1996). Population expansion into the drier, leeward areas of Kihei, Wailea, and Makena, likely took place by A.D. 1000-1200 (Cordy 1978, Kirch 1985). Seasonal settlements occurred along the coastal areas to exploit marine resources, while permanent settlements occupied the upland areas to utilize forest products and cultivate agricultural resources. Between these settlement loci was an arid area used for cultivating sweet potatoes and during transit on *mauka-makai* trails. Upland populations exchanged taro, bananas, and sweet potatoes with the coastal populations for ocean resources (Handy 1940). Although a number of scenarios regarding the prehistoric chronology of the coastal Honuaula region have previously been suggested (Cordy and Athens 1988, Gosser et al. 1996, and Donham 2006), the number of dated sites is still too limited to permit the establishment of conclusive intra-regional chronological benchmarks. The inhabitants of Makena are said to have subsisted mainly on fish and sweet potatoes, a common diet of those who lived in the leeward areas of Maui (Barrere 1975:41). The early French navigator La Perouse noted, while anchored at Keoneoio Bay, that "this part of the coast was altogether destitute of running water. The inhabitants had no drinking water but a brackish water obtained from shallow wells" (1798:350).

Captain George Vancouver introduced cattle to Hawaii in 1793 and Kamehameha placed a decade long *kapu* on them and wild cattle roamed throughout northern Hawaii Island. Around this time, cattle was also introduced to Maui and by 1845 proliferated rapidly that numerous complaints of the cattle destroying crops and lands were raised by the people. Many Hawaiians were driven from their homes and lands by marauding wild cattle. Forced abandonment of lands by families that occupied the area for generations took place in Makena and elsewhere on Maui leading to forfeiture of later claims to these lands.

Land Tenure During the Historic Period

Due to the lack of running water, agricultural production in leeward Maui Island was limited to dry-land taro in the upland areas in pockets of moist soil where rainfall was greater, while sweet potatoes were grown at the lower elevations (Handy 1940:113-114). Irish potatoes became an important cash crop in East Maui, for provisioning whaling ships and supplying the west coast of North America during the Gold Rush of 1848. By 1846, the cultivation of Irish potatoes had spread from Kula to Honua'ula. Sweet potatoes were also grown for export, and sugarcane was being commercially cultivated by 1841. M.J. Nowlein and S.D. Burrows leased lands from Kamehameha III at Ulupalakua to grow sugarcane and Irish potatoes. In 1845, Nowlein and Burrows transferred their lease and interests to Linton L. Torbert, who extended sugarcane cultivation to adjoining lands and started cattle ranching. In 1856, Captain James Makee bought the Torbert Plantation and it was later referred to as the "Rose Ranch." By 1862, sugarcane was being extensively cultivated, and a steam mill was built for processing sugar. A severe drought in 1878 forced the end of sugarcane production, and cattle ranching became the dominant commercial enterprise of Honua'ula. By the 1880s, 'Ulupalakua Plantation was basically a cattle ranch utilizing the road and landing at Makena in Papa`anui. Ranching continued to be practiced into the 1970s. However, the dominant economic and land-use theme since then has focused on tourism. The past three decades have seen the intensification of golf course, resort, and luxury residential developments in the Wailea and Makena regions.

PREVIOUS ARCHAEOLOGY

Winslow M. Walker, who conducted his fieldwork during 1929-30, provided the first modern archaeological descriptions of surface remains, mainly *heiau* and other prominent structural features, on the island of Maui. However, much of the remains of daily life, the house-sites and other small associated features were not documented until several decades later, especially in the remote Makena region.

The first modern, systematic documentation of surface remains on Maui occurred in 1973 during the Statewide Inventory of Historic Places implemented by the State Department of Land and Natural Resources. Over the years, a large number of archaeological procedures have been undertaken within the former Makena Resort holdings in conjunction with golf course and hotel development and expansion during the period between 1970 and 1992, the installation of a wastewater treatment facility and infrastructural improvements during 1992 to 2006, and most recently for multi-family residential and resort developments which are still currently on-going under new ownership.

Previous Archaeology In The Vicinity

In 1979, two surveys were undertaken in the proposed hotel and residential areas (Denison 1979 and Rogers-Jourdane 1979). These surveys resulted in the mitigation of several site areas and the *in situ* preservation of Site 2258, a pahoehoe bubble shelter located 120 m to the east of Keawalai Church. This site is located in back of the public parking lot and *makai* wastewater pumping facility in the vicinity of the north cul-de-sac and public beach access onto Maluaka Beach.

In 1985 (Clark and Kelly) and 1986 (Joesting), Bishop Museum conducted historic archival research and archaeological testing along the alignment of the Makena-Keone'oi'o Road behind the beach berm at Maluaka Beach to determine whether any subsurface traces of the former "King's Road" was evident. No evidence of any formally built Hawaiian trail was found, but informant testimony and physical evidence showed ample evidence of compounded prior distubances including military clearing and widening of the existing "Old Makena Road." These studies concluded that the purported "King's Trail" occurred more inland and that a fisherman's trail would have traversed the top of the berm or the beach, enabling a view of the ocean rather than behind a high berm. However, soon thereafter, at the urging of Native Hawaiian groups, the Seibu Corp., the former owners of the Maui Prince property agreed to close off the section of the roadway to vehicular traffic and make it into a pedestrian walkway following completion of the more inland Makena Alanui.

In 1988, a survey was conducted for the public beach parking lot (TMK 2-1-05:84) and the south cul-de-sac (TMK 2-1-06:37) for the Makena-Keoneoio Road (Cleghorn, Kawachi, & Sinoto 1988). A complex of five surface features consisting of 2 walls (Fe. 1 and 2), 2 platforms/privies (Fe. 3 and 4), and a cement lined cistern (Fe. 5) with two curvilinear stone alignments around the base were documented and designated Site 50-50-14-1007. The structural features were thought to be associated with the Old Makena School, formerly present in that location. The cistern, was

filled and preserved *in situ* in an area adjoining the parking lot to the south. Later, the cul-de-sac area was monitored during construction and installation of landscaping and irrigation with negative results (Sinoto and Rotunno 1992 letter to Makena Resort). No significant remains were encountered during the construction activities. The adjacent South Golf Course area south of Maluaka Beach was included in Donham's (2006) recent study which revisited Haun's (1978) previous survey. Subsequent mitigation of newly identified sites in the area resulted in the preservation of human remains (Rotunno-Hazuka 2006). These are the "human skeletal remains" mentioned in SHPD's July 15, 2015 correspondence commenting on the current catamaran boarding permit application. Worth noting, however, is that the current project area is in the water and not on land and also, the skeletal remains originated from the land parcel to the south (TMK: (2) 2-1-006:037) in a location roughly 500 ft (150 m) away from the south end of Maluaka Beach.

GENERAL SETTLEMENT PATTERN

The general pattern of extant archaeological remains in the Makena area appears to consist of prehistoric and historic permanent habitation along the coastal areas with isolated pockets of agricultural activity transformed into more extensive clusters of *kula* type features in the inland areas around the 200-foot elevation. Limited permanent and some temporary or seasonal occupation sites occur in the inland areas in association with agricultural complexes. Site densities and complex features focus around Ka`eo *ahupua`a*, owing to the variable rainfall in the area. The variety of available archaeological data as well as historic documentation indicate a traditional subsistence base dependent on marine exploitation and limited dryland cultivation for the Makena region.

METHODS

The current archaeological procedure was conducted on Wednesday, February 11, 2015. No systematic surface survey of the adjacent land area was warranted since the project area was within the shallow, near-shore waters of Maluaka Beach. Literature review of previous archaeology and historical summaries was conducted at the SHPD Library in Kapolei, O`ahu.

Based on the total absence of any significant remains or other indications of prehistoric or historic period cultural activities, an assessment report was prepared. Eugene Dashiell, M.A. was principal investigator and Aki Sinoto was project director for the current undertaking. A cultural impact assessment is being prepared by Kimokeo Kapahulehua of Hana Pono, LLC under separate cover.

RESULTS OF CURRENT PROCEDURES

A walk-through, surface survey of the adjacent land area of the current project area within the shallow nearshore waters of the bay fronting Maluaka Beach determined that the area was absent of any subsurface exposures of significant archaeological or cultural remains. As mentioned in the SHPD letter, there have been no reports of human skeletal remains exposed along the shoreline of Maluaka Beach during or following high wave or storm surf action. The authors, having worked in the area since the original owner, beginning in 1974 are intimately familiar with the Maluaka Beach area as well as the whole region and also have no knowledge of any exposures of archaeological or cultural significance ever eroding out of Maluaka Beach. Mr. Kimokeo Kapahulehua, the cultural consultant is also unaware of any such inadvertent exposures of cultural remains over the years.

The review of previous archaeological investigations also yielded negative results for the beach and berm areas immediately adjoining the subject project area in the water.



Figure 4. Overview of Passenger Loading onto Kai Kanani II, View North (photograph courtesy of Makena Boat Partners)

DISCUSSION AND CONCLUSION

The archaeological procedures described in this report resulted in completely negative results in terms of encountering any significant archaeological or historic remains within the immediately adjoining land areas of Maluaka Beach. This absence of remains coupled with the nature of the proposed activities within the shallow, near-shore waters of the bay fronting Maluaka Beach warrants no further archaeological procedures in conjunction with the subject Environmental Assessment. Furthermore, the previous archaeological procedures cited in this report, including the testing (Clark and Kelly 1985) for the "King's trail" and, monitoring during cul-de-sac construction and installation of landscaping irrigation (Sinoto and Rotunno-Hazuka 1992), encountered no significant subsurface deposition or other evidence of any archaeological or cultural remains. No new clearing or any other modifications are proposed for the land-based access and gathering localities for the passengers. Existing public access corridors are employed and will continued to be used for this purpose near the southern terminus of Maluaka Beach.

Thus, this study concludes that the proposed continuation of loading and off-loading of passengers onto and from the Kai Kanani II catamaran poses no adverse effect on any potential archaeological or historic resources in the immediate adjoining land areas.

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MALUAKA BEACH

Cultural Impact Assessment: for Continued Passenger Loading and Unloading of Kai Kanani II Catamaran at Maluaka Beach, Ka`eo and Maluaka *ahupua`a*, Makawao District, Maui Island TMK: (2) 2-1-008: 059 por.



For:

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By:

Keli`i Tau`a Kimokeo Kapahulehua

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INTRODUCTION

This cultural impact assessment was prepared by Hana Pono LLC of Pukalani, in conjunction with a draft Environmental Assessment being prepared for permit application for continued loading and off-loading of the Kai Kanani II catamaran within the shallow, in-shore waters of Maluaka Beach at Makena, Makawao, Maui Island. This activity has been on-going in the same location for over two decades. Archaeological assessment procedures were undertaken by Aki Sinoto Consulting of Honolulu and is included in the EA document as an appendix. Both procedures were conducted at the request of Makena Boat Partners of Wailea, Maui.

PROJECT AREA

The project area is located in the shallow, near-shore waters of Maluaka Beach (Figs. 1 & 2) in Makena, Ka`eo and Maluaka *ahupua*`a, Makawao District, Maui Island (adjacent to TMK: (2) 2-1-006:059 por.). The boarding area is a rectangular area measuring 225 ft. (68.6 m) NE to SW by 150 ft. (45.7 m) NW to SE, located immediately off-shore, just south of the central section of Maluaka Beach, the crescent-shaped, sandy beach (Fig. 3) fronting the Makena Beach Golf and Resort Hotel (formerly the Maui Prince Hotel).

For summary of natural and archaeological backgrounds, the reader is referred to the introductory section of the Archaeological Assessment report (Sinoto and Dashiell 2015).

CURRENT SCOPE AND METHODS

The current scope involved compiling of excerpts from previous cultural assessment documents (for Honua'ula and Makena Resort) prepared by Hana Pono LLC for the region together with current observations made at the specific location and neighboring shoreline areas. Although the current document is limited in scope and the subject area limited in extent, the original cited assessments followed methodology and protocol set forth by the OEQC's *Guidelines for Assessing Cultural Impacts* (November 19, 1997) in meeting Section 343-2 (recently amended by Act 50) of the Hawaii Revised Statutes. This and other laws mandate the promotion and preservation of cultural beliefs, practices, and resources of native Hawaiians as well as other ethnic groups. Information obtained through informal conversations, observations, personal experience, and other pertinent research was used to gauge the levels of contemporary use of the area and to assess the potential impact of continuing the to-be-permitted activity to existing cultural practices and beliefs.


Figure 1. Location of Project Area on USGS Makena Quadrangle







Figure 3. Project Area Depicted (red dashed line) on Bing Image.

PLACE NAMES

Traditional Hawaiian place names, prior to Western contact, were often given for a prominent natural feature, a characteristic of the area, or based on mythological references. Such names described various localities including land areas, political divisions, villages or hamlets, fisheries, ceremonial and sacred places, and prominent topographical or geological features. The name of the traditional district or *moku* is Honua`ula or "red land," from the color of the earth in this leeward area of East Maui. The name given to the coastal area is Makena, literally meaning, "abundance," but could also mean, "mourning, wailing, lamentation" or "calm, of sea, atmosphere" (Pukui et al. 1974:142 and Pukui and Elbert 1981:211). The two *ahupua`a*, Ka`eo literally means full (as a calabash full of food) or figuratively as "full of knowledge;" and Maluaka, literally means "peaceful shadow," but as explained by one of the oral informants, describes the long cloud that comes over this particular area from Haleakala which provides a favorable microclimate both on land and sea within these two *ahupua`a*.

Two `*olelo* or traditional sayings that refer to Honua`ula, recorded by Mary Kawena Pukui (1983:113) state:

Honua`ula, e paluku ia ana na kihi po`ohiwi e na `ale o ka Moa`e

Honua'ula whose shoulders are pummelled by the Mo`ae wind. A poetical expression for a person being buffeted by the wind. Honua`ula, Maui is a windy place. (1058)

Honua`ula kua la`ola`o

Callous-backed Honua`ula

Said of the people of Honua`ula, Maui who were hard workers. The loads they carried often caused callouses on their backs. (1059)

For a more detailed treatment of *mo`olelo* pertaining to Honua`ula, the reader is referred to the Cultural Historical Background Study undertaken for ATC Makena Holdings LLC (new owners of the former Makena Resort property) by Cultural Surveys Hawaii, Inc. (Lee-Grieg et al. 2013, revised draft) and *A Cultural-Historical Study of Ka`eo and Other Lands in Honua`ula, Island of Maui* (Maly and Maly 2005) by Kumu Pono Associates.

CHRONOLOGY OF HONUA`ULA

A brief summary of seven time periods, 5 prehistoric eras followed by the advent of the historic period following Western contact, and the modern era, shall be presented here with a general overview discussed for each period.

Mythical Creation

Besides the Kumulipo's account of the Creation or birth of the Hawaiian Islands, several other creation myths involving the Fire Goddess, Pele, can be found in oral traditions. There are many stories of Pele's travels from Tahiti to the islands of Hawai'i but here just the accounts involving Maui Island and Honua'ula *ahupua`a* are discussed.

Pele lived a very long time at Pu'u Keka'a on Maui but the people living on the island saw her only as fire. The whisper of the natives who lived at Honua'ula spoke of Pele as their woman chief who was greater than all of the other chiefs.

In "Sites of Maui", Sterling recounts a mo'olelo (story) about Pele's position in the community leading a man named Paea who lived at Wahane, Honua'ula to dedicate his new home to Pele saying that it should not be occupied until she had entered it. Sadly, he did not keep his word and ate all the ho'okupu (ceremonial food) which he had left for her. His unfaithfulness caused Pele to chase Paea to the ocean and her curse changed him into Pohaku Paea (Rock of Paea);which is located north of La Perouse Bay standing tall at the ocean front as a symbol of her prowess of yesterday, today and forevermore. (Sterling 1998:228)

The latest and last physical appearance of Pele occurred as late as the mid-1800 when the Fire Goddess flowed from the top of the southern slopes of Haleakala down through Honua'ula and reached the coast of Makena and Wailea.

In the Hawaiian Annual published by Thomas Thrum and James Dana's "Characteristics of Volcanoes", they report Father Bailey's statements of his oral interviews explaining that the last flow had occurred in 1750 (Sterling 1998: 228). Many of the lava flows in the summit depression and in the Ulupalakua to Nu'u area were dark black and bare 'a'a (rough, jagged type of lava landscape). The two freshest lava flows run near La Perouse Bay.

About two centuries ago, Tutu Pele completed her Lalanipu'u (row of foot hills) in Honua'ula such as Pu'u Naio, Pu'u Kalu, Pu'u 'Ola'i, Pu'u Lua Palani and Pu'u Pimoe. In 1736, Pele was still at Pimoe as she welcomed the birth of Kamehameha the Great.

Although Haleakala remains dormant, there is still a lot of seismic activity from Pu'u Pimoe and over to Pu'u Ola'i (Earthquake hill) at Ku-Makena. At Pu'u Ola'i, Pele was jealous of the mo'o maiden of Kaho'olawe, Inaina, whose parents were Hele and Kali. Pele accused Inaina of trying to steal her lover Lohi'au from her. In a fit of anger, Pele transformed the three into hills named after them. Her older brother Kamohoali'i scolded her and pronounced the Kanawai Inaina there, meaning, "you must not say or do unkind things to others." From that time the people of Honua'ula observed that law. They named the area Ku-Makena meaning "stand courageously, accepting the joys and sorrows of life bravely, even while mourning or rejoicing."

While Pele was carving her niche on the islands from below the earth's surface, her counterpart demi-god Maui-akamai had taken an ocean approach to presenting the islands. He paddled out into the sea of Po'o from Kipahulu and in line with the hill Ka- iwi-o-Pele near Hana with his brothers Maui-mua, Maui-waena and Maui-iki-iki to fish up the islands from beneath the deep ocean with the magical fishhook Manaiakalani. It is only because his brothers looked back which prevented the islands from all rising to the top. Today, we can be reminded of Maui-akamai's works by enjoying his fishhook, Manaiakalani, which is the constellation Scorpio stretched out in the Southern sky from Honua'ula.

Pre-contact Migration -0 to 1,100 AD

After the mythical creation of the islands was completed, pre-contact migratory periods in five distinct eras started in the year 0 to 600 A.D. Migrations from Polynesia, particularly the Marquesas, continued through the second era.

Between A.D. 600 and 1100 the population in the Hawaiian islands primarily expanded from natural internal growth on all of the islands. Through the course of this period the inhabitants of the Hawaiian islands grew to share common ancestors and a common heritage. More significantly, they had developed a Hawaiian culture and language uniquely adapted to the islands of Hawai'i which was distinct from that of other Polynesian peoples (Fornander 1919: 222).

During these periods, the social system was communal and organized around subsistence production to sustain the *'ohana* (large extended families). Hawaiian spiritual beliefs and customs focused on maintaining harmonious and nurturing relationships with the various life forces, elements and beings of nature. Ancestral spirits were honored as deities.

Land and natural resources were not privately owned; rather, the Hawaiian people maintained a communal stewardship over the land, ocean and other natural resources of the

islands. The kupuna (elders) provided leadership and guidance to the makua (adults) who performed most of the daily productive work of fishing, cultivation, and gathering.

Among the islands of Hawai'i, there was some variation of language dialect and names for plants, animals, rains and winds. There were also variations in physical structures, subsistence techniques and art forms. Origin myths varied according to the particular migration and genealogical line from which families descended. The prominence of *akua* (gods) and *kupuna* (elders) also varied by island. For example, as discussed above, the volcanic deity Pele was more prominent in Puna and Ka'u. Qualitatively, the language, culture, social system, spiritual beliefs, and customs were relatively similar among all the inhabitants of the islands. Oral traditions indicate frequent transmigration and even intermarriage among families from different islands.

Era3: EarlyTahitianMigration-AD 1100 to 1400

This third period, between A.D. 1100 and 1400, marks the era of the long voyages between Hawai'i and Tahiti and the introduction of major changes in the social system of the Hawaii. The chants, myths, and legends record the voyages of great Polynesian chiefs and priests, such as the high priest Pa'ao, the *ali'inui* (Head Chief) Mo'ikeha and his sons Kiha and La'amaikahiki, and high chief Hawai'iloa.

Oral traditions describe how these new Polynesian chiefs and their sons and daughters gradually appropriated the rule over the land from the original inhabitants through intermarriage, battles, and ritual sacrifices. The high priest Pa'ao introduced a new religious system that used human sacrifices, feathered images, and enclosed heiau for their sacred religious practices. The migration coincided also with a period of rapid internal population growth. Remnant structures and artifacts dating to this time suggest that previously uninhabited leeward and other marginal areas were settled during this period.

Honua'ula is an ancient name that was introduced to Hawai'i by Chief Mo'ikeha of Tahiti. The reason Chief Mo'ikeha decided to depart from Tahiti was to separate himself from his lover Lu'ukia who originally came from Hawai'i with her husband Olopana. Lu'ukia had created turmoil in Mo'ikeha's life and therefore the Chief felt that his separation from her would heal his wounds. (Sterling 1998:214)

Chief Mo'ikeha's departure was not simply moving to another section of his island and beloved home of Lanikeha. Instead, he ordered Mo'okini, his *kahuna nui* (influential priest) to prepare their large *wa'a kaulua* (double-hull canoe) to set sail to the distant land of Hawai'i. On this voyage, he would take his foster son Kamahualele to help him on this voyage. Mo'ikeha also took his sisters Makapu'u and Makaaoa, and his two younger brothers, Kumukahi and Ha'eha'e.

On his inaugural sail, Chief Mo'ikeha stops at the first landfall at South Point, Hawai'i. There, the Kalae family on Mo'ikeha's first migratory journey asks the Chief if they could reside there. He grants them permission and today, one of South Point's community names is the town of Kalae.

After Kalae, the remaining families on the wa'a kaulua (double-hull vessel) followed in line by requesting to get off as they came to a place in the Hawaiian Islands that attracted them. The Chief sailed north to drop the Hilo family at the town of Hilo. He took kahuna nui (powerful priest) Mo'okini up along the North-western part of the island to Kawaihae where the famous Mo'okini Heiau was eventually built after his popular priest.

From north Kohala, Hawai'i, Chief Mo'ikeha could dearly see the beauty of Haleakala which enticed him to set sail and island hop from Kawaihae onto the deep rough channel of 'Alenuihaha to Hana, Maui. There, the Hana family asked and were granted permission to reside at Hana. After, he sailed around the Kaupo coastline until he arrived at Honua'ula.

The Honua'ula family was granted permission to take up residence there. Still to this day Maui is the home for Honua'ula's descendants. The rest of the voyagers along with the Chief sailed on to Lahaina, then Moloka 'i, O'ahu and eventually Kaua 'i where he decided to take up permanent residency.

Era 4: `Ohana A.D. 1400 to 1600

The fourth period dates from A.D. 1400 through 1600. Voyaging between Hawai'i and Tahiti ended. The external influences of the migrating Polynesian chiefs along with internal developments within the culture resulted in sophisticated innovations in cultivation, irrigation, aquaculture, and fishing. These innovations were manifested in the construction of major fishponds, irrigation systems, and field cultivation systems. Such advances resulted in the production of a food surplus which sustained the developing stratification of Hawaiian society into three basic classes, ali'i (the chiefs), kahuna (the priests), and maka'ainana (the commoners). Oral traditions relate stories of warring chiefs, battles, and conquest resulting in the emergence

of the great ruling chiefs who controlled entire islands, rather than portions of islands. These ruling chiefs organized great public works projects which are still evident today. For example, 'Umi-A-Liloa constructed taro terraces, irrigation systems, and heiau throughout Hawai'i island, including the Pu'uhonua at Kealakekua. King Pi'ilani on the other hand was inspired to construct the King's Highway that passed through Honua'ula as it encircled the entire island of Maui.

Although the common people provided food, bark cloth, and household implements to the chiefs, Hawaiian society remained predominantly a subsistence agricultural economy. There is no evidence of a money system or commodity production. A system of barter of essential goods between fishermen, mountain dwellers, and taro cultivators existed within the framework of the extended family unit called 'ohana. In general, this exchange within the 'ohana functioned primarily to facilitate the sharing of what had been gathered or produced in different parts of the *ahupua*`a.

Within the 'ohana unit there was constant sharing and exchange of foods, utilitarian articles, and services. It was not an organized barter system but a voluntary (sometimes obligatory) giving. 'Ohana living inland raised taro, bananas, wauke (for tapa, or bark cloth making) and *olona* (for its fiber). The inlanders had need of gourds, coconuts and marine foods; they would take a gift to some 'ohana living near the shore and in return would receive fish or whatever was needed. When the fishermen needed poi or 'awa they took fish, squid or lobster upland to a household known to have taro, and would return with his kalo (taro) or pa'i'ai (hard poi, the steamed and pounded taro corm).... In other words, it was the 'ohana that constituted the community around which the economy was based.

Cultivation of taro and fishing were the centerpieces of the material culture. The system of irrigation, fishing and aquaculture was highly developed and produced a surplus that sustained a relatively developed and unified social structure that was embraced throughout the whole archipelago. All the basic necessities came from plants. Even fishing relied on plants; the canoe was made from a hardwood tree; the net was woven out of olona or some other vine; spears were carved out of a hardwood tree; ropes were woven from the coconut husk or a vine; the sails were usually made of lauhala (pandanus leaves). Hawaiians could not have survived without plants and Hawaiians were expert planters and cultivators.

Era 5: Chiefly Rule of the ahupua`a - A.D. 1600 to 1700

In the fifth period, during the century preceding the opening of Hawai'i to European contact in 1778, the Hawaiian economy expanded to support a population between 400,000 and 800,000 people. The social system consisted of the 'ohana who lived and worked upon communally held portions of land called *'iii* within the *ahupua'a* natural resource system. These families- the building blocks of the Hawaiian social system--were ruled over by the stewards of the land, the chiefs along with their retainers and priests. The history books are filled with tales of battles among the chiefs from all islands.

The earliest war between the island of Maui and the island of Hawai'i is attributed to Hua'akapuaimanaku, high chief of Maui, proba bly a descendent of the southerner Hua family from which Paumakaua and Haho came. Hua'akapuaimanaku resided at Hana. He built a heiau at Honua'ula. After his successful war on Hawai'i, he returned and built the Kuawalu heiau.

Kiha-Pi'ilani who reigned in the last half of the 16th century connected the entire island with a network of trails to aide his people in their travels and gave the king quick access to all parts of his kingdom. Even today, the original trails still exists from Keone'oi'o to Nu'u. Branching trails extended from the Pi'ilani trail in the Honua'ula area, Keawaka pu to Nu'u, up to Pu'u Ninole and Pu'u Palani, through Kanaio and up through Pu'u Pane. A trail name Kekua-waha'ula derives its meaning from Pele Smiting Red Mouth. She smites people who speak evil from her listening "blow hole" in the waiting hill Pu'uokali in the Keokea *'iii* (land division) in Honua'ula. Near the church in Kanaio, the trail entered the area known as Ma'ahi and into the forest of Auwahi where such plants as the *'akalea* grew. The old trail is located *mauka* of the government road of Kahikinui. Two trails crossed from Kanaio to Keone'o'io. The upper, or *mauka* one, was through Pu'u Pane down towards Luala'ilua hills and across to Kaupo. The *makai* trail went along the sea connecting the coastal villages.

Honua'ula was the residence of Queen Kalola, a daughter of high chief Kekaulike who ruled Maui till 1736. She was the last ali'i to pronounce the kapu (taboo) of the Burning Sun. Only the Maui chiefs had this Kapu which was Maui in the Pathway of the Sun.

In Honua'ula, high chief Kahekili gave permission to a chief named Ku-Keawe to run pigs in the upland. This chief abused his power and was killed with his body placed propped up facing the sea as an example to others who might consider abusing their powers.

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Even during this period of chiefly rule, land in Hawai'i was still not privately owned. The chiefly class which provided stewardship over the land divided and re- divided control over the districts of the islands among themselves through war and succession. A single chief could control a major section of an island, a whole island or several islands depending upon his military power. Up until the time of Kamehameha I, however, no one chief was ever paramount over all the islands.

During the time of Captain Cook's first visit, King Kalaniopu'u and uncle of Kamehameha the Great ruled Hawai'i island and King Kahekili of the Valley Isle controlled Maui as well as Moloka'i, Lana'i, Kaho'olawe, Kaua'i and Ni'ihau. The chief divided his landholdings among lesser ranking chiefs who were called *konohiki*. The *konohiki* functioned as supervisors on behalf of the chief over the people that lived on the lands and cultivated them. The tenure of a *konohiki* was dependent upon his benefactor, the chief. *Konohiki* were often related to the chief and were allocated land in recognition of loyal or outstanding service to him. However, unlike elsewhere in Polynesia, the *konohiki* were rarely related to the *maka'ainana* or commoners on the land under his supervision. Thus, the *konohiki* represented the collective interest of the *ali'i* class over the *maka'ainana* as well as the individual interest of his patron chief.

The lands allocated to the *konohiki* were called *ahupua'a*. *Ahupua'a* boundaries coincided with the geographic features of a valley. They usually ran from the mountain to the ocean, were watered by a stream, and were bounded on both sides by mountain ridges. It afforded the *'ohana* who lived in the *ahupua'a* access to the basic necessities of life-- marine foods from ocean reefs and streams, low-lying wetlands for taro, fresh water, timber, and medicinal plants from the forest. The use rights of the *konohiki* included fishing rights over shoreline fishponds and reefs.

The *konohiki* supervised all productive communal labor within the *ahupua'a* month- to-month and season-to-season. He collected the annual tribute and determined if it was sufficient in relation to the productivity of the land. He regulated the use of land and ocean resources, administering the *kanawai* (law) applying to the use of irrigated water as well as to fishing rights in the ocean. The *konohiki* was responsible for organizing communal labor for public works projects such as roads, fishponds, and irrigation systems.

The *ahupua'a* of the *konohiki* was further divided into strips of land called '*iii* which were allocated to the *maka'ainana* (commoner Ha waiians). These land grants were given to specific extended family units of *maka'ainana* called '*ohana*. The '*iii* either extended continuously from the mountain to the ocean or was comprised of separate plots of land located in each of the distinct

resource zones of the *ahupua'a*. In this way an *'ohana* was provided access to all of the resources necessary for survival (Handy, Handy, Handy & Pukui 1972:49).

Western Contact and the Ensuing Historic Period

Early western contact on Maui include Cook in 1779, LaPerouse in 1786, and Vancouver in 1793. From first contact to the inception of commercial activities took place over a short period of time. Portions of the island transitioned rapidly from a traditional subsistence economy to providing supplies for ships, supporting whaling, and large scale agriculture on a global commercial scale. Cattle introduced to Hawaii Island by Vancouver, found their way to Maui by the late 1700s or early 1800s proliferated with Kamehameha's kapu. that by 1845 marauding herds of wild cattle were wreaking havoc over the countryside especially on homesteads and farms. Many Hawaiian families were driven from their homes and properties, never to be able to reclaim those lands. Many such occurrences took place in Honua`ula.

By 1795, Maui was a part of the newly established Kingdom of Hawaii. The new politics and foreign influences brought gread changes to traditional demographics, religion, and land use. Christianity was introduced by Protestant missionaries which eventually led to the abolishment of traditional religious practices. On Maui Lahaina became the focus of political and commercial power serving as the Kingdom's capitol and residence of Kamehameha III from A.D. 1836 to 1844 (Kamakau 1961). Whaling, the trading of goods, sandalwood, and the cultivation of introduced crops. such as Irish potatoes became mainstays of the local economy. Disease epidemics decimated the native Hawaiian population. The decline in the native population drove the government and commercial entities to import labor from abroad. Thus, an influx of foreign laborers took place from the mid-1800 to the early 1900s. The Hawaiian monarchy was overthrown and the islands were annexed to the United States.

Cattle ranching, sugar cane and pineapple plantations, grew to drive the economic engine of first the Kingdom followed by the Territory of Hawaii.

Post-WWII Modern Era

Following the end of WWII, the growth of tourism as another source of economy was becoming realized. Modern hotel and resort development starting in the late 1960s and 1970s was flourishing on all of the major islands. Population growth also drove the development of new residential subdivisions and more recently, luxury homes and beach estates.

HONUA`ULA DISTRICT

The Honua`ula District was one of twelve ancient *moku* or districts of Maui Island (Fig. 4). In the years following the Great Mahele in 1848, various configurations of these districts were implemented and revised. In 1901 and 1932, the current district divisions with Honua`ula subsumed into Makawao was established.

The traditional Honua`ula District, located between Kula to the north and Kahikinui to the east and south, included the following 18 known *ahupua`a* from north to east; Paeahu, Palauea, Keauhou, Kalihi, Waipao, Papa`anui, **Ka`eo**, **Maluaka**, Mo`oiki, Mo`oloa, Mo`omuku, Onau, Kanahena, Kualapa, Kalihi, Papaka-kai, Kaunuahane, Kalo`i, and Kanaio. Honua`ula has 18.5 miles of coastline and at Papa`anui *ahupua`a* reaches the summit of Haleakala.

Handy and Handy describes the Honuaula region thus:

"On the south coast of East Maui, from Kula to `Ulupalakua, a consistently dry and lavastrewn country, Makena and Ke`oneo`io were notable for good fishing; this brought many people to live by the shore and inland. There were some patches of upland taro, not irrigated; but this was a notable area for sweet potato, which, combined with the fishing, must have supported a sizable population although it cannot be counted as one of the chief centers (1972:272)."

Human settlement of the Honua`ula region dates back to pre-historic times and continues today.

The following pertinent information is noted in Sites of Maui (Sterling 1998), Hawaiian Planter (Handy

1940), and Native Planters of Old Hawaii (Handy & Handy 1972).

"In Honuaula, as in Kaupo and Kahikinui, the forest zone was much lower and rain more abundant before the introduction of cattle. The usual forest-zone plants were cultivated in the lower upland above the inhabited area (Handy 1940:13).

Makena is today a small community of native fishermen who from time to time cultivate small patches of potatoes when rain favors them. Formerly, before deforestation of the uplands, it is said that there was ample rain in favorable season for planting the sweet potato, which was the staple here. A large population must have lived at Makena in ancient times for it is an excellent fishing locality, flanked by an extensive area along shore and inland that was formerly very good for sweet potato planting and even now is fairly good, despite frequent droughts.

Between Makena and the lava-covered terrain of Keoneoio (another famous fishing locality) the coastal region includes the small *ahupua*`a of Onau, Moomuku, Mooloa, Mooiki, Maluaka, Kaeo. According to an old *Kamaaina*, these *ahupua*`a had in former times a continuous population of fisher folk who cultivated potatoes and exchanged their





Figure 4. Two Maps Showing Honua`ula *moku* and Two *ahupua`a* (from Sterling 1998:2 & 214)

fish for taro, bananas, and sweet potatoes grown by the upland residents of the Ulupalakua section. A few Hawaiians still live here. One living near Puu Olai has a sizable sweet potato patch in the dusty soil near the shore; another raises fine potatoes in a low flatland of white sand near the abandoned schoolhouse of Makena (Handy 1940:159)."

Sterling names the following ten fishing grounds for Honua`ula and 8-10 are closest to the Maluaka Beach project area (1998:215-216):

- 1. Pahua is first and is located at Kanaio.
- 2. Hiu is another fishing ground.
- 3. Keahua is another.
- 4. Kalawa is another fishing ground.
- 5. Pohaku-ula is another fishing ground.
- 6. Kiele is another, it is situated at Lualailua.
- 7. Papuaa is another fishing ground. In Kahikinui.
- 8. Koa-hau is another. When the hill of Keoneoio appears above Puu-olai that is its upper landmark.
- 9. Na-ia-a-Kamahalu is another one. When Hoaka, which is in the upland of Kahoolawe on the western side appear to be in line with the cape of Ke-ala-i-kahiki that is the upper land mark. When the hill of Keoneoio appears to be in line of the seaward side of Puu-olai, that is the lower landmark.
- 10. Na-ia-a-Kamalii is anther one. When the cave on Makena appears to be close to the point of Paopao at Puu-olai, that is the upper landmark. The cave at Pali ku in Keoneoio is the other landmark. When it appears between the two stones at Mokuha and Kanahena, that is the lower landmark.

Sterling also lists two fishponds, a fishing shrine or *ko`a*, and Pohakunahaha heiau in coastal Makena, in Ka`eo and Keauhou *ahupua`a* (1998:231).

Fishing and ocean gathering occurred along the coastal areas throughout the region (from Makena to Kaupo). The techniques used to catch fish differed according to the particular locality. For example, fish traps were found in Makena and Kanahena where *moi* and *weke* were caught.

The Honua'ula shoreline has abundant marine life that still serves as a source of sustenance for many people. The fresh water seeping into the ocean at the shoreline attracts a large array of sea life. Both subsistence and recreational fishing and diving are practiced in the coastal area of Honua`ula *moku*.

RESULTS OF CURRENT OBSERVATIONS

Both recreational and subsistence fishing is conducted along the shoreline in the Honua`ula region together with sport and recreational diving.

Attempts were made to interview some fishermen for this study, but none agreed to be interviewed for oral testimony. The majority of the fishing takes place from the rocky shoreline area and during the current observation period, no individuals were seen fishing from Maluaka Beach during the day. Some night fishing does take place, but infrequently. During winter and spring months, the high waves and rough water hinders shore fishing.

Observations made by the author follows below:

1) snorkeling in the central portions of the embayment near the anchoring locality, often a green turtle is observed. Also, *nenue* or rudder fish are present in this locality.

2) Along the rocky point at the left edge of the bay is populated with 10 - 20 green turtles. They can be regularly observed.

3) The exposed bedrock fronting the beach appears to be a habitat for the leopard cowrie, a mollusk favored as food,

4) *limu kohu, limu pepe*, and *kala limu* seldom seen in Makena area. Limu kala, being more invasive, would be the most likely to be found in area.

5) <u>Uhu</u>, *omilu*, *papio*, *and mo*i used to be present during certain tides near the shore, but not so frequent as it was in the 1970s and 1980s.

6) No impact to coral from either the anchor or chain was observed. The anchorage is in a wholly sandy area.

7) When Kai Kanani II boards passengers, it stays afloat in shallow water and does not touch the bottom or the shore unless a big surge occurs. Also, the time is limited and no fuel is loaded while at Maluaka Beach.

8) During whale watching season, a volunteer naturalist docent is aboard the catamaran talking about whales and the marine environment. These volunteers are required to undergo NOAA-designed training and ensure accuracy and consistency with the subject matter as well as the traditional mo`olelo.

9) During planned ocean events, such as swims and canoe regattas, arrangements are made in advance so the catamaran and event schedules do not conflict.

10) Current observations indicate that the long term activity of passenger loading and off-loading have not had any negative impacts to the natural environment nor hinder or adversely affect any traditional cultural practices and the continuation of this activity will also not pose any such negative impacts.

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APPENDIX C: BEACH ACTIVITY MEASUREMENT

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(private, MB&GR)



Base map imagery, BING, Sub-division Map E. Dashiell, AICP, 10/29/15

Maluaka Beach Users in Landing Area Vicinity - July 23 through August 2				
(On beach and at shoreline)				
Date	Total Beach Users	MB&GR Beach Users	Other Users	Photo
23 Jul Express	15	15	0	Ν
23 Jul Deluxe	17	17	0	Y
24 Jul Express	13	13	0	Y
24 Jul Deluxe	30	29	1	Y
25 Jul Express	10	10	0	Y
25 Jul Deluxe	33	33	0	Y
26 Jul Express	11	11	0	Y
26 Jul Deluxe	18	18	0	Y
27 Jul Express	11	11	0	Y
27 Jul Deluxe	21	6	3	Y
28 Jul Express	11	11	0	N
28 Jul Deluxe	15	15	0	Y
29 Jul Express	5	5	0	Y
29 Jul Deluxe	22	22	0	Y
30 Jul Express	6	6	0	Y
30 Jul Deluxe	11	11	0	Y
31 Jul Express	10	10	0	Ν
31 Jul Deluxe	23	23	0	Y
1 Aug Express	12	12	0	Y
1 Aug Deluxe	4	4	0	Y
2 Aug Express	29	29	0	Y
2 Aug Deluxe	13	13	0	Y
Notes:				
1) These are the number of beach users in the "landing area" itself,				
not the entire Maluaka Beach. See map.				
2) These counts were made during a landing or a departure, which is usually				
between a 7 and 10 minute period.				
3) Refer to "Summer" series of photos, by date, to see an image of the landing				
area during the 7 to 10 minute period.				<u> </u>



1 Entrance from public park to south end of Maluaka Beach. 8/26/15



2North end of Maluaka Beach, facing south. 8/26/15, 9:12 AM



3South end of Maluaka Beach, facing north. 8/26/15, 9:20 AM



4Deluxe disembarking. 7/23/15



5Deluxe at conclusion. 7/23/15



6Express disembarking. 7/24/15



7Deluxe boarding. 7/24/15



8Deluxe approaching, note lookout on left (port) bow. 7/25/15



9Deluxe approaching, note lookout on (starboard) right bow. 7/25/15



10Deluxe approaching, closer to beach. 7/25/15



11Deluxe at conclusion. 7/25/15



12Deluxe boarding. 7/26/15



13Deluxe disembarking. 7/26/15



14Deluxe disembarking. 7/27/15



15Deluxe approaching landing. 7/28/15



16Deluxe departing. 7/28/15



17Deluxe approaching landing. 7/29/15



18Deluxe boarding. 7/29/15



19Deluxe disembarking. 7/29/15



20Deluxe boarding. 7/30/15



21Deluxe disembarking. 7/30/15



22Deluxe approaching landing. Note kayak to left of image. 7/31/15



23Deluxe approaching. Note kayak. 7/31/15



24Deluxe boarding. 7/31/15



25Deluxe disembarking. 7/31/15


26Express approaching. 8/1/15



27Express disembarking. 8/1/15



28Deluxe boarding. 8/2/15



29Deluxe disembarking. 8/2/15



1 Express approaching landing. 5/15/55. Note semi-submerged rock obstacle on right. This location is most frequently used for landings.



2 Deluxe disembarking. 5/15/15



3 Deluxe approaching. 5/15/15



4 Deluxe at conclusion. 5/15/15



5 Deluxe departing. 5/16/15



6 Deluxe approaching. 5/16/15



7 Express approaching. 5/17/15



8 Deluxe boarding, 5/17/15



9 Deluxe disembarking. 5/17/15



10 Express approaching. 5/18/15



11 Deluxe boarding. 5/18/15



12 Deluxe disembarking. 5/18, 1:09.



13 Express approaching. 5/19/15



14 Deluxe boarding. 5/19/15



15 Deluxe approaching. 5/19/15



16 Deluxe departing. 5/19/15



17 Express approaching. 5/20/15



18 Express disembarking. 5/20/15



19 Deluxe disembarking. 5/20/15



20 Deluxe approaching.



21 Deluxe boarding, 5/21/15. Note presence of small craft in distance on left and paddle board on right.



22 Deluxe approaching. 5/21/15



23 Deluxe at conclusion, about to depart. 5/21/15



24 Deluxe boarding. 5/22/15



25 Deluxe approaching. 5/22/15



26 Deluxe disembarking. 5/22/15



27 Express disembarking. 5/25/15



28 Deluxe boarding. 5/25/15



29 Deluxe approaching. 5/25/15



30 Deluxe disembarking. 5/25/15



31 Deluxe at conclusion. 5/25/15



³² Express approaching. 5/26/15.



33 Express disembarking. 5/26/15



34 Deluxe disembarking. 5/26/15



35 Express approaching. 5/27/15



36 Express disembarking. 5/27/15



37 Deluxe disembarking. 5/27/30



38 Deluxe at conclusion. 5/27/15



39 Express disembarking. 5/28/15



40 Deluxe departing. 5/28/15



41 Deluxe approaching. 5/28/15



42 Deluxe departing. 5/28/15



43 Express disembarking. 5/30/15



44 Deluxe departing. 5/30/15

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APPENDIX D: REGULATORY APPROVALS

CONSERVATION DISTRICT USE PERMIT, BOARD OF LAND AND NATURAL RESOURCES COMMERCIAL AND MOORING PERMITS, DIVISION OF BOATING AND OCEAN RECREATION CERTIFICATE OF INSPECTION, U.S. COAST GUARD MOORING PERMIT (NATIONWIDE PERMIT VERIFICATION), U.S. ARMY CORPS OF ENGINEERS (This page intentionally left blank)



, **1**.

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES LAND DIVISION

POST OFFICE BOX 621 HONOLULU, HAWAII 96809

March 13, 2013

Mr. Sidney J. Akiona Makena Boat Partners 34 Wailea Gateway Place Kihei, HI 96753

Dear Mr. Akiona,

SUBJECT: Disposition of Public Lands for Commercial Beach Landings of the Kai Kanani; Maluaka, Honuaula, Maui; Seaward of TMK (2) 2-1-006:059

We understand a Conservation District Use Permit (CDUP), dated December 28, 1988, was issued to Makena Boat Partners for three moorings located seaward of TMK (2) 2-1-006:059, fronting the Makena Beach and Golf Resort (formerly the Maui Prince Hotel). It has recently come to our attention that Condition No. 3 of the attached CDUP states, "[s]ince this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State Lands".

To date, there has been no disposition, and the aforementioned condition remains unfulfilled. In order to begin the process to resolve issues related to proper disposition and use of government lands, please complete the attached Application for Use of Government Lands and return to us as soon as possible. Furthermore please be advised that disposition of government lands for landing and mooring purposes via an easement or revocable permit is considered a "trigger" under Chapter 343, Hawaii Revised Statutes, requiring compliance by the applicant. If you have any questions, please contact District Land Agent, Daniel Ornellas, at the Maui District Land Office at (808) 984-8103.

Sincerely

Russell Y. Tsuji Administrator

Enc. CC:

Maui DOBOR Maui DOCARE Maui DAR OCCL Central / District Files Mr. Dennis Niles



ORMA STICKER #:

STATE OF HAWAII DEPT. OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION SMALL BOAT HARBORS

COMMERCIAL OPERATING AREA USE PERMIT

Date: <u>1/30/10</u> Account #: <u>9283</u>

Permit #:OR030997 RENEWAL

This permit authorizes <u>MAKENA BOAT PARTNERS (A Partnership)</u> (hereinafter referred to as the Permittee) to conduct (<u>Loading & Offloading Passengers at the Public</u> <u>Beach Fronting; the Makena Beach Resort; (Maui Prince Hotel) as Stipulated in the</u> <u>CDUA issued by the Board of Land & Natural Resources on 08/14/1987</u> on the ocean waters of the (See D.L.N.R Letter Dated 12/28/1988) State of Hawaii located on the Island of <u>Maui</u> in the "South Maui Ocean Recreation Management Area"; to commence on December 01, 2016 and expire on <u>November 30, 2017</u>; unless terminated for cause.

Copies of exhibits are submitted for review and the record:

- [] Department of Land & Natural Resources Permit No. OR030997
- [] Vessel Document (if applicable)

[] General Excise License

[] Vessel Certification (if applicable)

[] Certificate of business liability insurance

[] Partnership, Joint Venture, Corporate Exhibits, as applicable.

[] Land Board CDUA / Other Documentation

[] Certificate of Insurance Covering Thrill Craft; (Jet Skis, Wave Runner, ect.)

- The Permittee agrees to abide by all applicable Federal & State Laws and all Boating & Shore Water Rules; promulgated by the Department of Land & Natural Resources (hereinafter referred to as the Department). Any violation of the provisions aforementioned laws and/or rules, in addition to any fines and/or penalties a court of law may cause this permit to be terminated by the Department by written order of its representative, and the vessel or operation shall immediately cease activity.
- 2. The Permittee agrees to operate the vessel or equipment described in this permit in accordance with applicable rules and regulations regarding passenger-carrying and commercial vessels.
- 3. When applicable, the Permittee agrees to present proof; upon request of the Coast Guard Certification for the vessel(s) described to the Department; its officers and/or agents.
- The fee for this commercial operating area use permit will be the fee of <u>\$200.00</u> per month or <u>3%</u> of the vessel's and/or operations gross receipts; whichever is the greater.
- 5. The fee stated above is due and payable in advance of the first day of the month in the Division of Boating & Ocean Recreation office. Not later than (30) thirty days following the end of the month, the Permittee will submit to the Division of Boating & Ocean Recreation a report of gross receipts for the month plus payment of any additional amount required by the percentage of the gross receipts specified in paragraph (4). "UNLESS PAID ON TIME; THIS PERMIT WILL AUTOMATICALLY EXPIRE".

- 6. During scheduled events, as evidence by a marine event permit authorized by the State (or) U.S Coast Guard, vessel(s) or operations under commercial operating area use permits may be required to adjust their schedules for use of an ocean recreation management area, or temporarily cease activity as directed by the Department.
- 7. The Permittee agrees to notify the Department in writing of any changes concerning ownership, address, vessel inventory (or) operator(s) of a vessel(s) within (7) seven days of the date of change. Failure to promptly notify the Department of any changes may cause this permit to be terminated by the Department.
- 8. The Permittee shall at all times use due care for public safety and shall defend, hold harmless and indemnify the State of Hawaii, its officers, agents and employees from and against all claims or demands, including claims for property damage, personal injury or death arising out of or incident to the operation of said vessel or operation.
- 9. The permit charges are for the privilege of operating a commercial vessel or operation in the designated ocean recreation management area in the manner stated above (or) within the ocean recreation management rules. Any other use of harbor / ramp facilities (or) services must be requested and approved separately.
- 10. The duration of this commercial operating area use permit shall not exceed the period of (1) one year from the date of commencement.
- 11. This permit shall not exceed (1) one year from <u>12/01/2016</u> and unless it is renewed before the expiration date, the permit shall expire on <u>11/30/2017</u>. Before renewal, harbor authorities must sight the permittee's fees and charges due paid in full.

MAKENA BOAT PARTNERS

MAKENA BOAT PARTNERS Sidney J. AKIONA – it's General Partner

34 WAILEA GATEWAY PLACE . ADDRESS		
KIHEI	HI	96753 .
CITY	STATE	ZIPCODE
808-879-7218		808-280-8126.
BUS. PHONE		CELLPHONE
APPROVED:		
DEPARTMENT OF LAND) & NATURAL G & OCEAN RE	RESOURCES

DATED: _____ PAYMENT RECEIVED \$15.00 RECEIPT NO.: BARS

Account #: 9283

BY:

S. Masuda

LNR 3-012 (DBOR 7/92, rev 01/2015)

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION

COMMERCIAL USE PERMIT

Date:	Permit No.: <u>CR030997</u>	Account No.:	00009283
This permit authorizes	MAKENA BOAT PARTNERS	(A Partnership), (he	ereinafter referred to as the
Permittee) to conduct (desc	cribe commercial activities) <u>snorke</u>	ling, scuba and whale watching	g tours on the ocean waters of the
State of Hawaii located on	the island of <u>Maui</u>	, in the <u>coastal off-sh</u>	ore ocean waters of the
Ocean recreation managem	ient area or non-designated manager	nent area, to commence on <u></u>	December 1, 2016 and
expires on <u>Novem</u>	uber 30, 2017	unless terminated for c	ause.
Copies of the following ex	hibits are submitted for review and t	the record (if applicable):	

- [x] Vessel Documentation and/or Vessel Registration
- [x] Vessel Certificate of Inspection
- [x] General Excise Tax License

- [x] Certificate of commercial insurance policy naming the State of Hawaii as an additional insured, containing sufficient coverage limits and meeting all other requirements as outlined in Hawaii Administrative Rules § 13-231-65
- [x] Certificate of Compliance from Hawaii Compliance Express OR a copy of each of the following:
 - o Certificate of Compliance for the Hawaii Department of Labor
 - o Certificate of Compliance from the Hawaii Department of Taxation
 - o Certificate of Good Standing from the Hawaii Department of Commerce and Consumer Affairs
 - o Certificate of Compliance from the Internal Revenue Service of the United States of America
- [x] Partnership, Joint Venture, Corporate Exhibits
- [x] PUC for vehicle(s), if applicable
- [x] Certificate of Documentation or Certificate of Inspection for any vessels used in your commercial operation, if applicable.
- [x] Any relevant permits or letters of permission allowing you to access ocean waters from the shoreline, if applicable. Please note: if you cross county, state or private land, and/or conduct commercial activities therein, you may be required to obtain a permit from the landowner. Issuance of a commercial use permit from DOBOR does not grant you transit rights to access the shoreline or conduct commercial activities on shore.
- 1. The Permittee agrees to abide by all applicable Federal, State, and County laws and all boating and shore water rules promulgated by the Department of Land and Natural Resources (referred to as the Department). In addition to any fines or penalties a court of law may impose, any violation(s) of the provisions of the aforementioned laws or rules may cause this permit to be terminated by the Department of Land and Natural Resources Division of Boating and Ocean Recreation (the "Department) by written order of its Representative, and the vessel or operation shall immediately cease commercial activity.
- The Permittee agrees to operate the vessel or equipment described in this permit in accordance with all applicable rules and regulations regarding passenger-carrying capacity and commercial vessel activities.
- When applicable, the Permittee agrees to present proof, upon request, of Coast Guard certification for the vessel(s) registered with the Department.
- 4. The fee for this commercial use permit will be as follows:

 Commercial permittees operating from state land: The cost for a commercial use permit shall be \$200.00 per month or 3% of your gross receipts, whichever is greater.

e : 2

- b. Commercial permittees operating from a private or county facility or land and said operation does not involve the use of state fast land or land within a shoreline area: \$200.00 per month due and payable by the first day of each month.
- c. Commercial permittees possessing a harbor commercial use permit and a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, who are paying 3 per cent of gross receipts per month under the harbor commercial use permit, shall not be required to pay an additional 3 per cent of gross receipts per month under the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, who are paying 3 per cent of gross receipts per month under the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, provided that the payment made to the department is based on the total of gross receipts acquired under the harbor commercial use permit and the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate.

The foregoing fees are subject to change based upon amendments made to Hawaii Revised Statutes and/or Hawaii Administrative Rules.

- 5. The fees stated above are due and payable to DOBOR in advance of the first day of the month. Not later than 30 days following the end of the month, the Permittee shall submit to the Division a report of gross receipts for the month plus payment of any additional amount required by the percentage of the gross receipts specified in paragraph 4. Failure to submit the report of gross receipts as required shall be cause for termination of the commercial use permit.
- During scheduled events pursuant to a marine event permit or other official permission and authorized by the State or U.S. Coast Guard, vessel(s) or operations issued commercial use permits may be required to adjust their schedules or temporarily cease activity as directed by the Department.
- 7. The Permittee agrees to notify the Department in writing of any changes concerning ownership, address, vessel inventory or operator(s) of a vessel(s) within 7 days of the date of change. Failure to promptly notify the Department of any changes may cause this permit to be terminated by the Department.
- 8. The Permittee shall at all time use due care for public safety and shall defend, hold harmless and indemnify the State of Hawaii, its officers, agents and employees from and against all claims or demands, including claims for property damage, personal injury or death arising out of or incident to the operation of said vessel or operation.
- 9. The permit charges are for the privilege of operating a commercial vessel or operation in state navigable waters in the manner stated above. Any other use of harbor/ramp facilities or services must be requested and approved separately.
- 10. The duration of this commercial operating area use permit shall not exceed the period of 1 year from the date of commencement.
- 11. The Department may immediately revoke a commercial use permit without a hearing for activity that endangers or may endanger the health or safety of passengers or the public, and may suspend or revoke a commercial use permit for violation of any rules of the Department, if the activity or offense is not corrected following seventy-two (72) hours notice by the Department of the violation. The permit holder shall have ten (10) days from receipt of the notice of suspension or revocation to request in writing an administrative hearing. The administrative hearing is solely for the purpose of allowing the permit holder to contest the basis for suspension or revocation of the permit.
- 12. This commercial use permit shall be kept in the immediate possession of the Permittee or its agent(s), or at a place of safekeeping in the immediate vicinity of the permitted activity at all times when operating under this commercial use permit and Permittee or its agent(s) shall display the same upon the demand of a Federal, State, or County Enforcement Officer, or representative of the Department.
- 13. <u>Gross Receipts Defined</u>: Gross receipts shall include all receipts, whether by coin or currency, on account, by check or credit card, derived or received by the Permittee as a result of its operation herein granted and shall include the sales prices received or billed by the Permittee from the sale or rental of its equipment/or services of <u>snorkeling, scuba and whale</u> watching tours. The Permittee shall not be credited with, nor allowed to have any reduction in the amount of the gross

receipts, as hereinabove defined, which results from any arrangements for illegal rebates or kickbacks or hidden credits given or allowed to customers.

- Business Practices and Records: In connection with the obligations of the Permittee, the Permittee hereby agrees to:
 - a. Prepare and keep for a period of not less than three (3) years following the end of each permit year adequate records which shall show daily receipts from all sales and other transactions by the Permittee. The Permittee shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether for cash or credit. The Permittee shall issue to each customer a receipt or sales slip for each transaction, and must be recorded on serially-numbered receipts or sales slips. The Permittee further agrees to keep in storage for at least one (1) year following the termination, suspension, or revocation of the permit, all pertinent original sales records, serially-numbered sales slips and such other sales records, as would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of the Permittee's sales and gross receipts.
 - b. Submit to the Department on or before the 30th day of each and every month following each permit month (including the 30th day of the month following the end of the term) at the place fixed for payment of permit fees, a written statement using forms prescribed by the Chairperson of the Department of Land and Natural Resources to be certified as correct by the Permittee or by a person duly authorized by the Permittee to so certify showing in accurate detail, the amount of gross receipts for the preceding month and shall further submit to the Department on or before the 60th day following the end of each permit year at the place fixed for payment of fees, a written statement certified as correct by the Permittee or by a person duly authorized by the Permittee to so certify showing in accurate detail the amount of gross receipts during the preceding year duly verified by an independent Certified Public Accountant. The statements referred to herein shall be in such a form and style and contain such detail and breakdowns as the Department may require. Without any prejudice to any remedies herein provided for such default, if the Permittee shall fail to promptly furnish any such monthly report or Certified Public Accountants Annual Verification report, the Department may have such report prepared on the Permittee's behalf by an accountant to be selected by the Department, at the expense of the Permittee. The Permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the Permittee shall pay to the Department all expenses incurred by the Permittee in securing such reports. Furthermore, the Department may make assessments upon the Permittee by recourse to such procedures selected by the Department which would produce reasonable gross receipts expectation upon which percentage charges may be computed.

In the event that records have not been prepared and kept in accordance with the provisions set forth herein, the Department shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent (10%) of the applicable fee if the Permittee is paying fees based on percentage for the period or periods involved. Permittee shall grant unto the Department at all reasonable times access to all books, accounts, records and reports, including gross income tax reports, showing daily sales and at any reasonable times on twenty-four (24) hours notice will permit a complete audit to be made by the Department's Account or by a Certified Public Accountant of the Permittee's entire business affairs and records relating to the business authorized by this permit for the term of this permit.

The Permittee will cooperate fully in the making of any inspection, examination or audit. Should such audit by the Department's Accountant or by a Certified Public Accountant disclose that rental has been underpaid by two percent (2%) or more for any period under examination, the Department shall, in addition to the remedies provided in the above, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the Department's Accountant or by a Certified Public Account shall disclose that rent has been underpaid by five percent (5%) or more for the period under examination, the Department shall have the right, upon ten (10) days written notice to terminate this permit.

- 15. <u>Time of Payment</u>: The minimum monthly guaranteed fee required herein, shall be paid monthly, in advance, without notice, on the first day of each and every month of each and every year of the term hereof.
- 16. This permit does not grant any property rights or exclusive privileges.
- 17. The Department reserves the right to impose further restrictions.

18. <u>Restrictions:</u>

I AGREE TO THE TERMS, CONDITIONS AND CHARGES:

Vessel owner, if r	not Permittee			
Address	34 Wailea Gateway			
City/State/Zip	Kihei, HI 96753			
Business Phone_	808-879-7218	Email Address	sida@hawaii.rr.com	
Cellular Phone	808-280-8126	Fax Number		
Signed by (Autho	orized Representative)	Sorry Xle	him	
Print Name	Sidney J. AKIONA, It's	/ General Partner	Date Signed:	11-30-2016

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION

BY: S. Masuda

DATE:

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION

NORTH, SOUTH, AND WEST MAUI, OCEAN RECREATION MANAGEMENT AREA COMMERCIAL REGISTRATION APPLICATION

Business	Name: Makena Boat Partn	ers	Permit No	OR030997		
	INV	ENTORY OF VESSEL(S) and/or EC	UIPMENT			
Indicate if	(N)ew / (R)enewal / (D)eletion, and pay	appropriate fee				
to a time of	Description		R	eg/Doc No.		Registration
<u> </u>	Catamaran-Gold Coast	HIN# GCY64CDA707	1194	318	s_	3.50
2.		HINH	~		\$	
3.		HIN#			s _	
4.		HIN#			\$	
5.		HIN#	-		\$	
6.		HINH			\$	
7.	No. of the second s	HIN#			\$	
8.	an a	HIN#			\$	
9.		HIN#			\$	
10.		HIN#		****	\$ _	
11.		HIN#	-		\$ _	
12,		HIN#	-		\$ _	
13.		HIN#			5_	
14.		HIN#			\$ _	
15.	Management of the second s	HIN#			\$	
			A	Application Fee	\$	5.00
				Total Fee Due	5	8.50

The descripton listed above are correct to the best of my knowledge. I agree to comply with the Department's Administrative Rules. I agree to abide by all Federal and Statel laws, rules, and regulations that govern the use of Oahu's acean recreation management areas, vessels, equipment, and facilities including providing equipment registration application(s), upon demand by a police officer, lifeguard, or a representative of the department.

1

Signature of Officer of the Company	Title
Sidney J. AKIONA	11/30/110.
Print Name	Date
BUS Receipt Number	DOBOR USE Date <u>11/30/10</u> (LX APPROVE 1) DISAPPROVE Approved Signature <u>11/10000000000000000000000000000000000</u>

.
Affidavit of No Transfer 2016 - 2017 Permit Year

To Whom it May Concern:

I/we hereby certify that I/we are aware of the definition of "transfer" as it applies to my/our business and I/we are apprised of the business transfer fee required by law should a transfer of ten per cent or more of my/our business take place within the permit year. By signing this document I/we certify that no such transfer has occurred within the permit year.

Schuppl

Signature

Sidney J. AKIONA, it's General Partner Print Name and Title 11-30-2016

Date

MAKENA BOAT PARTNERS

Permittee Name

Hawaii Administrative Rules § 13-234-33 Business Transfer Fee:

(a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial permit sells or transfers ten per cent or more of the stock or interest in the firm, either as a single transaction or an aggregate of several transactions, to any person who is not a stockholder or owner of record on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee based on the passenger-carrying capacity of the vessel, and shall be as follows:

(1) Vessels used for bare boat (demise) and sailing charters carrying six or less passengers - \$ 2,500

(2) Vessels registered by the State or documented by the U. S. Coast Guard to carry six passengers or less, used for charter fishing or other commercial purpose - \$ 5,000

(3) Vessels certified by the U. S. Coast Guard to carry seven to twenty-five passengers - \$ 10,000

(4) Vessels certified by the U. S. Coast Guard to carry twenty-five to forty-nine passengers - \$ 15,000

(5) Vessels certified by the U. S. Coast Guard to carry fifty to seventy-four passengers - \$ 25,000

(6) Vessels certified by the U. S. Coast Guard to carry seventy-five to ninety-nine passengers - \$ 40,000

(7) Vessels certified by the U. S. Coast Guard to carry one hundred to one hundred forty nine passengers - \$ 75,000

(b) When less than one hundred per cent of the interest in the corporation is transferred, the business transfer fee shall be based upon a like percentage of the business transfer fee provided in subsection (a).

Hawaii Revised Statutes § 200-10 Definition of "Transfer":

"Transfer" includes any change in control, by whatever means, of any entity that owns or controls, directly or indirectly, a use permit.

DAVID IGE GOVERNOR OF HAWAII

Strate 4.





SUZANNE D. CASE INTERIM CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT

> KEKOA KALUHIWA FIRST DEPUTY

W. ROY HARDY ACTING EPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD ADMINISTRATOR DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION 101 Maalaea Boat Harbor Road

Wailuku, Hawaii 96793

Rules and Regulations

Permit #______0R030997

I agree to the following terms, conditions and charges:

- I agree to abide by all rules promulgated by the Department of Land and Natural Resources and conditions
 of this permit. Rules are available online at <u>http://hawaii.gov/dlnr/dbor/borrules.htm</u>.
- 2. The vessel will be moored at the location designated by the official representative of the Department of Land and Natural Resources and tied up in a manner approved by the representative.
- 3. The PERMITTEE will pay the STATE fees and charges in advance or before the first day of each month for the use of the berth and any additional facilities or services assigned or provided to the PERMITTEE by the STATE, in such sums as are prescribed by the HAWAII ADMINISTRATIVE RULES, SMALL BOAT HARBORS, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, in effect on the date of issuance of this permit, and in the future as prescribed by any amendments thereto. The fees in effect are as follows:

D Mooring	\$		
Electricity	\$		
Gear Locker	\$		
Gecurity Deposit	\$		
Other ORMA	\$	200.00	p
Other Equipment S	torage\$		
Monthly Payment	\$	200.00	

- 4. A mooring permit may be cancelled by a boat owner upon thirty (30) days written notification as prescribed in Section 13-231-9, and charges will be made in accordance with Section 13-234-2(d) of the Small Boat Harbor Rules. The Security Deposit will be applied to any outstanding balance. The remaining will be returned via mail within a reasonable time.
- 5. This mooring privilege may be terminated by the Department of Land and Natural Resources by written order of the said representative and the boat will be moved from the mooring at any time on order of the said representative should necessity arise. Failure to do so may result in the impoundment of the vessel.
- 6. This mooring permit and related use permits will AUTOMATICALLY EXPIRE if the vessel is absent from its assigned berth, mooring, and/or assigned offshore anchorage area for more than fourteen (14) days unless the holder of the permit applies for and receives permission from the Department to retain the use of the assigned berth and related permits upon the vessel's return (Sec. 13-231-11 of the Small Boat Harbors Rules)

- 7. The Department of Land and Natural Resources, its members, officers, agents and employees shall not be liable to me or any other person for damages to the boat or any other property or for injury to any person arising out of or incident to the mooring of said boat. And I hereby covenant and agree that I will indemnify and save harmless said Department, its members, officers, agents, and employees from any and all manner of actions, liability and claims arising out of or incident to said mooring; including acts incurred while attempting to save the vessel from sinking or preventing a pollution incident from occurring.
- 8. This mooring permit shall not exceed (1) year from <u>12/01/2016</u> (date) and the mooring privilege under this permit terminates on $\frac{11/30/2017}{}$ (date). A new mooring permit may be obtained within ninety (90) days prior to the termination date listed above only if all fees and charges due, per Hawaii Administrative Rules, have been paid and upon completion of a satisfactory vessel inspection. Failure to obtain a new mooring permit prior to the termination date listed above shall result in the vessel owner being charged the rate for vessels moored without a permit, and may result in the vessel being required to vacate the harbor, offshore mooring area, and/or ramp facility.
- 9. A new mooring permit may be obtained within ninety (90) days prior to the termination dated listed above only if all fees and charges due, per Hawaii Administrative Rules, have been paid and upon completion of a satisfactory vessel inspection and buoy run. Failure to obtain a new mooring permit prior to the termination date listed on the permit, shall result in the owner being charged the rate for vessels moored without a permit and a one-time payment of \$250.00 shall be paid as long as it is within 30 days from the date of the expiration. Failure to comply with the 30 day extension shall result in the vessels being required to vacate the harbor, offshore mooring area, and/or ramp facility.
- 10. The department retains the right to not issue a new permit after the termination date of this permit.
- 11. I shall obtain and continue to secure a Certificate of Insurance policy for General Liability insurance in the amount of \$500,000 and name the State of Hawaii as an additional insured, for as long as my permits is valid. Commercial Permittees shall refer t HAR-13-231-65 on minimum insurance requirements.

Vessel owners will be required to show proof of insurance when applying or reapplying for mooring permits. Acceptable coverage would include a minimum of \$500,000 in boat liability insurance (protection and indemnity) that names the State of Hawaii, Division of Boating and Ocean Recreation as additional insured.

ubrups have 11-30-201

Permittee Signature

1. N. 1.

Sidney J. AKIONA, It's General Partner

Printed Name of Permittee

Address 34 Wailea Gateway

City, State, Zip Kihei, HI 96753

and/or 808-879-7218 808-280-8126 Home Phone Work Phone

Approved by: S. Masuda

Department of Land and Natural Resources Division of Boating and Ocean Recreation



DAVID IGE GOVERNOR OF HAWAII





SUZANNE D. CASE INTERIM CHAIRPERSON ROARD OF LAND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT

> KEKOA KALUHIWA FIRST DEPUTY

W. ROY HARDY ACTING EPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD ADMINISTRATOR DIVISION OF BOATING AND OCEAN RECREATION

Permit #____

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION 101 Maalaea Boat Harbor Road

Wailuku, Hawaii 96793

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- 2. The vessel will be moored at the location designated by the official representative of the Department of Land and Natural Resources and tied up in a manner approved by the representative.
- 3. The PERMITTEE will pay the STATE fees and charges in advance or before the first day of each month for the use of the berth and any additional facilities or services assigned or provided to the PERMITTEE by the STATE, in such sums as are prescribed by the HAWAII ADMINISTRATIVE RULES, SMALL BOAT HARBORS, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, in effect on the date of issuance of this permit, and in the future as prescribed by any amendments thereto. The fees in effect are as follows:

Mooring	\$	95.36	pp
Electricity	\$		
Gear Locker	\$		
Gecurity Deposit	\$		
Other Equipment St	orage\$		
Other Equipment St	orage\$		
Monthly Payment	\$	95.36	

- 4. A mooring permit may be cancelled by a boat owner upon thirty (30) days written notification as prescribed in Section 13-231-9, and charges will be made in accordance with Section 13-234-2(d) of the Small Boat Harbor Rules. The Security Deposit will be applied to any outstanding balance. The remaining will be returned via mail within a reasonable time.
- 5. This mooring privilege may be terminated by the Department of Land and Natural Resources by written order of the said representative and the boat will be moved from the mooring at any time on order of the said representative should necessity arise. Failure to do so may result in the impoundment of the vessel.
- 6. This mooring permit and related use permits will AUTOMATICALLY EXPIRE if the vessel is absent from its assigned berth, mooring, and/or assigned offshore anchorage area for more than fourteen (14) days unless the holder of the permit applies for and receives permission from the Department to retain the use of the assigned berth and related permits upon the vessel's return (Sec. 13-231-11 of the Small Boat Harbors Rules)

- 7. The Department of Land and Natural Resources, its members, officers, agents and employees shall not be liable to me or any other person for damages to the boat or any other property or for injury to any person arising out of or incident to the mooring of said boat. And I hereby covenant and agree that I will indemnify and save harmless said Department, its members, officers, agents, and employees from any and all manner of actions, liability and claims arising out of or incident to said mooring; including acts incurred while attempting to save the vessel from sinking or preventing a pollution incident from occurring.
- 12/01/16 8. This mooring permit shall not exceed (1) year from _____ _ (date) and the mooring privilege under this permit terminates on $\frac{11/30/2017}{(date)}$. A new mooring permit may be obtained within ninety (90) days prior to the termination date listed above only if all fees and charges due, per Hawaii Administrative Rules, have been paid and upon completion of a satisfactory vessel inspection. Failure to obtain a new mooring permit prior to the termination date listed above shall result in the vessel owner being charged the rate for vessels moored without a permit, and may result in the vessel being required to vacate the harbor, offshore mooring area, and/or ramp facility.
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- 10. The department retains the right to not issue a new permit after the termination date of this permit.
- 11. I shall obtain and continue to secure a Certificate of Insurance policy for General Liability insurance in the amount of \$500,000 and name the State of Hawaii as an additional insured, for as long as my permits is valid. Commercial Permittees shall refer t HAR-13-231-65 on minimum insurance requirements.

Vessel owners will be required to show proof of insurance when applying or reapplying for mooring permits. Acceptable coverage would include a minimum of \$500,000 in boat liability insurance (protection and indemnity) that names the State of Hawaii, Division of Boating and Ocean Recreation as additional insured.

Salmer Lot Date

Permittee Signature

Sidney J. AKIONA, It's General Partner

Printed Name of Permittee

Address 34 Wailea Gateway Place

City, State, Zip Kihei, HI 96753

808-879-7218 808-280-8126 and/or Home Phone Work Phone Approved by: S. Masuda

Department of Land and Natural Resources Division of Boating and Ocean Recreation

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION

ADDENDUM TO MOORING REQUEST (OFFSHORE MOORING FACILITY)

Offshore Mooring #: ____Makena - O/S #01___

Location:	Makena	Vessel:	Kai Kana	ani II	Reg/Doc #:	1194318	
Length:	<u>64' 11"</u> Beam:	31' 0"	Draft: <u>7'</u>	00" Prop	ulsion:	Auxilary	
Latitude: <u>20 38' 901" N</u> Longitude: <u>156 26' 191" W</u>							
Tender Reg. No./ Doc Name: <u>N/A</u> Exp.: Length: Propulsion: <u>N/A</u>							
Insurance Company: <u>National Union Fire Ins., Co of Pittsburgh, PA (thru AIG)</u> Policy No.: 015918210							
Coverage Amount:\$1,000,000 Insurance Expiration:03/01/17							

I agree to the following terms and conditions:

- 1. The PERMITTEE SHALL be responsible for obtaining a permit for the installation of an offshore mooring from the Army Corps of Engineers. The PERMITTEE SHALL be responsible for the cost of the installation and maintenance of the mooring authorized by the Army Corps of Engineers and this permit. The mooring shall be equal or superior to the design approved by the Department and the Army Corps of Engineers.
- 2. This permit is non-transferable. Upon cancellation or expiration of this permit, the permittee shall remove the mooring at no cost to the State, unless prior permission is received from the Department to abandon the mooring in place, at which time all equipment associated with the mooring becomes the property of the State.
- 3. No vessel shall be utilized as a Houseboat, Living Aboard Quarters, Place of Abode, Dwelling, or Living Residence, including but not limited to, the regular use of such purposes during weekends, without a permit from the Department and in compliance with the requirements for Marine Sanitation Devices, Section HAR 13-243-2 of the Hawaii Administrative Rules.

APPROVED	16 0	
BY/DATE:	Mexel	
	S MASUDA HABBOB AGENT IV	

MASUDA, HARBOR AGENT IV

MOORING PERMIT #: ____RM030995___

PERMIT EXPIRES: _____ 11/30/2017

ACCOUNT #: _00014089

marche

Sidney J. AKIONA, It's General Partner

34 Waile	a Gateway Pla Business A	ace, A-105 Address
Kihei	Hawaii	96753
City	State	ZIP

808-879-1218 / 808-280-8126 **Business / Other Phone**





Certification Date: 16 May 2017 Expiration Date: 16 May 2022

For ships on international voyages this certificate fulfills the requirements of SOLAS 74 as amended, regulation V/14, for a SAFE MANNING DOCUMENT.

Vessel Name		Of	ficial Number	IMO N	Number	Call Sign	S	ervice
KAI KANANI	II	1	194318			WDD6048	F	Passenger (Inspected)
Hailing Port			Hull Material		lorsenower	Propulsion		
MAUI, HI				-			- 11	
			FRP (Fiberalas)	c) (40	Auxiliary S	all	
UNITED STA	TES		(Tibergias	3)				
Place Built	- m		Delivery Date	Keel Laid Date	Gross Tons	Net Tons	DWT	Length
ST CROIX, V	1		20Mar2007	15000200	R-36	R-28		R-64.0
	TEO		301VIAI2007	13Dec200	I-	I-		I-0
UNITED STA	IES							
Owner				Ope				
	AT PARTNERS	A105		PA				
KIHEL HI 967	53	A105		LA	AHAINA, HI 96	- 5761		
UNITED STA	TES			U	NITED STATE	ES		
This vessel m 0 Certified Life	ust be manned w eboatmen, 0 Cert	ith the follo ified Tanke	wing licensed ermen, 0 HSC	and unlicen Type Ratin	sed Personne g, and 0 GMD	el. Included in w SS Operators.	hich th	ere must be
1 Masters	0 Li	icensed Mate	es 0 Chief	Engineers	0 0	Qual. Member Eng.	Depts	
0 Chief Mates	0 Fi	irst Class Pile	ots 0 First A	ssistant Engi	neers 0 C	Dilers		
0 Second Mat	tes 0 R	adio Officers	0 Secon	d Assistant E	ngineers 0 0	Crew Members		
0 Third Mates	0 A	ble Seamen	0 Third	Assistant Eng	ineers			
0 Master First	t Class Pilot 0 O	rdinary Sean	nen 0 Licens	ed Engineers				
0 Mate First 0	Class Pilots 2 D	eckhands	0 Non L	icensed Engin	neer Dept			
In addition, thi Persons allow	s vessel may carr ed: 88	ry 80 Pass	engers, 5 Othe	er Persons i	n crew, 0 Pers	sons in addition	to crev	v, and no Others. Total
Route Perm	itted And Condit	ions Of O	peration:					
Lakes, I	Bays, and So	unds pl	us Limited	Coastw	ise			
,								
PACIFIC OCEA NORTH BY NOR	N, STATE OF HAW THWEST FROM LIP	AII, SOUT OA POINT	HERN AND WEST TO A LINE EXT	TERN COASTS	S OF THE ISL. UTHWEST FROM	AND OF MAUI BE CAPE HANAMANI	TWEEN	A LINE EXTENDING
FROM A HARBO	R OF SAFE REFUG	E. ISLAN	D OF LANAI, N	NOT MORE TH	HAN 20 MILES	FROM A HARBOR	OF SF	AFE REFUGE. SOUTHERN
SOUTHEAST FR	OM CAPE HALAWA,	NOT MORE	THAN 20 MILE	ES FROM A H	E SOUTH FROM HARBOR OF SAI	LAAU POINT TO FE REFUGE.	A LIN	NE EXTENDING SOUTH BY
TE THE VEGGE	T TO AWAY FROM	THE DOCK	OP DASSENCERS	APP ON D	OARD OR HAVE	ACCESS TO THE	VECCE	T FOR A DERTOR
EXCEEDING 12	HOURS IN ANY 2	4 HOUR PE	RIOD, AN ALTH	ERNATE MAST	TER AND CREW	SHALL BE PROV	IDED.	SL FOR A PERIOD
SEE NEX	T PAGE FOR A		AL CERTIFIC	ATE INFO	RMATION	ł		
With this Inspe	ection for Certifica	ation having	been comple	ted at Maal	aea HI UNIT	ED STATES #	ne Offic	cer in Charge Marine
Inspection, Ho	nolulu certified th	e vessel, ir	all respects, i	s in conform	nity with the a	pplicable vessel	inspec	ction laws and the rules
and regulation	s prescribed there	eunder.						
	Annual/Period	ic/Re-Inspe	ection		This certification	te issued by:		
Date	Zone	A/P/R	Signatur	е	R. N.	SAMUEL CDR,	USCO	B, BY DIRECTION
					Officer in Charge, M	larine Inspection		
						Но	nolulu	
	5-				Inspection Zone			



Dept. of Home Sec., USCG, CG-841 (Rev 4-2000)(v2)

8	United States of America Department of Homeland Security United States Coast Guard	Expiratio	on Date:	16 May 2017 16 May 2022
Cer	rtíficate of Inspec	tíon		
Vessel Name: KAI KANANI II				
Stdb Engine Room	Halocarbon (Formerly: FM 200, FE241)	500	Cubic	Foot
Fire Extinguishers - Hand portab	le and semi-portable			
Quantity	Class Type			
1	B-I			
	B-II			
END				
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				1.000
				8
Dent of Home Sec. USCG CG-841 (Rev 4.2000)(v2)	Dage 2 of 2			

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-	ALL DE LE DE					Certification Da	te:	05 Jun 2012
19	1922		United	States of America		Expiration Date	:	05 Jun 2017
		-4	Departme	ent of Homeland Security		IMO Number		
			United	States Coast Guard				
15	100	~	10 10					
10 Martin	Constanting of the local division of the loc		ortitica	to of w	CT2	oction	1	
					DD(ecuur		
For s	hins on internation	onal vovana	this contificate fulfille the					
	inpo on internation	onal voyage:	s this certificate fulfills the req	uirements of SOLAS 74 as am	ended, regul	ation V/14, for a SAFE	E MANNING	DOCUMENT.
Vessel Nam				- (1. States States)				
KAIKA	NANI II			Official Number	Call Sign		Service	
1041104	10/4/01/11			1194318	WDD60	48	Passeng	ger (Inspected)
Hailing Port	1			Hull Material	Horsepower		Pronulsion	
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HI				(is engineery	140		Auxiliary	Jan
Place Built				Delivery Bala Data Martin				
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			:	5000a12007 15Dec2006	I-	R-20		R-64
UNITEL	DSTATES .						<i>t</i>)	
Owner		· · ·		Operator				
MAKEN	NA BOAT PA	RTNERS		PATRICK H DE VAULT				
34 WA	ILEA GATEV	VAY CTR	A105	PO BOX 10284				
KIHEI I	HI 96753	and the second second						
UNITE	DSTATES							
				UNITED STATES				
This ve	accol must h		al instale also faile in a					Construction of the other
THIS VE	esser must L	je manne	a with the following li	icensed and unlicensed	d personi	nel. Included in v	which the	ere must be
U certi	iried lireboal	tmen, 0	certified tankermen, I	0 HSC type rating, and	0 GMDS	SS Operators.		
	1 Master		0 Master & 1st Class pilot	0 Radio Officer(s	5)	0 Chief Engineer		0 QMED/Rating
250	0 Chief Mate	• • • •	0 Mate & 1st Class Pilot	0 Able Seamen/I	ROANW	0 1st Asst. Engr/2n	d Enar.	0 Oilers
	0 2nd Mate/OI	CNW	0 Lic. Mate/OICNW	0 Ordinary Seam	ien	0 2nd Asst Engr/3	rd Engr	
	0 3rd Mate/OIC	CNW	0 1st Class Pilot	2 Deckhands		0 3rd Acet Engr	id Lilgi.	
		12.0				0 Lie Esse		
			THE .			o Lio. Lligi.		
In addit	tion this yes	sol may or	50 80 00000000 F		0			
Total p	arrong allow	ad. 00	any ou passengers, a	other persons in crew,	0 persor	is in addition to c	rew, and	no others.
Deuto	ersons allowe	eu. 00				and the second second second		
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		1.1						
La	kes, Bay	ys, an	d Sounds plus	Limited Coastw	ise	-		
		·	9			•		
PACIFI	C OCEAN,	STATE (OF HAWAII, SOUTHE	ERN AND WESTERN CO	ASTS OF	THE ISLAND	OF MAU	I BETWEEN
A LINE	EXTENDIN	IG NORTH	H BY NORTHWEST FF	ROM LIPOA POINT TO	A LINE	E EXTENDING S	SOUTHWE	ST FROM
CAPE H	IANAMANIOA	A, NOT N	ORE THAN 20 MILE	S FROM A HARBOR C	F SAFE	REFUGE. ISI	LAND OF	LANAI.
NOT MO	RE THAN 2	O MILES	FROM A HARBOR C	OF SAFE REFUGE. SC	UTHERN	COAST .OF THE	E TSLAN	DOF
MOLOKA	I BETWEEN	A LINE	E EXTENDING DUE S	SOUTH FROM LAAU PO	INT TO	A LINE EXTEN	IDING S	OUTH BY
SOUTHE	AST FROM	CAPE HA	LAWA, NOT MORE I	HAN 20 MILES FROM	A HARE	OR OF SAFE H	REFUGE .	
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TE. THE	VESSEL I	S AWAY	FROM THE DOCK OR	PASSENGERS ARE O	N BOARD	OR HAVE ACC	CESS TO	THE
VESSEL	, FOR A PE	CRIOD EX	CEEDING 12 HOURS	S IN ANY 24 HOUR P	ERIOD,	AN ALTERNATE	MASTE	R AND CREW
SHALL	BE PROVID)ED.			1			
						1		
***SEE	NEXT PAGE		DITIONAL CEPTIEICA	TE INFORMATION	*5			
	is lass setter	for Contin	DITIONAL OLIVITICA	TE INFORMATION		Concernation of the second		STOCKED IN THE SECOND
	is inspection	tor Certifi	cation having been con	npleted at Maui, HI, the	Officer in	Charge, Marine In	nspection	, HONOLULU
certified	d the vessel,	in all resp	ects, is in conformity w	ith the applicable vessel	inspection	n laws and the ru	les and re	gulations
prescrit	bed thereund	ler.				1		
								1
Ar	nnual/Periodi	c/Quarterl	y Reinspections	This Amended certificat	e issued h	by:		
Date	Zone	A/P/Q	Signature	- A Ch				2.2
27Aug2013	SEC Hono	A	Goade, Larry W	G. A. MAR	TINEAU C	DR, USCG. BY	DIRECTIO	ON .
1-1-AUDIY	-SEE (10)M2	-k	· his	Officer in Chama Marina Innonation	and the second second			
PEDALPIC	-Section	- 0	12 21	Succession analys, manne mspection	1.1			×
MARC	- TRIAN		for the -		п			·
-	-		-	Inspection Zone				

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Department of Homeland Security United States Coast Guard

Certificate of Inspection

KAI KANANI II

Certification Date: 05Jun2012

THE MASTER MUST REMAIN ON BOARD THE VESSEL AT ALL TIMES WHILE UNDERWAY OR AT ANCHOR WHEN CARRING PASSENGERS FOR HIRE.

ONE CHILD SIZE LIFE PRESERVER SHALL BE PROVIDED FOR EACH PERSON WEIGHING LESS THAN 90 POUNDS.

MASTERS/MATES/ LICENSE (S) MUST HAVE AUXILIARY SAIL ENDORSEMENT.

ONE CHILD SIZE LIFE PRESERVER SHALL BE PROVIDED FOR EACH PERSON WEIGHING LESS THAN 90 POUNDS.

THE MASTER SHALL ENSURE THAT THE VESSEL REMAINS AT LEAST 100 YARDS FROM HUMPBACK WHALES, AND AT LEAST 50 YARDS FROM OTHER MARINE MAMMALS. PRUDENT COURSE AND/OR SPEED ALTERATIONS SHALL BE MADE TO MINIMIZE CONTACT WITH MARINE MAMMALS.

THE MASTER MUST OBTAIN CURRENT WEATHER DATA FROM A RECOGNIZED WEATHER SERVICE PRIOR TO COMMENCING ANY TRIP TO ENSURE THE FOLLOWING PARAMETERS ARE NOT EXCEEDED DURING THE VOYAGE:

	SIGNIFICANT WAVE HEIGHT(ft)	MAXIMUM	ALLOWABLE	SPEED(kts)
	0-5	20		
	5-6	19		
6	6-7	15		
ŝ.	7-8	11		
÷.	8-9	10		
	9-10	9		
	10-11	8		
	11-12	7		

IF GREATER THAN 12' SEEK SHELTER AT SLOW SPEED

FAILURE TO LOAD AND OPERATE THE VESSEL IN ACCORDANCE WITH THIS OPERATIONAL ENVELOPE MAY RESULT IN EXCESSIVE HULL STRESSES NOT CONTEMPLATED BY THIS APPROVAL.

THE SPAR MUST BE UN-STEPPED AND PRESENTED FOR INSPECTION AT THE 2018 CREDIT DRYDOCK PER SECTOR HONOLULU WORK INSTRUCTION 13. 1

---Hull Exams---Evam Tune .

Exam Type	Next Exam	Last Exam	Prior Exam
Drydock Internal Structure	30Sep2016 30Sep2016	12Sep2014 12Sep2014	180ct2012 180ct2012
-			

----Stability----Approval Date / 04Dec2007 Office/ CG MSC Letter

---Lifesaving Equipment---

	Number	Perso	ons	Required
Total Equipment for		88	Life Preservers (Adult)	88
Lifeboats (Total)	0	0	Life Preservers (Child)	9
Lifeboats (Port) *	0	0	Ring Buoys (Total)	1
Lifeboats (Starbd) *	0	0	With Lights*	1





Certification Date: 05 Jun 2012 Expiration Date: 05 Jun 2017

Certificate of Inspection For ships on international voyages this certificate fulfills the requirements of SOLAS 74 as amended, regulation V/14, for a SAFE MANNING DOCUMENT.

Vessel Name	Official Number	IMO Numb	er.	Call Sign	Service	
KAI KANANI II	1194318			WDD6048	Passenger (Inspecte	ed)
Hailing Port						
MALLEHI	Hull Material	Horsep	ower	Propulsion		
	FRP	740		Auxiliary S	ail	
UNITED STATES	(Fibergla	iss)		,		
Direc Duilt						
ST CROIX Virgin Islands	Delivery Date	Keel Laid Date	Gross Tons	Net Tons	DWT Length	
or oron, virgin islands	30Mar200	15Dec2006	R-36	R-28	R-64.0	
UNITED STATES			ŀ	I-	1-0	
2						
MAKENA BOAT PARTNERS		Operator PATR				
34 WAILEA GATEWAY CTR	A105	PO B	OX 10284	AULI		
KIHEI, HI 96753		LAHA	NA, HI 967	61		
UNITED STATES		UNITE	D STATES	3		
771.2						
0 Certified Lifeboatmen, 0 Cert	ith the following license ified Tankermen, 0 HS	d and unlicensed C Type Rating, ar	Personnel. d 0 GMDS	Included in wi S Operators.	nich there must be	
1 Masters 0 L	icensed Mates 0 Chi	ef Engineers	0 Qu	al. Member Eng.	Depts	
0 Chief Mates 0 F	irst Class Pilots 0 Firs	Assistant Engineers	0 Oil	ers		
0 Second Mates 0 R	adio Officers 0 Sec	ond Assistant Engine	ant Engineers 0 Crew Members			
0 Third Mates 0 A	ble Seamen 0 Thir	d Assistant Engineer	5			
0 Master First Class Pilot 0 C	ordinary Seamen 0 Lice	nsed Engineers				
0 Mate First Class Pilots 2 D	eckhands 0 Nor	Licensed Engineer	lept			
In addition, this vessel may carr Persons allowed: 88	y 80 Passengers, 5 Ot	ner Persons in cre	w, 0 Perso	ons in addition t	o crew, and no Others. To	otal
Route Permitted And Condit	ions Of Operation:					
Lakes, Bavs, and So	unds plus Limite	d Coastwise				
PACIFIC OCEAN, STATE OF HAW	AII, SOUTHERN AND WE	STERN COASTS OF	THE ISLAN	ID OF MAUI BE	TWEEN A LINE EXTENDING	
NORTH BY NORTHWEST FROM LIP	OA POINT TO A LINE E	XTENDING SOUTHW	EST FROM C	CAPE HANAMANI	OA, NOT MORE THAN 20 M	ILES
COAST OF THE ISLAND OF MOLO	KAI BETWEEN A LINE E	XTENDING DUE SO	UTH FROM I	AAU POINT TO	A LINE EXTENDING SOUTH	ERN H BY
SOUTHEAST FROM CAPE HALAWA,	NOT MORE THAN 20 MI	LES FROM A HARB	OR OF SAFE	C REFUGE.		
IF THE VESSEL IS AWAY FROM	THE DOCK OR PASSENGE	RS ARE ON BOARD	OR HAVE A	CCESS TO THE	VESSEL FOR A PERIOD	
EXCEEDING 12 HOURS IN ANY 2	4 HOUR PERIOD, AN AL	TERNATE MASTER	AND CREW S	SHALL BE PROV	IDED.	
SEE NEXT PAGE FOR A	DDITIONAL CERTIFI	CATE INFORM	ATION			
With this Inspection for Certifica	ation having been comp	leted at Maui Hav	vaii UNITE	STATES the	e Officer in Charge Marin	ne l
Inspection, Honolulu certified th	e vessel, in all respects	, is in conformity	with the app	licable vessel	inspection laws and the ru	ules
and regulations prescribed there	eunder.			Here and the second states are		
Annual/Period	ic/Re-Inspection	Thi	Amended	certificate issu	ued by:	
Date Zone	A/P/R Signat	ure	R. N. SA	MUEL LCDR,	USCG, BY DIRECTION	
2/AUg2013 SEC Hono	A Goade Larry W.	Office	r in Charge, Mari	ne Inspection		
DEC HOHO	Goade Larry W.				a a lu lu c	
20Aug2015 MST Maui	A Goade Larny W			Hoi	noiuiu	
20Aug2015 MST Maui 30Aug2016 MST Maui	A Goade Larry W. A GOADE LARRY	Inspe	ction Zone	Hoi	noiuiu	



Certification Date: 05 Jun 2012 Expiration Date: 05 Jun 2017

Certificate of Inspection

Vessel Name: KAI KANANI II

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----Hull Exams----

Exam Type	Next Exam	Last Exam	Prior Exam
DryDock	30Sep2017	09Sep2015	12Sep2014
Stability			
Туре	Issued Date	Office	
Book	None Valid		
Letter	04 Dec 2007	Marine Safety Center (MSC)	

---Lifesaving Equipment---

Total Equipment for 88 Persons

Primary Lifesaving Equipment	Quantity	Capacity		Required
Lifeboats (Total)	0	0	Life Preservers (Adult)	88
Lifeboats (Port)	0	0	Life Preservers (Child)	9
Lifeboats (Starboard)	0	0	Ring Buoys (Total)	1
Motor Lifeboats	0	0	With Lights	1
Lifeboats W/Radio	0	0	With Line Attached	1
Rescue Boats/Platforms	0	0	Other	0
Inflatable Rafts	0	0	Immersion Suits	0
Life Floats/Buoyant App	2	44	Portable Lifeboat Radios	0
Inflatable Bouyant App (IBA)	0	0	Equipped with EPIRB?	YES

--- Fire Fighting Equipment ---

Number of Fireman Outfits -

Hose Information

Number of Fire Pumps - 1

Location	Quantity	Diameter	Length
Stbd side aft.	1	1.5	50



Certification Date:	05 Jun 2012
Expiration Date:	05 Jun 2017

Certificate of Inspection

Vessel Name: KAI KANANI II

				the same large state of the same state of the sa	the second s
Fixed Extinguishing Systems					
Location	Туре			Capacity	
Port Engine Romm	Halocarb	on (Formerly: FM 200,	FE241)	500	Cubic Foot
Stdb Engine Room	Halocarb	on (Formerly: FM 200,	FE241)	500	Cubic Foot
Fire Extinguishers - Hand portable and semi	i-portable				
Quantity	Class Typ	De			
1	B-I				
4	B-II				
Certificate Amendments					
Unit Amending		Amendment Date	Amendme	nt Remark	
Sector Honolulu		180ct2012	Completed	d credit hull	and ISE.
Sector Honolulu		01Nov2012			
Sector Honolulu		27Aug2013	Vessels na KAI KANA	ime was ch NI - KAI KA	anged in July from
Sector Honolulu		10Sep2014	CREDITE	D DRY DOG	CK.
Sector Honolulu		31Aug2016	Credit dry-	dock was c	ompleted (Sep 15).
END					

-









Nationwide Permit (3) Maintenance (3/19/2012)

- differing from those uses specified or contemplated for it in the original permit or the authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses limited to the minimum necessary for the repair, rehabilitation, or replacement of the the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, replacement is commenced, or is under contract to commence, within two years of rehabilitation, or replacement of those structures or fills destroyed or damaged by provided the permittee can demonstrate funding, contract, or other similar delays. storms, floods, fire or other discrete events, provided the repair, rehabilitation, or rehabilitation, or replacement are authorized. Any stream channel modification is The repair, rehabilitation, or replacement of any previously authorized, currently construction techniques, requirements of other regulatory agencies, or current structure or fill; such modifications, including the removal of material from the construction codes or safety standards that are necessary to make the repair, serviceable structure, or fill, or of any currently serviceable structure or fill stream channel, must be immediately adjacent to the project or within the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, boundaries of the structure or fill. This NWP also authorizes the repair, (a)
- dredging to remove accumulated sediments blocking or restricting outfall and intake materials must be deposited and retained in an area that has no waters of the United minimum necessary to protect the structure or to ensure the safety of the structure. existed when the structure was built, but cannot extend farther than 200 feet in any This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that structures or to maintenance dredging to remove accumulated sediments from structures, etc.) and/or the placement of new or additional riprap to protect the Any bank stabilization measures not directly associated with the structure will direction from the structure. This 200 foot limit does not apply to maintenance separate authorization. The placement of new or additional riprap must be the canals associated with outfall and intake structures. All dredged or excavated States unless otherwise specifically approved by the district engineer under require a separate authorization from the district engineer. 9
- (c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.
- (d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

REGIONAL CONDITIONS:

Honolulu District has adopted the following Regional Conditions as a means to ensure no more than minimal impacts, on an individual and/or cumulative basis, will occur in waters of the United States by projects authorized by Nationwide Permit (NWP). The following Regional Conditions are applicable unless the Honolulu District makes a written determination, based on project-specific information, that omitting or deviating from a particular Regional Condition is both merited and would not result in more than minimal impacts to the aquatic environment.

- Pre-Construction Notification (PCN). Notification to the Honolulu District is required, in accordance with General Condition 31, for any activity authorized by this NWP that will take place within any of the geographic areas subject to the regulatory jurisdiction of the Honolulu District. You must obtain a written NWP verification from the Honolulu District before commencing the authorized activity.
- 2. Coral Reef Advisory: Please be advised that coral reefs are special aquatic sites with complex ecosystems that may consist of many contributing biological assemblages, including sponges, macroalgae, seagrass, soft corals, gorgonians, etc., in addition to reef-building coral colonies. It should not be assumed that low live coral cover or the absence of live coral colonies. It should not be assumed that low live coral cover or the absence of potential impacts to a coral reef by a given project. The Honolulu District absence of potential impacts to a coral reef by a given project. The Honolulu District determines, after coordinating with the appropriate resource agencies, the presence and practicable compensatory mitigation requirements, commensurate with the scope and scale of specific authorized activities. No activity that directly results in a permanent loss of coral reef may be authorized by this NWP If the District Engineer determines, after coordinating with appropriate resource agencies, that compensatory mitigation is required by this NWP If the District Engineer determines, after coordinating with appropriate resource agencies, that compensatory mitigation is required by this NWP If the District Engineer determines, after coordinating with appropriate resource agencies, that compensatory mitigation is required.
- 3. National Wildlife Refuges. Hawaii State Wildlife Sanctuaries. Hawaii Marine Life Conservation Districts. and Guam Marine Preserve Areas. This NWP may not be used to authorize activities within or directly affecting national wildlife refuges, Hawaii state wildlife sanctuaries, Hawaii marine life conservation districts, or Guam marine preserve areas, including wetlands adjacent to such designated areas, unless the Honolulu District determines after coordination with appropriate resource agencies that the activity would result in not more than minimal adverse impacts to aquatic resources.
- Anchialine pools, montane bogs, natural freshwater lakes and saline lakes. This NWP may not be used to authorize activities within anchialine pools, montane bogs, natural freshwater lakes, or saline lakes.
- Mangroves and Sea and Freshwater Caves, Including Vadose Shafts, Sink Holes, Allogenic Streams. Stream Caves, Phreatic Zones, and Cenotes, in the Territories of Guam and American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI). This NWP may not be used to authorize any activity in Guam, American Samoa, or the Cormmonwealth of the Northern Mariana Islands (CNMI) within mangroves or sea or freshwater caves, including vadose shafts, sink holes, allogenic streams, stream caves, phreatic zones, and cenotes.

- 6. <u>Acreage Limitation</u>. The maximum acreage loss of waters of the United States for the total project may not exceed 1/10-acre resulting from any discharge of dredged or fill material in a special aquatic site, including wetlands, if authorized by this NWP, or a combination of any of these NWPs: NWP 3, 7, 40, 41, 43, 45, 46, and 51.
- 7. <u>Road Crossings</u>. Use of embedded or bottomless arch culverts is required when practicable, especially where frequent culvert maintenance or replacement is needed, for any activity authorized under this NWP. Culverts must maintain the original and natural full bank capacity (cross-sectional volume) of the channel. If a bottomless culvert cannot be used, a rock apron with an appropriate slope (determined on a site or project specific basis), or other appropriate measures must be and downstream native stream species migration. To preserve a natural stream bed, bridge designs that span the stream or river, including pier or pile supported spans, are encouraged.
- 8. <u>Compensatory Mitigation</u>. Upland vegetation buffers may not be used as the primary or sole method to offset permanent losses of wetland or aquatic resources within the geographic areas subject to the regulatory jurisdiction of the Honolulu District. However, use of vegetated upland buffers is strongly encouraged as part of a compensatory mitigation plan that replaces lost aquatic resource functions through restoration, enhancement, and creation or, under exceptional circumstances, preservation of wetland and aquatic areas. Compensatory mitigation shall provide a minimum ratio of 1:1 replacement of unavoidable aquatic resource function losses or area. (Note: The actual ratio may be larger in order to account for the impact plus termporal loss of area/functions and/or uncertainty of mitigation success.)
- 9. <u>Minimization Measures</u>. A plan employing the techniques listed below must be implemented to avoid or minimize disturbance to wetlands, riparian areas and beach fringes and/or to re-establish vegetation in such areas when disturbance cannot be avoided. Areas disturbed during project construction must be revegetated as soon as possible. Erosion protection must be provided and maintained until the soil is permanently stabilized.
 - a. Avoidance and minimization techniques may vary with site conditions and
- include, but are not limited to, the following: (1) Planning construction access and scheduling work to avoid or minimize
 - damage to wetland vegetation.
 Using crane matting or suitable geotextile material to protect vegetation from damage by heavy equipment.
 - (3) Insuring that anchorage of construction barges, equipment, and their anchor lines avoid coral reefs and seagrass beds.
- the USDA APHIS Plant Protection and Quarantine, Federal Noxious Weed List as provide the same functions as those species they are replacing, shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) communities. Species to be used for seeding and planting, preferably those that Revegetation techniques may vary with site conditions and include, but are not following species are known to be highly invasive and shall not be used under any circumstances for revegetation under these NWPs: 1) species included on Distribution Maps of Alien Plants in Hawaii by island, Hawaiian Ecosystems at fertilizing of re-contoured ground to promote re-establishment of natural plant of 6/7/99; 2) species included on the Hawaii Department of Agriculture, List of native species shall be used only when native species are not available. The species native to the state; 4) non-native non-invasive, species. Note: non-Risk (HEAR) Project (1/16/01); and 4) plants that score >1 and evaluated as limited to seeding, planting, replacement of reserved ground cover, and/or Purposes (6/18/92); and 3) the University of Hawaii, Department of Botany, Plant Species Designated as Noxious Weeds for Eradication or Control Accept' on the Hawaii Weed Risk Assessment. á

- 10. <u>Site Identification</u>. Prior to clearing and construction, project limits of authorized sites must be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) to ensure that impacts to waters of the United States (including wetlands) beyond project footprints are avoided. Such identification of project limits must be properly maintained until construction is completed and the soils have been stabilized.
- 11. Protected or Endangered Species.
- a. Constant vigliance shall be kept for the presence of protected species during all aspects of the proposed action. Protected species include plants and animals listed or proposed for listing as threatened or endangered under Endangered Species Act (ESA), birds covered under the Migratory Bird Conservation Act, as would be determined on a project-specific basis, protected species potentially affected would be determined on a project-specific basis, protected species typically of concern in Hawaii include: Hawaiian stilt, Hawaiian coot, Hawaiian moorhen, Hawaiian duck, Hawaiian goose, green sea turtle, hawksbill sea turtle, and Hawaiian duck, Hawaiian goose, green sea turtle, hawksbill sea turtle, and Northern Mariana Islands species include: nightingale wee-warbler, Mariana common moorhen, green sea turtle and hawksbill sea turtle. Mariana Samoa species also include: green sea turtle and hawksbill sea turtle.
 - b. All on-site project personnel, irrespective of their employment arrangement or affiliation (e.g. employee, contractor, etc.), shall be apprised of the status of any protected species potentially present in the project area and the protections afforded to those species under Federal laws. Brochures explaining the laws and guidelines for listed species in Hawaii, American Samoa, and Guam may be downloaded from http://www.nmfs.noaa.gov/prot res/MMWatch/hawaii.htm and http://www.fws.gov/pacificislands/species.html.
- c. The project foreman shall designate an appropriate number of competent observers to survey the area adjacent to the proposed action for protected species. The project foreman shall also have in his/her possession at the jobsite a handout with photographs of protected species that may enter the construction site to assist with identification of the protected species. (U.S. Fish and Wildlife Service – Pacific Islands Fish and Wildlife Office (PIFWO) will provide the informational handout).
 - d. Surveys of the project area shall be made prior to the start of work each day, and prior to resumption of work following any break of more than one half hour, to ensure that no protected species are in the project area (typically within 50 yards of the proposed work). All work shall be postponed or halted when protected species are present, and shall only begin/resume after the animals have voluntarily departed the area. In the case of sessile species, a conservation plan shall be developed and approved between the Regulatory Branch, U.S. Army Corps of Engineers and PIFWO and/or National Marine Fisheries Service Pacific Islands Regional Office (PIRO).
 - e. If an onsite protected species does not depart the area on its own for 3 days or more, we recommend that the permittee, or responsible contractor, contact plFWO for further technical assistance and guidance (308) 792-9400.
- f. Any interaction with or incidental take of protected species shall be reported immediately to the Regulatory Branch, U.S. Army Corps of Engineers (808) 835-4303. Additionally, pursuant to the ESA, any take of ESA-listed species (other than marine mammals) must be reported to the U.S. Fish and Wildlife Office of Law Enforcement in Honolulu at 1-808-861-8525. Any incidental take of marine mammals shall be reported immediately to the National Oceanic and Atmospheric Administration's (NOAA) 24-hour hottine at 1-888-256-9840. Information reported imust include the name and phone number of a point of contact, location of the incident, and nature of the take and/or injury.

appropriate for specific projects, including all conservation measures and/or best management practices (BMPs) required by any ESA consultation for the project Note: Additional requirements may be designated by the Honolulu District as

diversions, that were not authorized under the NWP verification. To facilitate efficient delays or enforcement action if work is commenced pursuant to a site-specific BMP Standard Best Management Practices (BMPs). Site-specific BMPs are generally a certification conditions, which are incorporated by reference. A permittee risks plan that includes regulated activities, such as temporary access fill or stream review of a project, site-specific BMPs must be submitted as part of the PCN requirement of NWP verifications, either directly or by state water quality required for any activity requiring authorization under a NWP. 12.

To the extent applicable, the following BMPs must be implemented to minimize the degradation of water quality and impacts to fish, coral reefs, and other aquatic resources:

- Turbidity and sediment from project-related work must be minimized and contained to the immediate vicinity of the authorized activity through the appropriate use of effective sediment containment devices. rio a
- when any affected stream has minimal or no flow. The site must be stabilized to prevent erosion and runoff and work must stop during flooding, intense rainfall, storm surge, or high surf conditions. To the extent practicable, shoreline work To the extent practicable, the work must be conducted in the dry season or ġ
- To the extent practicable, work in the aquatic environment must be scheduled to hatching periods. Coordination with federal resource agencies (U.S. Fish and avoid coral spawning and recruitment periods and sea turtle nesting and must be done during low tides. ů
 - Dredging and filling in the aquatic environment must be designed to avoid or (swamps, marshes, bogs, etc.), mudilats, vegetated shallows/seagrass beds, Wildlife Service and/or NOAA) can assist in identifying these time periods. minimize adverse impacts to or the loss of special aquatic sites (wetlands b.
- (including snakes, frogs, and marine plants and animals, etc.) prior to use in any All project-related materials (fill, landscaping, etc.) and equipment (dredges, inspected and cleaned of pollutants, organic matter, and invasive species barges, backhoes, etc.) to be placed in any aquatic environment shall be coral reefs and/or riffle and pool complexes). ė.
 - No project-related materials (fill, revetment rock, pipe etc.) shall be stockpiled in the aquatic environment (intertidal zones, reef flats, stream channels, wetlands etc.) or in close proximity such that materials could be carried into waters by aquatic environment. . سود
 - environment shall be disposed of at an approved upland or alternative disposal All construction debris and material removed from the marine/aquatic wind, rain, or high surf. ö
- aquatic non-native species. This shall be accomplished by implementing a litternrm.org/Wizard/default.asp) to prevent attraction and introduction of non-native No contamination (by trash, debris, sediment, non-native species introductions, control plan and on a site or project specific need basis, developing a Hazard equipment whereas to minimize the transport and potential introduction and attractions of non-native pests, etc.) of adjacent waters of the United States, material or structural members are removed from the water or placed in the water, measures must be taken to prevent the spread or introduction of any Special attention must be paid to the fouling level on barges, vessels, and spread of aquatic non-native species. In addition, if dredged or excavated including special aquatic sites, shall result from project-related activities. Analysis and Critical Control Point Plan (HACCP - see http://www.haccpspecies. site. ÷

- spilled during the project shall be developed. The plan shall be retained on site Absorbent pads and containment booms shall be stored on-site, if appropriate, Fueling of project-related vehicles and equipment shall take place away from the water and a contingency plan to control petroleum products accidentally with the person charged with the responsibility of compliance with the plan. to facilitate the clean-up of accidental petroleum releases.
 - To minimize turbidity in the aquatic environment, any under-layer fills used in precast concrete armor or mat units) as soon after placement as practicable. the project shall be protected from erosion with suitable material (such as ÷.,
 - hydroseeding etc.). Revegetation should follow the established standards in Any soil exposed near water as part of the project shall be protected from exposure and stabilized as soon as practicable (with vegetation matting, erosion (with suitable material such as geotextile, filter fabric, etc.) after 4
- shall be installed properly and maintained in a functioning manner for the life of the construction period and until the impact area is permanently stabilized, self sustaining, and/or turbidity levels, elevated due to construction, have returned Regional Condition #10 (Minimization Measures). Silt fences, silt curtains, or other diversion or containment structures shall be sediment to an adjacent aquatic site; and (b) adjacent to any fill placed or soil installed to contain sediment and turbidity at the work site (a) parallel to, and exposed within an aquatic site. All silt fences, curtains, and other structures within 10 feet of, the toe of any fill or exposed soil which may introduce to ambient levels. _
- quality from increasing impervious area, projects should incorporate low impact practical to retain stormflows and pollutants on-site. More information including development stormwater practices (e.g. native landscaping, bioretention and result in more than minimal degradation of water quality (in accordance with infiltration techniques, buffers, green roofs, and green spaces) to the extent When the discharge of fill material results in the replacement of wetlands or waters of the US with impervious surfaces, the authorized activity must not General Condition 25). To ensure NWPs do not cumulatively degrade water low impact stormwater concepts and definitions is available at: http://www.epa.gov/owow/NPS/lid . Ė
- State of Hawaii, Department of Health, Clean Water Branch (DOH) Reguirements (Projects in the State of Hawaii Only). 13.
- incorporated into the project's NWP verification and are subject to discretionary verification for proposed work requiring authorization under CWA Section 404. enforcement by the Honolulu District. The permittee is strongly encouraged to submit a DOH WQC application to DOH, with site-specific BMPs, applicable You must contact the DOH to determine if a National Pollutant Discharge Certification (WQC) from the DOH before the Honolulu District can issue You must obtain a Clean Water Act (CWA) Section 401 Water Quality All conditions of a Section 401 WQC issued for a project are hereby monitoring plan, and any dredge spoils management plans. ei.
- DOH for purposes of avoiding and minimizing the discharge of pollutants, other waters, are hereby incorporated into the NWP verification. These conditions are 1899, any best management practices (BMPs) required or recommended by the than dredged or fill material, into state waters, including 303(d)-listed impaired For projects directly impacting "Impaired Waters" as listed on the most recent requiring verification solely under Section 10 of the Rivers and Harbors Act of Elimination System (NPDES) permit is required. For work authorizations subject to discretionary enforcement by the Honolulu District. ġ. ö
 - CWA Section 303(d) list
- (http://hawaii.gov/health/environmental/water/cleanwater/integrated/index.html), the PCN shall:
 - (1) Identify the waterbody as an "Impaired Water" and,

	 (2) Identify mitigating measures or BMPs necessary to avoid further degradation of the impaired water. You may dispose of dredged spoils at state permitted landfills, provided you comply with the landfill's acceptance criteria. Preapproval by the DOH-Solid and 	0, 55 510	Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., ihrough excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
	Hazardous Waste Branch is not required for this action. The generator shall provide documentation to DOH upon request. You may use dredge spoils at off- site locations, provided the dredged spoils meet the Hawaii DOH Soil	4.	<u>Migratory Bird Breeding Areas</u> . Activities in waters of the United States that serve as preeding areas for migratory birds must be avoided to the maximum extent practicable.
	Environmental Action Levels for unrestricted use. You must adequately characterize the dredged spoils, including conducting sampling and analysis in accordance with the HEER Office Technical Guidance Manual and other relevant guidance documents. Sampling methodology and analytical results shall be	ις Ο Φ ΙΟ	Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
	documented, including a comparison to EALs, and maintained by the generator. The spoils shall also meet the definition of inert fill material, which generally includes "earth, soil, rocks, and rock-like materials [that do not] contain vegetation or other organic material, or other solid wate." The generator shall	6	Suit <u>able Material</u> . No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
	provide the documentation to the DOH upon request. Offsite placement of dredged spoils that do not meet the above criteria or occur without adequate records may be considered illegal dumping, subject to enforcement action.	Мінін	Mater Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
14. GEN	<u>Sidecasting</u> . No activity may sidecast material into waters of the United States. 8 <u>:RAL CONDITIONS</u> :		Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
Note gene appro NWP deter Zone autho	To qualify for NWP authorization, the prospective permittee must comply with the following al conditions, as applicable, in addition to any regional or case-specific conditions imposed of division engineer or district engineer. Prospective permittees should contact the Prospective permittees should also contact the appropriate Corps district office to inhe the status of Clean Water Act Section 401 water quality certification and/or Coastal Management Act consistency for an NWP. Every person who may wish to obtain permit rization under one or more NWPs, or who is currently relying on an existing or prior permit	0.	Management of Water Flows. To the maximum extent practicable, the pre-construction courses, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
CFR relati	rization under one or more NWPs, has been and is on notice that all of the provisions of 33 \$\$ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR \$ 330.5 ig to the modification, suspension, or revocation of any NWP authorization.	10. <u>F</u>	Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA- approved state or local floodplain management requirements.
+	<u>Vavigation.</u> t) No activity may cause more than a minimal adverse effect on navigation.	11.	<u>Equipment</u> . Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
	(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on or otherwise, must be installed and maintained at the permittee's expense on the permittee understands and agrees that, if future operations by the United States is authorized, or if, in the optinion of the Secretary of the Army or his authorized and attronation, or other alteration, of the Army or his authorized arthorized representative, said structure or work shall cause unreasonable obstruction to the free	5 0 0 0 0 0 0 0 0 0 0	Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the orcinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
	navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.	13. 1	<u>Removal of Temporary Fills</u> . Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
N	Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to mpound water. All permanent and temporary crossings of waterbodies shall be suitably.	4 1 1 2 2	Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public sarety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
	culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.	15.	<u>Single and Complete Project</u> . The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

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- determined in writing that the proposed activity will not adversely affect the Wild and Scenic from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of River designation or study status. Information on Wild and Scenic Rivers may be obtained Scenic River System, or in a river officially designated by Congress as a "study river" for Wild and Scenic Rivers. No activity may occur in a component of the National Wild and possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has Land Management, U.S. Fish and Wildlife Service). 16.
- Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. 17.
- Endangered Species. 18.
- a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize for such designation, as identified under the Federal Endangered Species Act (ESA), or species. No activity is authorized under any NWP which "may affect" a listed species or the continued existence of a threatened or endangered species or a species proposed which will directly or indirectly destroy or adversely modify the critical habitat of such critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
- address ESA compliance for the NWP activity, or whether additional ESA consultation is requirements of the ESA. Federal permittees must provide the district engineer with the district engineer will review the documentation and determine whether it is sufficient to appropriate documentation to demonstrate compliance with those requirements. The b) Federal agencies should follow their own procedures for complying with the necessary.
- cases where the non-Federal applicant has identified listed species or critical habitat that c) Non-federal permittees must submit a pre-construction notification to the district engineer work on the activity until notified by the district engineer that the requirements of the ESA Federally-listed endangered or threatened species or designated critical habitat, the prespecies that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine if any listed species or designated critical habitat might be affected or is in the vicinity of consultation has been completed. If the non-Federal applicant has not heard back from the project, or if the project is located in designated critical habitat, and shall not begin whether the proposed activity "may affect" or will have "no effect" to listed species and might be affected or is in the vicinity of the project, and has so notified the Corps, the determination within 45 days of receipt of a complete pre-construction notification. In the Corps within 45 days, the applicant must still wait for notification from the Corps. applicant shall not begin work until the Corps has provided notification the proposed have been satisfied and that the activity is authorized. For activities that might affect construction notification must include the name(s) of the endangered or threatened activities will have "no effect" on listed species or critical habitat, or until Section 7 designated critical habitat and will notify the non-Federal applicant of the Corps'
 - endangered species as defined under the ESA. In the absence of separate authorization d) As a result of formal or informal consultation with the FWS or NMFS the district engineer e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or may add species-specific regional endangered species conditions to the NWPs.
- habitat modification or degradation where it actually kills or injures wildlife by significantly means an act which actually kills or injures wildlife. Such an act may include significant 'take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, person subject to the jurisdiction of the United States to take a listed species, where etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any impairing essential behavioral patterns, including breeding, feeding or sheltering.

- habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their Information on the location of threatened and endangered species and their critical world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively. G
- any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity. 19.
- Historic Properties. 20.
- listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation a) In cases where the district engineer determines that the activity may affect properties Act (NHPA) have been satisfied.
- requirements of Section 106 of the National Historic Preservation Act. Federal permittees compliance with those requirements. The district engineer will review the documentation must provide the district engineer with the appropriate documentation to demonstrate and determine whether it is sufficient to address section 106 compliance for the NWP b) Federal permittees should follow their own procedures for complying with the
 - engineer if the authorized activity may have the potential to cause effects to any historic Non-federal permittees must submit a pre-construction notification to the district activity, or whether additional section 106 consultation is necessary. ô
- Historic Preservation Officer, as appropriate, and the National Register of Historic Places properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers effect on the historic properties. Where the non-Federal applicant has identified historic of the National Historic Preservation Act. The district engineer shall make a reasonable The district engineer will notify the prospective permittee within 45 days of receipt of a location of the historic properties or the potential for the presence of historic properties. will comply with the current procedures for addressing the requirements of Section 106 properties on which the activity may have the potential to cause effects and so notified historic resources can be sought from the State Historic Preservation Officer or Tribal background research, consultation, oral history interviews, sample field investigation, engineer shall determine whether the proposed activity has the potential to cause an and good faith effort to carry out appropriate identification efforts, which may include the Corps, the non-Federal applicant shall not begin the activity until notified by the properties listed on, determined to be eligible for listing on, or potentially eligible for Assistance regarding information on the location of or potential for the presence of and field survey. Based on the information submitted and these efforts, the district listing on the National Register of Historic Places, including previously unidentified district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.
- from the Corps within 45 days, the applicant must still wait for notification from the Corps. 470h-2(k)) 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 Section 106 consultation is completed. If the non-Federal applicant has not heard back required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR engineer will notify the non-Federal applicant that he or she cannot begin work until e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. §800.3(a)). If NHPA section 106 consultation is required and will occur, the district complete pre-construction notification whether NHPA Section 106 consultation is F
- naving 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), ENCLOSURE 2

significantly adversely affected a historic property to which the permit would relate, or

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/THPO, appropriate Indian tribes 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. <u>Discovery of Previously Unknown Remains and Artifacts</u>. If you discover any previously unknown historic, cultural or archeological 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. <u>Designated Critical Resource Waters</u>. Critical resource waters include, NOAA-managed marrine 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, 40, 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, and 38, notification is required in accordance with general condition 31, 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 waters will be no more than minimal.
- <u>Mittigation</u>. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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 adverse rectifying to ensure that the adverse

c) effects to the aquatic environment are minimal. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-byconse basis that 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

 The prospective permittee is responsible for proposing an appropriate compensationy mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

- (2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
- (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
 - (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.(d) For losses of streams or other open waters that require pre-construction notification, the
- district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.
- normally include a requirement for the restoration or establishment, maintenance, and legal If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody ervironment on a watershed basis. In cases where riparian areas are determined to be the documented water quality or aquatic habitat loss concerns. Normally, the riparian area will slightly wider riparian areas to address documented water quality or habitat loss concerns. (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas Compensatory mitigation plans for projects in or near streams or other open waters will project site, the district engineer will determine the appropriate compensatory mitigation bank or shoreline may be sufficient. Where both wetlands and open waters exist on the reduce the requirement to provide wetland compensatory mitigation for wetland losses. Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate is a lake or coastal waters, then restoring or establishing a riparan area along a single be 25 to 50 feet wide on each side of the stream, but the district engineer may require most appropriate form of compensatory mitigation, the district engineer may waive or should consist of native species. The width of the required riparian area will address (b 6
- permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permitteeresponsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
 - h) Where carain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

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- qualified persons. The district engineer may also require documentation that the design has designed, the district engineer may require non-Federal applicants to demonstrate that the been independently reviewed by similarly qualified persons, and appropriate modifications Safety of Impoundment Structures. To ensure that all impoundment structures are safely structures comply with established state dam safely criteria or have been designed by made to ensure safety. 24.
- engineer or State or Tribe may require additional water quality management measures to Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water ensure that the authorized activity does not result in more than minimal degradation of Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district water quality. 25.
- Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements. 26.
- conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Regional and Case-By-Case Conditions. The activity must comply with any regional Management Act consistency determination. 27.
- complete project is prohibited, except when the acreage loss of waters of the United States under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum authorized by the NWPs does not exceed the acreage limit of the NWP with the highest acreage loss of waters of the United States for the total project cannot exceed 1/3-acre. specified acreage limit. For example, if a road crossing over tidal waters is constructed Use of Multiple Nationwide Permits. The use of more than one NWP for a single and 28.
- verification to the new owner by submitting a letter to the appropriate Corps district office to Transfer of Nationwide Permit Verifications. If the permittee sells the property associated validate the transfer. A copy of the nationwide permit verification must be attached to the with a nationwide permit verification, the permittee may transfer the nationwide permit letter, and the letter must contain the following statement and signature: 29.

associated with compliance with its terms and conditions, have the transferee sign and date "When the structures or work authorized by this nationwide permit are still in existence at including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities the time the property is transferred, the terms and conditions of this nationwide permit, below."

(Transferee)

(Date)

Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the and any required compensatory mitigation. The success of any required permittee-30.

certification document with the NWP verification letter. The certification document will include:

- a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions.
- completed in accordance with the permit conditions. If credits from a mitigation bank or certification must include the documentation required by 33 CFR 332.3(I)(3) to confirm in-lieu fee program are used to satisfy the compensatory mitigation requirements, the b) A statement that the implementation of any required compensatory mitigation was
 - that the permittee secured the appropriate number and resource type of credits; and c) The signature of the permittee certifying the completion of the work and mitigation.
- Pre-Construction Notification. 31.
- information necessary to make the PCN complete only once. However, if the prospective prospective permittee within that 30 day period to request the additional information needed necessary to make the PCN complete. The request must specify the information needed permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review possible. The district engineer must determine if the PCN is complete within 30 calendar a) <u>Timing</u>. Where required by the terms of the NWP, the prospective permittee must notify to make the PCN complete. As a general rule, district engineers will request additional process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: days of the date of receipt and, if the PCN is determined to be incomplete, notify the the district engineer by submitting a pre-construction notification (PCN) as early as
 - He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or 1
- receipt of a complete PCN, the permittee cannot begin the activity until an Individual written approval from the Corps. If the proposed activity requires a written waiver to the district engineer issues the waiver. If the district or division engineer notifies the permit has been obtained. Subsequently, the permittee's right to proceed under the properties, the permittee cannot begin the activity until receiving written notification PCN and the prospective permittee has not received written notice from the district permittee in writing that an individual permit is required within 45 calendar days of effects" on historic properties, or that any consultation required under Section 7 of 45 calendar days have passed from the district engineer's receipt of the complete from the Corps that there is "no effect" on listed species or "no potential to cause National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, exceed specified limits of an NWP, the permittee may not begin the activity until affected or in the vicinity of the project, or to notify the Ccrps pursuant to general or division engineer. However, if the permittee was required to notify the Corps condition 20 that the activity may have the potential to cause effects to historic pursuant to general condition 18 that listed species or critical habitat might be the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the work cannot begin under NWPs 21, 49, or 50 until the permittee has received NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2). 3
 - b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:
 - Name, address and telephone numbers of the prospective permittee;
 - Location of the proposed project; 363
- description should be sufficiently detailed to allow the district engineer to determine NWP(s), regional general permit(s), or individual permit(s) used or intended to be adverse environmental effects the project would cause, including the anticipated A description of the proposed project; the project's purpose; direct and indirect used to authorize any part of the proposed project or any related activity. The amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other

that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

- (4) The PCN must include a delineation of wellands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate.
 - (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the
- Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.
 - c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also
- d) Agency Coordination:
- (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPS and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.
- (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 94, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will be more than minimal. If so contacted by an agency, the district engineer will be more than minimal.

before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each preconstruction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. In cases of where the prospective permittee is not a Federal agency, the district

- (3) In cases of where the prospective permittee is not a rederal agency, ine usure, engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
- Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

DISTRICT ENGINEER'S DECISION:

- adverse effects (temporary or permanent), the importance of the aquatic resource functions project, this determination will include an evaluation of the individual crossings to determine the activity authorized by the NWP will result in more than minimal individual or cumulative streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, use, that assessment method may be used by the district engineer to assist in the minimal If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of In reviewing the PCN for the proposed activity, the district engineer will determine whether resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will engineer. If an appropriate functional assessment method is available and practicable to determination that the NWP activity will result in minimal adverse effects. When making be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the effects caused by the NWP activity. The district engineer will also consider site specific resource that will be affected by the NWP activity, the functions provided by the aquatic factors, such as the environmental setting in the vicinity of the NVVP activity, the type of whether they individually satisfy the terms and conditions of the NWP(s), as well as the wetlands, the prospective permittee should submit a mitigation proposal with the PCN. minimal effects determinations the district engineer will consider the direct and indirect conditions to the NWP authorization to address site-specific environmental concerns. adverse environmental effects or may be contrary to the public interest. For a linear 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral adverse effects determination. The district engineer may add case-specific special to the region (e.g., watershed or eccregion), and mitigation required by the district N -
- If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and confitons of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer determines that the adverse and include any activity-specific conditions in the NWP verification the district engineer determines the notify the activity the appropriate provisions at 33 CFR 332.3(k). The district engineer must must comply with the appropriate provisions at 33 CFR and the district engineer must

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the proposed compensatory mitigation plan. The district engineer must review the proposed environment (after consideration of the compensatory mitigation proposal) are determined compensatory mitigation plan with the PCN, the district engineer will expeditiously review effects on the aquatic environment. If the net adverse effects of the project on the aquatic response to the applicant. The response will state that the project can proceed under the determine whether the proposed mitigation would ensure no more than minimal adverse compensatory mitigation plan within 45 calendar days of receiving a complete PCN and terms and conditions of the NWP, including any activity-specific conditions added to the approve the final mitigation plan before the permittee commences work in waters of the by the district engineer to be minimal, the district engineer will provide a timely written mitigation plan is not practicable or not necessary to ensure timely completion of the United States, unless the district engineer determines that prior approval of the final required compensatory mitigation. If the prospective permittee elects to submit a NWP authorization by the district engineer.

3

requirements. The authorization will include the necessary conceptual or detailed mitigation specific mitigation plan or has determined that prior approval of a final mitigation plan is not or a requirement that the applicant submit a mitigation plan that would reduce the adverse If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project Where the district engineer determines that mitigation is required to ensure no more than authorized under the NWP subject to the applicant's submission of a mitigation plan that work in waters of the United States may occur until the district engineer has approved a would reduce the adverse effects on the aquatic environment to the minimal level; or (c) minimal adverse effects occur to the aquatic environment, the activity will be authorized effects on the aquatic environment to the minimal level. When mitigation is required, no practicable or not necessary to ensure timely completion of the required compensatory within the 45-day PCN period, with activity-specific conditions that state the mitigation that the project is authorized under the NWP with specific modifications or conditions. does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is mitigation.

FURTHER INFORMATION:

- District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP. ÷
- NW/Ps do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. N
 - NWPs do not grant any property rights or exclusive privileges.
 - NWPs do not authorize any injury to the property or rights of others. ė
- NWPs do not authorize interference with any existing or proposed Federal project. 4.0
- SECTION 401 WATER QUALITY CERTIFICATION:

State of Hawaii, Department of Health, Clean Water Branch (DOH) Requirements (Projects in the State of Hawaii Only)

- WQC issued for a project are hereby incorporated into the project's NWP verification (WQC) from the DOH before the Honolulu District can issue verification for proposed and are subject to discretionary enforcement by the Honolulu District. The permittee work requiring authorization under CWA Section 404. All conditions of a Section 401 is strongly encouraged to submit a DOH WQC application to DOH, with site-specific You must obtain a Clean Water Act (CWA) Section 401 Water Quality Certification ri,
- solely under Section 10 of the Rivers and Harbors Act of 1899, any best management You must contact the DOH to determine if a National Pollutant Discharge Elimination System (NPDES) permit is required. For work authorizations requiring verification BMPs, applicable monitoring plan, and any dredge spoils management plans. ġ

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the NWP verification. These conditions are subject to discretionary enforcement by and minimizing the discharge of pollutants, other than dredged or fill material, into state waters, including 303(d)-listed impaired waters, are hereby incorporated into practices (BMPs) required or recommended by the DOH for purposes of avoiding the Honolulu District.

For projects directly impacting "Impaired Waters" as listed on the most recent CWA Section 303(d) list ö

(http://hawaii.gov/health/environmental/water/cleanwater/integrated/index.html), the PCN shall:

- Identify the waterbody as an "Impaired Water" and,
- Identify mitigating measures or BMPs necessary to avoid further degradation of the impaired water. 33
- comparison to EALs, and maintained by the generator. The spoils shall also meet the You may dispose of dredged spoils at state permitted landfills, provided you comply other solid waste." The generator shall provide the documentation to the DOH upon with the landiil's acceptance criteria. Preapproval by the DOH-Solid and Hazardous request. Offsite placement of dredged spoils that do not meet the above criteria or Action Levels for unrestricted use. You must adequately characterize the dredged spoils, including conducting sampling and analysis in accordance with the HEER rock-like materials... [that do not] contain vegetation or other organic material, or definition of inert fill material, which generally includes "...earth, soil, rocks, and locations, provided the dredged spoils meet the Hawaii DOH Soil Environmental Sampling methodology and analytical results shall be documented, including a occur without adequate records may be considered illegal dumping, subject to documentation to DOH upon request. You may use dredge spoils at off-site Office Technical Guidance Manual and other relevant guidance documents. Waste Branch is not required for this action. The generator shall provide enforcement action. b

COASTAL ZONE MANAGEMENT ACT CONSISTENCY DETERMINATION (3/16/2012):

Nationwide Permits resulted in a general concurrence with the Nationwide Permit General Conditions and the 2012 Nationwide Permit Honolulu District Regional Conditions. The The Hawaii Coastal Zone Management (CZM) Program Coastal Zone Management Act Hawail CZM Program reserves the right to require an individual federal consistency (CZMA) Federal Consistency review for the 2012 U.S. Army Corps of Engineers review for any proposed activity covered by a NWP. CZM consistency general concurrences were issued for each of the following NWPs:

1,2,3,4,5,6, 7,9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,20,22,23,25,27,28,30,31, 32, 33, 35, 36, 37, 38, 40, 41, 43, 45, 46, 48, and 51.

Excluded NWP-The following NWPs are excluded from use within the State of Hawaii as explained below:

- 2012 Nationwide Permit Honolulu District Regional Conditions Regional Condition 1 · Exclusions; Revoked Permits The Corps Honolulu District has revoked the following NWPs for use within the State of Hawaii: NWPs 21, 24, 29, 34, 39, 42, 44, 49, 50, and 52.
 - Reserved NWPs: NWP 26 and NWP 47 are designated by the Corps as "reserved." If these NWPs are made available for use during the five year authorization period for the 2012 NWPs, then Hawaii CZM Program federal consistency review will be required. •
 - five-year authorization period for the 2012 NWPs, then Hawaii CZM Program federal consistency review will be required. In the event that NWP 8 should be amended to applicable to the State of Hawaii. If this NWP becomes available for use during the include renewable energy structures within areas leased for such purposes by the NWP 8- Oil and Gas Structures on the Outer Continental Shelf, is not currently 0

Department of Interior, Bureau of Ocean Energy Management, then Hawaii CZM Program federal consistency review will be required. The 2012 NWPs are denied without prejudice in the Territories of American Samoa and Guam, and in the CNML. As is the case with any DA authorization, verification of a NWP does not obviate the need for any other Federal, State or local authorization.

2012 NWP REGIONAL CONDITIONS DEFINITIONS:

Allogenic streams - streams flowing from an impervious surface, such as volcanic rock into porous limestone. Example: in Northern Guam, such streams will percolate into the ground and can flow into the marine environment from subsurface channels. Anchialine pools – marine or brackish water bodies that have no surface connection but that, through permeable substrates, have subsurface hydrologic connection to the ocean.

Cenotes - sinkholes open to the surface and extending into groundwater.

Coral Reefs - As defined at 40 CFR 230.44 (Clean Water Act, Section 404(b)(1) Guidelines), coral reefs consist of the skeletal deposit, usually of calcareous or silicaceous materials, produced by the vital activities of anthozoan polyps or other invertebrate organisms present in growing portions of the reef.

Phreatic zones - the zones along a coast where freshwater and saltwater mix usually causing rapid dissolution of limestone with a resulting cave formation Sinkholes - caves formed when a water formed cave either collapses or is opened up by adequate dissolution of limestone by water.

Stream caves - a series of caves formed by water flowing through limestone usually structurally complex. Vadose Shafts - vertical shafts in limestone that allows rapid passage of water into the ground water lens.

The Work:

Contractor will use a hydraulic rock drill and non-polluting hydraulic oil to bore three holes into the hard limestone substrate. Each of the three bores shall have a diameter of approximately 1.5 inches and an approximate depth of 24 inches. See attached revised mooring elevation and mooring plan for further details (hereafter refeMrred to as the "Work"). Operations will be conducted from a landing craft measuring approximately 75 by 25 feet and limited to waters with a depth of less than 30 feet.

Stainless steel pins measuring 1.25 and by 20 inches will be embedded in the bores to an approximate depth of 16 inches using Unitex Pro-Poxy 300, a high-strength, two-component epoxy adhesive anchoring gel. Pro-Poxy 300 meets USDA specifications for use in food processing areas.

The ³/₄ inch chain that attaches the two ships anchors to the existing concrete encased tire or "sinker" will be cut with an underwater cutting torch. Excess chain will then be moved by hand (with the help of a 500 pound capacity lift bag) for re-use in linking the stainless pins to the 27" inflatable buoy. Any unused excess chain along with the sinker will be lifted aboard the landing craft for disposal ashore.

MBP expects all facets the Work will be completed in less than eight (8) hours.

Best Management Practices

Contractor will comply with the following best management practices (BMPs) in executing the Work:

- 1. Contractor shall maintain constant vigilance for the presence of ESA-listed marine species during all aspects of the Work including boat operation and anchoring and all in-water activities, and shall designate a competent observer to survey the areas adjacent to the Work for ESA-listed marine species.
- 2. Prior to commencing the Work, Contractor shall survey the area of the Work for the presence of marine mammals. Contractor shall verify that no ESA-listed marine animal is within 500 yards of the site of the Work before personnel, equipment or material enter the water.
- 3. All vessels involved in the Work shall comply with all applicable state and federal rules regarding approaching or operating in the presence of marine mammals. When piloting vessels, 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.
- 4. There shall be no drilling of the substrate if a marine mammal is observed within 1,640 feet of the site of the Work. Drilling may resume no sooner than 30 minutes after the last sighting. If drilling has commenced and a marine mammal is sighted within 1,640 feet,

drilling may continue unless the marine mammal approaches within 820 feet.¹ In such event operations shall cease until the animal is observed at least 500 meters outside of the work area or 30 minutes have elapsed since the last sighting.

- 5. Prior to commencement of cutting or other alteration of existing chain, Contractor shall inspect the affected chain for coral or other marine life that may be growing on the two lengths of chain that will be removed from the sea floor. Care shall be taken to avoid disturbing attached marine life or, to the extent practicable, to move affected specimens to chain that will be left in place.
- 6. Installation of the three inflatable buoys shall be suspended if an ESA-listed marine species approaches within 50 yards of the work site. Work may commence or resume after the animals have voluntarily departed the area.
- 7. All chain and objects shall be lowered to or removed from the bottom in a controlled manner. This can include the use of buoyancy controls such as lift bags, or the use of cranes, winches, or other equipment that affect positive control of the rate of descent or ascent.
- 8. Mooring lines for vessels and marker buoys shall be kept to the minimum lengths necessary and shall remain deployed only as long as needed to properly accomplish the Work.
- 9. Vessel operators shall reduce vessel speed to 5 knots when turtles are sighted or suspected to be present at or near the surface in the area of the Work.
- 10. If despite efforts to maintain the distances and speeds described above, a marine mammal or turtle approaches the vessel, the vessel operator shall disengage the vessel's propellers until the animal is at least 50 feet away, and then slowly move away to the prescribed distance.
- 11. Marine mammals and sea turtles shall not be encircled or trapped between multiple vessels or between vessels and the shore.
- 12. Contractor employees shall not attempt to feed, touch, ride, or otherwise intentionally interact with any ESA-listed marine species.
- 13. Contractor shall avoid discharge of pollutants into the marine environment.
- 14. Contractor shall have on hand aboard the landing craft suitable materials to contain and remediate any spills.
- 15. Contractor shall ensure all equipment to be used in performing the Work is clean and free of leaks. Work shall be suspended in the event a leak is detected and shall not proceed until the leak is repaired and equipment cleaned.

¹ The 1,640-ft (500-m) and 820-ft (250-m) zones of interest are based on California Department of Transportation (CALTRANS) recommendations for an in-water pile driving project (CALTRANS 2009).

Pac-SLOPES Activity Specific BMPs

The following Best Management Practices (BMPs) apply to each action authorized under Pac-SLOPES.

5.1 Collision with vessels:

- 1. 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.
- 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.
- 3. If approached by a marine mammal or turtle, the vessel operator shall put the engine in neutral and allow the animal to pass.
- 4. Vessel operators shall not encircle or trap marine mammals or sea turtles between multiple vessels or between vessels and the shore.

5.2. Direct physical impact:

- 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.
- 2. Equipment operators shall employ "soft starts" when initiating work 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.
- 3. 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.
- 4. Equipment, anchor(s), or materials shall not be deployed in areas containing live corals, sea grass beds, or other significant resources.

5.3 Entanglement:

- 1. Mooring systems shall employ the minimum line length necessary to account for expected fluctuations in water depth due to tides and waves.
- 2. Mooring systems shall be designed to keep the line as tight as possible, with the intent to eliminate the potential for loops to form.
- 3. 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.

- 4. 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. Any permanent or long-term deployments shall include an inspection and maintenance program to reduce the likelihood of failures that may result in loose mooring lines lying on the substrate or hanging below a drifting buoy.
- 6. Mooring systems, including those used for temporary markers, scientific sensor buoys, or vessel moorings, shall be completely removed from the marine environment immediately at the completion of the authorized work or the end of the mooring's service life. The only exceptions to this rule shall be mooring anchors such as eyebolts that are epoxied into the substrate and which pose little or no risk to marine life.

5.5 Exposure to elevated noise levels:

- 1. For any equipment used in undertaking the authorized work, the 160 dB and 120 dB isopleths shall not exceed the 50 yard shut-down range for impulsive and continuous sound sources, respectively.
- 2. Maintenance dredging, in-water excavation, movement of large armor stones, and benthic core sampling shall not be undertaken if any ESA-listed species is within 50 yards of the authorized work, and those operations shall immediately shut-down if an ESA-listed species enters within 50 yards of the authorized work.

Pac-SLOPES General Conditions

GENERAL CONDITIONS: The Corps will apply the following set of general conditions to each action authorized under Pac-SLOPES. Additionally, specific BMPs described in section 5 under the specific activity types will be required as applicable.

1. Each applicable condition, BMP, and conservation measure will be included as an enforceable part of the permit document.

2. The Corps will retain the right of reasonable access to projects authorized under Pac-SLOPES to monitor the compliance with and effectiveness of permit conditions.

3. Each permit will contain the requirement that the permittee document and report to the Corps and NMFS, all interactions with listed species, including the disposition of any listed species that are injured or killed. Should an ESA-listed species be adversely affected, all work must stop pending reinitiation of consultation between the Corps and NMFS PRD for that action.

4. Constant vigilance shall be kept for the presence of ESA-listed marine species during all aspects of a proposed action

a) A responsible party, i.e., permittee/site manager/project supervisor, shall designate a competent observer to survey work sites and the areas adjacent to the proposed action for ESA-listed marine species;

b) Surveys shall be made prior to the start of work each day, including prior to resumption of work following any break of more than one half hour. Periodic additional surveys throughout the work day are strongly recommended;

c) All in-water work will be postponed or halted when ESA-listed marine species are within 50 yards of the proposed work, and will only begin/resume after the animals have voluntarily departed the area, with the following exception: if ESA-listed marine species are noticed within 50 yards after work has already begun, that work may continue only if, in the best judgment of the responsible party, the activity is unlikely disturb or harm the animal(s), for example, divers performing surveys or underwater work (excluding the use of toxic chemicals) is likely safe, the use of heavy machinery is not; and

d) No one shall attempt to feed, touch, ride, or otherwise intentionally interact with any protected species.

5. Project footprints must be limited to the minimum area necessary to complete the project.

6. The project area must be flagged to identify sensitive resource areas, such as seagrass beds, listed terrestrial plants, and turtle nests.
7. Work located waterward of the Mean Higher High Tide Line of a navigable water or waterward of the upward limits of adjacent wetlands must be timed to minimize effects on ESA-listed species and their habitats.

8. Project operations must cease under unusual conditions, such as large tidal events and high surf conditions, except for efforts to avoid or minimize resource damage.

9. A stormwater management plan, commensurate to the size of the project, must be prepared and carried out for any project that will produce any new impervious surface or a land cover conversion that will slow the entry of water into the soil to ensure that effects to water quality and hydrology are minimized.

10. A pollution and erosion control plan for the project site and adjacent areas must be prepared and carried out. As a minimum, this plan shall include:

a.) Proper installation and maintenance of silt fences, sausages, equipment diapers, and/or drippans;

b.) A contingency plan to control and clean spilled petroleum products and other toxic materials.

c.) Appropriate materials to contain and clean potential spills will be stored at the work site, and be readily available;

d.) All project-related materials and equipment placed in the water will be free of pollutants;

e.) Daily pre-work inspections of heavy equipment for cleanliness and leaks, with all heavy equipment operations postponed or halted until leaks are repaired and equipment is cleaned;

f.) Fueling of project-related vehicles and equipment will take place at least 50 feet away from the water, preferably over an impervious surface;

g.) A plan will be developed to prevent trash and debris from entering the marine environment during the project; and

h.) All construction discharge water (e.g., concrete washout, pumping for work area isolation, vehicle wash water, drilling fluids) must be treated before discharge.

11. Erosion controls must be properly installed before any alteration of the area may take place.

12. Temporary access roads and drilling pads must avoid steep slopes, where grade, soil types, or other features suggest a likelihood of excessive erosion or failure; existing access routes must be utilized or improved whenever possible, in lieu of construction of new access routes.

13. All disturbed areas must be immediately stabilized following cessation of activities for any break in work longer than 4 days.

14. Drilling and sampling are restricted to uncontaminated areas, and any associated waste or spoils must be completely isolated and disposed of in an upland location.

15. Authorized work must comply with all applicable NWP General and Regional Conditions.

Pac-SLOPES SPECIAL CONDITIONS

In addition to the general conditions listed the following special conditions are required under Pac-SLOPES for each activity:

2.2.3 Marina or Harbor Repair & Improvement

1) Repair and replacement of over- and in-water structures (such as piers, docks, and launch ramps) under Pac-SLOPES is expressly limited to their existing footprints.

2) No piling installation or piling replacement will be authorized;

3) Repair and removal work will be accomplished in a manner that minimizes the potential spread of invasive species that may reside on the pilings; and

4) Removed materials must be disposed of at an approved upland disposal site.

2.2.4 Piling Repair & Removal

- 1. Repair and removal work will be accomplished in a manner that minimizes the potential spread of invasive species that may reside on the pilings;
- 2. Removed pilings must be disposed of at an approved upland disposal site; and
- 3. Installation of new or replacement pilings of any type is not authorized

2.2.5 Buoy Installation & Repair

1. Anchoring locations and moorings must be designed to avoid, to the greatest extent practicable, impacts to live corals and other benthic organisms.

2. The following buoy deployments are expressly excluded from coverage under Pac-SLOPES:

a.) Deployment of mooring buoys in or adjacent to seagrass beds;

b.) Any new deployments or installations within the Hawaiian Islands Humpback Whale National Marine Sanctuary; and

c) With the exception of certain wave and current monitoring systems that operate in frequency bands well outside the hearing ranges of ESA-listed marine life, the deployment of moored active acoustic devices.

2.2.6 Maintenance Dredging

- 1. With the exception of the actual dredging apparatus (e.g. clamshell buckets, or the scoop and articulated arm of a backhoe, etc.), heavy equipment will be operated from above and out of the water;
- 2. The portions of the equipment that enter the water will be clean and free of pollutants;
- 3. Appropriate silt containment devices must be used and properly installed to avoid degradation of adjacent coral reefs, and aquatic vegetation; and
- 4. Dredged material must be deposited at upland sites, or at EPA designated ocean disposal sites provided sediment standards are met.
- 5. Dredging of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), and wetlands, is not authorized;
- 6. Use of hydraulic dredging (aka vacuum, suction, hopper) is not authorized;
- 7. Any form of blasting is not authorized; and

8. Any dredging for the purpose of connecting canals or other artificial waterways to navigable waters is not authorized.

2.2.7 Minor Discharges and Excavations

NWP # 18 authorizes minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- 1. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and
- 3. The discharge is not placed for the purpose of a stream diversion.

NWP # 19 authorizes minor dredging below OHW or the high tide line from navigable waters of the United States, provided the activity meets all of the following criteria:

- 1. The dredging involves no more than 25 cubic yards below the plane of OHW or the mean high water mark;
- 2. The dredging will result in no degradation of coral reefs, submerged aquatic vegetation, or wetlands; and
- 3. The dredging involves no connection of canals or other artificial waterways to navigable waters.

Additionally, the following conditions apply to minor discharges and excavations (dredging) covered under Pac-SLOPES:

- 1. The dredged or discharged material will be free of contamination; and
- 2. The site of excavation or discharge will contain no known forage or resting habitat for ESA-listed marine species.

2.2.8 Utility Line Installation & Repair

- 1. Utility line placement location and method must be designed to avoid to the greatest extent practicable, impacts to live corals, submerged aquatic or marine vegetation and other benthic organisms, and wetlands.
- The following actions are expressly excluded from coverage under Pac-SLOPES:

 a) New installations within the Hawaiian Islands Humpback Whale National Marine Sanctuary;

b) New installations in or adjacent to seagrass beds;

c) Installation of new or expanded outfall and/or intake structures;

d) Installation, removal, or abandonment of any pipeline used to convey toxic substances (e.g. crude oil or its derivatives, known toxic chemicals, etc.);

e) Any project that involves the installation of new power lines or other conveyances that may radiate or otherwise exude substances or energies into the marine environment;
f) Any projects that involve in-water trenching in the marine environment or in the lower reaches of freshwater streams and rivers where ESA-listed marine species may occur, or where downstream impacts of the trenching may impact those species or their habitats;
g) Any projects that require new hydrographic surveys that employ acoustic devices such as sonars and seismic profilers.

2.2.9 Outfall Structure Repair & Replacement

- 1. The following actions are expressly excluded from coverage under Pac-SLOPES:
 - a.) Installation of new or expanded outfall structures; and
 - b.) Relocation of existing outfall structures.

2.2.10 Bank Stabilization

- 1. No material will be discharged into special aquatic sites;
- 2. An activity will involve no more than 500 feet in total length along the bank;
- The maximum amount of material placed shall not exceed the minimum needed for erosion protection;
- 4. No more than one cubic yard, per running foot, of new fill will be placed below ordinary high water (OHW) or the high tide line; and
- 5. All material will be placed in a manner that will avoid erosion by normal or expected high flows.

2.2.12 Road Construction, Repair, and Improvement

- 1. Maximum road width shall be limited to the minimum width necessary;
- 2. Roads shall be designed and constructed in a manner that minimizes adverse impacts on surface and marine waters due to runoff and erosion;
- 3. Roads shall be constructed as near as possible to pre-construction contours and elevations; and
- 4. Roads must be bridged or culverted in a manner that maintains surface flows with minimal modification to flow direction or velocity.

2.2.13 Bridge Repair & Replacement

1. Temporary fills must consist of stable materials, and be placed in a manner, that will not be eroded by expected high flows;

2. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations within 30 days of project completion; and

3. Installation of pilings, including steel sheetpile cofferdams, is expressly excluded from coverage under Pac-SLOPES, as is any in-water drilling.



Honolulu District US Army Corps of Engineers

DEPARTMENT OF THE ARMY PERMIT COMPLIANCE CERTIFICATION

File Number: POH-2016-00096 Project Title: Makena Boat Partners Mooring, Makena Bay, Maui

PERMIT TYPE: Final Nationwide Permit #3

NAME OF PERMITTEE: Mr. Sidney Akiona

DATE OF ISSUANCE: June 15, 2016

DATE OF EXPIRATION: March 18, 2017

The permittee must, upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address or via email within seven (7) days of completion of work:

Honolulu District US Army Corps of Engineers **Regulatory Office** Building 230, CEPOH-RO Fort Shafter, HI 96858-5440 Email: CEPOH-RO@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of this permit, you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Fermittee

<u>Nov. 22 2016</u> Date

Enclosure 5

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

June 15, 2016

SUBJECT: Nationwide Permit Verification for Makena Boat Partners Mooring, Makena Bay, Maui, DA File No. **POH-2016-00096**

Sidney Akiona Makena Boat Partners 34 Wailea Gateway Place Suite 105 Kihei, HI 96753

Dear Mr. Akiona:

The U.S. Army Corps of Engineers, Honolulu District (Corps) Regulatory Office, has completed review of your request for authorization dated March 23, 2016 and deemed it complete for the proposed replacement of the anchoring system of an existing mooring buoy located at 20.64833°, -156.44556° within the Makena Bay Mooring Zone, approximately 0.19 miles northwest of the shoreline and 0.24 miles northwest of the Makena Road traffic circle, in Makena Bay, Kihei, Island of Maui, Hawaii.

This office has verified that your proposed activity complies with the terms and conditions of Nationwide Permit 3 (NWP-3), Maintenance, and the overall NWP program issued on March 17, 2012 pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Please reference Department of the Army (DA) file number POH-2016-00093 in any future correspondence relating to this permit.

This NWP verification is being issued pursuant to Section 10 and authorizes the following work as described below and as depicted on the enclosed drawings (Enclosure 1):

- Project Description: The proposed project would replace a the anchor of single point mooring buoy for a single commercial vessel deployed in 21-foot deep, rubble bottom, within the Makena Bay Mooring Zone, approximately 0.19 miles northwest of the shoreline and 0.24 miles northwest of the Makena Road traffic circle. The replacement and modification of the existing authorized mooring buoy would include the removal of a 600-pound concrete filled tire anchor, to be placed in an upland disposal site, and the removal of a portion of the two existing ³/₄-inch chains. The new mooring buoy would include the installation of a new 24-inch diameter spherical buoy, with two new 35-foot long 1 ¹/₄-inch three-strand nylon ropes with two eye splices and a pick up float, attached by 40 feet of new ³/₄ -inch "Campbell" galvanized dock fender chain with a 1 ¹/₄-inch anchor eye-eye swivel, a 15-inch diameter mid-line float, and a 27-inch diameter float at the base of the chain, to two

existing anchors and three new manta ray anchors. The two existing ship anchors would be attached to the central "Campbell" chain by two 12-foot long sections of repurposed existing ³/₄-inch long link chain, each with a ³/₄-inch galvanized bolt anchor shackle with seizing wire. The three 1.25-inch diameter by 20-inch long manta ray anchors would be drilled into the rubble substrate of the sea floor with an epoxy coating and would each be attached to the central "Campbell" chain by three 8-foot long sections of ³/₄-inch repurposed existing long link chain each with a ³/₄-inch galvanized bolt anchor shackle with seizing wire. The chains from the two anchors and three manta ray anchors would all be connected to the "Campbell" chain with a new 1-inch galvanized bolt anchor shackle with a seizing wire and a 1 3/8-inch galvanized weldless ring. The three 1.5-inch diameter and 24-inch deep holes would be drilled using a hydraulic rock drill conducted from a landing craft. The construction is anticipated to be complete within eight hours of commencement.

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:

a. Incidents where any individuals of Green Sea Turtle (Chelonia mydas), Hawksbill Turtle (Eretmochelys imbricata), Humpback Whale, (Megaptera novaeangliae), 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 structures in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Honolulu District of the U.S. Army Corps of Engineers at (808) 835-4303. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measurements to ensure that evidence intrinsic to the specimen is preserved.

b. You must maintain your mooring line in good, functioning condition to ensure the mooring does not fail.

c. All work will be conducted between 7:00am and 6:00pm so that federally-protected sea turtles and seabirds are not disturbed or attracted to artificial lights. Any lights used during the construction will be turned off during the evening hours.

d. The permittee must comply with all best management practices relevant to actions that may impact Federally listed threatened and endangered species listed in the Best Management Practice Plan dated May 26, 2016 (Enclosure 3).

e. The permittee must comply with the attached Pacific Standard Local Operating Procedure for Endangered Species (Pac-SLOPES) general conditions, special conditions, and activity-specific best management practices (BMPs) (Enclosure 4) to avoid effects to threatened or endangered marine species.

This NWP verification is valid until **March 18, 2017** unless this NWP is modified, reissued, or revoked prior to that date. If the authorized work has not commenced or is not under contract by March 18, 2017, then please contact this office at least 60 days prior to expiration of the NWP to request a permit extension. 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 Section 404 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 seven (7) days of completion of work to <u>CEPOH-RO@usace.army.mil</u>.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this provisional permit, please contact Vera Koskelo of my staff at 808-835-4310 or via e-mail at <u>Vera.B.Koskelo@usace.army.mil</u>.

Sincerely,

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Tunis W. McElwain Acting Chief, Regulatory Office

Enclosures

cc: State of Hawaii DBEDT Office of Planning (John Nakagawa) USCG (Nicolas A. Jarboe) DOH-CWB (Darryl Lum) Sea Engineering Inc., Agent (Chris Conger)

APPENDIX E: CORRESPONDENCE

E1 PRE-ASSESSMENT CONSULTATION CORRESPONDENCE E2 2015 DRAFT ENVIRONMENTAL ASSESSMENT CONSULTATION CORRESPONDENCE (This page intentionally left blank)

E1 PRE-ASSESSMENT CONSULTATION CORRESPONDENCE

Subject: Preliminary Consultation concerning ENVIRONMENTAL ASSESSMENT of a proposed disposition of State lands allowing continued catamaran passenger boarding at Maluaka Beach, Wailea, Maui, Hawaii

Purpose of this letter: The purpose of this letter is to invite comment by members of the public and governmental agencies as to the potential effects of the proposed action prior to preparation of an Environmental Assessment

Your comments are requested: Please submit your comments by July 20, 2015 via letter or email to:

Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, Hawaii 96734 dashiellplanning@outlook.com

Proposed Action: The proposed action is establishment, by the State Department of Land and Natural Resources, of a non-exclusive use area for catamaran boarding. Makena Boat Partners (MBP) operates Kai Kanani II, a 65 by 31 foot catamaran, to provide commercial tours and ocean activities in the near shore waters of Makena Bay in accordance with a Conservation District Use Permit (CDUP) issued in 1988. Passengers embark the vessel directly from Maluaka Beach as may be seen in the following photograph. Boarding occurs in the southern portion of the beach fronting the Makena Beach Golf and Resort (formerly the Maui Prince Hotel). Annual permits received by MBP from the Division of Boating and Ocean Recreation of the Department of Land and Natural Resources through 2014 expressly authorized "loading & offloading passengers at the public beach fronting the Makena Beach Resort (Maui Prince Hotel)."

The 1988 CDUP was conditioned on MBP securing authorization from DLNR's Division of Land Management for the occupancy of state lands. MBP seeks to satisfy that condition through this action.



Kai Kanani II boarding at Maluaka Beach.

Description: The Environmental Assessment will assess the impact on Maluaka Beach of the boarding of passengers. Passengers access the vessel by wading through shallow (approximately knee-deep) water. On reaching the vessel they board by means of a retractable ladder positioned between the vessel's two hulls. Passengers are assisted by crewmembers standing on submerged land at the foot of the ladder. This cycle repeats on the return of the vessel following an excursion. Provisioning and trash removal comprise the final daily cycle. These cycles begin each day early in the morning (typically 5:30 AM HST) and conclude immediately following the last excursion of the day. Each cycle typically requires less than seven (7) minutes.

No more than forty-five (45) feet of shoreline is affected by the vessel during any given boarding cycle. The affected submerged lands are sandy substrate. The vessel remains afloat throughout each cycle. Positioning of the vessel is maintained through the application of power to one or both of the vessels' propellers. Contact with the sandy substrate due to wave action is infrequent and momentary, and limited to the forward-most part of a hull and, rarely, the tip of a rudder. Operations are suspended whenever condition renders boarding unsafe.

Members of the vessel's crew (and other shore-side personnel) assist passengers in crossing the beach directly to the vessel from a public access point mauka of state property. They also guide beachgoers and swimmers away from the boarding area while the vessel approaches or is in the process of boarding passengers or disembarking passengers. Operations are suspended whenever conditions render boarding unsafe.

The Applicant (MBP) desires formal disposition of the affected state lands to eliminate question whether a condition of the 1988 CDUP remains unmet.

Background and chronology. In 1988, the Department of Land and Natural Resources (DLNR) issued a Conservation District Use Permit (CDUP) to Makena Boat Partners for a mooring (commercial use) in a designated mooring location offshore of the (then) Maui Prince Hotel. The CDUP included "...a Beach Use Permit Fronting the Maui Prince Hotel, Makena, Maui at TMK 2-1-06 and 2-1-07 (offshore)...".

In 2013, Applicant (MBP) was notified that it lacked "...appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State Lands." Applicant was invited to submit an "Application for Use of Government Lands," and advised that the "...disposition of government lands for landing and mooring purposes via an easement or revocable permit is considered a "trigger" under Chapter 343, Hawaii Revised Statutes, requiring compliance by the applicant."

The proposed Environmental Assessment is intended to satisfy the requirements of Chapter 343 of the Hawai'i Revised Statutes.

Location and purpose of the project or activity. The activity site involves a portion of shoreline waters and fast and submerged lands (the "Site") comprising Maluaka Beach as depicted in the map included in this letter. Applicant (MBP) proposes to use the Site to board and disembark passengers to and from Kai Kanani II.

Description of the project or activity. On reaching the shoreline the vessel is slowed to a stop. Passenger boarding requires a relatively stationary vessel. This is achieved and maintained throughout boarding by judicious application of power to one or both of the vessel's propellers. There is no anchoring or other fixed connection with the sandy substrate. The vessel remains stationary for the few minutes required to board or offload passengers.

Environmental effects. The transient boarding of passengers does not cause a significant impact on the shoreline environment. Operation of the vessel brings positive economic and recreational effects to the community at large by providing employment for local residents and ocean-based activity options for residents and visitors. A marine biological survey concluded that vessel operations appear to have no adverse effect on marine resources at or near the landing sites. There appear to be no adverse effects on beachgoers, swimmers and other water-users.





Dotted red line bounds non-exclusive use area. Seaward extent is about 150 feet from the shoreline. The shoreline elevation varies between mean lower low water and mean higher high water because of changes in sea level (tides, winds, swell, season). Catamaran Boarding Maluaka Beach Wailea, Maui



Base map imagery, ESRI E. Dashiell, AICP, 4/27/15

Mailing List

State of Hawai'i Department of Business, Economic Development & Tourism P.O. Box 2359 Honolulu HI 96804

State of Hawai'i Department of Business, Economic Development & Tourism Strategic Industries Division 235 S. Beretania St., 5th Flr. Honolulu HI 96813

State of Hawai'i Department of Business, Economic Development & Tourism Office of Planning 235 S. Beretania St., 6th Floor Honolulu HI 96813

State of Hawai'i, Department of Education, Hawaii State Library Hawai'i Documents Center 478 S. King Street Honolulu HI 96813

State of Hawai'I Department of Education Hawai'i State Library Kahului Regional Library 90 School Street Kahului HI 96732

State of Hawai'l Department of Education Kihei-Makena Library 131 South Kihei Rd Kihei HI 96753

State of Hawai'l Department of Health, Environmental Health Administration P.O. Box 3378 Honolulu HI 96801

State of Hawai'i, Department of Land & Natural Resources Office of Conservation & Coastal Lands 1151 Punchbowl St RM 131 Honolulu HI 96813

State of Hawai'i, Department of Land & Natural Resources Land Division1 151 Punchbowl St RM 220 Honolulu HI 96813

State of Hawai'i Department of Land & Natural Resources Division of Boating & Outdoor Recreation P.O. Box 621 Honolulu, HI 96809 State of Hawai'i Department of Land & Natural Resources State Historic Preservation Division 601 Kamokila Blvd., Rm. 555 Kapolei HI 96707

State of Hawai'i Department of Land & Natural Resources Division of Aquatic Resources 1151 Punchbowl St RM 330 Honolulu HI 96813

State of Hawai'i Department of Land & Natural Resources Land Divison Maui District Branch ATTN: Mr Daniel L. Ornellas 54 High St RM 101 Wailuku HI 96793

State of Hawai'i Department of Transportation Division of Harbors 869 Punchbowl Street Honolulu HI 96813

University of Hawai'i Maui College Library 310 Ka'ahumanu Avenue Kahului HI 96732

State of Hawaii Office of Hawaiian Affairs 711 Kapi'olani Blvd., Suite 500 Honolulu HI 96813

County of Maui Department of Parks and Recreation 700 Hali'a Nakoa Street War Memorial Complex Wailuku HI 96793

County of Maui Department of Planning 250 S. High Street Kalana Pakui Bldg., Ste. 200 Wailuku HI 96793

Department of the Interior Fish and Wildlife Service 300 Ala Moana Boulevard, Room 3-122, Honolulu HI 96850-0056

Department of Commerce National Marine Fisheries Service Pacific Islands Regional Office, 1611 Kapi'olani Boulevard, Suite 1110, Honolulu HI 96814

Mailing List

Department of the Army Corps of Engineers Pacific Ocean Division, Building 525, Suite 300, Fort Shafter HI 96858-5440

Department of Homeland Security Coast Guard Commander14th Coast Guard District 300 Ala Moana Boulevard Room 9-204 Honolulu HI 96850-4982

Honolulu Star Advertiser Restaurant Row 7, Waterfront Plaza Suite 210 500 Ala Moana Boulevard Honolulu, HI 96813

Maui News 100 Mahalani Street, Wailuku, HI 96793

Sen Rosalyn H. Baker State Senator Dist 6 Hawaii State Capitol Room 230 Honolulu HI 96813

Rep Kaniela Ing State Representative Dist 11 Hawaii State Capitol Room 311 Honolulu HI 9681

Donald G Couch Jr Maui County Council Member 200 South High Street Wailuku HI 96793-2155

Doug Rice 2726 Kalanilani Circle Makawao HI, 96768

Maui Masters Swim Club c/o Doug Rice 2726 Kalanilani Circle Makawao HI, 96768

Malama Kahakai c/o Dana Naone Hall 2087 Well Street Wailuku HI 96793

Christine Andrews 2726 Kalanilani Circle Makawao HI, 96768 Maui Tomorrow Foundation, Inc. 55 N. Church St., Suite A4 Wailuku HI 96793

Surfrider Foundation Maui Chapter PO Box 790549 Paia Maui HI 96779

ATC Makena Holding, LLC c/o Mark Alexander Roy Munekiyo and Hiraga, Inc. 305 High Street, Suite 104 Wailuku HI 96793

ATC Makena Hotel, LLC c/o Declan McCarthy, General Manager, Makena Prince Hotel, 5400 Makena Ala Nui Kihei HI 96753

Don Bloom 4950 Makena Road Kihei, HI 96753

Play Pacific, LLC Attn. Kip Larson 5400 Makena Alanui Makena HI 96753

Pre-consultation Comments & Responses		
	Comments	Response
FEDERAL		
Department of the Interior Fish and Wildlife Service	7/30/15	10/8/15
Department of Commerce National Marine Fisheries Service		
Department of the Army US Army Corps of Engineers, Pacific Ocean Division	8/03/15	8/03/15
Department of Homeland Security Coast Guard Commander14th Coast Guard District		
CTATE		
Department of Business, Economic Development & Tourism		
Department of Business, Economic Development & Tourism Strategic Industries Division		
Department of Business, Economic Development & Tourism, Office of Planning-Hawaii Coastal Zone Management Program	7/16/15	10/8/15
Department of Education, Hawaii State Library, Hawaiʻi Documents Center		
Department of Education Hawai'i State Library, Kahului Regional Library		
Department of Education Kihei-Makena Library		
Department of Health, Environmental Health Administration, Environmental Planning Office	7/13/15	10/8/15
Department of Land & Natural Resources Office of Conservation & Coastal Lands	7/20/15	None required
Department of Land & Natural Resources Land Division	See Maui District Branch, 7/23/15	
Department of Land & Natural Resources Division of Boating & Outdoor Recreation		
Department of Land & Natural Resources State Historic Preservation Division	7/15/15	7/15/15
Department of Land & Natural Resources Division of Aquatic Resources	7/14/15 10/20/15	10/13/15
Department of Land & Natural Resources Land Division, Maui District Branch ATTN: Mr. Daniel L. Ornellas	7/23/15	10/20/15
Department of Transportation Division of Harbors	7/15/15	7/15/15
University of Hawaiʻi Maui College Library		
State of Hawaii Office of Hawaiian Affairs		

MAUI COUNTY		
County of Maui Department of Parks and Recreation		
County of Maui Department of Planning	7/15/15, 8/11/15	8/11/15
ELECTED		
Sen Rosalyn H. Baker State Senator Dist 6		
Rep Kaniela Ing State Representative Dist 11		
Donald G Couch Jr Maui County Council Member		
OTHER		
Honolulu Star Advertiser		
Maui News	7/13/15	None required
Doug Rice		
Maui Masters Swim Club c/o Doug Rice		
Malama Kahakai c/o Dana Naone Hall	See Isaac Hall, 7/20/15	
Christine Andrews		
Maui Tomorrow Foundation, Inc.		
Surfrider Foundation		
Maui Chapter		
ATC Makena Holding, LLC c/o Mark Alexander Roy, Munekiyo and Hiraga, Inc		
ATC Makena Hotel, LLC c/o Declan McCarthy		
Hannah Bernard, President Hawai'i Wildlife Fund	7/19/15	7/20/15
Isaac Hall, Esq, for Hui Alanui o Makena & Dana Naone Hall	7/20/15	10/13/15
Patricia Stillwell, Kihei Resident	7/17/15	9/25/15
Bill & Sylvia Sales, So Maui Residents	7/15/15	7/15/15
Phillip Schultz	7/14/15	7/15/15



United States Department of the Interior

FISH AND WILDLIFE SERVICE Pacific Islands Fish and Wildlife Office 300 Ala Moana Boulevard, Room 3-122 Honolulu, Hawaii 96850

In Reply Refer To: 01EPIF00-2015-TA-0341

JUL 3 0 2015

Mr. Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, Hawaii 96734

Subject: Technical Assistance for the Proposed Environmental Assessment for Continued Catamaran Landing (Kai Kanai II) at Makena Beach, Maui

Dear Mr. Dashiell:

The U.S. Fish and Wildlife Service (Service) received your correspondence on July 06, 2015 inviting comment on potential effects of continuing to land the catamaran Kai Kanai II at Makena Beach, Maui to embark passengers. The proposed action includes establishing a non-exclusive use area where the boat can be drawn in close enough for passengers embark and disembark by walking from the beach through shallow water.

Based on information you provided and pertinent information in our files, there are three listed species possibly in the vicinity of the project area that are of concern: the endangered hawksbill turtle (*Eretmochelys imbricata*) and Hawaiian monk seal (*Monachus schauinslandi*), and the threatened green sea turtle (*Chelonia mydas*). Given that your proposal includes routinely transiting to and from areas where these species may be swimming, basking, or nesting, the Service recommends that your environmental assessment address possible impacts to these species and best management practices to avoid and minimize project impacts.

Sea Turtles

The proposed project is within the vicinity of nesting habitat for the endangered hawksbill turtle and threatened green turtle, collectively referred to as sea turtles. Sea turtles come ashore to nest on beaches from May through September, peaking in June and July. Optimal nesting habitat is a dark beach free of barriers that restrict movement. Given that there is no boat landings proposed to occur at night, the most likely impact would be to animals near or in the water as the boat approaches shore, and to the nests themselves as people walk to and from the boat. We recommend that your staff look for signs of nesting including tracks on the beach to and from the ocean, and shallow depressions. Please contact the Service for further guidance if you observe signs of nesting. Green sea turtles may also use the beach to haul up and bask. This is an important behavior that puts the turtles at increased risk of disturbance from beach goers. We recommend that you educate passengers to avoid approaching turtles within 10 feet, not to surround the turtles or prevent them from moving, not touch them, and never attempt to feed



Mr. Eugene Dashiell

them. Turtles may also be in the shallow water between the boat and the beach while the boat is approaching shore, and therefore at risk of being hit. We recommend that the boat have a designated lookout on the bow to spot turtles and assist in maneuvering around them.

An important note: the Service consults on sea turtles and their use of terrestrial habitats (beaches where nesting and/or basking is known to occur), whereas the National Marine Fisheries Service (NMFS) consults on sea turtles and their use of off-shore and open ocean habitats. We recommend that you consult with NMFS regarding the potential impacts from the proposed project to sea turtles in off-shore and open ocean habitats.

Monk Seals

Hawaiian monk seals may be in the waters around the beach or on the beach itself. Monk seals do not fall under the regulatory authority of the Service, but of NMFS. We recommend that you consult with NMFS on potential impacts that your project could have on monk seals.

Implementation of these measures will minimize but does not ensure that take of listed species associated with this proposed action will be fully avoided. Thank you for your efforts to conserve listed species and native habitats. Please contact Fish and Wildlife Biologist Jon Sprague (808-792-9573) if you have any questions or for further guidance.

Sincerely,

Michelle Bogardus Island Team Leader Maui Nui and Hawaii Island

Eugene P. Dashiell AICP ENVIRONMENTAL PLANNING SERVICES 728 Nunu Street Kailua, Hawai'i 96734 Telephone/FAX: 808.254.4522 Cell Phone/Voice Mail: 808.371.0745 email: <u>dashiellplanning@outlook.com</u> Member, American Institute of Certified Planners

October 8, 2015

MICHELLE BOGARDUS ISLAND TEAM LEADER MAUI NUI AND HAWAII ISLAND US Fish and Wildlife Service Pacific Islands Fish and Wildlife Office 300 Ala Moana Boulevard, Room 3-122 HONOLULU HAWAII 96850

Dear Ms. Bogardus:

Subject: 01EP1F00-2015-TA-0341 -- Pre-Assessment Consultation for the Proposed Disposition of State Lands Allowing Continued Catamaran Passenger Boarding at Maluaka Beach, Wailea, Maui, Hawaii

Thank you for your comments (letter, July 30). I will address them in the subject EA. Specifically, the draft EA will:

- Discuss the effects on listed species in the vicinity of the project area, including the endangered hawksbill turtle and Hawaiian monk seal, and the threatened green sea turtle. AECOS, which is consultant to the client, previously prepared an aquatic survey of the project area, and is in the process of preparing a supplement to that document which will discuss listed species. I understand a representative will be contacting you and also NOAA;
- Regarding sea turtles we are aware of their presence in the area but believe the vessel has been successful in avoiding them. We will provide more information in the draft environmental assessment;
- Regarding monk seals and other marine mammals (humpback whales), the vessel is required by the US Coast Guard (see enclosure) to maintain distances of at least 50 yards or more from monk seals and 100 yards or more from humpback whales. We will provide more information in the draft EA.

If you have questions please call me (254-4522 or 371-0745) or e-mail me (dashiellplanning@outlook.com).

Sincerely yours,

Engre P. Dahurs

Eugene P. Dashiell, AICP

Enclosure



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

August 3, 2015

SUBJECT: No Permit Required for Makena Boat Partners; File No. POH-2015-00140; located in Wailea, Island of Maui, Hawaii

Pacific Environmental Planning 728 Nunu Street Kailua, Hawaii 96734 Attn: Eugene P. Dashiell, AICP

Dear Mr. Dashiell:

On July 22, 2015, the Corps received a submittal from Pacific Environmental Planning on behalf of Makena Boat Partners, requesting the Corps' comments prior to the development of an Environmental Assessment for the loading and unloading of passengers from a public beach to a catamaran idling in shallow offshore waters. The project has been assigned DA file number 2015-00140. Please reference this number in all future correspondence concerning this project.

The submittal indicated that the catamaran does not drop anchor, is not moored during the activity, and there is no other structure that would be lowered into the ocean bottom to facilitate passengers boarding and disembarking. A retractable ladder is submerged and passengers are helped on and off the vessel in this manner. This activity is conducted in Wailea, at the beach fronting the Makena Beach Resort (formerly the Maui Prince Hotel), Maui, Hawaii.

Note that a mooring permit was issued to Makena Boat Partners as a Letter of Permission on March 13, 1987 under DA Permit No. PGDCO-O 1958-S. The mooring is needed during times when the boat is not in use.

Your submittal has been reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and Section 404 of the Clean Water Act (Section 404). Section 10 requires that a DA permit be obtained for certain structures or work conducted in, over, or under navigable waters of the United States (WOUS), prior to conducting the work (33 U.S.C. 403). Section 404 requires that a DA permit be obtained for the discharge of dredged and/or fill material into WOUS, including wetlands and WOUS that are navigable-in-fact, prior to conducting the work (33 U.S.C. 1344).

Based on our review of the submitted information, this office has determined the proposed activities do not affect the course, capacity, condition, or location of a navigable WOUS as defined by Section 10 and would not result in the discharge of dredged or fill material into WOUS as defined by Section 404. Therefore, a DA permit is not required for the proposed work activities.

It is your responsibility to ensure that your project complies with all other Federal, State, or local statutes, ordinances and regulations.

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this determination, please contact our office at 808-835-4303 or by mail at U.S. Army Corps of Engineers, Building 252, CEPOH-RO, Fort Shafter, Hawaii 96858-5440.

You are encouraged to provide comments on your experience with the Honolulu District Regulatory Office by accessing our web-based customer survey form at <u>http://corpsmapu</u>.usace.army.mil/cm_apex/f?p=136:4:0.

Sincerely,

Michelle Syrch

Michelle R. Lynch Chief, Regulatory Office

CC:

State of Hawaii DBEDT Office of Planning (John Nakagawa) Makena Boat Partners (Sidney J. Akiona and Roger Gildersleeve) Department of Land Management, Division of Boating and Ocean Recreation (Edward Underwood)

Eugene dashiell

From: Sent: To: Subject:	Gene Dashiell <dashiellplanning@outlook.com> Monday, August 3, 2015 3:41 PM Robinson, Judy A LRB; sida@hawaii.rr.com; JNakagaw@dbedt.hawaii.gov; ed.r.underwood@hawaii.gov Re: No Permit Required for Makena Boat Partners; File No. POH-2015-00140; located in Wailea, Island of Maui, Hawaii (UNCLASSIFIED)</dashiellplanning@outlook.com>
Thanks Judy, Appreciate this. Gene Dashiell On 8/3/15, 3:35 PM, "Robinson, J	udv A I RB"
<judy.a.robinson@usace.army.n< th=""><th>nil> wrote:</th></judy.a.robinson@usace.army.n<>	nil> wrote:
>Classification: UNCLASSIFIED >Caveats: NONE	
> >Dear Mr. Akiona, Mr. Gilderslee >Underwood:	ve, Mr. Dashiell; Mr. Nakagawa, and Mr.
> >I have revised the No Permit Revised the No Permit Revised the No Permit Revised the No Permit Review of the original NPR letter. I have sas the location. Your map indicates the location. Your map indicates catamaran boarding is Wailea, No set the original set of	quired letter to reflect the error found e no idea where I came up with "Kailua" ates that the location for the vlaui and that is what it was changed to. rst e-mail and attachment an replace it
> Thank you for your patience.	
>Sincerely, >	
 >Judy Robinson > >Temporary Duty Address >Judy A. Robinson, Biologist >U.S. Army Corps of Engineers >Honolulu District >Fort Shafter, Hawaii 96858-544 >808-835-4310 >judy.a.robinson@usace.army.r > >Judy A. Robinson, MS >Biologist 	40 nil
>U.S. Army Corps of Engineers >Auburn Field Office	



OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813 Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804 DAVID Y. IGE GOVERNOR

LEO R. ASUNCION ACTING DIRECTOR OFFICE OF PLANNING

Telephone: (808) 587-2846 Fax. (808) 587-2824 Web http://planning.hawaii gov/

Ref. No. P-14825

July 16, 2015

Mr. Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, Hawaii 96734

Dear Mr. Dashiell:

Subject: Pre-Assessment Consultation for the Proposed Disposition of State Lands Allowing Continued Catamaran Passenger Boarding at Maluaka Beach, Wailea, Maui

Thank you for the opportunity to provide comments on the pre-consultation request for a Draft Environmental Assessment (Draft EA) on the disposition of State Lands along Maluaka Beach for the continued use of commercial catamaran passenger boarding proposed by the Makena Boat Partners. The pre-consultation review material was transmitted to our office by letter, dated July 2, 2015.

It is our understanding that this proposed action seeks to establish a non-exclusive use area for catamaran boarding from the Department of Land and Natural Resources – Division of Land Management. Makena Boat Partners operates a 65' by 31' catamaran that provides commercial tours and ocean activities in the near shore waters of Makena Bay in accordance with a Conservation District Use Permit (CDUP) issued in 1988. Passengers embark and disembark directly from Maluaka Beach. Boarding occurs in the southern portion of the beach fronting Makena Beach Golf and Resort. The 1988 CDUP was conditioned on Makena Boat Partners securing authorization from DLNR. Makena Boat Partners seeks to satisfy this condition through this action.

The Office of Planning (OP) has reviewed the transmitted material and has the following comments to offer:

 Pursuant to the Hawaii Administrative Rules § 11-200-17(h) – land use plans, policies, and controls – gaining approval for the disposition of land so as to facilitate the daily presence of catamaran passengers boarding and disembarking from the shoreline may have an adverse environmental impact on the nearby marine environment. The Draft EA, therefore, should consider and evaluate this action based upon the statewide planning system in Hawaii Revised Statutes (HRS) Chapter 226, the Hawaii State Plan. The Hawaii State Plan provides goals, objectives, policies, Mr. Eugene Dashiell, AICP July 16, 2015 Page 2

> and priority guidelines for growth, development, and the allocation of resources throughout the State. The Hawaii State Plan includes diverse objectives and policies of state interest including but not limited to the economy, agriculture, the visitor industry, federal expenditure, the physical environment, facility systems, sociocultural advancement, climate change adaptation, and sustainability.

> The Draft EA should include an analysis that addresses whether the proposed project conforms or is in conflict with the goals, objectives, policies, and priority guidelines listed in the Hawaii State Plan.

2. The coastal zone management area is defined as "all lands of the State and the area extending seaward from the shoreline to the limit of the State's police power and management authority, including the U.S. territorial sea" see HRS § 205A-1 (definition of "coastal zone management area").

HRS Chapter 205A requires all State and county agencies to enforce the coastal zone management (CZM) objectives and policies. The Draft EA should include an assessment as to how the proposed project conforms to the CZM objectives and its supporting policies set forth in HRS § 205A-2. The assessment on compliance with HRS Chapter 205A is an important component for satisfying the requirements of HRS Chapter 343. These objectives and policies include: recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, and marine resources.

- 3. The area in question lies within the Special Management Area (SMA) and the shoreline setback area delineated by the County of Maui, Department of Planning. It may require an SMA permit as well as a shoreline setback variance. Please consult with said department on the procedures and requirements for SMA use and the shoreline setback requirements.
- 4. The Draft EA, should provide a list of any federal, state, or county permits required for this project. A listing of required permits will allow OP to verify the necessity of conducting a Coastal Zone Management Federal Consistency evaluation.

The national Coastal Zone Management Act requires activities that need federal permits to be consistent with approved state coastal programs to the maximum extent practicable. This project may need to be evaluated on Federal Consistency requirements if this action requires a United States Army Corps of Engineers Clean Water Act approval. OP is the lead state agency to conduct this evaluation. Mr. Eugene Dashiell, AICP July 16, 2015 Page 3

If you have any questions regarding this comment letter, please contact Josh Hekekia of our office at (808) 587-2845.

Sincerely,

Leo R. Asuncion Acting Director

October 8, 2015 DRAFT

MR LEO ASUNCION ACTING DIRECTOR OFFICE OF STATE PLANNING PO BOX 2359 HONOLULU HAWAII 96804

Dear Mr. Asuncion:

Subject: Pre-Assessment Consultation for the Proposed Disposition of State Lands Allowing Continued Catamaran Passenger Boarding at Maluaka Beach, Wailea, Maui, Hawaii

Thank you for your comments (letter, July 16). I will address them in the subject EA. Among other things, the draft EA will:

- Discuss the potential effects of the proposed action within the context of the State Plans;
- Consider the potential effects of the proposed action upon the State's coastal zone management area;
- Upon consulting Maui County's Department of Planning, I was informed a Special Management Area Permit is not required. I have attached a copy of their email for your information and use.
- Include a list and a discussion of the permits that relate to the proposed action.

If you have questions please call me (254-4522 or 371-0745) or e-mail me (dashiellplanning@outlook.com).

Sincerely yours,

Engre P. Dehul

Eugene P. Dashiell, AICP

Enclosure

Eugene dashiell

From:Keith Scott <Keith.Scott@co.maui.hi.us>Sent:Tuesday, August 11, 2015 12:04 PMTo:dashiellplanning@outlook.comSubject:Re: Preliminary Consultation Maluaka Beach Catamaran Passenger Boarding

Eugene - -

After further consultation, it appears that an SMA permit for the loading activity itself is not necessary. However, your client needs to assess the mauka activity related to the loading. As an example, are the passengers driving to the beach to load? If so, where are they parking? How does it impact the use of the beach park?

If you have any questions, please let me know.

Mahalo,

Keith Scott Staff Planner <u>keith.scott@co.maui.hi.us</u> (808) 463-3867 >>> Keith Scott 7/15/2015 8:50 AM >>> Thank you for the opportunity to comment during the Preliminary Consultation period for the subject Environmental Assessment. Maui County Planning has the following comment:

Special Management Area clearance is required for using the beach for access to the in-water boarding area, and should have been obtained prior to initiating activities.

Mahalo,

Keith Scott Staff Planner <u>keith.scott@co.maui.hi.us</u> (808) 463-3867 DAVID Y. IGE GOVERNOR OF HAWAI



VIRGINIA PRESSLER, M.D. DIRECTOR OF HEALTH

STATE OF HAWAII DEPARTMENT OF HEALTH P. O. BOX 3378 HONOLULU, HI 96801-3378

In reply, please refer to File: EPO 15-173

July 13, 2015

Mr. Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, Hawaii 96734 Via email: dashiellplanning@outlook.com

Dear Mr. Dashiell:

SUBJECT: Preliminary Consultation for Draft Environmental Assessment (PC DEA) for Maluaka Beach, Wailea, Maui

The Department of Health (DOH), Environmental Planning Office (EPO), acknowledges receipt of your PC DEA to our office on July 13, 2015. Thank you for allowing us to review and comment on the proposed project. The PC DEA was routed to the District Health Office on Maui and the Clean Water Branch. They will provide specific comments to you if necessary. EPO recommends that you review the standard comments and available strategies to support sustainable and healthy design provided at: <u>http://health.hawaii.gov/epo/home/landuse-planning-review-program</u>. Projects are required to adhere to all applicable standard comments.

We encourage you to examine and utilize the Hawaii Environmental Health Portal. The portal provides links to our e-Permitting Portal, Environmental Health Warehouse, Groundwater Contamination Viewer, Hawaii Emergency Response Exchange, Hawaii State and Local Emission Inventory System, Water Pollution Control Viewer, Water Quality Data, Warnings, Advisories and Postings. The Portal is continually updated. Please visit it regularly at: https://eha-cloud.doh.hawaii.gov

You may also wish to review the revised Water Quality Standards Maps that have been updated for all islands. The Water Quality Standards Maps can be found at: http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/water-guality-standards

We request that you utilize all of this information on your proposed project to increase sustainable, innovative, inspirational, transparent and healthy design.

Mahalo nui loa

Laura Leialoha Phillips McIntyre, AICP Program Manager, Environmental Planning Office

c: DBEDT/OP, DLNR/OCCL, DPP Maui, OEQC DHO Maui, CWB {via email only} **Eugene P. Dashiell AICP** ENVIRONMENTAL PLANNING SERVICES 728 Nunu Street Kailua, Hawai'i 96734

October 8, 2015

MS LAURA LEIALOHA PHILLIPS MCINTYRE, AICP PROGRAM MANAGER ENVIRONMENTAL PLANNING OFFICE DEPARTMENT OF HEALTH PO BOX 3378 HONOLULU HAWAII 96801-3378

Dear Ms. McIntyre:

Subject: Pre-Assessment Consultation for the Proposed Disposition of State Lands Allowing Continued Catamaran Passenger Boarding at Maluaka Beach, Wailea, Maui, Hawaii

Thank you for your comments (letter, July 16). I will address them in the subject EA. Specifically, the draft EA will:

- Include a review of the "standard comments and available strategies to support sustainable and health design" and discuss these in relation to the proposed action;
- Consider the resources available within the "Hawaii Environmental Health Portal" and the EA will make reference to it;
- Include a discussion of State Water Quality Standards and the referenced map.

If you have questions please call me (254-4522 or 371-0745) or e-mail me (dashiellplanning@outlook.com).

Sincerely yours,

Engre P. Dahurs

Eugene P. Dashiell, AICP

Enclosures

DAVID Y. IGE GOVERNOR OF HAWAII



cc:



MA-16-1 SUZANNE D. CASE CHAIRPERSON RECEIVELBOARD OF LAND AND NATURAL RESOURCES OFFICE OF CONSERVACEMENTSSION ON WATER RESOURCE MANAGEMENT AND COASTAL LANDS

2015 JUL - 8 P 12:29

STATE OF HAWAII DEPT. OF LANG & DEPARTMENT OF LAND AND NATURAL RENATURCESSE SOURCES LAND DIVISION STATE OF HAWAIL

> POST OFFICE BOX 621 HONOLULU, HAWAII 96809

July 7, 2015

MEMORANDUM

TO:	DLNR Agencies:
	X Div. of Aquatic Resources
	X Div. of Boating & Ocean Recreation
	Engineering Division
	Div. of Forestry & Wildlife
	Div. of State Parks
	Commission on Water Resource Management
	X Office of Conservation & Coastal Lands
	X Land Division – Maui District
	X Historic Preservation X LD Admin - I. therokawa > k. Hoore
FROM:	Russell Y. Tsuji, Land Administrator
SUBJECT:	Environmental Assessment of the Proposed Disposition of State Lands
	Allowing Continued Catamaran Passengers Boarding at Maluaka Beach.
LOCATION:	Wailea, Island of Maui; TMK: (2) 2-1-006:059
APPLICANT:	Makena Boat Partners

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by July 16, 2015.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Lydia Morikawa at 587-0410. Thank you.

Attachments We have no objections. Please see We have no comments. attached Correspondence from 2012 Comments are attached Signed: Print Name: Date: Central Files

NELL ABERCROMBIE GOVERNOR OF HAWAD	STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF CONSERVATION AND COASTAL LANDS POST OFFICE BOX 621 HONOLULU, HAWAII 96809	WILLIAM J. AILA, JR CHARRENSON BOARD OF LAND AND MATURAL RESOURCES CONDESSION ON WATER RESOURCES MANAGEMENT GUY M. KAULUKUKUK JRBST DEPUTY MULLIAM M. TAM DEPUTY DIRECTOR - WATER AQUATIC RESOURCES BOATMO AND OCCAN RESOURCES COMORSON WATER ASSOURCES MANAGEMENT COMORSON WATER MAD CASATAL LANDS COMORSON WATER MAD ESSOURCES MANAGEMENT CONSERVATION AND DESSOURCES MANAGEMENT CONSERVATION AND RESOURCES MANAGEMENT CON
<u>MEMORANI</u>	DUM	JUN 1 3 2012
TO:	Russ Tsuji, Administrator Land Division Ed Underwood, Administrator Boating and Ocean Recreation Randy Awo, Administrator Conservation and Resource Enforcement	
FROM:	Samuel J.Lemmo, Administrator Office of Conservation and Coastal Lands	Elimo
SUBJECT:	Catamaran Kai Kanani Landing at Makena, Maui	

The Office of Conservation and Coastal Lands (OCCL) is in receipt of a DOCARE Investigation Report regarding an observed landing of Catamaran Kai Kanani at Makena beach. According to the report, it was "noted Kai Kanani using Papaanui (Makena Landing) as a loading site. Also noted that their normal loading area at Maluaka was blown out windy & rough." From the information gathered by the reporting Officer from the Land Office and Boating in Maui, it was apparent that a Conservation District Use Permit (CDUP) was authorized in 1987 to land at Makena. However it was believed that the CDUP was outdated or expired.

Upon reviewing the file, Makena Boat Partners, owners of Kai Kanani, does have a valid CDUP that authorized the siting and use of the mooring in front of the former Maui Prince as the primary mooring; the siting and use of the mooring at Makena landing as a non-exclusive emergency mooring only; and non-exclusive use of public beach in front of the former Maui Prince Hotel for the loading/offloading of passengers on a regular basis. Use of the Makena mooring requires the applicant to document and maintain written records for each use of the emergency mooring.

The OCCL wishes to make this known to our fellow Divisions as Chapter 13-5, HAR-Conservation District rules and regulations have been amended and no longer provides for regulating activities such as landings. Although beach landings fall under Land or DOBOR's purview, Makena Boat Partners does have Board authorization to use the noted moorings and non-exclusive use of public beach for loading/offloading. Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at 587-0382.

DAVID Y. IGE GOVERNOR OF HAWAII





STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES STATE HISTORIC PRESERVATION DIVISION

> **KAKUHIHEWA BUILDING** 601 KAMOKILA BLVD, STE 555 KAPOLEI, HAWAII 96707

SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATERAL RESIDENCES MMISSION ON WATER RESIDENCE MANAGEMENT

KEKOA KALUHIWA

W. ROY HARDY ACTING DEPUTY DIRECTOR - WATTR

ADE'ATE' RESOURCES AUTATIC RESOLUCTS BIOLATICAN DECLAN RELEASION HUBELAU OF CONVESSIONES COMMENSION OF WATER RESOLUCE MANAGEMENT CONSERVATION AND RESOLUCE SETURICEMENT CONSERVATION AND RESERVATION FORESTRY AND WILDLET HISTORIC PUESE RVATION KAHOOLAWE ISLAND RESERVE CONDUCSION LAND

LAND STATE PARKS

July 15, 2015

Eugene Dashiell, AICP **Environmental Planning Services** 728 Nunu Street Kailua, Hawaii 96734 dashiellplanning@outlook.com

Aloha Mr. Dashiell:

SUBJECT: Chapter 6E-8 Historic Preservation Review - Maui County Early Consultation for an EA on State Lands Ka'eo Ahupua'a, Makawao District, Island of Maui TMK (2) 2-1-006:059 (por.)

Thank you for the opportunity to comment on the subject project, which we received on July 6, 2015. The Makena Boat Partners (MBP) is conducting an environmental assessment for the landing of a catamaran along the near shore waters of Makena Bay. MBP has held an annual permit from DLNR's Division of Boating and Ocean Recreation authorizing "loading & offloading passengers at the public beach fronting the Makena Beach Resort (Maui Prince Hotel)." This permission has been based on the issuance of a Conservation District Use Permit (CDUP) issued for the Kai Kanani II, MBP's 65 by 31 foot catamaran. The Kai Kanani II provides commercial tours and ocean activities in the near shore waters of Makena Bay under this CDUP. There are no pier, harbor structure or other man-made structures at this location; passengers embark directly from the beach.

Your firm has requested comments from the State Historic Preservation Division in support for an upcoming environmental assessment. According to our records, an archaeological inventory survey has not been conducted on any portions of this parcel. Based upon archaeological survey work from nearby locations we expect that human skeletal remains (burials) are present in some locations within this parcel. We found no records that the past decades' use as a boarding spot has resulted in exposure of any remains however. The ship does not reach the land and passengers wade out to the ship to a retractable ladder that does not reach the surface.

Please contact me at (808) 243-4641 or Morgan. E. Davis@hawaii.gov if you have any questions or concerns regarding this letter.

Mahalo,

Morgan E. Davis Lead Archaeologist, Maui Section

cc:

County of Maui Department of Planning (Planning.@co.maui.hi.us) County of Maui Department of Public Works - DSA (Renee Segundora co. maui. hi. us)

County of Maui Cultural Resources Commission (Annalise Kehler a co. maui. hi.us)

Log No: 2015.02588 Doc No: 1507MD20 Archaeology

Eugene dashiell

From:	Eugene Dashiell < dashiellplanning@outlook.com>
Sent:	Wednesday, July 15, 2015 4:11 PM
То:	Morgan.E.Davis@hawaii.gov
Cc:	djn@dennyniles.com; Gil Keith-Agaran
Subject:	Fwd: SHPD review letter
Attachments:	(2) 2-1-006 059por L2015 02588 D1507MD20 6E8 EC for EA Maluaka Beach Wailea_
	Comments.pdf; Untitled attachment 02374.htm

Dear Ms. Davis,

Thank you for forwarding this email to me and I will include it in the draft environmental assessment. I am copying this email and your email to the attorneys for Makena Boat Partners, Dennis Niles and Gill Keith-Agaran.

Begin forwarded message:

From: Morgan.E.Davis@hawaii.gov Subject: SHPD review letter Date: July 15, 2015 at 3:08:55 PM HST To: dashiellplanning@outlook.com Cc: planning@co.maui.hi.us, "Renee Segundo" <<u>Renee.Segundo@co.maui.hi.us</u>>, "Annalise Kehler" <<u>Annalise.Kehler@co.maui.hi.us</u>>
DAVID Y. JGE GOVERNOR OF HAWAH





SUZANNE D. CASE CHAIRPERSON CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES MILISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA FIRST DEPUTY

W. ROY HARDY ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOLIDCES AQUATE RESOURCES BOATING AND CEAN RECREATION DUREAU OF CONVEYANCES COMMENSION ON WATER RESOURCE MAIA/GEMEINT CONSERVATION AND COASTAL LANDS COMSERVATION AND DESCURCES ENFORCEMENT ENGINEERNO FORESTRY AND WEIGHT KANOOLAWE ISLAND RESERVE COMBISSION KANOOLAWE ISLAND RESERVE COMBISSION LAND STATE PARKS

Date: 7/14/2015 DAR # 5146

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621 HONOLULU, HAWAII 96809

MEMORANDUM

- TO: Suzanne D. Case, DLNR Chairperson
- DATE July 14, 2015
- Russell Sparks, Aquatic Biologist FROM:

Environmental Assessment of the Proposed Disposition of State Lands SUBJECT: Allowing Continued Catamaran Passengers Boarding at Maluaka Beach.

Comment	Date Request	Receipt	Referral	Due Date
	(7/07/2015)	(7/09/2015)	(7/10/2015)	(7/16/2015)

Requested by: Russell Y. Tsuji, Land Administrator

Summary of Proposed Project

Title: Preliminary Consultation concerning Environmental Assessment of proposed disposition of State lands allowing continued catamaran passenger boarding at Maluaka Beach, Wailea, Maui, Hawaii.

Project by: Makena Boat Partners

Location: Wailea, Island of Maui, TMK(2)2-1-006:059

Brief Description: This project involves preliminary consultation for an environmental assessment of the proposed non-exclusive use area for beach loading and unloading of passengers and supplies onto and off of the vessel Kai Kanani II.

Comments: The current use of Maluaka Beach for the loading and unloading of passengers from commercial catamarans owned and run by Makena Boat Partners has been ongoing since before the CDUP was issued in 1988. Maluaka Beach is a small

heavily utilized public beach. There is extensive coral reef habitat on both ends of this beach and therefore snorkeling, SCUBA diving, fishing and other recreational activities are common practices in the area. The continued navigation of a 65' vessel into this small beach area presents an ongoing safety hazard for ocean users in the area, and potentially displaces the public from freely enjoying the beach and nearshore waters. The safety issues and potential displacement of the public are not, however, the only concerns with this operation. There is a history of impacts to the offshore coral reef habitat from the mooring and/or anchoring of vessels operated by Makena Boat Partners, and future potential impacts could occur to threatened and endangered sea turtles and monk seals.

Previous inspections on the mooring system for the Kai Kanani II have documented two large ship anchors connected by large chains to a center mooring consisting of a large concrete filled tire. This mooring system, not only created an eyesore to anyone enjoying the reef habitat in the area, but also resulted in impacts to the hard bottom habitat around the mooring. The center concrete filled tire would move back and forth with the chains scraping the bottom resulting in a fairly large area of continuously disturbed bottom habitat. Past inspections found that this mooring system was directly damaging coral colonies and other living benthic marine resources. The vessel operators were notified of the department's concerns with this mooring system, but it is unclear if any modifications have been conducted to mitigate these impacts. The past and potential future impacts from this and possibly new offshore moorings is directly related to the use of the beach for loading and unloading since vessel operators will want to have their vessels secured near the beach loading site.

In the past, Makena Boat Partners contracted a biological assessment of the area, but this assessment appeared to have been hastily prepared. This assessment did a decent job of describing the general biological resources in and/or around the beach landing location, but failed to note the regular use of the rocks in the middle of the site as foraging habitat by threatened green sea turtles. Furthermore, although not yet observed on this beach, many beaches in the general area have been used a nesting habitat for both green and hawksbill sea turtles. It is not unreasonable to expect future turtle nesting activity to occur on this beach. A careful assessment of how this loading and unloading operation would deal with turtle nests needs to be presented. Although turtle nests are unlikely to be directly impacted by the vessel's hulls, the movement of people and gear over the beach could negatively impact the nests overall viability. Other biological uses of the beach could include endangered monk seal haul outs. Monk Seals are known to utilize the Makena area, and the beach loading and unloading of large commercial catamarans would certainly disturb any monk seals hauled out on this sandy beach environment.

Perhaps the biggest concern with this proposed action is that it would result in nonexclusive use of the beach for loading and unloading. If approved, it is very likely, that other commercial boating operations could seek permission to use this beach for loading and unloading. There are already concerns with the environmental impacts from the current operation but this action appears to open the door for an unlimited amount of other operators to begin using this beach for loading and unloading activities. If it is decided to allow the current activity to continue, I would strongly recommend a careful carrying capacity study be conducted to outline what level of vessel loading and unloading activity can safely be allowed on this small heavily utilized public beach. It may be more appropriate, however, to work towards an exclusive use agreement rather than the currently planned non-exclusive use.

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plans, DAR requests the opportunity to review and comment on those changes.

Eugene P. Dashiell AICP ENVIRONMENTAL PLANNING SERVICES 728 Nunu Street Kailua. Hawai'i 96734

October 13, 2015

RUSSEL SPARKS AQUATIC BIOLOGIST DIVISION OF AQUATIC RESOURCES DEPARTMENT OF LAND AND NATURAL RESOURCES PO BOX 621 HONOLULU HAWAII 96809

Dear Mr. Sparks:

Subject: DAR # 5146 -- Pre-Assessment Consultation for the Proposed Disposition of State Lands Allowing Continued Catamaran Passenger Boarding at Maluaka Beach, Wailea, Maui, Hawaii

Thank you for your comments (letter-memorandum, July 14, copy enclosed for your reference).

You begin by characterizing Maluaka Beach "as a small heavily utilized beach." In 2006, Maui County obtained a detailed assessment of the beach and adjoining park amenities. Commercial Ocean Recreational Study (Munekiyo & Hiraga 2006) (Hereinafter "CORA Study), at 172. The beach is not described as either "small" or "heavily used." As to the level of use, the study notes "the primary beach park users during the week are mainly guests of the Maui Prince Resort and a few other tourists, while local residents were observed to utilize the beach park mainly during weekends and holidays." (CORA Study, p. 179).

The five businesses that held CORA permits for Maluaka Beach for scuba, snorkeling and kayak activities at the time of the study no longer hold permits. In addition, the adjoining hotel is undergoing a reduction in the number of available rooms. I would be most interested in reviewing the factual basis for your belief the beach is "heavily utilized." Access to that information will assist me in addressing your concern that presence of the vessel poses an "ongoing safety hazard" and "potentially displaces the public.

Similarly, I wish to see documentation of incidents involving marine mammals, turtle nesting, or seal use of Maluaka Beach. This information would be very helpful in addressing the potential for impact on these species.

In summary, the draft EA will discuss:

- The visual and habitat impacts of the mooring system;
- Listed, threatened or endangered species and potential effects of the proposed action upon them. AECOS, who prepared the biological assessment of the area, is preparing a supplement to that report which will specifically address listed species.
- Regarding sea turtles we are aware of their presence and aware also of the vessel's success in avoiding them. We will provide more information in the draft environmental assessment;

Page Two Russel Sparks

 Regarding monk seals and other marine mammals (humpback whales), the vessel is required by the US Coast Guard (see enclosure) to maintain distances of at least 50 yards or more from monk seals and 100 yards or more from humpback whales. We will provide more information in the draft EA.

Lastly, you voice concern that the proposed disposition would "open the door for an unlimited amount of other operators." We believe this possibility is remote and beyond the scope of the subject EA. MBP questions whether a unique disposition resolving an open condition of the1988 CDUP will lead other operators to seek a U.S. Army Corps of Engineers permit for a new mooring, comply with Chapter 343, secure a DOBOR ocean recreation management area commercial permit, and obtain every other agreement and permit that would be required in order to conduct similar operations at Maluaka.

If you have questions please call me (254-4522 or 371-0745) or e-mail me (dashiellplanning@outlook.com).

Sincerely yours,

Engre P. Dahurs

Eugene P. Dashiell, AICP

Enclosure

Copies: AECOS, Niles, Makena Boat Partners, Ornellas, Case, Agaran

DAVID Y. IGE GOVERNOR OF HAWAD



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STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES LAND DIVISION

54 High Street, Room 101 Wailuku, Hawaii 96793 PHONE: (808) 984-8103 FAX: (808) 984-8111

July 23, 2015

13MD-078

Mr. Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, HI 96734

Dear Mr. Dashiell,

SUBJECT: Preliminary Consultation, Environmental Assessment of a State Lands Disposition to Allow Catamaran Boarding at Maluaka Beach, Wailea, Maui, TMK (2) 2-1-006: Seaward of 059

This letter serves to suggest areas that need further clarification and/or analysis in regards to direct, indirect and/or cumulative impacts and related mitigating actions in order to properly assess and protect natural resources and its users.

- 1. A non-exclusive easement is contemplated. How many beach landings can occur at the subject location before user conflicts occur? How many operators could operate off of the same disposed area on any given day?
- 2. You state that a typical landing requires 7 minutes. How many passengers constitute a "typical" landing? What is the maximum carrying capacity of the Catamaran? What is the amount of time necessary to unload a full boat?
- 3. What constitutes an unsafe landing condition? When conditions render a landing unsafe, where is the alternate landing site or what is the off-loading plan to get passengers to shore?
- 4. How do staff members advise the public beach users of an upcoming landing?
- 5. Pursuant to Item D on page 3 of the CDUP identified as MA-1965, issued to Makena Boat Partners, dated 12/18/88, in regards to the non-exclusive emergency mooring in Makena Bay: the user was to "maintain written records for each use of the emergency mooring." I have seen the Kai Kanani use the mooring at Makena Bay many times. What was the nature of the situation that warranted the use of the emergency mooring? Please describe the use of the mooring for emergency purposes.

Thank you for the opportunity to provide comments related to the subject project. If you have any questions, please contact me at the Maui District Land Office at (808) 984-8103.

Aloha Daniel Ornellas

District Land Agent

Cc: Board Member District Files **Eugene P. Dashiell AICP** ENVIRONMENTAL PLANNING SERVICES 728 Nunu Street Kailua, Hawai'i 96734

Telephone/FAX: 808.254.4522 Cell Phone/Voice Mail: 808.371.0745 email: <u>dashiellplanning@outlook.com</u> Member, American Institute of Certified Planners

October 13, 2015

DANIEL ORNELLAS DISTRICT AGENT LAND DIVISION DEPARTMENT OF LAND AND NATURAL RESOURCES 54 HIGH ST RM 101 WAILUKU HAWAII 96793

Dear Mr. Ornellas:

Subject: 13MD-078 -- Pre-Assessment Consultation for the Proposed Disposition of State Lands Allowing Continued Catamaran Passenger Boarding at Maluaka Beach, Wailea, Maui, Hawaii

Thank you for your suggestions for clarification and further analysis of the impacts of the disposition sought by MBP. For your convenience, a copy of your July 23, 2015 letter is attached. I will address each numbered point seriatim.

1. You correctly note that the disposition sought by MBP is "non-exclusive." At issue is the use of the water column and underlying submerged lands by a single vessel to board and disembark passengers. The use is transient and lasting minutes. For the limited duration of active boarding, the physical presence of the vessel does not prevent others from using the water column and submerged lands the vessel occupies. This does not constitute "user conflict," however, because for the few minutes the vessel is present other users have safe and unfettered access to the shoreline and shore waters a few yards either side of the vessel.

The disposition is unique to MBP and is intended to meet a condition of CDUP MA1965 issued in 1988. As such, there is no need to study the hypothetical capacity of Maluaka Beach to accommodate "other operators." Moreover, any such study would require assumptions regarding vessels, operating modes, economic conditions, regulatory model, and the like that are well beyond the scope of the proposed disposition.

2. You note also that the duration of non-exclusive use will be a function of passenger load. The greater the number of passengers the more time that will be required to safely board or disembark. MBP limits to 70 the number of passengers to enhance passenger experience. This is below the US Coast Guard capacity of 88 passengers. Taking hold of the hand rail or the hand of a crew member and stepping on or off the vessel takes only seconds As a result, at a passenger load of 70, boarding or disembarking is not expected to take longer than approximately 10 minutes (or less than 10 seconds per passenger). The DEA will assume every cycle will require approximately 10 minutes but actual passenger counts and thus the duration of a given cycle will typically be less.

3. Conditions may be deemed "unsafe" for boarding or disembarking for three reasons: the presence of a marine mammal, one or more human individuals, or adverse wind and sea conditions. In the case of a marine mammal, the vessel will stand offshore until the area is clear or the observed species can be kept

Page two Daniel Ornellas

at a distance that avoids any risk of contact. The same holds for human users. See item 4 below. In the unlikely event a change in weather conditions prevents the safe return of the vessel, MBP may disembark passengers at Maalaea Small Boat Harbor.

4. MBP avoids landing in an area where hotel guests and other members of the public may be present. The slowly approaching vessel and crew members on shore provide notice of an impending arrival so that the area can be avoided for the few minutes the vessel will be present.

5. MBP discontinued use of the non-exclusive emergency mooring referenced in the CDUP years ago. From time to time in the past MBP has accessed Makena Landing when passengers required emergency medical treatment. Makena Landing affords EMT vehicles ready access to the shoreline. There is a private mooring that MBP and other commercial operators have used at Makena Bay with the permission of the owner. Such use, while infrequent, is permissible under the DOBOR commercial permit. Incidental use of the private mooring is outside the scope of the subject DEA.

If you have questions please call me (254-4522 or 371-0745) or e-mail me (dashiellplanning@outlook.com).

Sincerely yours,

Engre P. Dahul

Eugene P. Dashiell, AICP

Enclosure

Copies: AECOS, Niles, Makena Boat Partners, Board Member, Land Div Deputy Dir, Agaran

From:	Sandra.C.Rossetter@hawaii.gov
Sent:	Wednesday, July 15, 2015 9:36 AM
To:	dashiellplanning@outlook.com
Cc:	Dean.Watase@hawaii.gov; Carter.Luke@hawaii.gov; Arnold.Liu@hawaii.gov; Duane.SS.Kim@hawaii.gov

Subject: Preliminary Consultation concerning Environmental Assessment of a proposed disposition of State lands allowing continued catamaran passenger boarding at Maluaka Beach, Wailea, Maui, Hawaii, Log. No. 16.0010

Thank you for the opportunity to provide comments early. The subject project is not within our jurisdiction and does not affect commercial harbor operations. Mahalo

Sandra Rossetter

Harbors Division | Planning Office 79 S. Nimitz Highway Honolulu, Hawaii 96813 (808) 587- 1886

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From:	Eugene Dashiell <kapaia@msn.com></kapaia@msn.com>
Sent:	Wednesday, July 15, 2015 9:45 AM
То:	Sandra.C.Rossetter@hawaii.gov
Cc:	Dean.Watase@hawaii.gov; Carter.Luke@hawaii.gov; Arnold.Liu@hawaii.gov;
	Duane.SS.Kim@hawaii.gov; djn@dennyniles.com; Gil Keith-Agaran
Subject:	Re: Preliminary Consultation concerning Environmental Assessment of a proposed disposition of State lands allowing continued catamaran passenger boarding at Maluaka
	Beach, Wailea, Maui, Hawaii, Log. No. 16.0010

Dear Ms. Rossetter,

Thank you for you email. I will include a copy of it in the draft environmental assessment and I am copying Mr. Niles and Mr. Keith-Agaran, attorneys for Makena Boat Partners.

On Jul 15, 2015, at 9:36 AM, Sandra.C.Rossetter@hawaii.gov wrote:

Thank you for the opportunity to provide comments early. The subject project is not within our jurisdiction and does not affect commercial harbor operations. Mahalo

Sandra Rossetter

Harbors Division | Planning Office 79 S. Nimitz Highway Honolulu, Hawaii 96813 (808) 587- 1886

CONFIDENTIAL NOTICE: This communication and any attachments may contain confidential information for the sole use of the intended recipient. Any unauthorized use, disclosure, viewing, copying, alteration, dissemination, or reliance on this message is strictly prohibited. If you receive this message in error, or you are not an authorized recipient, please notify the sender immediately by replying to the message, delete this message immediately and all copies from your e-mail system and destroy printed copies.

Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, Hawaii 96734 808-254-4522 (FAX & landline) 808-371-0745 (Cell) dashiellplanning@outlook.com From: Keith Scott Keith Scott rich maultilus

Subject: Preliminary Consultation Maluaka Beach Catamaran Passenger Boarding

Date: July 15, 2015 at 8:50 AM

To: dashieliplanning is outlook com

Thank you for the opportunity to comment during the Preliminary Consultation period for the subject Environmental Assessment. Maui County Planning has the following comment:

Special Management Area clearance is required for using the beach for access to the in-water boarding area, and should have been obtained prior to initiating activities.

Mahalo,

Keith Scott Staff Planner keith scott:@co.mau.huus (808) 463-3867

From:	Keith Scott <keith.scott@co.maui.hi.us></keith.scott@co.maui.hi.us>
Sent:	Tuesday, August 11, 2015 12:04 PM
То:	dashiellplanning@outlook.com
Subject:	Re: Preliminary Consultation Maluaka Beach Catamaran Passenger Boarding

Eugene - -

After further consultation, it appears that an SMA permit for the loading activity itself is not necessary. However, your client needs to assess the mauka activity related to the loading. As an example, are the passengers driving to the beach to load? If so, where are they parking? How does it impact the use of the beach park?

If you have any questions, please let me know.

Mahalo,

Keith Scott Staff Planner <u>keith.scott@co.maui.hi.us</u> (808) 463-3867 >>> Keith Scott 7/15/2015 8:50 AM >>> Thank you for the opportunity to comment during the Preliminary Consultation period for the subject Environmental Assessment. Maui County Planning has the following comment:

Special Management Area clearance is required for using the beach for access to the in-water boarding area, and should have been obtained prior to initiating activities.

Mahalo,

Keith Scott Staff Planner <u>keith.scott@co.maui.hi.us</u> (808) 463-3867

From:	Eugene Dashiell <dashiellplanning@outlook.com></dashiellplanning@outlook.com>
Sent:	Tuesday, August 11, 2015 2:51 PM
То:	Keith Scott
Cc:	djn@dennyniles.com
Subject:	Re: Preliminary Consultation Maluaka Beach Catamaran Passenger Boarding

Hi Keith,

Thank you for the clarification and we will discuss, in the DEA, the transport of passengers to the area, and potential effects.

Gene

On Aug 11, 2015, at 12:04 PM, Keith Scott <<u>Keith.Scott@co.maui.hi.us</u>> wrote:

Eugene - -

After further consultation, it appears that an SMA permit for the loading activity itself is not necessary. However, your client needs to assess the mauka activity related to the loading. As an example, are the passengers driving to the beach to load? If so, where are they parking? How does it impact the use of the beach park?

If you have any questions, please let me know.

Mahalo,

Keith Scott Staff Planner <u>keith.scott@co.maui.hi.us</u> (808) 463-3867 >>> Keith Scott 7/15/2015 8:50 AM >>> Thank you for the opportunity to comment during the Preliminary Consultation period for the subject Environmental Assessment. Maui County Planning has the following comment:

Special Management Area clearance is required for using the beach for access to the in-water boarding area, and should have been obtained prior to initiating activities.

Mahalo,

Keith Scott Staff Planner <u>keith.scott@co.maui.hi.us</u> (808) 463-3867



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THIS WEEK'S

Comments sought on Makena boat boarding

July 13, 2015 The Maui News

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Public comments are being solicited for a proposal to continue allowing catamaran boarding at Maluaka Beach fronting the Makena Beach & Golf Resort.

The deadline to submit comments is July 20.

Makena Boat Partners operates the Kai Kanani II, a 65-foot catamaran, using state land at the beach under a conservation district use permit since 1988.

Passengers board and disembark from the Kai Kanani at the southern portion of the beach. However, the 1988 permit required Makena Boat Partners to secure occupancy of the state land from the Department of Land and Natural Resources.

An environmental assessment is being prepared as part of the catamaran operator's application to the land board to use state land at the beach to load and unload catamaran passengers. The study will assess the environmental impact on Maluaka Beach of the loading and unloading of the passengers who wade through shallow water to get to and from the boat.

They climb aboard the vessel from a retractable ladder positioned between the catamaran's two hulls. It takes about seven minutes to load and unload passengers, according to an announcement. No more than 45 feet of shoreline is used by the catamaran during any one boarding cycle.

The boat's contact with the beach's sandy bottom is "infrequent and momentary," the announcement says. The use of government land for boarding triggered the state's environmental review process.

Public comments may be submitted by mail or email to Eugene Dashiell, Environmental Planning Services, 728 Nunu St., Kailua 96734. His email address is dashieliplanning@outlook.com.

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Hawai`i Wildlife Fund July 19, 2015

Eugene Dashiell Environmental Planning Services 728 Nunu St., Kailua 96734 dashiellplanning@outlook.com

SUBJECT: Letter of Support submitted to Department of Land & Natural Resources on behalf of Kai Kanani Catamaran Beach Loading at Maluaka, Maui

Aloha Mr. Dashiell,

I am writing on behalf of Hawai'i Wildlife Fund, a Hawai'i-based marine conservation organization, to support the continuance of the Kai Kanani II catamaran loading on Maluaka Beach in south Maui.

We founded our non-profit in 1996 to assist in the conservation of Hawai'i's native wildlife with a focus on the marine environment. With programs on both Hawai'i Island and Maui, we have succeeded in working closely with our communities to initiate significant projects including the statewide Makai Watch, Maui Reef Fund, Wild Hawai'i, Hawksbill Recovery Project, Ho'okipa Honu Watch, Maui Monk Seal Watch, Marine Naturalist Training through UH Maui College, and Marine Debris Recovery Projects on both Maui and Hawai'i Islands (recovering more than 225 tons in 10 years).

For more than a decade, we have partnered with Makena Boat Partners to educate their passengers onboard Kai Kanani and to teach the highest standard for wildlife viewing. Every day, Kai Kanani passengers are taught to respect and protect green and hawksbill sea turtles and actively requested, reminded and guided to keep a distance of at least 10 feet from them. In addition, Makena Boat Partners is the only commercial tour company that supports an independent non-profit organization by hosting a marine naturalist on their vessel to both train their crew and to teach visitors the highest wildlife viewing standards. They are also the only commercial tour company that has contributed financially to conservation for this length of time. Through our partnership, they also host student interns from all over the world. This vessel has truly served as a model for teaching about the marine ecosystem in Hawai'i.

Also as important, the crew and captains of Kai Kanani are world-class professionals who love their jobs and excel at what they do. The captains are exceedingly careful when approaching and leaving Maluaka beach and when boarding passengers. All

P.O. Box 790637 • Paia • HI • 96779 • (808) 280-8124 • wild@aloha.net • www.wildhawaii.org

crew are helpful and polite to beachgoers and passengers alike, with safety as their top priority. The landing site for beach loading where the front edges of the catamaran make contact is on sand, no coral reef habitat is there.

I am on this vessel myself approximately twice weekly, and it has been a pleasure to work with this company. Perhaps because this is a family-owned business, it really feels like you are with 'ohana when onboard Kai Kanani. Two families own this company, the Akionas from Hawai'i, and the Gildersleeves from Alaska. Both families are deeply engaged in the business and our community and care deeply about the health of the marine environment.

I urge you to allow this vessel to continue to load passengers from the beach at Maluaka. I believe this company has operated with the highest regard for the marine environment and serves as a significant platform to educate passengers and inspire the entire marine tourism industry to give back.

Please don't hesitate to contact me if you have any questions. Mahalo for your kind consideration,

penb Bornd

Hannah Bernard President Hawai`i Wildlife Fund

Hannah Bernard <bernardhannah@me.com></bernardhannah@me.com>	
Tuesday, July 21, 2015 10:44 AM	
Eugene Dashiell	
din@dennyniles.com; Gil Keith-Agaran	
Re: Checking on the email	

Mahalo for the reply! Hannah Hannah Bernard President Hawai'i Wildlife Fund P.O. Box 790637 Paia, HI 96779 wild@aloha.net www.wildhawaii.org (808) 280-8124 bernardhannah@me.com

On Jul 21, 2015, at 7:59 AM, Eugene Dashiell <<u>dashiellplanning@outlook.com</u>> wrote:

Dear Ms. Bernard,

Thank you for your email and I will include your comments in the draft environmental assessment.

I have provided the attorneys for Makena Boat Partners with a copy of your comments.

Thanks and Aloha,

Gene

Eugene P. Dashiell, AICP Pacific Environmental Planning 728 Nunu Street Kailua, Hawaii 96734 808-254-4522 (tel/fax) 808-371-0745 (cell) dashiellplanning@outlook.com

From: Hannah Bernard [mailto:bernardhannah@me.com] Sent: Monday, July 20, 2015 5:05 PM To: dashiellplanning@outlook.com Subject: Checking on the email

Aloha Mr. Dashiell, Just checking to be sure you received my letter regarding Kai Kanani on Maui?

ISAAC DAVIS HALL

ATTORNEY AT LAW 2087 WELLS STREET WAILUKU, MAUI, HAWAII 96793 (808) 244-9017 FAX (808) 244-6775

July 20, 2015

<u>Via Email and U. S. Mail</u> dashiellplanning@outlook.com Mr. Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, Hawaii 96734

> Re: Preliminary Consultation on Environmental Assessment on Proposed Disposition of State Lands Allowing continued catamaran passenger boarding at Maluaka Beach, Wailea, Maui, Hawaii

Dear Mr. Dashiell:

This letter is written on behalf of Hui Alanui o Makena and Dana Naone Hall. You are preparing an Environmental Assessment ("EA") pursuant to HRS Chapter 343 regarding an application that Kai Kanani II has submitted to the Board of Land and Natural Resources ("BLNR") requesting the disposition of state lands, in the form of a Grant of Non-Exclusive Easement over and across state beach lands and state waters, more than 300 feet by 150 feet by and on Maluaka Beach, allowing the mooring and presence of the Kai Kanani II 24 hours a day, 7days a week, in a particular location, and the boarding and unboarding of passengers on Maluaka Beach.

Your claim that your proposed uses do not cause significant impacts – even before an EA has been prepared – is unlikely to be supported. Instead, the uses that you propose "may" have significant adverse impacts on the environment such that a full Environmental Impact Statement ("EIS") should be prepared. See Unite Here! Local 5 v. City and County of Honolulu, 123 Haw. 150, 231 P.3d 423 (2010).

Kindly address the following issues in the EA or EIS:

1. The depiction of the bounds of the easement area is misleading. You allege that the purpose of the easement is for "landing and mooring purposes." You state that the activity site includes "fast" lands. You further state that the CDUP included a "beach use permit" allowing "loading and offloading passengers at the public beach…" however you explain that only the Division of Land Management had the authority to approve the use of state lands. In your depiction of the easement area you fail to disclose that portion of Maluaka public beach that is subject to this proposed disposition. This failure obscures the fact that what is being proposed, in part, is the disposition of a portion of a public, sandy beach. This, in turn, obscures the types of conflicts among the users of this public, sandy beach that arise with a proposed disposition of this type.

2. You allege that you possess a CDUP issued in 1988. Is this permit still in effect? Please attach to the EA a full copy of this CDUP.

3. Please explain why there has been no compliance with a term contained in a CDUP issued in 1988 until now – 27 years later. Has MBP been embarking and disembarking passengers on state land from 1988 until the present without any permit or approval from the Division of Land Management as required by the 1988 CDUP? Have any penalties been assessed? Have any enforcement actions been taken by DLNR or BLNR?

4. Does the Kai Kanani II possess a permit or approval to moor off of Maluaka Beach. Please attach to the EA a full copy of any mooring permit or approval. How long has the Kai Kanani II moored off of Maluaka Beach with or without a mooring permit? Have any penalties been assessed? Has any enforcement action taken place?

5. Is Maluaka Beach within an "Ocean Recreation Management Area" pursuant to HAR 13-256-1 et seq.? Have any regulations been implemented to manage Maluaka Beach as an "Ocean Recreation Management Area"? Do any regulations permit Kai Kanani II to use Maluaka Beach in the manners proposed? Do any regulations permit BLNR to grant an easement to use ocean waters and this sandy beach for the uses proposed by Kai Kanani II?

6. Maluaka Beach is well-used by local residents and visitors. Formalizing these proposed uses formalizes the conflicts among uses of the beach by local residents and visitors, and those using the beach to board and disembark from the Kai Kanani II.

7. A study of the capacity of Maluaka Beach and its ability to support existing and future uses should be included in the EA or EIS.

8. Please explain how the proposed uses are "non-exclusive" in the EA or EIS. Please explain how being granted the right to moor the Kai Kanani II in the same place 24/7 is "non-exclusive"? Please explain how the use of the 300-foot by 150-foot area is "non-exclusive"?

Please send us your EA or EIS for review. We reserve the right to comment on the adequacy of your EA and on whether an EIS is required before any disposition.

\$incerelv/. Ísabc Hall

Cc: Clients

Eugene P. Dashiell AICP

ENVIRONMENTAL PLANNING SERVICES 728 Nunu Street Kailua, Hawai`i 96734 Telephone/FAX: 808.254.4522 Cell Phone/Voice Mail: 808.371.0745 email: <u>dashiellplanning@outlook.com</u> Member, American Institute of Certified Planners

October 13, 2015

MR ISAAC HALL ATTORNEY AT LAW 2087 WELLS STREET WAILUKU, HAWAII 96793

Subject: Preliminary Consultation on Environmental Assessment on Proposed Disposition of State Lands Allowing continued catamaran passenger boarding at Maluaka Beach, Wailea, Maui, Hawaii

Dear Mr. Hall:

This letter will serve as a preliminary response to yours dated July 20, 2015. Please note the following:

- 1. Applicant is Makena Boat Partners ("MBP"), a Hawaii general partnership.
- 2. Applicant does not seek authority to moor a vessel. The purpose of the requested disposition is to resolve any question that may exist regarding the transient use of Maluaka Beach by Applicant's vessel to board and disembark passengers. This activity is incident to excursions the vessel provides under DLNR permits for the South Maui Ocean Recreation Management Area (see Hi Admin Rules § 13-235-116) and the Molokini Marine Life Conservation District. MBP has held these permits for decades and been in continuous operation at Maluaka Beach since 1988.
- 3. The reference to "fast" lands was in error.
- 4. The description of the disposition area includes the slice of shoreline where the forward portion of a hull make momentary contact with the sand bottom during the few minutes required to board or disembark passengers.
- 5. The CDUP remains in effect. A complete copy will be attached to the DEA as requested.
- 6. The current owners of MBP were informed in 2013 of concern that a term of the 1988 approval remained open. The subject DEA is a step towards resolving any issue concerning compliance with the CDUP.
- 7. MBP's vessel operates from a private mooring within the designated Makena Bay mooring zone. See Hi Admin Rules § 13-235-70. Makena Bay Mooring Zone. The mooring is authorized by U. S. Army Corps of Engineers permit and also permitted by DLNR's Division of Boating and Ocean Recreation. Kai Kanani II has moored off Maluaka Beach since 2009 and has not been the subject of enforcement action.
- 8. The impact of MBP's transient use of the shoreline does not bring conflict with beach goers to the degree that would warrant formal study of beach carrying capacity.

Page two Isaac Hall

9. The EA will address the non-exclusivity of the proposed disposition. That disposition does not involve moorage of the vessel which occurs well offshore as noted. MBP has safely shared use of Maluaka Beach with other users for decades. Given its success in avoiding conflict, there is no need for exclusivity in formalizing authorization of MBP's continued transient use of the beach.

We look forward to your comments in response to the draft Environmental Assessment.

If you have questions please call me (254-4522 or 371-0745) or e-mail me (dashiellplanning@outlook.com).

Sincerely yours,

Engre P. Dahuer

Eugene P. Dashiell, AICP

From: Stillwell [stillys@hawaii.rr.com]

Sent: Friday, July 17, 2015 10:57 AM

To: dashiellplanning@outlook.com

Subject: Makena Boat Partners EA - Support usage

Regarding Makena Boat Partners use of Maluaka Beach, I am in full support of their obtaining a permit from DLNR. The Kai Kanani II catamaran offers a unique and beautiful experience for residents and guests alike as it is the only full service boating trip for snorkeling, whale watching and sunset dinner cruises from South Maui. The amount of time the boat is actually near the beach to load and unload, taking appx. 7 minutes is nominal. This does not interfere with any other beach or ocean activities. As a frequent user of this beach and a passenger on the Kai Kanani, and as an volunteer ocean steward, I can speak from experience that there little to no impact from this use. Thank you for your time and concern. Patricia Stillwell, Kihei



From: Eugene Dashiell [dashiellplanning@outlook.com]

Sent: Sunday, September 27, 2015 5:23 PM

To: 'Stillwell'

Cc: 'djn@dennyniles.com'

Subject: RE: Makena Boat Partners EA - Support usage

Ms. Stillwell,

In looking through my emails it appears I did not acknowledge your email of July 17, or inadvertently I deleted my response to you!! Please accept this email as recognition that I did receive your email, and that you will receive a copy of the DEA when it is available. Thank you for your comments.

Thanks and Aloha,

Gene

Eugene P. Dashiell, AICP Pacific Environmental Planning 728 Nunu Street Kailua, Hawaii 96734 808-254-4522 (tel/fax) 808-371-0745 (cell) dashiellplanning@outlook.com

From: Stillwell [mailto:stillys@hawaii.rr.com] Sent: Friday, July 17, 2015 10:57 AM To: dashiellplanning@outlook.com Subject: Makena Boat Partners EA - Support usage

Regarding Makena Boat Partners use of Maluaka Beach, I am in full support of their obtaining a permit from DLNR. The Kai Kanani II catamaran offers a unique and beautiful experience for residents and guests alike as it is the only full service boating trip for snorkeling, whale watching and sunset dinner cruises from South Maui. The amount of time the boat is actually near the beach to load and unload, taking appx. 7 minutes is nominal. This does not interfere with any other beach or ocean activities. As a frequent user of this beach and a passenger on the Kai Kanani, and as an volunteer ocean steward, I can speak from experience that there little to no impact from this use. Thank you for your time and concern. Patricia Stillwell, Kihei



This email has been checked for viruses by Avast antivirus software.

www.avast.com

From:Bill & Sylvia Sales [mitt@hawaii.rr.com]Sent:Wednesday, July 15, 2015 12:15 PMTo:dashiellplanning@outlook.comSubject:Makena Boat Boarding

The Kai Kanani II Boat owned by Makena Boat Charters boarding Maluaka Beach fronting the Makena Beach & Gold Resort is a crime!! Have they paid the \$650,000 - \$700,000 fine for destroying the beautiful coral reefs? Please have the Department of Land and Natural Resources research this fact. These reefs were among the most beautiful reefs in South Maui. The natural beauty of the Makena area waters are being destroyed. What about senior citizens who have to board through the waves or the children? Makena Boat Charters is risking some heavy lawsuits should an accident occur. Go down and watch the loading and off-loading before you make a decision. The boat needs to be slipped at Ma'alaea Harbor for safety purposes and the preservation of what reefs and natural beauty still remain.

Our entire family is insulted that you would even consider renewing this permit. God help you.

Bill and Sylvia Sales 35 years of residency in South Maui.

From:	Eugene Dashiell <dashiellplanning@outlook.com></dashiellplanning@outlook.com>
Sent:	Wednesday, July 15, 2015 12:25 PM
To:	'Bill & Sylvia Sales'
Cc:	'Dennis Niles'; 'Gil Keith-Agaran'
Subject:	RE: Makena Boat Boarding

Dear Mr. and Mrs. Sales:

Thank your for your email and it will be part of the comments section in the draft EA. I have forwarded your comments to the attorneys for Makena Boat Partners, Dennis Niles and Gil Keith-Agaran. When we file the public draft Environmental Assessment, I will send you a copy.

Thanks and Aloha,

Gene

Eugene P. Dashiell, AICP Pacific Environmental Planning 728 Nunu Street Kailua, Hawaii 96734 808-254-4522 (tel/fax) 808-371-0745 (cell) dashiellplanning@outlook.com

From: Bill & Sylvia Sales [mailto:mitt@hawaii.rr.com] Sent: Wednesday, July 15, 2015 12:15 PM To: dashiellplanning@outlook.com Subject: Makena Boat Boarding

The Kai Kanani II Boat owned by Makena Boat Charters boarding Maluaka Beach fronting the Makena Beach & Gold Resort is a crime!! Have they paid the \$650,000 - \$700,000 fine for destroying the beautiful coral reefs? Please have the Department of Land and Natural Resources research this fact. These reefs were among the most beautiful reefs in South Maui. The natural beauty of the Makena area waters are being destroyed. What about senior citizens who have to board through the waves or the children? Makena Boat Charters is risking some heavy lawsuits should an accident occur. Go down and watch the loading and off-loading before you make a decision. The boat needs to be slipped at Ma'alaea Harbor for safety purposes and the preservation of what reefs and natural beauty still remain.

Our entire family is insulted that you would even consider renewing this permit. God help you.

Bill and Sylvia Sales 35 years of residency in South Maui.

From: Phillip Schultz pas444-3 gmail.com

Subject: Environmental impact of loading boat on beach

Date: July 14, 2015 at 5:49 PM

To: dashiellplanning houtlook com

Aloha Eugene;

If I understand this correctly, Makena Boat Partners have been doing this on this beach for most of three decades with no notable environmental impact on the beach; However, for some reason an environmental impact assessment is now being done. It makes me wonder why this was requested to be done at this time, as I hate to see money wasted on a study if it is not for a valid reason. Clearly if there was a problem, I would have thought it would have come up well before this.

Bottom line, I have no issue whatsoever with them loading/unloading from the beach, and I see no environmental impact over what any other beach users have had or will have on the state land sand beach.

Phil Schultz

From:	Eugene Dashiell <dashiellplanning@outlook.com></dashiellplanning@outlook.com>
Sent:	Wednesday, July 15, 2015 6:13 AM
То:	gene NEW ;
Subject:	Re: Environmental impact of loading boat on beach

Dear Mr. Schultz,

Thank your for your email. I will include your email in the draft environmental assessment. I am forwarding your email to Mr. Dennis Niles, attorney for Makena Boat Partners.

In the draft environmental assessment, I will provide more detail as to the background and rationale for the decision to prepare an environmental assessment.

I will send you a copy of the draft environmental assessment when we publish it.

Please do not hesitate to contact me or Mr. Niles if you have questions or comments.

> On Jul 14, 2015, at 5:49 PM, Phillip Schultz <pas444@gmail.com> wrote:

>

> Aloha Eugene;

> If I understand this correctly, Makena Boat Partners have been doing this on this beach for most of three decades with no notable environmental impact on the beach; However, for some reason an environmental impact assessment is now being done. It makes me wonder why this was requested to be done at this time, as I hate to see money wasted on a study if it is not for a valid reason. Clearly if there was a problem, I would have thought it would have come up well before this.

 > Bottom line, I have no issue whatsoever with them loading/unloading from the beach, and I see no environmental impact over what any other beach users have had or will have on the state land sand beach.
> Phil Schultz

E2 2015 DRAFT ENVIRONMENTAL ASSESSMENT CONSULTATION CORRESPONDENCE

Isaac Davis Hall

Attorney at Law 2087 Wells Street Wailuku, Maui, Hawaii 96793 Telephone: (808) 244-9017 Facsimile: (808) 244-6775 January 22, 2016

<u>Via Email and U. S. Mail</u> kimberlymills@hawaii.gov. Board of Land and Natural Resources State of Hawaii c/o Ms. Tiger Mills P. O. Box 621 Honolulu, HI 96809

> Re: Comments on Draft Environmental Assessment on Proposed Disposition of State Lands Maluaka Beach, Wailea, Maui, Hawaii

Dear Board of Land and Natural Resources:

This letter is written on behalf of Hui Alanui o Makena and Dana Naone Hall regarding the Draft Environmental Assessment ("DEA") for the proposed disposition of 1.43 acres of public and ceded lands to Kai Kanani for its commercial operations.

I. ANY PROPOSED DISPOSITION OF A PUBLIC TRUST, SANDY BEACH, REQUIRES AN EIS

This DEA is required to address a disposition, for the commercial operations of Kai Kanani, of 1.43 acres of state land, some of which is a portion of the sandy, public beach at Maluaka and some of which is submerged land, immediately makai of the sandy beach. Any such disposition has significant adverse impacts and requires the preparation of a full Environmental Impact Statement ("EIS"). See *Unite Here! Local 5 v. City and County of Honolulu*, 123 Haw. 150, 231 P.3d 423 (2010).

These lands and waters are some of the most sensitive and prized lands owned by the State. Sandy beaches are treasured for their recreational values. Near-shore waters are regularly used by Hawai'i's citizens for swimming, fishing, snorkeling and gathering. There would be no point to a disposition of these lands and waters for commercial purposes unless the commercial user was attempting to gain rights that were superior to the rights that can be exercised by Native Hawaiians and members of the public without the benefit of a disposition from the Board of Land and Natural Resources, pursuant to HRS Chapter 171. No adequate explanation has been provided explaining how the proposed uses are "non-exclusive". No adequate explanation has been provided explaining how being granted the right to moor the Kai Kanani II in the same place at any and all hours is "non-exclusive." No adequate explanation has been provided explaining how the use of the 250-foot by 250-foot area is "non-exclusive."

Hui Alanui o Makena re-opened Maluaka Beach for Native Hawaiian and general public uses more than thirty (30) years ago, before the commencement of the Kai Kanani commercial uses. Hui Alanui o Makena and Dana Naone Hall do not want to see Native Hawaiian and general public uses diminished, restricted or impeded through the disposition of state lands for the commercial purposes proposed here.

Dana Naone Hall and members of Hui Alanui o Makena, with others, have devoted themselves to preventing private entities from attempting to privatize public resources intended to be conserved, protected and managed in trust for the benefit of present and future generations. In *Akau v. Olohana Corp.*, 65 Haw. 383, 652 P. 2d 1130, 1135 (1982), the Hawaii Supreme Court held, with regard to an "injury to a recreational interest":

In this case, plaintiffs allege that they are prevented from using a public right of way. The resulting difficulty in getting to the beach hampers the use and enjoyment of it and may prevent or discourage use in some instances. This is an injury to a recreational interest similar to the one in *SCRAP* because the ability to get to a recreational area is as vital for enjoying it as having it in its natural condition.

Conversely, it is the reverse injury to a recreational interest to be provided with a public right of way to Maluaka Beach, as here, but to be prevented from the full public use and enjoyment of the beach to which public access has been assured.

The State is considering an improper means of disposition of private entitlements to public beach resources. The State BLNR is contemplating a disposition of public lands pursuant to HRS Chapter 171, which public lands are:

- Subject to the Public Lands Trust of the State of Hawaii;
- b. Subject to the Ceded Lands Trust of the State of Hawaii;
- Lands in the Conservation District, subject to HRS Chapter 183C and the regulations promulgated thereunder, namely HAR §§ 13-5-1 et.seq.;
- d. Submerged lands; and
- e. State marine water, subject to the dispositional requirements of HRS Chapter 190D;

Lands and waters seaward or makai of the "shoreline," including Maluaka Beach, to the three-mile limit, are sometimes defined as "unencumbered public lands" subject to the jurisdiction of Defendants BLNR and DLNR. The beach lands at Maluaka Beach seaward or "makai" of the shoreline and above or "mauka" of the regular wash of the waves comprise a portion of the corpus of the Public Lands Trust held in trust by the State of Hawaii for the benefit of its people; see Article XI, § 1, of the Hawaii State Constitution.

The public beach lands at Maluaka Beach are those lands seaward or "makai" of the upper reaches of the wash of the waves over the course of the year, which in many cases is presumed to be the vegetation line. *County of Hawaii v. Sotomura*, 55 Haw. 167, 517 P.2d 57 (1973). Land makai of the "shoreline," including Maluaka Beach, belongs to the public, is part of the corpus of the Public Land Trust, pursuant to HRS § 171-18, and the Section 5(f) Trust imposed by the Admissions Act in which Native Hawaiians, such as Dana Naone Hall and members of Hui Alanui o Makena, have a beneficial interest.

The Kai Kanani has extended its commercial operations onto Maluaka Beach a sandy beach that is state-owned land, held in trust for the benefit of Native Hawaiians and the public, including Dana Naone Hall and members of Hui Alanui o Makena. *Hawaii County v. Sotomura*, 55 Haw. 176, 517 P.2d 57 at 63 (1973); *Kaahumanu v. Hawaii*, 685 F. Supp. 2d 1140 at 1145 (D. Haw. 2010); *Napeahi v. Paty*, 921 F. 2d 897 at 903 (9th Cir. 1990). The Kai Kanani is depriving Native Hawaiians and other members of the public, of their fundamental rights to use and enjoy for recreational and access purposes, the 1.43 acre portion of Maluaka Beach and the ocean through the commercial activities of the Kai Kanani.

Dana Naone Hall and members of Hui Alanui o Makena, including Leslie Kuloloio, are beneficiaries of the Public Lands Trust and have the right to assure that the public beach lands at Maluaka Beach are conserved and protected in their natural state for the benefit of present and future generations of Hawaii residents, including themselves, their family members and other members of the public.

In addition, even brief uses of Maluaka Beach for commercial purposes requires a permit pursuant to HAR § 13-221-35. *Kaahumanu v. Hawaii*, 685 F. Supp. 2d 1140 at 1145 (D. Haw. 2010). The State has admitted the adverse nature of the commercial uses of our public beaches and justified fining a kayak company on Wailea Beach stating:

The Maui District Land office has received **numerous complaints from the public** regarding the **overcrowding of shoreline areas** due to **vendors laying out kayaks or surfboards along the beaches** while awaiting the arrival of clients or during instruction and while safety briefings are being conducted prior to moving out into the water for tours or surf lessons. The public has for generations utilized specific areas for family outings and recreational activities and is now being forced out of these locations because of the impacts brought about by the presence of unauthorized commercial operators. (Emphasis added).

We also agree with the preliminary comments about the adverse impacts caused by the project noted in the Memorandum dated July 14, 2015 from DLNR Aquatic Biologist Russell Sparks, as follows:

There is extensive coral reef habitat on both ends of this beach and therefore snorkeling. SCUBA diving, fishing and other recreational activities are common practices in the area. The continued navigation of a 65' vessel into this small beach area presents an ongoing safety hazard for ocean users in the area, and potentially displaces the public from freely enjoying the beach and nearshore waters.

The Ninth Circuit Court of Appeals wrote of the history and purpose of HAR §13-221-35, in upholding the validity of the State's rule in *Kaahumanu v. State of Hawaii*, 682 F.3d 789 at 793 -794 (9th Cir. 2012):

Over 200 public beaches in Hawai'i are under DLNR's jurisdiction. See Beaches, Hawai'i Department of Land and Natural Resources, available at http:// hawaii.gov/dlnr/land/forms-1/Wiki Permit Locations.pdf (last visited Feb. 10, 2012) (listing beaches). These include such beautiful beaches as Wailea Beach on Maui; Waimea Bay Beach on Oahu; and Papohaku Beach on Molokai. Many commercial companies provide services for recreational activities on Hawai'i's beaches. During the late 1990s and early 2000s, these services were largely unregulated, with the result that some public beaches became congested by commercial enterprises. For example, kayak and surf schools stored equipment on and operated from public beaches, and hotels set out chairs and umbrellas in the morning before the general beach-going public arrived.

The State submitted the Declaration of the then Director of DLNR Laura Thielen in *Kaahumanu v. Hawaii*, 685 F. Supp. 2d 1140 at 1145 (D. Haw. 2010) which the opinion summarizes as follows:

The DLNR has utilized these regulations in recent years to regulate or control commercial activities such as kayak rentals and tours, surfing and surfboard schools, resort activities, other commercial ocean recreation businesses, and potential activities such as food businesses, hula classes, and other types of lessons. [Thielen Decl. of Aug. 8, 2009, at ¶¶ 4-10]. (Emphasis added)

The two federal courts noted that the purposes of HAR §13-221-35. The District Court held in *Kaahumanu v. Hawaii*, 685 F. Supp. 2d 1140 (D. Haw. 2010) that these purposes were as follows:

- * The permit requirements are directed at protection of a public resource and preservation of access for all. (Emphasis added) *Id.* at p. 1153.
- * [the permitting requirement] is directed at keeping public beaches open to the public, towards minimizing congestion, promoting maximum use (Emphasis added) Id. at p. 1154.

The Ninth Circuit in *Kaahumanu v. State of Hawaii*, 682 F.3d 789 (9th Cir. 2012) noted several further purposes served by the regulation:

- * The requirement is reasonably designed to minimize conflicting uses of limited beach area and to conserve the physical resource of the beaches. (Emphasis added) *Id.* at p. 803.
- DLNR seeks to allow commercial beach weddings, but, at the same time, not to allow such weddings to interfere unduly with the activities of other beachgoers. (Emphasis added) *ld.* at p. 808.

The Hawaii Supreme Court issued a unanimous Opinion in *Diamond v. Dobbin and BLNR*, 132 Hawai'i 9, 319 P.3d 1017 (2014), reaffirming that it was an objective and policy of the Coastal Zone Management Act, HRS Chapter 205A, "to protect beaches for public use and recreation." HRS § 205A-2(b)(9). *Diamond v. State Board of Land & Natural Resources*, 112 Hawai'i 161, 174, 145 P.3d 704, 717 (2006). *Id.* The Supreme Court also reaffirmed that public policy favors extending public use and ownership to as much of Hawaii's shoreline as is reasonably possible." *Id.*

The uses of the Kai Kanani "affect" this beach and, therefore, are deemed to have a significant impact. These uses and activities congest the beach and force other members of the public out of the areas occupied. These are significant adverse cultural and social impacts that are contrary to the State's goals of keeping public beaches open to the public, minimizing congestion, promoting maximum use, protecting a public resource, preserving access for all and preventing undue interference with the activities of other beachgoers. It is an objective and policy of the Coastal Zone Management Act, HRS Chapter 205A, "to protect beaches for public use and recreation." HRS § 205A-2(b)(9). *Diamond v. Dobbin and BLNR*, 132 Hawai'i 9, 319 P.3d 1017 (2014); *Diamond v. State Board of Land & Natural Resources*, 112 Hawai'i 161, 174, 145 P.3d 704, 717 (2006).

Dana Naone Hall and Hui Alanui o Makena, including Leslie Kuloloio, share the concern of the State Aquatic Biologist with the precedent set by this proposed action and the long-term and cumulative adverse impacts caused by this proposed action, stated as follows:

Perhaps the biggest concern with this proposed action is that it would result in nonexclusive use of the beach for loading and unloading. If approved, it is very likely, that other commercial boating operations could seek permission to use this beach for loading and unloading. There are already concerns with the environmental impacts from the current operation but this action appears to open the door for an unlimited amount of other operators to begin using this beach for loading and unloading activities. If it is decided to allow the current activity to continue, I would strongly recommend a careful carrying capacity study be conducted to outline what level of vessel loading and unloading activity can safely be allowed on this small heavily utilized public beach.

No adequate study of the capacity of Maluaka Beach and its ability to support existing and future uses has been included in the DEA. It may be that once all uses are disclosed that an SMA permit, and/or a CDUA and/or an SUP permit are required by law.

II. FAILURE TO DESCRIBE AND ADDRESS THE PROJECT AS A WHOLE

The DEA does not provide a detailed description of the Kai Kanani project or operations as a whole, over time. How do Kai Kanani customers travel to Maluaka Beach? Where do they park? Do they park in stalls reserved for beach goers? How often is the Kai Kanani moored off Maluaka Beach?

Is Maluaka Beach within an "Ocean Recreation Management Area" pursuant to HAR 13-256-1 et seq.? Have any regulations been implemented to manage Maluaka Beach as an "Ocean Recreation Management Area"? Do any regulations permit Kai Kanani II to use Maluaka Beach in the manners proposed? Do any regulations permit BLNR to grant an easement to use ocean waters and this sandy beach for the uses proposed by Kai Kanani II?

III. ADVERSE IMPACTS ON ENDANGERED AND THREATENED SPECIES

We also agree with and adopt the preliminary comments about the adverse impacts on endangered and threatened species caused by the project noted in the Memorandum dated July 14, 2015 from DLNR Aquatic Biologist Russell Sparks, as follows:

... The safety issues and potential displacement of the public are not, however, the only concerns with this operation. There is a history of impacts to the offshore coral reef habitat from the mooring and/or anchoring of vessels operated by Makena Boat Partners, and future potential impacts could occur to threatened and endangered sea turtles and monk seals.

DLNR's Aqautic Biologist continues:

In the past, Makena Boat Partners contracted a biological assessment of the area, but this assessment appeared to have been hastily prepared. This assessment did a decent job of describing the general biological resources in and/or around the beach landing location. but failed to note the regular use of the rocks in the middle of the site as foraging habitat by threatened green sea turtles. Furthermore, although not yet observed on this beach, many beaches in the general area have been used a nesting habitat for both green and hawksbill sea turtles. It is not unreasonable to expect future turtle nesting activity to occur on this beach. A careful assessment of how this loading and unloading operation would deal with turtle nests needs to be presented. Although turtle nests are unlikely to be directly impacted by the vessel's hulls. the movement of people and gear over the beach could negatively impact the nests over all viability. Other biological uses of the beach could include endangered monk seal haul outs. Monk Seals are known to utilize the Makena area, and the beach loading and unloading of large commercial catamarans would certainly disturb any monk seals hauled out on this sandy beach environment.

No adequate study has been included in the DEA on the impact of this project on endangered and threatened species.

IV. CONTINUING ADVERSE IMPACTS TO COASTAL RESOURCES

We also agree with and adopt the preliminary comments about the adverse impacts on coastal resources caused by the project noted in the Memorandum dated July 14, 2015 from DLNR Aquatic Biologist Russell Sparks, as follows:

Previous inspections on the mooring system for the Kai Kanani II have documented two large ship anchors connected by large chains to a center mooring consisting of a large concrete filled tire. This mooring system, not only created an eyesore to anyone enjoying the reef habitat in the area, but also resulted in impacts to the hard bottom habitat around the mooring. The center concrete filled tire would move back and forth with the chains scraping the bottom resulting in a fairly large area of continuously disturbed bottom habitat. Past inspections found that this mooring system was directly damaging coral colonies and other living benthic marine resources. The vessel operators were notified of the department's concerns with this mooring system, but it is unclear if any modifications have been conducted to mitigate these impacts. The past and potential future impacts from this and possibly new offshore moorings is directly related to the use of the beach for loading and unloading since vessel operators will want to have their vessels secured near the beach loading site been conducted to mitigate these impacts. The past and potential future impacts from this and possibly new offshore moorings is directly related to the use of the beach for loading and unloading since vessel operators will want to have their vessels secured near the beach loading site.

There must be convincing proof presented that the mooring system used by the Kai Kanani does not adversely impact coastal ecosystems before this project can proceed. This project requires an EIS. See *Unite Here! Local 5 v. City and County of Honolulu*, 123 Haw. 150, 231 P.3d 423 (2010).

Dane Naone Hall

Dana Naone Hall

Cc: Sidney J. Akiona, President, (Applicant) Kai Kanani, Inc., 170 Ulana Street, Makawao, HI 96768; dashiellplanning@outlook.com (Consultant) Mr. Eugene Dashiell, AICP Environmental Planning Services 728 Nunu Street Kailua, Hawaii 96734 Clients



February 26, 2018

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Mr. Isaac Davis Hall Attorney at Law 2087 Wells Street Wailuku, HI 96793

SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT

Dear Mr. Hall

We are in receipt of your letter dated January 22, 2016 regarding the Catamaran Landings at Maluaka Beach Draft Environmental Assessment (Draft EA).

As the planning consultant for the applicant, Makena Boat Partners, we acknowledge your comments on the 2015 Draft EA, and provide the following responses.

I. Need for an EIS

While we believe the impacts from the proposed action (a request for a non-exclusive easement) do not warrant the need for an EIS, we acknowledge that the approving agency, the State Department of Land and Natural Resources, could find differently.

II. Addressing Project as a Whole

While the 2015 Draft EA addressed many of your questions, the forthcoming revised EA will address any that were not previously discussed.

III. Adverse Impacts on Endangered Species

The 2015 Draft EA included two biological assessments performed by AECOS, Inc. In its earlier report dated April 9, 2014, AECOS, Inc. found:

"Vessel operations appear to have no impact on the marine resources at or near the landing sites. No coral colonies are present in the vicinity of the landing areas. The landings are not located in any State of Hawai'i natural preserve or any critical habitat as designated by U.S. Fish and Wildlife Service."
Mr. Hall SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 2 of 3

In its later report (October 24, 2015), AECOS, Inc. found:

"Based on the analysis of the possible impacts on ESA-listed species and critical habitat provided above, the potential stressors posed by continued Landing operations at Maluaka Beach are not expected to result in significant, discountable impacts on ESAlisted sea turtles and marine mammals or on critical habitat for Hawaiian monk seals. As such, it has been determined that the proposed action may affect, but is not likely to adversely affect, any ESA-listed marine species under NMFS jurisdiction."

IV. Mooring System

The U.S. Army Corps of Engineers (USACE) first authorized MBP to install three commercial moorings at Makena, Maui, Hawai'i in 1986. A special condition of the federal permit was the requirement that MBP "acquire a Conservation District Use Permit (CDUP) from the State Department of Land and Natural Resources." In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. MBP replaced the mooring in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016.

The EA will include a biological report showing the new Vessel mooring.

In 1988, the Board of Land and Natural Resources granted "after-the-fact" approval of a CDUP for use of conservation lands for two moorings. The Harbors Division of the Department of Transportation thereupon began issuing MBP renewable annual permits for the moorings. In 1992 jurisdiction over small boat moorings passed to DLNR. DLNR began administering mooring permits and has renewed MBP's mooring permit every year since. The permitted mooring is located within a DLNR designated mooring area. The Vessel uses the mooring nightly.

The EA will include a copy of the new mooring permit.

In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. See Appendix D. Following recommendations in a 2016 marine biological report, MBP replaced the mooring system in September 2016 and the Department of Land and Natural Resources inspected the new mooring in November 2016.

The EA will include a copy of the aforementioned 2016 marine biological report in addition to the original 2015 marine biological report.

As for use of the public beach for loading/offloading of passengers, MBP was directed to obtain "appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State Lands."

In a June 13, 2012 memorandum from the DLNR Office of Conservation and Coastal Lands (OCCL) to other Divisions of DLNR OCCL stated:

"The OCCL wishes to make this known to our fellow Divisions...Makena Boat Partners does have Board authorization to use the noted moorings and non-exclusive use of public beach for loading/offloading." Mr. Hall SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 3 of 3

In 2013, MBP was notified it had not yet obtained the required authorization for the occupancy of state lands. MBP was advised to submit an "Application for Use of Government Lands", and that the "...disposition of government lands for landing and mooring purposes via an easement or revocable permit is considered a 'trigger' under Chapter 343, Hawaii Revised Statutes, requiring compliance by the applicant." Approval of the application attached as Appendix E shall satisfy this unmet condition and will be referred to herein as the "Disposition."

Please note PBR will be preparing and submitting to the Office of Environmental Quality Control (OEQC) a Second Draft EA (2nd Draft EA) which will be made publicly available for review and comment. This 2nd Draft EA will allow agencies and the public to comment on information that was not available in the 2015 Draft EA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

We value your participation in the environmental review process. Your letter, along with our response, will be included in the forthcoming 2nd Draft EA.

Sincerely,

PBR HAWAII

MM

Tom Schnell, AICP Principal

cc: Department of Land and Natural Resources Makena Boat Partners 01.22.16

Email memorandum to: Tiger Mills, DLNR-OCCL

From: James Buika, Shoreline Planner, Planning Department, County of Maui

Subject: Comments from the County of Maui Planning Department (EAC 2015/0012)

Thank you for the opportunity to comment on the Draft EA for Catamaran Landings. Please address the following seven comments and concerns in the Final EA:

- 1. Thank you for reviewing the project activities relative to the Coastal Zone Management Act, as amended, HRS 205A and for completing this thorough analysis. This EA analysis provides the applicant with a thorough understanding of the potential impacts and best management practices that the County and State and Federal governments expect from this type of activity.
- 2. Complete a dune delineation study at Maluaka Beach entry area in order to define the dune for the area traversed by the people traversing the beach. Examine the passenger access route by completing a site visit with Ms. Tara Owens, University Sea Grant Extension Agent Maui County, taram@hawaii.edu. Ms. Owens supports the County of Maui for all shoreline related issues and can provide good mitigation education and assistance. Implement mitigation actions to ensure preservation or improvement of the dune in this area, as well as to minimize erosion caused by passengers accessing the vessel, as required.
- 3. Fully explore, study, and explain the issue raised but not addressed in the following sentence on page 16. "Respondents voiced concern that other vessels might want to use the non-exclusive easement or 'landing zone' sought by MPB. The speculative nature of this fear defies study."
 - a. How can this particular use lead to proliferation of this shoreline activity?
 - b. Could proliferation of these types of activities could lead to cumulative impact at the shoreline, on county property or the shoreline?
- 4. Explain the reasons why the CORA permits were rescinded or revoked in this greater area. P. 16.
- 5. Define and delineate on a map if county property is used to park and traverse the beach. P. 16
- 6. The Beach Activities Report shows the catamaran shoaling onto the Maluaka Beach itself. Please describe if this is the case and how any environmental impact is mitigated by this action. Has the option to moor the catamaran offshore been considered and to load passengers using a smaller vessel been considered? Would this alternative method provide less potential impact? Please explore this option if impacts are identified from the current operations.

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February 26, 2018

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Attn: Mr. James Buika Shoreline Planner Planning Department County of Maui 250 S. High Street Kalana Pakui Building, Suite 200 Wailuku, HI 96793

SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT

Dear Mr. Buika:

Thank you for your emailed comments (your reference code EAC 2015/012) dated January 22, 2016 regarding the Catamaran Landings at Maluaka Beach Draft Environmental Assessment (Draft EA).

As the planning consultant for the applicant, Makena Boat Partners, we acknowledge your comments on the 2015 Draft EA, and provide the following responses.

- 1. We appreciate your comment regarding the EA's discussion of the Coastal Zone Management Act.
- 2. MBP's application does not involve any work on land. MBP's passengers will be parking at an existing gravel lot and traveling to the landing area on existing walkways and beach access. According to MBP, approximately 50-65% of their passengers use the shuttle service. The Traffic and Access section of the EA will be revised to include the following clarifying language:

Passengers may board a shuttle van at the MBP retail store located at Wailea Gateway Plaza, or may be picked up at a south Maui hotel or condominium. Passengers are offloaded at the gravel lot at the end of the public road off Makena Alanui Road... According to MBP, approximately 50-65% of their passengers use the shuttle service... Passengers are given a briefing of the sensitive marine habitat and the boarding process, and then escorted by a MBP crew member down the walkway to the beach. At the entrance to the beach, they re-move their footwear and walk barefoot onto the beach...

MBP signed a license agreement with Hawaii Land Development, L.L.C. allowing limited parking by MBP and passengers on adjacent property TMK (2)2-1-005:85, located south of the now-closed hotel. See Appendix J for a map of the parking area. Up to four vans and 15 automobiles may park on said property between 4:45 a.m. and 8:15 p.m.... This amount of parking is anticipated to be sufficient to accommodate Mr. James Buika, Planning Department SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 2 of 3

MBP's parking demand, given that at least half of MBP's passengers opt to arrive by shuttle van.

Passengers are discouraged from using the public parking areas adjacent to the north and south of the cul-de-sacs, because of the potential for difficulty in finding parking (compared to parking at the Wailea Gateway Plaza, or their hotel or condominium and taking advantage of MBP's shuttle service). MBP passengers formerly accessed Maluaka Beach through Parcel 59 with the consent of ATC Makena Services, LLC, the lessee of the properties that comprise the hotel resort known as Makena Beach & Golf Re-sort (now closed). Given the recent closure of the hotel, MBP passengers currently access Maluaka Beach through Parcel 111 on an existing public access on the south end of the beach...

The EA will include a signed license agreement allowing MBP to use the gravel lot area.

- 3. The forthcoming EA will include an expanded discussion regarding the use of the non-exclusive easement by other vessels (Section 2.5). The granting of MBP's request for a non-exclusive easement is not expected to result in the issuance of additional commercial permits for Maluaka Beach. A potential competitor would be required first to obtain an offshore mooring permit from the U.S. Army Corps of Engineers. The effectiveness of that permit would be conditioned on the applicant obtaining a State commercial operating area use permit and mooring permit. No law obligates DLNR to issue additional permits. Before issuing an additional permit, DLNR would be required to investigate and set standards of quality (i.e., crowding). The new permit applicant would be then required to demonstrate that Maluaka Beach could accommodate another passenger vessel in light of those standards. The applicant would be required also to present an engineered plan for the proposed mooring system that addresses the potential impact on benthic habitat. Only if those conditions were met would DLNR consider issuing a second commercial permit for the area. Since the likelihood of a proliferation of beach landings is low, we do not believe there will be cumulative impact at the shoreline, on County property or the shoreline.
- 4. The forthcoming EA will include an expanded discussion regarding the County's decision to suspend CORA permits in the area (Section 2.6.1).
- 5. County property is not used to park and traverse the beach. The EA will show the location of the County property relative to MBP's area of use.
- 6. As stated in a July 2, 2015 between MBP's planning consultant and your office, contact with the sandy substrate due to wave action is infrequent and momentary, and limited to the forward-most part of a hull and, rarely, the tip of a rudder. Operations are suspended whenever condition renders boarding unsafe... There is no anchoring or other fixed connection with the sandy substrate. The vessel remains stationary for the few minutes required to board or offload passengers.

The biological study notes that, "As the Vessel loads and offloads passengers, surge at the site requires the captain to engage the engine at times to hold the Vessel safely in place. During these instances, the wash from the propeller creates a small plume off the stern of the Vessel. Due to the absence of particles smaller than sand at the site, the plume settles out quickly. This causes a very brief increase

Mr. James Buika, Planning Department SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 3 of 3

in the amount of suspended sediment in the water column." (Biological Report, page 27). Thus, little to no impacts are anticipated from current operations.

Please note PBR will be preparing and submitting to the Office of Environmental Quality Control (OEQC) a Second Draft EA (2nd Draft EA) which will be made publicly available for review and comment. This 2nd Draft EA will allow agencies and the public to comment on information that was not available in the 2015 Draft EA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

We value your participation in the environmental review process. Your letter, along with our response, will be included in the forthcoming 2nd Draft EA.

Sincerely,

PBR HAWAII

m

Tom Schnell, AICP Principal

cc: Department of Land and Natural Resources Makena Boat Partners

DAVID Y. IGE GOVERNOR OF HAWAFT





SUZANNE D. CASE IOARD OF LAND AND NATURAL RESERVED. (MISSION ON WATER RESOURCE MANAGEMENT)

KEKOA KALUHIWA

JEFFREY T. PEARSON P.E.

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POST OFFICE BOX 621 HONOLULU HAWAP1 96809

STATE OF HAWAI'I DEPARTMENT OF LAND AND NATURAL RESOURCES LAND DIVISION

Eugene Dashiell PO Box 621 Honolulu, HI 96809

SUBJECT: Draft Environmental Assessment for Catamaran Landings at Maluaka Beach Located at Makawao, Maui, Makai of TMK: (2) 2-1-006:059

Dear Mr. Dashiell:

This letter is regarding the processing of the subject Environmental Assessment (EA). The public and agency comment period on the EA has closed. Attached to this letter are copies of the comments received by the Department regarding your client's EA. As you may recall on January 12, 2016, a meeting was held at the Department in which it was concluded that the mooring is part of the vessel loading and unloading and should also be included in the EA.

A revised draft EA should include the benthic vicinity of the mooring and the new mooring system contemplated.

Should you have any questions regarding this correspondence, contact Tiger Mills at (808) 587-0382 or at kimberly.mills@hawaii.gov.

Sincerely,

Russell Y. Tsuji, Administrator Land Division

Attachments

DAVID Y. IGE GOVERNOR OF HAWAI 1





STATE OF HAWAI'I DEPARTMENT OF LAND AND NATURAL RESOURCES LAND DIVISION

> POST OFFICE BOX 621 HONOLI'L' HAWAI'I 96809

SUZANNE D. CASE EGARD OF LAND AND NATURAL RESOURCES CONVERSION ON WATER RESOURCE MANAGEME

> KEKOA KALUHIWA FIRST DUPUT

JEFFREY T. PEARSON P.E. DEPUTY DRECTOR . WATER

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DEC 1 0 2015

MEMORANDUM

TO:

- **DLNR-Aquatic Resources**
- **DLNR-Boating and Ocean Recreation**
- **DLNR-Resource Enforcement**
- **DLNR-Maui** District Land Office
- **DLNR-Historic** Preservation

RECEIVER DEC 1 0 2015 CRES

FROM:	N	Russell Y. Tsuji, Administrator Land Division	1	H-AC-
SUBJECT:		REQUEST FOR COMMENTS Draft Environmental Assessment for Catamaran Landing	S	
APPLICANT: LOCATION: TMK:		Mākena Boat Partners Maluaka Beach, Makawao, Maui Makai of (2) 2-1-006:059 [submerged land]		

Attached please find a USB flash drive of the draft Environmental Assessment (EA) for Catamaran Landings at the subject location. Previously a memorandum for the Disposition of Public Lands for Commercial Beach Landing at Maluaka Beach was transmitted for your review and comment on November 18, 2015 that included the draft EA. Since then, the draft EA has been amended and we would appreciate your agency's review and comment on this environmental document. The publication of the draft EA is tentatively proposed for December 23, 2015, with a comment deadline of January 22, 2016. If no response is received by the comment deadline, we will assume there are no comments. Please contact Tiger Mills at (808) 587-0382 should you have any questions on this matter.

Previous Comments Provide 12/1/2015, DAR# 5208 <u>Frevious Comments Provide 12/1/2015, DAR# 5208</u> <u>Signature/Print Name & Title</u> (1) Comments Attached () No Comments () No Objections

Bruce S. Anderson, DAR Administrator

DAVID Y. IGE GOVERNOR OF HAWAII





STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF AQUATIC RESOURCES 1151 PUNCHBOWL STREET, ROOM 330 HONOLULU, HAWAII 96813 SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMEN

KEKOA KALUHIWA

JEFFREY T. PEARSON DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUREAU OF CONVEYTANCES COMMISSION ON WATER RESOURCES MANAGEMES CONSERVATION AND RESOURCES ENFORCEMEN CONSERVATION AND RESOURCES ENFORCEMEN FORESTRY AND WILDLIFE HISTORIC PRESERVATION KAHOOLAWE ISLAND RESERVE COMMISSION LAND STATE PARKS

Date: 12-16-15 DAR #5216

MEMORANDUM

TO:	Bruce S. Anderson, DAR Administrator
DATE:	12/17/15 12/
FROM:	Russell Sparks, Aquatic Biologist
THROUGH:	Jo-Anne Kushima, Aquatic Biologist
SUBJECT:	Commercial Beach Landing at Maluaka Beach

Comment	Date Request	Receipt	Referral	Due Date
	12-10-15	12-10-15	12-10-15	01-22-15

Requested by: Russell Y. Tsuji, Land Administrator

Summary of Proposed Project

Title: Request for Comments DEA for Catamaran Landings

Project by: Makena Boat Partners (MBP)

Location: Maluaka Beach, Makawao, Maui TMK (2) 2-1-006:059

<u>Brief Description</u>: A previous memorandum for the Disposition of Public Lands for Commercial Beach Landing at Maluaka Beach was received at DAR for review and comment on November 18, 2015. A draft EA was included at that time. The draft EA has since been amended and is resubmitted under DAR #5216 for additional review and comments.

<u>Comments</u>: The comments previously submitted under DAR #5208 still stand. A copy of that Final Document which includes the Request Memo as well as the comments that were provided under DAR #5208 are attached.

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plans, DAR requests the opportunity to review and comment on those changes.

DAVID Y. IGE GOVEDNOR OF HAWAI



TO:



5UZANNE D. CASE CHAIRFERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGUMENT

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES LAND DIVISION

POST OFFICE BOX 621 HONOLUT UL HAWATT 96809

November 18, 2015

MEMORANDUM

HOV 2 0 2015 000 RECUPTIC RESOLUTION TAO # 52.08

BIVED

	X Div. of Boating & Ocean Recreation	1)40 # 52	_0_
	X Engineering Division		
	Div. of Forestry & Wildlife		
	Div. of State Parks	-	TK.
	X Commission on Water Resource Management	~	سر
	X Office of Conservation & Coastal Lands		RS
	X Land Division – Maui District		
	X Historic Preservation		
	X Land Division – Kevin Moore/Ian Hirokawa		
	K-HDEO		
FROM:	Russell Y. Tsuji, Land Administrator		
SUBJECT:	Disposition of Public Lands for Commercial Beach La	nding at Maluaka Beach	
LOCATION:	Honuaula, Island of Maui; TMK: (2) 2-1-006:059		
APPLICANT:	Dennis Niles, Esq. for Makena Boat Partners		

Transmitted for your review and comment is information on the above referenced project. We would appreciate your comments on this document which can be located at:

https://sp01.ld.dlnr.hawaii.gov/LD/ (then click on "Request for Comments", then click on the subject link.

Username: LD/Visitor

DLNR Agencies:

X Div. of Aquatic Resources

Password: Opa\$\$word0 (first and last characters are zeros, not O's)

Please submit any comments by **December 16, 2015**. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Lydia Morikawa at 587-0410. Thank you.

Attachments

() We have no objections.
() We have no comments.
() Comments are attached.

Signed:

Sun ARider

Print Name: Date:

Bruce S. Anderson, DAR Administrator

cc: Central Files

DAVID Y. IGE GOVERNOR OF HAWAII





STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES POST OFFICE BOX 621 HONOLULU, HAWAII 96809 SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT

> KEKOA KALUHIWA FIRST DEPUTY

W. ROY HARDY ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUDEAU OF CONVEYANCES COMISSION ON WATER RESOURCE MANAGEMENT CONSERVATION AND RESOURCES ENFORCEMENT EXOINSERVATION AND RESOURCES ENFORCEMENT EXOINSERVATION AND NULDLIFÉ HISTORC ("RESERVATION KAHOOLAWE ISLAND RESERVE COMMISSION LAND STATE PARKS

Date: 12/01/2015 DAR # 5208

MEMORANDUM

TO: Suzanne D. Case, DLNR Chairperson

DATE: December 01, 2015 FROM: Russell Sparks, Aquatic Biologist

Shall Sinh

SUBJECT: Draft Environmental Assessment of the Proposed Disposition of State Lands Allowing Continued Catamaran Passengers Boarding at Maluaka Beach.

Comment	Date Request	Receipt	Referral	Due Date
	(11/18/2015)	(11/20/2015)	(11/20/2015)	(12/16/2015)

Requested by: Russell Y. Tsuji, Land Administrator

Summary of Proposed Project

Title: Review and comments concerning the Draft Environmental Assessment of proposed disposition of public lands for commercial beach landing at Maluaka Beach.

Project by: Makena Boat Partners (MBP)

Location: Wailea, Island of Maui, TMK(2)2-1-006:059

<u>Brief Description</u>: This review and the following comments are in relation to the draft environmental assessment of the proposed non-exclusive use area for beach loading and unloading of passengers and supplies onto and off of the vessel Kai Kanani II.

<u>Comments</u>: After conducting a careful of review of the draft environmental assessment for commercial beach loading and offloading of the Kai Kanani II 65' catamaran on Maluaka Beach in Makena, I would like to commend the author for carefully addressing many of the

past concerns expressed during the preliminary consultation. I do, however, have several ongoing concerns that the current draft does not seem to adequately address.

MBP's Offshore Mooring:

Perhaps the most pressing issue continues to be the mooring system currently in use by the Kai Kanani II. A recent inspection on this mooring (11/23/2015) confirms concerns that were raised from past inspections of the area, and that I clearly expressed in my early comments during the preliminary consultation. Two large ship anchors in conjunction with a large concrete filled tire and over 100 meters of chain continue to scour the hard bottom in the area, removing and/or killing any living coral and crushing much of the hard bottom habitat resulting in large field of lose rubble. The loading and unloading activity on Maluaka beach is directly linked to the desire of the Makena Boat Partners (MBP) to moor their vessel nearby. Therefore, this beach landing activity has an indirect effect on the offshore habitat where the mooring is placed.

HAR 11-200 provides the following definition: "Secondary impact" or "secondary effect" or "indirect impact" or "indirect effect" means effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

It is not appropriate to avoid the clear environmental effects caused by the vessel conducting the beach loading and unloading regardless of how the mooring was originally permitted or allowed. The ongoing damage to the substrate is a violation to existing state rules (HAR 13-95) and it has yet to be appropriately dealt with. The environmental assessment should therefore, conduct a thorough biological assessment of the offshore habitats where the vessel is currently moored and/or could be moored, and carefully evaluate various mitigations that would stop the ongoing damage to fully protected live rock and stony corals in the area.

Affects of Beach Landing Operation on Sand Movement Patterns and the Beach Profile: The EA does not investigate how the beach landing and the movement of people across the same section of sandy beach may be affecting the way sand naturally moves and accumulates in this area. The aerial photographs utilized in the EA show a clear low point on the beach where water is moving much further inland at the exact location of the loading and unloading activity. Although this could be a variable situation on this beach that just happens to show up in the aerial photo being used in the report, it does raise the concern that moving large groups of people back and forth along the same section of the sandy beach could be resulting in a lose of sand from that area. Furthermore, the practice of engaging the vessel's props to help keep it in place during the loading/unloading operation, could be removing sand from the area, further exasperating the affects to the beach profile. The Draft EA cites a report from the University of Hawaii, which lists Maluaka Beach as having experienced the highest coastal erosion rates in the KihelMakena area. With this information, it is not clear why they would then go on to avoid any discussion of the possible impacts the loading and unloading activity may have to potentially further accelerate the coastal erosion problem on this beach. I suggest at the very least, the EA involves some consultation with experts in coastal processes and a detailed beach profile study be conducted to look at possible long-term impacts from the beach landings.

Concerns with Impacts to Beach Users (Crowding, Conflicts, etc):

The draft EA conducted beach user surveys for portions of June and July and concluded there was little to no negative impact on beach users. However, these studies were only conducted for two months of the year, and as a result, may not accurately characterize the true level of beach use throughout the year (especially during the busy winter months). Even more importantly, the studies were only conducted on the specific portion of the beach where the loading and unloading takes place. To accurately characterize the level at which the beach is being utilized, a full year-long study of the entire beach would be appropriate. Beach users could be adversely impacted by the beach landing activity, regardless of whether or not they are directly in the path of the landing. Furthermore, it seems equally important to characterize the overall use of the coastal waters. Swimmers, snorkelers, kayakers, stand up paddle-boarders, fishers, and other users of the coastal waters could be impacted by the vessel transiting in and out of the nearshore area. The draft EA fails to take a look at all these activities across the entire beach.

Crowding and human use conflicts were not adequately addressed by the draft EA. The author cites a report by Dr. Mark Needham, 2013, in which the normative standard that beach users felt was acceptable before they began to feel crowded was evaluated and reported on. This study, however, was conducted on six heavily used beaches on the urbanized island of Oahu and therefore, it is very likely that their expectation for crowding far exceeds what would be expected in rural Makena, Maui. In fact, the study demonstrated that feelings of crowding are highly influenced by the preconceived norms that people bring with them. The draft EA applied this study to develop an acceptable number of 14 to 26 people within the 250 foot x 250 foot area where the beach landings take place. I contacted Dr. Needham and asked if this was an appropriate application of his 2013 Oahu beach study and received the following response; "Results from my study on Oahu are site-specific and have no direct relevance or application whatsoever to any sites on Maui. Data would need to be collected at the Maluaka site."

Concerns with the Non-Exclusive Use for Passenger Loading and Unloading

Maluaka Beach and the general Makena area are not being managed by the Division of Boating and Ocean Recreation (DOBOR) for high levels of commercial use. Therefore, there is no existing mechanism to actively manage the level of passenger loading and unloading that could occur if a non-exclusive easement were issued to MBP. This current draft EA states "the speculative nature of this fear defies study". Hawaii's environmental assessment laws, however, require that all "*reasonably foreseeable*" impacts be assessed. It is, therefore, appropriate for this EA to conduct capacity studies which would allow the DLNR to adequately anticipated and if necessary appropriately mitigated future commercial loading and unloading requests. Under DOBOR rules, any other commercial tour vessel could decide to seek approval from the Land Division to load and unload passengers at Maluaka beach. The studies that MBP are currently conducting would likely cover the State's environmental assessment requirements and make any further environmental reviews unnecessary. If approved, this non-exclusive easement could open the door for an unlimited amount of other operators to begin using this beach for loading and unloading activities. If MBP feels they should only be required to look at the anticipated impacts from their specific use, it may be more appropriate to work towards an exclusive use agreement instead.

Thank you for providing DAR the opportunity to review and comment on this draft Environmental Assessment. Should there be any further revisions and/or changes to this EA and/or the overall project plans, the DAR requests the opportunity to review and comment on those changes.



February 26, 2018

THOMAS S. WITTEN, FASLA Chairman / Principal

R. STAN DUNCAN, ASLA *President / Principal*

RUSSELL Y. J. CHUNG, FASLA, LEED® AP BD+C Executive Vice-President / Principal

VINCENT SHIGEKUNI Vice-President / Principal

GRANT T. MURAKAMI, AICP, LEED® AP BD+C Vice-President / Principal

TOM SCHNELL, AICP Principal

KIMI MIKAMI YUEN, LEED® AP BD+C Principal

W. FRANK BRANDT, FASLA Chairman Emeritus

ANN MIKIKO BOUSLOG, PhD Project Director

RAMSAY R. M. TAUM Cultural Sustainability Planner

RAYMOND T. HIGA, ASLA Senior Associate

CATIE CULLISON, AICP Senior Associate

MARC SHIMATSU, ASLA Senior Associate

DACHENG DONG, LEED® AP Senior Associate

SCOTT MURAKAMI, ASLA, LEED® AP Associate

MICAH McMILLEN, ASLA, LEED® AP Associate

NATHALIE RAZO Associate

HONOLULU OFFICE 1001 Bishop Street, Suite 650 Honolulu, Hawai'i 96813-3484 Tel: (808) 521-5631 Fax: (808) 523-1402 E-mail: sysadmin@pbrhawaii.com

printed on recycled paper

Mr. Russell Tsuji, Land Administrator Land Division Department of Land and Natural Resources State of Hawai'i P.O. Box 621 Honolulu, HI 96809

SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT

Dear Mr. Tsuji:

Thank you for your letter dated February 1, 2016 containing comments from the Department of Land and Natural Resources' Land Division and Division of Aquatic Resources regarding the Catamaran Landings at Maluaka Beach Draft Environmental Assessment (Draft EA).

As the planning consultant for the applicant, Makena Boat Partners, we are providing the following responses to DLNR's comments on the 2015 Draft EA.

Land Division

We acknowledge your comment that, "A revised draft EA should include the benthic vicinity of the mooring and the new mooring system contemplated."

In response to comments received on the 2015 Draft EA regarding the mooring system in place at the time, MBP hired biological consultant AECOS, Inc. to conduct a benthic habitat survey around the mooring area and assess the potential effect of a proposed improved mooring system on the marine environment. The marine report describes the former and new mooring systems and discusses the marine environment in the mooring area. The report determined that no coral damage was observed around the former mooring system. The only scouring observed was that occurring immediately around the former central anchor. AECOS, Inc. determined that the improved mooring system was de-signed to further reduce scour damage, and recommended installation strategies to minimize environmental impact.

In 2016 the USACE authorized MBP to replace the former approved mooring with a more environmentally-sensitive design. Following recommendations in the report, MBP replaced the mooring system in September 2016 and the Department of Land and Natural Re-sources inspected the new mooring in November 2016. The EA will include the benthic habitat survey report and description of the new mooring system.

Mr. Tsuji SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 2 of 3

Division of Aquatic Resources MBP's Offshore Mooring

We acknowledge your comment regarding the potential secondary impact of the mooring. The EA will include the benthic habitat survey report and description of the new mooring system.

Effects of Beach Landing Operation on Sand Movement Patterns and Beach Profile

Regarding your comment about an apparent low point on the beach in the landing area, please note the attached aerial image which suggests a natural variability in sand distribution, rather than a feature created by hotel guests entering the beach from Lot 5 and/or boat passengers boarding the boat. Rather, a natural low point in the sand would be favorable landing area for a boat precisely because water moves farther inland at this point.

Regarding your comment about the boat itself displacing sand, the biological study notes that, "As the Vessel loads and offloads passengers, surge at the site requires the captain to engage the engine at times to hold the Vessel safely in place. During these instances, the wash from the propeller creates a small plume off the stern of the Vessel. Due to the absence of particles smaller than sand at the site, the plume settles out quickly. This causes a very brief increase in the amount of suspended sediment in the water column." (Biological Report, page 27)

MBP acknowledges that Maluaka Beach is experiencing relatively high average coastal erosion rates compared to the rest of the Kīhei-Mākena area. However given the information above, it is unlikely that the boat landing activities are significantly contributing to erosion or otherwise impacting the existing patterns of sediment movement on the coast. Refer to the attached coastal erosion figure (University of Hawaii Coastal Geology Group, 2016) which suggests that the erosion rate at the transect associated with the landing area (Transect 39) is consistent with that of surrounding transects, and not markedly higher. Rather, the erosion rates at the landing area and other southern transects are substantially lower than those in the northern transects of Maluaka beach. Therefore, these coastal erosion data do not support the idea that the proposed landing activities are impacting beach erosion rates.

Concerns with Impacts to Beach Users (Crowding, Conflicts, etc.)

We acknowledge your concerns regarding impacts to beach users. According to the Hawaii Tourism Authority's Annual Visitor Research Report, the busiest months for tourist arrivals on Maui have alternated between July and December from year to year since at least 2012. Therefore MBP concludes that beach user data collected in the winter visitor season should be comparable to that collected in summer in terms of maximum beach use.

Concerns with the Non-Exclusive Use for Passenger Loading and Unloading

As stated in the EA, continued Landings will not burden public facilities and are not expected to result in the issuance of additional commercial permits for Maluaka Beach. A potential competitor would be required first to obtain an offshore mooring permit from the U.S. Army Corps of Engineers. The effectiveness of that permit would be conditioned on the applicant obtaining a State commercial operating area use permit and mooring permit. No law obligates DLNR to issue additional permits. Before issuing an additional permit DLNR would be required to investigate and set standards of quality (i.e., crowding). The permit applicant would be then required to demonstrate that Maluaka Beach could accommodate

Mr. Tsuji SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 3 of 3

another passenger vessel in light of those standards. The applicant would be required also to present an engineered plan for the proposed mooring system that addresses the potential impact on benthic habitat. Only if those conditions were met could DLNR consider issuing a second commercial permit for the area. MBP deems that possibility to be remote.

Please note PBR will be preparing and submitting to the Office of Environmental Quality Control (OEQC) a Second Draft EA (2nd Draft EA) which will be made publicly available for review and comment. This 2nd Draft EA will allow agencies and the public to comment on information that was not available in the 2015 Draft EA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

We value your participation in the environmental review process. Your letter, along with our response, will be included in the forthcoming 2nd Draft EA.

Sincerely,

PBR HAWAII

Tom Schnell, AICP Principal

cc: Department of Land and Natural Resources Makena Boat Partners



Big Beach and Makena, Maui, Hawaii

Smoothed Erosion Rates



DAVID Y. IGE



RECTICED UFFICE OF CONSERVATION AND CONSTAL LANDS DIRECTOR OF MEALTH

2016 JAN 19 A 10: 04

STATE OF HAWAII DEPARTMENT OF HEALTH P O BOX 3378 HONOLULU, HI 96801-3378

DEPT. CE LAND & NATURAL RESOURCES STATE OF HAMAI 01014PNN.16

in reply, please refer to: EMD/CWB

January 13, 2016

Ms. Tiger Mills Department of Land and Natural Resources P.O. Box 621 Honolulu, Hawaii 96809

Dear Ms. Mills:

Comments on the Draft Environmental Assessment for the SUBJECT: Catamaran Landings at Maluaka Beach Makawao, Island of Maui, Hawaii

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of your letter, dated December 10, 2015, requesting comments on your project. The DOH-CWB has reviewed the subject document and offers these comments. Please note that our review is based solely on the information provided in the subject document and its compliance with the Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at: http://health.hawaii.gov/epo/files/2013/05/Clean-Water-Branch-Std-Comments.pdf.

- 1. Any project and its potential impacts to State waters must meet the following criteria:
 - a. Antidegradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
 - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
 - c. Water guality criteria (HAR, Sections 11-54-4 through 11-54-8).
- 2. You may be required to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55).

Ms. Tiger Mills January 13, 2016 Page 2

> For NPDES general permit coverage, a Notice of Intent (NOI) form must be submitted at least 30 calendar days before the commencement of the discharge. An application for an NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. To request NPDES permit coverage, you must submit the applicable form ("CWB Individual NPDES Form" or "CWB NOI Form") through the e-Permitting Portal and the hard copy certification statement with the respective filing fee (\$1,000 for an individual NPDES permit or \$500 for a Notice of General Permit Coverage). Please open the e-Permitting Portal website located at: <u>https://eha-cloud.doh.hawaii.gov/epermit/</u>. You will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool and locate the appropriate form. Follow the instructions to complete and submit the form.

 If your project involves work in, over, or under waters of the United States, it is highly recommended that you contact the Army Corp of Engineers, Regulatory Branch (Tel: 835-4303) regarding their permitting requirements.

Pursuant to Federal Water Pollution Control Act [commonly known as the "Clean Water Act" (CWA)], Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may <u>result</u> in any discharge into the navigable waters..." (emphasis added). The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40 of the Code of Federal Regulations, Section 122.2; and HAR, Chapter 11-54.

- 4. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or Section 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.
- 5. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters. Project planning should:
 - a. Treat storm water as a resource to be protected by integrating it into project planning and permitting. Storm water has long been recognized as a source of irrigation that will not deplete potable water resources. What is often overlooked is that storm water recharges ground water supplies and feeds streams and estuaries; to ensure that these water cycles are not disrupted, storm water cannot be relegated as a waste product of impervious surfaces. Any project planning must recognize storm water as an asset that sustains and protects natural ecosystems and traditional beneficial uses of State waters, like

Ms. Tiger Mills January 13, 2016 Page 3

community beautification, beach going, swimming, and fishing. The approaches necessary to do so, including low impact development methods or ecological bio-engineering of drainage ways must be identified in the planning stages to allow designers opportunity to include those approaches up front, prior to seeking zoning, construction, or building permits.

- b. Clearly articulate the State's position on water quality and the beneficial uses of State waters. The plan should include statements regarding the implementation of methods to conserve natural resources (e.g., minimizing potable water for irrigation, gray water re-use options, energy conservation through smart design) and improve water quality.
- c. Consider storm water Best Management Practice (BMP) approaches that minimize the use of potable water for irrigation through storm water storage and reuse, percolate storm water to recharge groundwater to revitalize natural hydrology, and treat storm water which is to be discharged.
- d. Consider the use of green building practices, such as pervious pavement and landscaping with native vegetation, to improve water quality by reducing excessive runoff and the need for excessive fertilization, respectively.
- e. Identify opportunities for retrofitting or bio-engineering existing storm water infrastructure to restore ecological function while maintaining, or even enhancing, hydraulic capacity. Particular consideration should be given to areas prone to flooding, or where the infrastructure is aged and will need to be rehabilitated.

If you have any questions, please visit our website at: <u>http://health.hawaii.gov/cwb</u>, or contact the Engineering Section, CWB, at (808) 586-4309.

Sincerely,

ALEC WONG, P.E., CHIEF Clean Water Branch

NN:ak

 c: Mr. Sidney J. Akiona, Kai Kanani, Inc.
 Mr. Eugene P. Dashiell [via e-mail <u>dashiellplanning@outlook.com</u> only] DOH-EPO #15-333 [via e-mail <u>Noella.Narimatsu@doh.hawaii.gov</u> only]



THOMAS S. WITTEN, FASLA Chairman / Principal

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RUSSELL Y. J. CHUNG, FASLA, LEED* AP BD+C Executive Vice-President / Principal

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February 26, 2018

Mr. Alec Wong, Chief Clean Water Branch Department of Health State of Hawai'i P.O. Box 3378 Honolulu, HI 96801

SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT

Dear Mr. Wong:

Thank you for your letter (your reference code EMD/CWB 01014PNN.16) dated January 13, 2016 regarding the Catamaran Landings at Maluaka Beach Draft Environmental Assessment (Draft EA).

As the planning consultant for the applicant, Makena Boat Partners, we acknowledge your comments on the 2015 Draft EA, and provide the following responses.

- 1. **Potential Impacts to State Waters.** It is acknowledged that any potential impacts to the ocean caused by the operation of the proposed project will meet the provisions of the: a) anti-degradation policy (Chapter 11-54-1.1, HAR); b) designated uses (Chapter 11-54-3, HAR); and c) water quality criteria (Chapter 11.54-4 through 11-54-8, HAR).
- 2. National Pollutant Discharge Elimination System permit coverage. It is not anticipated that the area to be disturbed will be greater than one acre (the boat measures 65 feet by 30 feet and does not leave the ocean), thusly, a National Pollutant Discharge Elimination System (NPDES) permit for Storm Water Associated with Construction Activity will not be necessary.
- 3. **Clean Water Act.** During the Pre-Assessment Consultation period (August 3, 2015), the U.S. Army Corps of Engineers wrote:

"Based on our review of the submitted information, this office has determined the proposed activities do not affect the course, capacity, condition, or location of a navigable WOUS as defined by Section 10 and would not result in the discharge of dredged or fill material into WOUS as defined by Section 404. Therefore, a DA permit is not required for the proposed work activities." Mr. Wong SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 2 of 2

- 4. **State Water Quality Standards** (Chapter 11-54 and 11-55, HAR). All discharges related to the operation of the proposed project will comply with the State's Water Quality requirements contained in Chapters 11-54 and 11-55, HAR.
- 5. **The State's position on water quality.** We acknowledge that water is a limited resource that needs to be managed appropriately and not wasted. We concur with the State's position that projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters.

Please note PBR will be preparing and submitting to the Office of Environmental Quality Control (OEQC) a Second Draft EA (2nd Draft EA) which will be made publicly available for review and comment. This 2nd Draft EA will allow agencies and the public to comment on information that was not available in the 2015 Draft EA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

We value your participation in the environmental review process. Your letter, along with our response, will be included in the forthcoming 2nd Draft EA.

Sincerely,

PBR HAWAII mille

Tom Schnell, AICP Principal

cc: Department of Land and Natural Resources Makena Boat Partners





STATE OF HAWAII DEPARTMENT OF HEALTH P. O. BOX 3378 HONOLULU, HI 96801-3378

December 31, 2015

VIRGINIA PRESSLER, M.D. INECEIVED DIRECTOR OF HEALTH OFFICE OF CONSERVATION AND COASTALLATIDS

2016 JAN - 6 A 9: Цлбу, please refer to: File: DL. T. OF LAHDA EPO 15-333 NATURAL ESOURCES STATE OF HAMAIN

Mr. Eugene Dashiell, AICP 728 Nunu Street Kailua, Hawaii 96734 Via email: dashiellplanning@outlook.com

Dear Mr. Dashiell:

SUBJECT: Draft Environmental Assessment (DEA) for Catamaran Landings, Maluaka Beach, Makawao District, Maui TMK: Offshore ocean waters, adjacent to (2) 2-1-006:59

The Department of Health (DOH), Environmental Planning Office (EPO), acknowledges receipt of your DEA to our office via the OEQC link:

http://oegc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Maui/2010s/2015-12-23-MA-5E-DEA-Catamaran-Landings-at-ivialauka-Beach.pdf

EPO strongly recommends that you review the standard comments and available strategies to support sustainable and healthy design provided at: <u>http://health.hawaii.gov/epo/landuse</u>. Projects are required to adhere to all applicable standard comments. EPO has recently prepared draft Environmental Health Management Maps for each county. They are online: <u>http://health.hawaii.gov/epo/landuse</u>.

We suggest you review the requirements for the National Pollutant Discharge Elimination System (NPDES) permit. We recommend contacting the Clean Water Branch at (808) 586-4309 or <u>cleanwaterbranch@doh.hawaii.gov</u> after relevant information is reviewed at:

- 1. http://health.hawaii.gov/cwb
- 2. http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/standard-npdes-permit-conditions
- 3. http://health.hawaii.gov/cwb/site-map/clean-water-branch-home-page/forms

EPO encourages you to examine and utilize the Hawaii Environmental Health Portal. The portal provides links to our e-Permitting Portal, Environmental Health Warehouse, Groundwater Contamination Viewer, Hawaii Emergency Response Exchange, Hawaii State and Local Emission Inventory System, Water Pollution Control Viewer, Water Quality Data, Warnings, Advisories and Postings. The Portal is continually updated. Please visit it regularly at: https://eha-cloud.doh.hawaii.gov

You may also wish to review the draft Office of Environmental Quality Control (OEQC) viewer at: <u>http://eha-</u> web.doh.hawaii.gov/oeqc-viewer This viewer geographically shows where previous Hawaii Environmental Policy Act (HEPA) {Hawaii Revised Statutes, Chapter 343} documents have been prepared.

In order to better protect public health and the environment, the U.S. Environmental Protection Agency (EPA) has developed a new environmental justice (EJ) mapping and screening tool called EJSCREEN. It is based on nationally consistent data and combines environmental and demographic indicators in maps and reports. EPO encourages you to explore, launch and utilize this powerful tool in planning your project. The EPA EJSCREEN tool is available at: http://www2.epa.gov/ejscreen

Mr. Eugene Dashieli, AICP Page 2 December 31, 2015

We request that you utilize all of this information on your proposed project to increase sustainable, innovative, inspirational, transparent and healthy design.

Mahaio nui ioa,

Free Sucha to

Laura Leialoha Phillips Molntyre, AICP Program Manager, Environmental Planning Office

LMinn

Attachment 1: EPO Draft Environmental Health Management Map Attachment 2: OEQC Viewer Map of area Attachment 3: U.S. EPA EJSCREEN (3 page report)

 Sidney J. Akiona, Kai Kanani, Inc.
 Tiger Mills, Board of Land of Land and Natural Resources DOH. CWB (via email only)

Attachment 1: EPO Draft Environmental Health Management Map of Maui http://health.hawaii.gov/epo/files/2013/05/Environmental_Map_Maui_20151116.pdf



MAP THE ENDLO FOR LUST BATTYE PULLPOSES ONLY . 111 LOCATIONS AND APPEILOKIMATE

Attachment 2: OEQC Viewer Map of Area

http://eha_web.doh.hawaii.gov/oegc-viewer



Attachment 3: US EPA EJSCREEN 3 page report summary

http://ejscreen.epa.gov/mapper/ejscreen SOE.aspx



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Selected Variables	Raw data	State Average	%ile in State	EPA Region Average	%ile in EPA Region	USA Average	%ile in USA
Environmental Indicators						-	
Particulate Matter (PM 25 in µg/m ²)	N/A	N/A	N/A	9.95	N/A	9.78	N/A
Ozone (ppb)	N/A	N/A	N/A	49.7	N/A	46.1	N/A
			1.1				
the second se							
Traffic Proximity and Volume (delly treffic count/distance to read)	23	280	25	190	23	110	39
Lead Paint Indicator (% pre-1960s housing)	0.041	0.17	31	0.25	32	0.3	23
NPL Proximity (site count/ion distance)	0.0052	0.092	16	0.11	5	0.096	1
RMP Proximity (facility count/km distance)	0.13	0.18	65	0.41	34	0.31	46
TSDF Proximity (facility count/km distance)	0.0056	0.092	17	0.12	1	0.054	12
Water Discharger Proximity (count/km)	0.038	0.33	8	0.19	8	0.25	7
Demographic Indicators							
Demographic Index	19%	51%	D	46%	12	35%	30
Minority Population	10%	77%	Ő	57%	3	36%	26
Low Income Population	28%	25%	64	35%	45	34%	46
Linguistically Isolated Population	0%	6%	25	9%	20	5%	45
Population with Less Than High School Education	0%	10%	3	18%	3	14%	4
Population under Age 5	0%	6%	2	7%	4	7%	4
Population over Age 64	27%	14%	92	12%	94	13%	94

"The National-Scale Air Toxics Assessment (NATA) environmental indicators and EJ indexes, which include cancer risk, respiratory hazerd, neurodevelopment hazerd, and diesel particulate matter will be added into EJSCREEN during the first full public update after the scon-to-be-released 2011 dataset is made available. The National-Scale Air Toxics Assessment (NATA) is EPA's ongoing, comprehensive evaluation of air toxics in the United States, EPA developed the NATA to prioritize air toxics, emission sources, and locations of interest for further study, it is important to remember that NATA provides broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. More information on the NATA enalysis can be found at: http:// www.epa.gov/ttn/atv/matmani/fuex.html

For additional information, see: www.epa.gov/environmentaljustice

EUSCREEN is a screening tool for pre-decisional use only. It can help identify areas that may warrant additional consideration, analysis, or outreach, it does not provide a basis for decisionmaking. But it may help identify potential areas of EU concern. Users should keep in mind that screening tools are subject to substantial uncertainty in their demographic and environmental orats, particularly whel looking at small peographic areas. Important cravasis and uncertainties apply to this screening-level information so it is essential to understant the intertains on appropriate interpretations and applications of these indicators. Please see EUSCREEN documentation for discussion of these issues before using reports. This screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location. EUSCREEN outputs should be supplemented with additional information and local knowledge before texing any action to address potential EU concerns.



THOMAS S. WITTEN, FASLA Chairman / Principal

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1001 Bishop Street, Suite 650 Honolulu, Hawai'i 96813-3484 Tel: (808) 521-5631 Fax: (808) 523-1402 E-mail: sysadmin@pbrhawaii.com Ms. Laura Leialoha Phillips McIntyre Program Manager Environmental Planning Office Department of Health State of Hawai'i 630 South Beretania Street Honolulu, HI 96843

SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT

Dear Ms. McIntyre:

February 26, 2018

Thank you for your letter (your reference code EPO-15-333) dated December 31, 2015 regarding the Catamaran Landings at Maluaka Beach Draft Environmental Assessment (Draft EA).

As the planning consultant for the applicant, Makena Boat Partners, we acknowledge your comments on the 2015 Draft EA, and provide the following responses.

We reviewed the Environmental Planning Office's (EPO) standard comments relating to Environmental Health programs. We understand that all standard comments specifically applicable to the proposed project must be adhered to. The organization of this letter follows the list of standard comments on your website.

Clean Air Branch

The proposed action will not have a material effect on air quality. The Vessel's engines meet federal emission standards for marine compression ignition engines. There is no applicable state standard.

Clean Water Branch

We reviewed and understand the standard comments provided by the Clean Water Branch (CWB).

1. **Potential Impacts to State Waters.** Continued Landings are not expected to negatively impact water quality or the marine environment. Engine exhaust gases and cooling seawater discharged by the Vessel quickly dissipate. Such discharges while the Vessel is within the Landing Zone do not have a deleterious effect on beachgoers or swimmers. The Vessel and its machinery are operated to ensure any release does not violate applicable federal standards.

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Ms. McIntyre SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 2 of 3

- 2. National Pollutant Discharge Elimination System permit coverage. It is not anticipated that the area to be disturbed will be greater than one acre (the Vessel measures 65 feet by 30 feet and does not leave the ocean), thusly, a National Pollutant Discharge Elimination System (NPDES) permit for Storm Water Associated with Construction Activity will not be necessary.
- 3. **Clean Water Act.** During the Pre-Assessment Consultation period (August 3, 2015), the U.S. Army Corps of Engineers wrote:

"Based on our review of the submitted information, this office has determined the proposed activities do not affect the course, capacity, condition, or location of a navigable WOUS as defined by Section 10 and would not result in the discharge of dredged or fill material into WOUS as defined by Section 404. Therefore, a DA permit is not required for the proposed work activities."

4. State Water Quality Standards (Chapter 11-54 and 11-55, HAR). All discharges related to the construction and operation of the proposed project will comply with the State's Water Quality requirements contained in Chapters 11-54 and 11-55, HAR.

Hazard Evaluation and Emergency Response Office

We understand that the Hazard Evaluation and Emergency Response (HEER) Office provides leadership, support, and partnership in preventing, planning for, responding to, and enforcing environmental laws relating to releases or threats of releases of hazardous substances. We do not expect hazardous substances, pollutants, or contaminants to be present where the landings occur.

Indoor and Radiological Health (IRH) Branch

The Proposed Action will probably not trigger the need to comply with the following Hawaii Administrative Rules:

- Chapter 11-39 Air conditioning and Ventilation
- Chapter 11-45 Radiation Control
- Chapter 11-46 Community Noise Control

In addition, the Proposed Action will probably not trigger the need to comply with HAR Chapters 11-501 through 11-504 regarding asbestos.

Safe Drinking Water Branch

We note that the Safe Drinking Water Branch administers programs to protect drinking water sources from contamination.

- 1. **Public Water System.** A public water system will not be developed as part of the Proposed Action.
- 2. **Underground Injection Control.** Wastewater generated by the guests of the operation has been/will be collected and disposed of in the County wastewater system.

Ms. McIntyre SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 3 of 3

Solid and Hazardous Waste Branch

Solid waste that cannot be recycled will be collected and eventually disposed of at the County landfill. The Proposed Action will also comply with the provisions of Section 11-260 to 11-280, Hawaii Administrative Rules, relating to hazardous waste.

Wastewater Branch

The Vessel does not need to connect to the County wastewater system, because visitors can use the Maluaka Beach Park restrooms. Wastewater generated on board will be collected and disposed of in the County wastewater system. No cesspool is being proposed.

Please note PBR will be preparing and submitting to the Office of Environmental Quality Control (OEQC) a Second Draft EA (2nd Draft EA) which will be made publicly available for review and comment. This 2nd Draft EA will allow agencies and the public to comment on information that was not available in the 2015 Draft EA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

We value your participation in the environmental review process. Your letter, along with our response, will be included in the forthcoming 2nd Draft EA.

Sincerely,

PBR HAWAII

MWINN

Tom Schnell, AICP Principal

cc: Department of Land and Natural Resources Makena Boat Partners DEPARTMENT OF TRANSPORTATION DEPARTMENT OF TRANSPORTATION 2016 JAN - 6 P 2: 31 STATE OF HAWAII 79 S. Nimitz Highway HONOLULU, HAWAII 96813-4898 DEPT. LE LAND & NATURAL RESOURCES STATE OF HAWAII

RELEIVED UFFICE OF CONSERVATION AND CONSTAL LARDS

DARRELL T YOUNG IN REPLY REFER TO: HAR-EP

FORD N. FUCHIGAMI

DIRECTOR

Deputy Directors JADE T. BUTAY ROSS M. HIGASHI

EDWINH SNIFFEN

7281.16

December 31, 2015

K. Tiger Mills, Staff Planner State of Hawai'i Department of Land and Natural Resources Office of Conservation and Coastal Lands P.O. Box 621 Honolulu, Hawaii 96809

Dear Mr. Mills,

Draft Environmental Assessment of a proposed disposition of State lands Subject: allowing continued passenger boarding at Maluaka Beach, Maui

Thank you for your letter dated December 16, 2015 requesting comments on the subject draft environmental assessment.

The proposed action will not occur within or adjacent to our jurisdiction and does not appear to have any foreseeable impacts to our commercial harbors system with respect to operations and short-term/long-term plans.

Thank you for providing the opportunity to comment.

Aloha,

DARRELL T. YOUNG **Deputy Director** Department of Transportation, Harbors Division



THOMAS S. WITTEN, FASLA Chairman / Principal

R. STAN DUNCAN, ASLA President / Principal

RUSSELL Y. J. CHUNG, FASLA, LEED[®] AP BD+C Executive Vice-President / Principal

VINCENT SHIGEKUNI Vice-President / Principal

GRANT T. MURAKAMI, AICP, LEED* AP BD+C Vice-President / Principal

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HONOLULU OFFICE 1001 Bishop Street, Suite 650 Honolulu, Hawai'i 96813-3484 Tel: (808) 521-5631 Fax: (808) 523-1402 E-mail: sysadmin@pbrhawaii.com February 26, 2018

Mr. Darrell Young Deputy Director Harbors Division Department of Transportation 79 S. Nimitz Highway Honolulu, HI 96813

SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT

Dear Mr. Young:

Thank you for your letter (your reference code HAAR-EP 7281.13) dated December 31, 2015 regarding the Catamaran Landings at Maluaka Beach Draft Environmental Assessment (Draft EA).

As the planning consultant for the applicant, Makena Boat Partners, we acknowledge that the proposed action will not occur within or adjacent to DOT Harbors jurisdiction and you do not foresee impacts to the commercial harbors system.

Please note PBR will be preparing and submitting to the Office of Environmental Quality Control (OEQC) a Second Draft EA (2nd Draft EA) which will be made publicly available for review and comment. This 2nd Draft EA will allow agencies and the public to comment on information that was not available in the 2015 Draft EA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

We value your participation in the environmental review process. Your letter, along with our response, will be included in the forthcoming 2^{nd} Draft EA.

Sincerely,

PBR HAWAII

Tom Schnell, AICP Principal

cc: Department of Land and Natural Resources Makena Boat Partners

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OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813 Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

LEO R. ASUNCION DIRECTOR OFFICE OF PLANNING

Telephone: (808) 587-2846 (808) 587-2824 Fax: http://planning hawaii gov/ Web

Ref. No. P-15005

059 por.

	January 8, 2016	
To:	Samuel J. Lemmo, Administrator Office of Conservation and Coastal Lands Department of Land and Natural Resources	UFFICE OF POLICE
	Attention: K. Tiger Mills	-
From:	Leo R. Asuncion, Director	
Subject:	Draft Environmental Assessment for Catamaran Landings, Maluaka Beach, Makawao District, Maui; Offshore Ocean Waters, Adjacent to Parcel (2)2-1-006	ó:

Thank you for the opportunity to provide comments on the subject Draft Environmental Assessment (EA), received December 18, 2015.

According to the Draft EA, Makena Boat Partners (MBP) proposes continued use of Maluaka Beach to board and disembark passengers and crew of the catamaran Kai Kanani II. To access the vessel, passengers and crew need to walk across the public beach into shallow water. The vessel remains afloat and under power throughout each cycle of landing. These cycles, or landings, repeat up to four times a day. The vessel is unlikely to be present at the landing more than 90 minutes a day.

The proposed action is in a State Conservation District seaward of the shoreline. This EA is prepared in conjunction with an application for use of government lands through which MBP is seeking a non-exclusive easement for the occupancy of State lands at Maluaka Beach.

The Office of Planning has reviewed the Draft EA and has following comments to offer.

- 1. General Information & Summary Sheet of the Draft EA lists MPB as "Proposing Agency". Pursuant to Hawaii Administrative Rules Chapter 11-200, the proposed action is an applicant action. MPB should be "Applicant" rather than "Proposing Agency" for the subject EA.
- 2. Page 2, the Draft EA states that each landing generally does not exceed 10 minutes, with a total of 20 minutes per cycle. Given that the vessel is certified to carry up to 80 passengers, who will walk across the public beach into shallow water and board by means of a retractable ladder, the Final EA should provide empirical information

Samuel J. Lemmo, Administrator January 8, 2016 Page 2

> as to how the time of each boarding or disembarking is concluded or calculated with a result of less than 10 minutes. The pictures provided in **Appendix C Beach Activity** from the Draft EA do not reflect the time period observed from a complete cycle of boarding or disembarking.

- 3. <u>Page 14</u>, **2.4**, **Special Management Area**, **Coastal Zone Management Consistency, Shoreline Setback Area**, states that the County of Maui has advised that a special management area permit is not required for continued landings. The requested disposition does not require a federal permit and thus a coastal zone management (CZM) consistency declaration is not required. The applicant should indicate where the written confirmations from the respective authorities for such clearance statement are included in the Final EA.
- 4. Public-owned beach access is protected by Hawaii Revised Statutes Chapter 205A. The Final EA should provide information about how many passengers in each trip in general use transportation other than private automobile, and address as to how passengers who travel by private automobile are discouraged, as stated in 2.15 Traffic and Access, page 20, from using the public parking areas adjacent to the north and south of the cul-de-sacs for their subject vessel trip.
- 5. The typo from Appendix B, Archaeological Assessment and Cultural Impact Assessment, on the parcel Tax Map Key (2)2-1-008: 059 should be corrected to (2)2-1-006: 059 for the Final EA.

If you have any questions regarding this comment letter, please contact Shichao Li of our CZM Program at (808) 587-2841.

c: Mr. Luis P. Salaveria, Director Department of Business, Economic Development and Tourism


February 26, 2018

THOMAS S. WITTEN, FASLA Chairman / Principal

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printed on recycled paper

Mr. Leo Asuncion Director Office of Planning State of Hawai'i P.O. Box 2359, Honolulu, HI 96804

Attn: Shichao Li

SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT

Dear Mr. Asuncion:

Thank you for your letter (your reference code P-15005) dated January 8, 2016 regarding the Catamaran Landings at Maluaka Beach Draft Environmental Assessment (Draft EA).

As the planning consultant for the applicant, Makena Boat Partners, we acknowledge your comments on the 2015 Draft EA, and provide the following responses.

- 1. General Information & Summary Sheet. The EA will reflect the correction you suggested.
- 2. Page 2 will be revised to note that while the Vessel is certified to carry up to 80 passengers with a crew of three, MBP limits the number of passengers to 70. The photos selected in Appendix C were intended to show the users of the beach when disembarkations and embarkations were taking place. The photos taken on 5/28/15 show the Vessel approaching at 12:54 pm and departing at 1:00 pm (6 minutes for disembarkation). Another set of photos on 5/30/15 show disembarkation starting at 8:45 am and then well underway in its departure (including embarkation) at 9:01 am, for a total of 16 minutes.
- 3. To assist in OP's review, an Appendix J will be provided in the 2nd Draft EA that will include correspondence from the County Planning Department as well as the U.S. Army Corps of Engineers.
- 4. According to MBP, approximately 50-65% of their passengers use the shuttle service.

The Traffic and Access section will be revised to include the following clarifying language:

Passengers may board a shuttle van at the MBP retail store located at Wailea Gateway Plaza, or may be picked up at a south Maui hotel or condominium. Passengers are offloaded at the gravel lot at the end of the public road off Makena Alanui Road... According to MBP, approximately 50-65% of their passengers Mr. Asuncion SUBJECT: CATAMARAN LANDINGS AT MALUAKA BEACH DRAFT ENVIRONMENTAL ASSESSMENT February 26, 2018 Page 2 of 2

use the shuttle service... Passengers are given a briefing of the sensitive marine habitat and the boarding process, and then escorted by a MBP crew member down the walkway to the beach. At the entrance to the beach, they re-move their footwear and walk barefoot onto the beach...

MBP signed a license agreement with Hawaii Land Development, L.L.C. allowing limited parking by MBP and passengers on adjacent property TMK (2)2-1-005:85, located south of the now-closed hotel. See Appendix J for a map of the parking area. Up to four vans and 15 automobiles may park on said property between 4:45 a.m. and 8:15 p.m... This amount of parking is anticipated to be sufficient to accommodate MBP's parking demand, given that at least half of MBP's passengers opt to arrive by shuttle van.

Passengers are discouraged from using the public parking areas adjacent to the north and south of the cul-de-sacs, because of the potential for difficulty in finding parking (compared to parking at the Wailea Gateway Plaza, or their hotel or condominium and taking advantage of MBP's shuttle service). MBP passengers formerly accessed Maluaka Beach through Parcel 59 with the consent of ATC Makena Services, LLC, the lessee of the properties that comprise the hotel resort known as Makena Beach & Golf Resort (now closed). Given the recent closure of the hotel, MBP passengers currently access Maluaka Beach through Parcel 111 on an existing public access on the south end of the beach...

The EA will include a signed license agreement allowing MBP to use the gravel lot area.

5. The typographical error on the numbering of the TMK on the cover of the Archaeological Assessment will be corrected in the EA.

Please note PBR will be preparing and submitting to the Office of Environmental Quality Control (OEQC) a Second Draft EA (2nd Draft EA) which will be made publicly available for review and comment. This 2nd Draft EA will allow agencies and the public to comment on information that was not available in the 2015 Draft EA, such as a new marine study and mooring system, a new parking agreement and passenger access route, and the closure of the Makena Beach & Golf Resort hotel.

We value your participation in the environmental review process. Your letter, along with our response, will be included in the forthcoming 2nd Draft EA.

Sincerely,

PBR HAWAII

Tom Schnell, AICP

Tom Schnell, AIC Principal

cc: Department of Land and Natural Resources Makena Boat Partners

APPENDIX F: REQUEST FOR STATE LANDS (FORM LD-1)

State of Hawaii Department of Land and Natural Resources Land Division

REQUEST FOR STATE LANDS (Direct Negotiation) – APPLICATION FORM

This Application Form is for persons requesting State lands for the following categories:

- Right to temporarily enter onto State lands for a specific purposes
- Access, utility or other easements to private property
- Month-to-month revocable permit where an auction is prohibited
- Direct lease to eleemosynary organizations, public utilities, etc.
- Purchase of remnant
- Land patent in confirmation of Land Commission Award
- Land license

Please note the following important points:

- Statutorily, directly negotiated leases and permits can only be issued in certain situations. In most cases, you must compete for the use of State lands through the public auction process. If you are interested in bidding on State leases through the auction process, please contact the District Branch staff in your county to obtain further information.
- 2) Persons who have had, during the five years preceding a previous sale, lease, license, permit or easement cancelled for failure to satisfy the terms and conditions are not eligible to purchase or lease public lands.
- 3) The use of State lands triggers the environmental assessment requirements of Chapter 343, HRS. Please contact the Office of Environmental Quality Control for their opinion of whether an environmental assessment is required and the process to be followed. Phone number: (808) 586-4185. Website: http://hawaii.gov/health/environmental/oeqc/index.html
- 4) You are responsible for contacting the appropriate agencies to verify that your proposed project has complied with all applicable zoning and permitting laws and regulations (e.g., State Land Use classification, Special Management Area, County General Plan, etc.).
- 5) You will be responsible for paying processing fees. If you are granted a disposition, you will be required to obtain insurance, among other requirements.

All applications must be complete to be considered for processing. Please submit two copies of the completed application form to the District Branch office in your county:

Oahu District Branch 1151 Punchbowl Street, Room 220 Honolulu, Hawaii 96813 Phone: (808) 587-0433; Fax: (808) 587-0455

Hawaii District Branch 75 Aupuni Street, Room 204 Hilo, Hawaii 96720 Phone: (808) 974-6203; Fax: (808) 974-6222 Maui District Branch 54 High Street, Room 101 Wailuku, Hawaii 96793 Phone: (808) 984-8103; Fax: (808) 984-8111

Kauai District Branch 3060 Eiwa Street, Room 205A Lihue, Hawaii 96766 Phone: (808) 274-3491; Fax: (808) 241-3537

STATE OF HAWAII DEPARTMENT OF LAND & NATURAL RESOURCES	
REQUEST FOR STATE LANDS	

APPLICATION FORM

For DLNR use only:
Date of request:
Date request recvd:
Date request no. issued
Request number
Land Code:
Unit Code:
Status:Future
Type of Request:
Assigned Land Agent:

I. <u>APPLICANT</u>

Should a land disposition result from your application, the following information will be used in the preparation of the legal documents. Therefore, please include <u>all</u> applicable, full legal names and addresses, one for each person/entity (attach additional sheets as necessary). If title is held by a trust, please include the trustee(s) name(s) and full description of the trust (e.g., George D. Smith, Trustee of the George D. Smith Revocable Living Trust dated June 1, 2001).

Applicant name(s):	Akiona		Sidney J.		
	Last name	Firs	t Name		
Mailing address:	<u>170 Ulana Street</u> No. and Street				
	Makawao	Hawaii	96768		
	City	State	Zip Code		
Phone numbers:	(808) 879-7218	()	(808) 280-8126		
	Work	Home	Cellular		
	() Pager	<u>(808)</u> 879-7 Fax	218 sida@hawaii.rr.com E-mail address		
Signature:	ent Kai Kanani Inc. a	Run general partner of M	Date:		
Applicant intends to I	hold title as:	Selleral partner of M	akena Doat i artiters (WiBi)		
() Individual	() Corporatio	n	(X) Partnership		
() Husband and Wit	fe () Limited Li	iability Corporation	() Limited Partnership		
() Trust	() Non-Profit	t Corporation	() Association		
() Joint Venture	() Limited Li	iability Partnership			
() Other (specify): _		_			

For individual or husband and wife, type of tenancy:

() Tenant in Severalty () Tenants in Common () Joint Tenants () Tenants by the Entirety

For individual, marital status:

1

() Single () Widow/widower () Married – spouse of:

For partnership or corporation, state of incorporation: <u>Hawaii</u>

II. <u>AGENT</u>

ПΙ.

IV.

If you have an attorney, consultant or other person processing this request for you, please include the following information.

Agent address:	Last name	First Name	
Agent address:	No. and Sturet		
Ū.	No. and Stuget		
	no. and Street		

	City	State	Zip Code
Phone numbers:	()	()	()
	Work	Home	Cellular
	()	()	
	Pager	Fax	E-mail address
 () Direct lease (electroproducers, etc.) () Purchase of remr () Land patent in co () Land license 	nant nant of a Land (Commission Award	nment, renewable energy
Is this request being	made to resolve an enc	roachment or other viola	ation? (X) Yes () No
	Attacher out (1 A ?? Dour	vranh 1	
If yes, explain: <u>See</u>	Attachiment A Parag	anpri 1	

10 with 10		IVIAKCIIA		<u></u> .
Area:		Approximately 250)'x250' or 62,500 sq. ft.	acres/sq.ft. (circle one
<u>County</u>	Zoning:	H-M Hotel District		
State La	and Use:	() Agricultural (X) Conservation	() Rural () Urban	
<u>Is prope</u>	erty located in	n a Special Manageme	nt Area?	
		(X) Yes	() No	
Identify () Agr () Bus	the specific iculture iness/Comm	uses intended. (X) I ercial () E	Easement - Access Easement - Utility Easement – Seawall	
() Ind () Pas () Oth A.	ustrial ture er (specify): Fully describ	e your proposed use of	f the public lands: <u>See Atta</u>	chment "A", paragraph 2
() Ind () Pas () Oth A	ustrial ture er (specify): Fully describ	e your proposed use of tion map showing a pr the tax maps. See Atta	f the public lands: <u>See Attac</u>	chment "A", paragraph 2

.

- D. If constructing improvements, attach a Plan of Development showing improvements to be constructed and their location on the public lands including a timeframe for construction.
- Is it your opinion that an environmental assessment is required? (X) Yes () No E.

If no, identify exemption:

If yes, describe completion of EA: A draft environment assessment is attached

F. Describe what other permits or approvals are required for this use and whether you have obtained such permits or approvals: See attachment "A", paragraph 3

VI. OTHER

- A. If you are applying for a revocable permit for any type of use, you are required to provide the following information:
 - 1) Describe your qualifications and experience in running this type of operation; and
 - 2) Describe your long-term intentions for this operation. (Note: Revocable permits are temporary and may be revoked at any time.)
- В. If you are applying for a revocable permit for pasture or agricultural use, you are required to complete Attachment A.

VII. **CERTIFICATION**

I/We hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected or my/our lease/permit/agreement may be cancelled.

BIDNEY J. Alcunta-Printed Name

X Sam Johns

Printed Name

X______Signature

Date

For DLNR Use Only:	TO CLOSE FUTURE TENANT:	
Reason for closing:		
Approved by DLA: Date request closed:		

Attachment A Qualification Questionnaire

Qualifications and Experience

1.	Indic husba corpc only	ate experience to qualify as a bona fide farmer pursuant to Section 171-1 and and wife, at least one individual shall qualify. For partnerships, joint prations, "Applicant" in the following questions refers to the entity itself, 1.A, 1.B, 1.G and 1.J below will apply.	4.5, HRS. t ventures and, there	For and fore,
	A.	Has the Applicant spent not less than two years, full-time, in farming operations? If yes, explain in Question 3.	() Yes	() No
	B.	Is the Applicant an owner-operator of an established farm conducting a substantial farming operation? If yes, explain in Question 3.	() Yes	() No
	C.	Has the Applicant, for a substantial period of the individual's adult life, resided on a farm and depended on farm income for a livelihood? If yes, explain (number of years, location, income, etc):	()Yes	() No
	D.	Is the Applicant an individual who has been a farm tenant or farm laborer or other individual, who has for the last two years obtained the major portion of their income from farming operations? If yes, explain in Question 3.	() Yes	() No
	E.	Does the Applicant have a college degree in agriculture? If yes, explain in Question 2.	() Yes	() No
	F.	Is the Applicant an individual who, by reason of ability, experience, and training as a vocational trainee, is likely to successfully operate a farm? If yes, explain in Question 2.	() Yes	() No
	G.	Has the Applicant received a commitment for a loan under the Bankhead-Jones Farm Tenant Act for the acquisition of a farm? If yes, attach copy of executed loan document or notification letter.	() Yes	() No
	H.	Is the Applicant an individual who is displaced from employment in an agricultural production enterprise? If yes, explain in Question 3.	() Yes	() No
	I.	Is the Applicant a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects? If yes, attach letter	() Yes	() No

Does the Applicant possess such other qualif If yes, briefly describe any other information consider pertinent to assessing your qualifica and which is not contained in your responses	Tcations? () Yes which you may ations and experience to Questions 2 & 3:	(

2. Education and Training

A. List all vocational training, business, trade, college or university, graduate or professional schools:

Name & Location of School		*********************************	Date
(and Name of Person, if applicable)	Field of Study	Degree Type	Received

- B. Attach evidence of your graduation from college (copy of transcripts or diploma).
- C. Describe any vocational or other training you have received which relates to your qualifications and experience to successfully operate your farm/ranch:

3. In chronological order starting with the Applicant's most current experience, briefly describe Applicant's farming/ranching experience and business experience (management, financial and marketing) as it relates to the land intended to be bid on. For partnerships, joint ventures and corporations, include both experience of business entity itself as well as experience of principals or managers. **Copy and attach additional sheets as needed.**

Business Name	
Address	From:
Name & Title of Supervisor	Month Year
Your Position	
Commodity Produced	
Size of Operations (no. of employees , acres)	
Duties & Responsibilities	Part-time ()
	Average hours worked
- 	per week:
· · · · · · · · · · · · · · · · · · ·	
Business Name	Eno
Address	From: Month Vear
Name & Title of Supervisor	
Your Position	To:
Commodity Produced	Month Year
Size of Operations (no. of employees, acres)	— Full-time ()
Duties & Responsibilities	Part-time ()
	Average hours worked
	per week:
Business Name	
Address	From:
Name & Title of Supervisor	Month Year
Your Position	To:
Commodity Produced	Month Year
Size of Operations (no. of employees , acres)	
Duties & Responsibilities	Part-time ()
	Average hours worked
· · · · · · · · · · · · · · · · · · ·	per week:

- 4. For any experience listed above which the Applicant would like to be considered in order to qualify as a bona fide farmer pursuant to Section 171-14.5, HRS, under Question 1, attach verification, including but not limited to: 1) pay stubs or W-2 forms where Applicant was employed as an individual or 2) Schedule F of federal income tax returns or General Excise tax returns where Applicant was a self-employed individual or a corporation.
- 5. Attach at least two (2) reference letters from people, who are not related to you, verifying agricultural background (applies to farm laborer or previous farm experience).

ATTACHMENT "A" REQUEST FOR STATE LANDS APPLICATION FORM (November 11, 2015)

¶1. In 1988, MBP was granted a CDUP for the use of conservation lands for the mooring of its vessel at Makena Bay and the loading/offloading of passengers at Maluaka Beach. As to the latter, MBP was directed to obtain "appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State Land." In 2013, MBP was notified it had not yet obtained a disposition of the state lands used to load and offload passengers. MBP seeks to satisfy this unmet condition.

¶2. Applicant seeks a non-exclusive easement allowing use of the 250' x 250' loading zone depicted in Figure 2, Attachment "B," for up to ninety (90) minutes daily. This disposition will allow Applicant to continue boarding and disembarking passengers as it has since 1988. Applicant conducts four (4) or fewer excursions daily. The vessel is afloat in the landing zone for less than 20 minutes during an excursion.

¶3. MBP holds the two permits required to moor its vessel at Makena Bay and carry paying passengers on the ocean waters of the South Maui Ocean Recreation Management Area. The Division of Boating and Ocean Recreation, DLNR, renewed both permits in November 2014. The 2015 renewal is pending.





Base map imagery, BING E. Dashiell, AICP, 10/29/15

LD-01

ATTACHMENT "C"

II. <u>AGENT</u>	
Agent name:	NILES, DENNIS J.
Agent address:	P.O. Box 2594
	Olympia, WA 98507
Phone numbers:	Cell: (808) 283-3208
	Email: djn@dennyniles.com
Agent name:	KEITH-AGARAN, GILBERT S.C.
Agent address:	24 N. Church St., Ste. 409
	Wailuku, HI 96793
Phone numbers:	Work: (808) 242-4049
	Work Fax: (808) 244-4021
	Email: gilagaran@gmail.com

APPENDIX G: PRE-TRIP BRIEFING (MAKENA BOAT PARTNERS)



ATTACHMENT B



PRE-TRIP BRIEFING AND ACKNOWLEDGEMENT FORM

Molokini Shoal Marine Life Conservation District Use Permit*

Molokini Islet is the southern rim of an extinct volcanic crater. The shallow inner cove is the crater's submerged floor which is covered by sand patches, coral and boulders. The coral reefs within the crater support abundant marine life which is among the most diverse and impressive in Hawaii. The waters in and around Molokini are designated as a Marine Life Conservation District (MLCD), which makes it a strictly protected marine reserve. While enjoying your visit to Molokini, please help us to protect this precious area by following these rules and guidelines:

- 1. The taking, injuring or disturbing of any living material (fishes, turtles, eggs, shells, corals, seaweed, etc.) or non-living habitat (sand, rocks, coral skeletons, etc.) is strictly prohibited. Sea turtles may not be approached or harassed at any time.
- 2. Make sure you avoid contacting the bottom at all times and stay out of the shallow water immediately next to shore. Keep hands and feet well away from any rock or coral, and use a floatation device if you need help swimming or if it is required by your guides.
- 3. Feeding fish or introducing any material into the water that could attract marine life is strictly prohibited. Fish feeding can change the type of fish in the reserve, stimulate aggressive behavior, and reduce normal grazing patterns that maintain a healthy reef.
- 4. Stay away from shore and do not attempt to climb onto the island. Molokini is a seabird sanctuary and entry is strictly prohibited.
- 5. Avoid excessive splashing and creating loud noises that can disturb both protected marine life and seabirds.
- 6. It is illegal to pollute or introduce human waste into the MLCD waters.
- 7. Listen to your guides, follow their instructions, and do not venture too far away from your tour vessel. Weather and current conditions at Molokini can change very quickly, and this can create dangerous situations if you get separated from your boat.

I certify that I have read and will comply with all of the rules and guidelines listed above.

Signature

Print (name)

Date

(*Operators: Please have each passenger sign a copy of this form prior to each commercial trip to the Molokini Shoal MLCD, and retain signed all signed copies for no less than one year following each trip.)

APPENDIX H: PHOTOGRAPHS OF MALUAKA BEACH ACCESS AREAS AND MBP PASSENGER ACCESS ROUTE



Figure 1. South cul-de-sac.



Figure 2. Paved path and shower adjacent to now-closed hotel activity center, Parcel 59.

Appendix H



Figure 3. End of path from activity center seen in Figure 2 (former MBP access prior to hotel closure).



Figure 4. Paved public access to Maluaka Beach across Parcel 111.

APPENDIX I: MBP 2017 VESSEL SCHEDULE

Kai Kanani II Current Boat Schedule

lan 1 - Dec 31 All Year		Monday	Tuesday	Wednesda	Thursday	Friday	Saturday	Sunday
Molokini Express Snorkel Trip	Check in at Gravel lot	6:00 AM						
Molokini Express Snorkel Trip	Beach Load	6.15 AM						
Molokini Express Shorkel Trip	Trin Start	6·30 AM	6.30 AM					
Molokini Express Shorkel Trip	Poturn to Poach	0.30 AM	0.30 AN					
	Reach Unload and Poturn to	0.50 AIVI	0.30 AIVI					
Malakini Evarass Sparkal Trin	Cravel let	0.4E ANA						
Molokini Express Shorker Trip	Gravel lot	8:45 AIVI						
Ian 1 Dec 21 All Year		Monday	Tuesday	Wodpocda	Thursday	Friday	Saturday	Sunday
Jali 1 - Dec SI Ali fedi	Check in at Croupl lat		RESURY					Sulludy
Malakini Dakwa Grankal Trin	Check in at Graver lot	8:30 AIVI						
Malakini Dakwa Grankal Trin	Beach Load	8:45 AIVI						
Molokini Deluxe Shorkei Trip		9:00 AIVI						
Molokini Deluxe Snorkel Trip	Return to Beach	1:00 PM						
	Beach Unload and Return to							
Molokini Deluxe Snorkel Trip	Gravel lot	1:15 PM						
December 15 - April 15 (Seasonal)		Monday	Tuesday	Wednesda	Thursday	Friday	Saturday	Sunday
Whale Watching Tour	Check in at Gravel lot	1:00 PM						
Whale Watching Tour	Beach Load	1:15 PM						
Whale Watching Tour	Trip Start	1:15 PM						
Whale Watching Tour	Return to Beach	3:15 PM						
	Beach Unload and Return to							
Whale Watching Tour	Gravel lot	3:30 PM						
Nov 1 - Jan 15		Monday	Tuesday	Wednesda	Thursday	Friday	Saturday	Sunday
Sunset Sail	Check in at Gravel lot	3:30 PM	None	3:30 PM	None	3:30 PM	None	None
Sunset Sail	Beach Load	4:00 PM	None	4:00 PM	None	4:00 PM	None	None
Sunset Sail	Trip Start	4:00 PM	None	4:00 PM	None	4:00 PM	None	None
Sunset Sail	Return to Beach	6:00 PM	None	6:00 PM	None	6:00 PM	None	None
	Beach Unload and Return to							
Sunset Sail	Gravel lot	6:15 PM	None	6:15 PM	None	6:15 PM	None	None
Jan 16-Feb 14 / Oct1-Nov1		Monday	Tuesday	Wednesda	Thursday	Friday	Saturday	Sunday
Sunset Sail	Check in at Gravel lot	3:45 PM	None ,	3:45 PM	None,	3:45 PM	None	None
Sunset Sail	Beach Load	4:15 PM	None	4:15 PM	None	4:15 PM	None	None
Sunset Sail	Trin Start	4.15 PM	None	4.15 PM	None	4.15 PM	None	None
Sunset Sail	Return to Beach	6.15 PM	None	6.15 PM	None	6.15 PM	None	None
Sunset Sun	Beach Unload and Beturn to	0.131101	None	0.131101	None	0.131101	None	None
Sunset Sail	Gravel lot	6.30 DM	None	6.30 DM	None	6.30 DM	None	None
Suiser Sai	Graveriot	0.30 FIV	None	0.30 F W	None	0.30 F W	None	None
Eab 15 March 15 / Sant 5 Sant 20		Monday	Tuesday	Madpacda	Thursday	Friday	Caturday	Sunday
Support Soil	Chack in at Cravel lat		None		Nono		None	None
Sunset Sall		4.00 PIVI	None	4.00 PIVI	None	4.00 PIVI	None	None
Sunset Sall	Beach Load	4:30 PIVI	None	4:30 PIVI	None	4:30 PIVI	None	None
Sunset Sall		4:30 PIVI	None	4:30 PIVI	None	4:30 PIVI	None	None
Sunset Sali	Return to Beach	6:30 PIVI	None	6:30 PIVI	None	6:30 PIVI	None	None
	Beach Unioad and Return to	C 45 DM		C 45 DM		C 45 DM		
Sunset Sail	Gravel lot	6:45 PM	None	6:45 PM	None	6:45 PM	None	None
			_		-			
Mar 16-May 14 / Aug16-Sept 4		Monday	Tuesday	Wednesda	Thursday	Friday	Saturday	Sunday
Sunset Sail	Check in at Gravel lot	4:15 PM	None	4:15 PM	None	4:15 PM	None	None
Sunset Sail	Beach Load	4:45 PM	None	4:45 PM	None	4:45 PM	None	None
Sunset Sail	Trip Start	4:45 PM	None	4:45 PM	None	4:45 PM	None	None
Sunset Sail	Return to Beach	6:45 PM	None	6:45 PM	None	6:45 PM	None	None
	Beach Unload and Return to							
Sunset Sail	Gravel lot	7:00 PM	None	7:00 PM	None	7:00 PM	None	None
May 15-Aug 15		Monday	Tuesday	Wednesda	Thursday	Friday	Saturday	Sunday
Sunset Sail	Check in at Gravel lot	4:30 PM	None	4:30 PM	None	4:30 PM	None	None
Sunset Sail	Beach Load	5:00 PM	None	5:00 PM	None	5:00 PM	None	None
Sunset Sail	Trip Start	5:00 PM	None	5:00 PM	None	5:00 PM	None	None
Sunset Sail	Return to Beach	7:00 PM	None	7:00 PM	None	7:00 PM	None	None
	Beach Unload and Return to							
Sunset Sail	Gravel lot	7:15 PM	None	7:15 PM	None	7:15 PM	None	None

*** Schedule does not include private functions or special charters. These are added on a case by case basis.

APPENDIX J: PARKING AGREEMENT WITH ADJACENT PROPERTY LANDOWNER HAWAII DEVELOPMENT, L.L.C.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is entered into effective as of <u>January 4</u>, _____, 2017 (the "Effective Date"), by and between **HAWAII DEVELOPMENT, L.L.C.,** An Oklahoma limited liability company, whose principal place of business is 2000 Classen Blvd., Oklahoma City, Oklahoma 73106 ("Licensor"), and **MAKENA BOAT PARTNERS**, a Hawaii general partnership, whose principal place of business is 34 Wailea Gateway Place, Suite 105, Kihei, Hawaii 96753 ("Licensee").

RECITALS

A. Licensor is the owner of a certain parcel of real property on the Island of Maui that adjoins 5500 Makena Keonoio Road in the vicinity of the former Makena Beach & Golf Resort. The property is currently used by Licensee for the temporary parking of motor vehicles. The parcel will be referred to herein as the "Property" and is further identified as TMK No. (2) 2-1-005:85.

B. Licensee desires to obtain a license from Licensor to enter upon and use a portion of the Property (the "License Area") in connection with Licensee's business of providing catamaran sails and charters using the vessel "Kai Kanani II" (the "Catamaran Activities").

C. The License Area is shown on the map attached hereto as Exhibit "A" and labeled "Parking Area".

D. Licensor is willing to grant to Licensee, and Licensee is willing to accept, a nonexclusive license on the terns and conditions set forth herein.

AGREEMENT

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and conditions set forth herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. <u>Grant of Nonexclusive License</u>. Licensor hereby grants to Licensee, and Licensee hereby accepts, upon the terms and conditions set forth herein, a nonexclusive license to enter upon the area of the Property reflected on Exhibit "A" attached hereto, solely for the purpose of parking a maximum of fifteen (15) automobiles and four (4) shuttle vans per day.

2. <u>Duration of Permitted Parking</u>. Licensee shall use the Parking Area for the sole purpose of motor vehicle parking in connection with Licensor's Catamaran Activities between the hours of 4:45 a.m. and 8:15 p.m. only. Any motor vehicle parked, stored, or located on the Property between the hours of 8:16 p.m. and 4:44 a.m. may be towed away by Licensor at the sole expense of Licensee.

26083I-0009/207285.pl/jmt/12/1/16
3. <u>Additional Rules</u>.

- a) <u>Standards of Conduct</u>. Licensee agrees its employees shall conduct themselves at all times in a manner that does not disturb or interfere with the use and enjoyment of Maluaka Beach Park by others.
- b) Prohibited Uses. Licensee shall not enter any portion of the Property for purposes other than those specified herein. No use shall be made, or permitted to be made, by Licensee upon the Property, nor acts done, which are illegal or contrary to law, or which could increase the existing rate of insurance upon the Property, or cause the cancellation of insurance policies covering the Property. If Licensee is cited for any violation of law as a result of its use of the Property by any government official, Licensee shall immediately cease the cited activity and, at Licensor's option, discontinue use of the Property.
- c) <u>Recreational Activity Liability</u>. Licensee shall comply at all times with Hawaii Revised Statues Section 663-1.54, regarding Recreational Activity Liability, in its conduct of Catamaran Activities, including obtaining the required written liability waivers and providing all customers with full disclosure required by said statute. Licensee's written disclosure to all customers shall inform the participant that Licensee is the owner and operator of the business providing the Catamaran Activities and that Licenser is landlord only and to a participant in or owner or operator of, Licensee's business and that Licensor shall not be liable for any injuries or damages that may be sustained as a result of any Catamaran Activities. Without limiting the generality of the foregoing, prior to allowing any participant to engage in Catamaran Activities, Licensee shall:
 - i. Provide participants with full written disclosure of the inherent risks associated with Catamaran Activities; and
 - ii. Take reasonable steps to ensure that each participant is physically able to participate in Catamaran Activities and is given the necessary instruction to participate in Catamaran Activities safely.
- 4. Term and Termination.
 - a. <u>Term</u>. The term of this Agreement shall be for six (6) months, commencing on the Effective Date, and shall automatically renew for successive six (6) moth terms thereafter, unless otherwise terminated, as provided herein.
 - b. <u>Early Termination</u>. Licensor or Licensee may terminate this Agreement at any time for any reason, or no reason, upon ten (10) days written notice to the other party. In the event that Licensee fails to

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observe or perform any term, provision or obligation to be observed or performed under this Agreement, Licensor shall have the right, at its sole discretion, to immediately terminate this Agreement upon written notice to Licensee.

- c. <u>Surrender</u>. Upon the expiration or earlier termination of the term, Licensee shall promptly remove all of the Licensee's property and peaceably and quietly vacate the Property.
- 5. License Fee and Taxes.
 - a. <u>License Fee</u>. As consideration for the nonexclusive license granted herein, Licensee shall pay to Licensor the sun of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month in advance, without demand, on the first day of each calendar month during the term of this Agreement at the address for Licensor set forth in Section 15 below.
 - b. Tax on Rent and Other Payments. Licensee shall pay to Licensor as an additional fee, together with each payment of the License Fee and any other payments required hereunder which are subject to the State of Hawai'i general excise tax on gross income, as it may be amended, and all other similar or substitute taxes imposed by the United States of America, the State of Hawai'i, the County of Maui, or any other political subdivision, whether now in the future, on Licensor on said License Fee or other payments under this Agreement, in the nature of gross receipts tax, sales tax, privilege tax, or the like (excluding federal or State net income taxes), an amount which, when added to such License Fee and other payments, shall yield to Licensor, after deduction of all such tax payable to Licensor with respect to all such payments, a new amount equal to that which Licensor would have realized from such payments had no such taxes been imposed. (Note: Hawaii general excise taxes currently at the rate of 4.166% of gross receipts.)
 - c. Interest and Late Charges. If any License Fee or other payment which Licensee is obligated to pay under the terms of this Agreement has not been paid within five (5) days after the same shall have become due and payable, the unpaid amounts shall bear interest at the legal rate of ten percent (10%) per annum until paid. Licensee acknowledges that the collection of past due amounts imposes administrative and collection costs on Licensor, the exact amount of which is difficult to ascertain. Therefore, in addition to interest, Licensee shall pay to Licensor a late charge equal to fiver percent (5%) of such unpaid amounts, as set forth in each billing or written demand made by Licensor, computed on the total amount of each such billing or

demand. Acceptance of any interest or late charge by Licensor shall not constitute a waiver of Licensee's default with respect to such nonpayment nor prevent Licensor from exercising any other rights or remedies available to Licensor under this Agreement.

6. <u>Condition of Property</u>. Licensee has thoroughly inspected and accepts the Property in "AS IS" condition. Licensor has made no warranties or representations concerning the condition or suitability of the Property for the parking of motor vehicles as contemplated herein. Licensee expressly assumes all risks, known or unknown, in connection with the same. Licensee is responsible for maintaining the Property in a secure and safe condition. Licensor is not obligated to provide any utility services to the Property. Licensee operates on the Property solely at Licensee's sole risk. Licensee shall solely be responsible for providing Licensee's own security against theft, vandalism and other criminal activity, at all times on and about the Property.

7. <u>Compliance with Laws</u>. Licensee shall observe and perform and comply with all governmental laws, ordinances, rules and regulations applicable to the use of the Property and the conduct of Catamaran Activities, and shall indemnify and defend Licensor against all actions, suits, claims by whomsoever brought or made reason of the nonobservance or non performance by Licensee of said laws, ordinances, rules or regulations or of this covenant, and all loss, liability and expenses, including attorney's fees suffered or incurred by Licensor.

8. <u>Duty of Due Care</u>. Licensee shall use due care and diligence in the exercise of Licensee's rights hereunder and shall at all times exercise such rights in a manner that will, to the extent reasonably possible and consistent with the purposes of this Agreement, result in the least interference with or interruption of the use of the Property by Licensor, other licensees, or Maluaka Beach Park by members of the general public.

9. <u>No Waste or Nuisance</u>. Licenses shall maintain the Property in its present condition, ordinary wear and tear excepted, and shall not commit, or cause to be committed, any waste in or upon the Property or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of the Property or Maluaka Beach Park

10. Indemnity. Licensee shall indemnify, defend and hold Licensor and Dowling Company, Inc. harmless from and against any and all claims, demands, damages, losses and liability of whatsoever kind or nature for loss or damage to property or for injuries to, or death of, any person or persons, directly or indirectly, arising from, related to, or in any way connected with: (i) Licensee's use or occupancy of, or operations upon, the Property; (ii) Licensee's conduct of Catamaran Activities; or (iii) any acts or omissions of Licensee upon or about the Property or in the conduct of Catamaran Activities, and Licensee shall indemnify, defend and hold harmless Licensor and Dowling Company, Inc. from and against any and all expenses, including attorneys' fees and costs, incurred by Licensor and Dowling Company, Inc. in connection therewith.

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This indemnification obligation shall survive the expiration or earlier termination of this Agreement.

11. <u>Insurance</u>. During the term of this Agreement Licensee shall obtain and maintain in force at its sole expense commercial general liability insurance insuring Licensee against any liability that may arise from Licensee's acts and omissions and the acts and omissions of all persons for whom Licensee shall have legal responsibility and having bodily injury policy limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate, and property damage policy limits of not less than Five Hundred Thousand Dollars (\$500,000.00). Said Insurance shall be from an insurance company authorized to do business in the State of Hawai'i and approved by Licensor, shall name Licensor and any mortgagee, ground lessor or other person(s) whom Licensor may designate as an "additional insured" thereunder, and shall provide not less than thirty (30) days' prior written notice to Licensor if any modification or cancellation.

12. <u>No Assignment by Licensee</u>. Licensee shall not assign this Agreement or any interest therein nor sublicense the Property or any part thereof or any right or privilege appurtenant thereto, or mortgage, assign as collateral or in any way create any lien on this Agreement or any interest therein without the prior written consent of Licensor, which consent may be withheld by Licensor in its sole discretion.

13. <u>No Liens or Encumbrances</u>. Licensee shall not commit or suffer any act or neglect whereby the Property or any improvements thereon, or interest of Licensor, or any mortgage or ground lessor therein, shall become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and will defend, indemnify and hold Licensor harmless against all such attachments, judgments, liens, charges and encumbrances, and from all losses, costs, and expenses, including attorneys' fees, arising or resulting therefrom.

14. <u>Definitions</u>. The term "Licensor" as used herein shall mean and include its members, managers, officers, agents, representatives, employees and invitees. The term "Licensee" as used herein shall mean and include its partners, agents, representatives, employees, and invitees.

15. <u>Notices</u>. Any notice to be given or served pursuant to the terms of this Agreement on any of the parties hereto or persons mentioned in this Agreement must be in writing and will be deemed to have been received for all purposed when (a) personally delivered, (b) sent by certified or register mail, or (c) sent by e-mail with delivery or read receipt to such party or person at the address set forth above.

16. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement among the parties concerning the subject matter hereof. All prior correspondence, writings, and discussions in connection with the same are hereby superseded, the parties intending that this Agreement sets forth their respective rights and obligations concerning this subject matter. This Agreement may not be amended, modified and/or revised except in a written instrument validly signed by all parties hereto.

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17. <u>Headings: Severability</u>. The section and subsection headings in this Agreement are meant for convenience only and shall in no way define, limit or describe the scope or intent of any provision of this Agreement. On the event that any one or more of the provisions of this Agreement are determined by a court of competent jurisdiction to be unenforceable, in whole or in part, then the unenforceable provisions and parts thereof shall continue to be binding and enforceable upon the parties hereto.

18. <u>No Waiver</u>. No failure by Licensor or Licensee to insist upon strict performance by the other party of the terms or conditions of this Agreement shall constitute waiver of any such term or provision.

19. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first written above.

LICENSOR:

HAWAII DEVELOPMENT, L.L.C.

By:

LICENSEE:

MAKENA BOAT PARTNERS, a Hawaii general partnership,

By: Kai Kanani, Inc. Its General Partner

By:

Sidney Akiona Its President





MAKEBOA-01

IYASAKA

DATE (MM/DD/YYYY)

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Hawaii Development, LLC 2005 Main Street Wailuku. HI 96793					SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.						
						AUTHORIZED REPRESENTATIVE					

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