

KEWALO BASIN TENANT MEETING

Re: HCDA Proposed Rules

Friday, May 25, 2007

2:00 p.m.

HCDA Large Conference Room, 677 Ala Moana Boulevard, Suite 1000

Attendance: Richard Kuitunen, Alex Kagawa, Frank Mento, Reg White, Bryan Ho, Tom Hahn, Mike De Rego, Bob McCowan, Greg Longnecker, and Glenn Okimoto.

RK: I asked Glenn Okimoto to come here also; I don't want to take up your whole afternoon. I just wanted to touch base with you guys. The e-mail that I sent out – cold, impersonal and e-mails are the way they are what is written versus what it means. So I just wanted to sit down face to face with everybody. Letting you know where we are going. This is not to discuss any of the rules or anything like that. It is really just a courtesy to bring you up to speed with what we are doing, where we are going. I invited Glenn, we are working with DOT on the transition. We met with Barry and Glenn's group and we are working with them on the logistics of getting the basin transferred over. We are still in the operative stages. We just had one meeting. We had a side meeting with Barry. But we are looking at transfer of operations on the management on September 1. DOT has agreed to operate during the transitional phase. There is some pressure, there is a lot of pressure on the legal and audits stand point on DOT. They've been flagged by the auditors because of the management of the harbor and physically I think they are requiring transfer of the assets on DOT books to HCDA's books as of July 1, which creates some issues because HCDA will now have full responsibility of the operating assets, but DOT will still be managing it so you can see that there will be issues of liability of management. That is why we are going to be working closely together even after September 1, we are talking about having a transitional period where the property manager would be shadowing DOT's managers.

FM: I'm a little confused, transfer date is September 1.

RK: Transfer of September 1 is the physical transfer. The assets will be transferred which is just the bookkeeping entry you won't see anything different in the harbor. But if you hold up the financials of DOT on July 1, 2007, they wouldn't have any Kewalo assets and HCDA's books would have Kewalo. It is still State assets, it is just a transfer from one agency to the other.

FM: So July 1 is the bookkeeping transfer? And September 1?

RK: September 1 is the physical transfer. DOT will stay on. We will be working with them, making sure all the records and everything, and the management systems, hopefully educating...

RW: What is exactly is being transferred on July 1?

RK: The assets.

RW: What are they? You own the place. You owned it since 1990.

RK: The lands transferred. Technically the assets and improvements were transferred too. But DOT has booked the assets and doing improvements. So that is what the auditor is requiring the transfer over. So right now on our books, I think it is just the land. We'll probably show a dollar. We will inherit their basis, land on their books.... That will also afford DOT ability to focus on core assets which is Honolulu Harbor and Kapalama. The reason which I touched on in the e-mail that we postponed the public hearing, we are still working on the transition plan and we are still waiting for the Deputy AG to get back to us on those legal issues. He just came back from vacation yesterday; he is still trying to catch up with everything. So hopefully we will have that by next Tuesday. And then we wanted KOA input, stakeholders and anything else additional that has come up. Bryan had sent us a letter and we are waiting for any comments from KOA. The meeting on the 29th, it will be a public meeting, it is not a public hearing, there won't be any action by the authority on the rules, but it is there to solicit input on the administrative rules, specifically the rules that have been proposed. As usual, we will record the meeting.

MD: How is it going to work with this meeting?

RK: The meeting? I will be there but I'm not going to facilitate it. We are having an outside facilitator for the meeting.

MD: Do you know who?

RK: I haven't been involved in the planning of things. They'll have the agenda.

MD: What is the whole point of the meeting, how is that going to function, is it going to be on the proposal or what?

RK: I'm not involved in the planning of this. (too many people talking at once) I'm sure they will because it is a public meeting, so they are seeking input.

FM: Is it possible for us to get the format as soon as it is decided upon. Is it going to be decided on Tuesday morning? Can you send the information to us?

RK: Absolutely.

FM: On the meeting format, copies of testimony.

RK: It is not a public hearing so you don't need to submit prior testimony. If you are not going to be there, you might want to submit something, I'm sure you can do that.

- RW: What is the date of the proposed rules that they will be taking input on? The promulgation of the latest version of the proposed rules that they will be taking comments on because there have been more than one set of these rules proposed.
- RK: The current rules on our website are the rules up for discussion. (mumbling) I think the date on is the rules. It is the only one on our website.
- FM: Was that the one that were redlined and sent by e-mail to us? I think prior to that April 27 meeting.
- RK: We haven't done a lot since. It hasn't been changed since the 27th meeting.
- FM: Our input is there but hasn't been incorporated into this draft?
- RK: Yah because we are waiting for everybody's input. So we have been waiting, waiting.
- FM: Just to make it clear, we never promised to have an input in by the 27th.
- RK: The idea that ...
- FM: We also said that it is only fair that everybody get an opportunity to input including the longliners which is a difficult process.
- RK: I know you indicated on the e-mails that you are still working on it,.
- FM: It did take us some time to get KOA and also the leadership in place.
- RK: Who is the leader?
- FM: I'll send it to you.
- RK: The important part is we don't need a 100% of the comments, so as you have the comments, that is why I'm saying before, during or after. And even after you've given us comments, something else comes up you can send that. It's a continuum, it's not "here is your comments and that is it". We are not trying to shut the door on you. In the same vein, as things come up, don't change from one end to the other.
- FM: The input, do we just... the users providing their ideas what we would like to see change in these rules?
- RK: The focus of the meeting is not just KOA and the boaters, it is a public meeting.
- FM: Will there be guidelines or just us making comments.
- RK: Again, the facilitator will decide that.

RW: What will we hear from you at that meeting?

RK: I will be there as a resource. I don't intend to testify.

MD: What do we comment on, the proposed rules?

RK: The comments will be considered for making changes.

RW: But you have no proposals to put forth that you have learned anything in all this period of time and that you are willing to modify those rules to get it down to some sort of reasonable sort of shape. You are not putting this forward at the meeting for us to comment on?

RK: No. We are asking for your input of what you need, if I start guessing what you need it will be a long....

FM: Isn't that the process that we've been going through in these meetings in this room? Why are we changing the format to this facilitated town meeting? Isn't that what we were doing here?

RK: Well, I'm still waiting for your comments.

FM: We had to constitute our group, we got leadership in place and we've done that, we are also trying to see all the other people that are there. You refer frequently to the fact that since December 2005 you have been drafting these rules. They were presented in February 2007. We have been aware about the extent and details of these rules in February....

RK: Actually you have been aware since December 2005.

FM: That is not true.

RK: The representatives of the longliners, the charter...

FM: How were those representatives selected?

RK: They were identified as the key people.

FM: Who actually selected them, was it HCDA or me? They weren't elected by us.

RK: We put them through the committee and the Authority approved two of them.

FM: You asked the people who you already selected who should be on? Does that seem a little bit of a vacuum?

RK: No.

FM: It does to us.

RK: It was a representative sample.

FM: Not even close.

GO: Regardless.....

FM: What we are trying to say in all fairness, you refer to this as a long process, you say you are waiting for us. We have been aware of this since February. We are talking in May.

RK: We have to do work prospectively to accomplish the task, not look retrospectively.

FM: The only reason why we are looking retrospectively.

RK: Criticizing the process.

FM: There has been a lot of time on your side. We are asking for consideration of our time.

RK: Again we are getting side tracked. The point of the meeting coming up is to talk about the rules as they stand not how the rules got to be.

FM: You are changing what we've been doing here. My question is why are we doing it? We've been doing this all along; we've been here in meetings trying to revise these rules. We were told that if you didn't have the public hearing it would be an informational gathering meeting, which I question is sounds like we are going to a format to do the very same thing that we've been doing this whole time.

RK: The meeting will be informational gathering.

GO: The public is invited and whoever wants to come in, we need to gather their input also.

MD: There will also be a public hearing? Our record is tabling it on September 1. Or are you just doing away with the public hearing?

RK: You have to have a public hearing for administrative rules.

GO: Based on the input gathered by this group and public meeting on Tuesday, it will amend the rules, I guess.

RK: Well we are working towards that.

GO: And there will be a public hearing to discuss.

MD: Okay, at this point we've been supplying a lot of information about the current rules on the website, disagree with them. There has been no attempt to correct them. So at this point, we are blowing in the wind because we are not even close.

RK: Bring your points to the meeting.

MD: The point I'm trying to make, you should learn to be productive, let's be productive but we are not, we are going around in circles. When we sat down you and I and Dan we gave you really specific numbers and you've ignored those things.

RK: We made the changes since the first public hearing.

MD: I understand that.

RK: You and Frank said that it sounded fine to you, had no major problems.

FM: Not speaking as representatives, speaking as individuals...

RK: Actually the second time you were speaking as KOA.

FM: No I was not, KOA wasn't constituted then. You asked me about the reaction of what the guys were. I said I didn't see any major problem, but we also have not had time to review these, that is what I also said. So let's be truthful and accurate.

RK: Let's both agree to do that. Okay.

FM: Please.

RK: I've been straightforward.

FM: ... (can't understand)

RK: Right now you are not being it.

FM: Communication, your recollection of the conversation is different than mine, then we are both entitled to be different, in writing, let's keep in writing.

RK: Maybe that is a good reason if you say we are changing the format to bring in a facilitator to allow someone else. If you and I are not seeing eye to eye perhaps that would be a better road.

FM: If you are saying that the reason we are having this because you have been waiting on us and I'm saying to you, you have been involved in this revision process with fair representation and eyes open since March, we've moved forward on everything you said including getting a list together, including e-mailing, group constituted and just as we are about to sit down to more meetings, this has changed to a facilitator based meeting, we

don't know who the facilitator is, don't know the format is, we are changing all the work that we've done at this point. At the same time you are saying that it is our problem because you have been waiting on us. And I'm pointing to you saying that you have been working on this in a vacuum by our opinion. You've been working on it for year and half. We've been at this thing for a couple of months. We've also been able to take the time, get some legal points of view that we've seen as to the problems that we've had and that has only become apparent to us recently.

RK: Certainly, share those legal points. Having a facilitator there doesn't change the intent, we are still working towards the goals. You said I'm blaming you. I'm not blaming anybody. One of the reasons that we postponed the meeting, we are also waiting for the AG, I'm not blaming anybody. I'm not trying to put fault.

FM: Let me ask you this.

RK: We want to move forward.

FM: Were the rules ready to be put to a public hearing? All the input that you got from us.

RK: At the meeting, it became clear that you were no longer okay with the rules and that is why we wanted the input so we could make adjustments before the public hearing if necessary but we didn't have time to do that.

RW: No longer is the wrong word, we were never okay with it. Not any version that you have put out so far.

RK: Well, let's take advantage of that, at the meeting on Tuesday, be specific, if you want chapter and verse, bring in your redlined copy. I can send you the word document.

FM: To help us be specific. I think you should give us the facilitator format before we walk into that meeting and sit down.

RK: Whatever your desires are we will straighten it out.

FM: You are presupposing that we are okay with the rules.

RK: No. If you are okay with the rules, you would have no changes.

FM: inaudible..

RK: I'm not setting up the format, the facilitator is, so I will have to find out.

FM: Who is setting it up?

RK: It is handled outside of my hands.

- FM: Meaning Dan Dinell? We'd like to know who the facilitator is.
- RK: Well I was advised that we are under a time limit, suggesting a process we are going to have to follow. Getting your comments how it will be handled, there will be public comments and anybody from the public is welcome to come. But they did say that in order to be efficient of the time available, they want to be specific on the rules, they don't want to get into what's happened in the past, or the process working, focus on the rules.
- FM: Understand to speak to the rules but are we going to be allowed to question for example one of the big questions is a definition of the difference between permits and leases. We never had a response. You have simply said to us the reason is for is, we are comfortable with leases.
- RK: It is the format that we use. If you prefer permits as opposed to leases.
- GO: Revocable permits...
- FM: In the system that we have we have certain rights. If we have a lease we are surrendering our rights.
- MD: I think we've established certain rights by.... But if you go to lease...
- RK: If that is what you want in the rules.
- GO: The permits are the 30 days I believe. Permits can be
- FM: Revocable.
- BH: No they are one year.
- GO: You don't want 30 year lease?
- FM: 30 year lease? That is a consideration.
- GO: Well that is what a lease can do for you guys.
- FM: 30 day revocable annual lease.
- RK: Just say revocable lease.
- BH: Revocable lease one year and the commercial lease is not stated as a term.
- FM: I thought it was 30 days.
- BH: No it is one year.

- RK: The language in the current rules provide for revocable...
- BH: Revocable with 30 days notice.
- RK: Your permit can also be revoked.
- FM: Not ours. There is a whole bunch of issues. Changing rates.
- RK: That is why, if you are more comfortable with permit and you'd rather have permit form than the lease format. I'd suggest it. I don't see that as a major issue. I would suggest that you consult consul as to the difference between permits and a lease. The statement, you didn't say it, but you were talking about adjusting the rates at the end of the lease versus permit. I think either one can be under the administrative rules. If you adjust the administrative rules, permit comes up for renewal that is your new rate. Same thing happens if your lease comes up, the renewal will follow the administrative rules. You can't differentiate from the administrative rules. The administrative rules say \$5.00, the time you get your permit \$30.00. Can't do that, you have to follow the rules.
- BM: I think the important thing to know is that I'm still not sure what is required by the lease because as far there as some statement that says gross revenue will be based on \$40,000 or 80% of the top two or three whatever, I'm not sure. The thing that concerns me and most of us is that you get this implemented, because you postpone just to get it closer to the date for the take over to happen and all these rules are on the books and we will not be able to live up to the gross receipts or whatever and some of us might have secondary slips that supports the operation and does that slip have the same kind of requirement of the main slip. Nobody knows how all this stuff is really going to work. Consequently, we are always concerned that we are going to be in violation whether it is lease or permit. When you are in violation that is the chance to get removed and that is what concerns us, we still believe that the bottom line is that you still want to get most of us out of there. So that is why we need to know what is going on and how and have that explained in detail or written up in detail so we know, exactly what we are looking at in a year or two years based on what this agreement is going to be and you don't have design to turn the first deal.
- RK: I understand your point and that is a very good point. The way that the rules are worded now is the minimum or 80% of the average of its revenues in your class. To address your concern about a secondary site versus primary site, if I were you I would suggest that the rules reflect that in your class be defined as also a comparable slip, so that you are comparing apples and apples.
- BM: So you are saying 80% of the top three producers.
- RK: No average. So if you are a six pack and you have 10 in the class, add up all of their sales and divide that by 10 and that is your average.

- BM: So let's say you have \$200,000 anybody else with that 80% of that you can average, you are saying that some people produce more, and others produce less, it will be the total divided by the number you put in that class. And then 80% of that. Assuming that the classes are put together... You have Maggie Joe that is one operation fishing boat and he is a certified fishing boat and all the rest of us is certified, he wouldn't be in our class I would assume?
- RK: I'm not sure.
- MD: But you see our revenue, when I get that situation, I don't make the same revenue as Greg does. He charges more and carries more passengers. I'm typically, seven or eight even though I'm certified. If I were to allow a certain fishing boat below 7 or 8 I'd be in trouble, set the value by working down. I want to keep it that... According to your rules, it will be hard for me to exist.
- RW: He is the only boat ... (more than one person talking) even if you made them a class doesn't work.
- MD: You made 150 you'd be in violation.
- RW: Exactly, we'd be homeless.
- BM: What if sometimes, you have a break down and you have some major repairs or whatever so that particular year you are not, seems like 80% ...
- BH: The suggestion that I made on that is to eliminate the secondary language or instead of making it the greater or lesser of the two because all that supposed to do is make sure that commercial operator and they are not pleasure boats so you can do it – either eliminate or it or just use the lesser.
- RK: Those are good points on the comparison on how you define the categories and I suggest that you bring that to the meeting if that is an issue. It may not be something that you can quantify because like Reg you carry more passenger than anybody so you are in a class by yourself, so.... But if there is that many boats, than certainly it's got to be relooked at as to how you
- RW: The other thing is some of us for instance one of the boats caters to the low end market and one of them cater to the high end market. So you can say that we're the same capacity, it doesn't work because this one is catering to Joe Blow who lies on the beach and eats at McDonalds and this one is catering to the guy that eats at Mortons. So how can you compare? It is not fair . Both of them are very honest businesses.
- GL: It seems like to me, as long as these boats are in there it is not hobby, they have a business license, they are paying Uncle Sam, they are paying their State taxes, they are a business that should be fine. Why are we worried about some people are good business

people, some aren't as good, some people have a different business altogether. That is too gray of an area to take someone's livelihood and jeopardize it.

RW: You go back and look at the history for the reason they put it in, buying a fishing boat, getting a slot there, and using it as his yacht.

GL: yah, but he has a full time job and he just got a boat in there and he is just doing one charter a month or something that is a hobby. Ain't none of us here represents hobbyists. We are not hobbyists; this is what we do for a living.

MD: The language as written is what is scary to most of us. We object to that.

RK: Again, we are not here to discuss that right now, but those are valid points and certainly bring them up on Tuesday. And anything else.

RW: Can we have you explain to us exactly why you are going to add on top of everything else, a CAM?

RK: CAM covers the day to day operating expenses.

RW: Well we pay that now so why are you adding it on top?

RK: You are not paying a CAM.

RW: Well we are paying for the operating expenses. Now you are going to raise the fee that we pay and on top of that you want to charge a CAM.

RK: A lot of that you pay directly. Again CAM is something that is a major gridlock. It doesn't have to be major. If the CAM, or anything else that you want to see changed in the rules, bring it up on Tuesday.

RW: Why is it that you think that you need a CAM when there is no marina in the world that charges a CAM except you.

RK: Technically, we are not charging CAM.

RW: Why do you think you need to?

RK: That is the formula that was set up in the business plan.

RW: For your shopping centers? This is not a shopping center, so it doesn't have a CAM.

FM: So talking about the same sort of issue, if HCDA only issues permits what happens to the user fees? Would it go to the general operating fund for HCDA?

RK: HCDA has revolving funds. DOT has special funds.

- GO: I would think it is the same thing; it goes into a Kewalo pot. The funds are used to improve the properties. You wouldn't be co-mingling funds for HCDA.
- RK: Goes to revolving funds, our ASO would handle the accounts.
- GO: It is an accounting thing, it goes into a revolving fund, but there is a separate account.
- RW: Nowhere in the DOT does it say that it will be dedicated back to Kewalo?
- GO: Nowhere.
- GL: The \$5 million that was earmarked for the repairs, would we talk about that?
- RK: No, we are just going to talk about the rules. So the \$5 million is in DOT's budget but in the change over, correct me if I'm wrong Glenn, the auditor cited them for spending money on property they don't own, so they are not allowed to do that. So they will not be able to utilize the \$5 million for Kewalo.
- FM: So how do you use it?
- GO: It is not your money.
- FM: I understand. So the appropriation all the process that we went through, someone has to go back and get the money back.
- RW: So long as we take Kewalo and put it back into DOT, then the money can be spent.
- FM: Solves the problem.
- GO: The money is in the budget. We need real cash money to fund it.
- RW: You would get the real cash money if you have the basin.
- GO: \$900,000 in revenues a year. \$700,000 in expenses. \$200,000 left over to do some work that is not enough to pay for \$5 million project.
- GL: Glenn I have a question about that. You see you've been collecting \$900,000 from all the tenants and the money has been collected for years and years, right? And the harbor right now is in bad disrepair where has that extra \$200,000 a year gone and you have been doing it for 15 years, that is \$2 million almost \$3 million where is that?
- GO: It's gone back, we put in \$4/\$5 million to repair electrical.
- GL: We are just trying to figure out where all this money is, why hasn't the harbor been taking care of it to this point?

- RK: I think we are getting sidetracked. We are talking about the meeting on Tuesday.
- RW: The most viable option is to put it back to DOT, then you don't have to worry about it. You can sleep better at night.
- MD: At this point, I don't see a plan that HCDA is going to leave with us that helps us. We want to see our business survive.
- GO: Even if they gave it to us, we have to do all this work, the rates have to go up. There is probably \$20 million worth of work there.
- MD: But you know what Glenn that is part of State taxes. I understand your position, every time you decide to raise the fees, there is public input. Now with HCDA there is not public input.
- RK: I don't think you are listening.
- MD: If you want to raise the rates, there is no out.
- RK: It is administrative rules, it has to go to public hearing. HCDA and DOT operate under the same statutes when it comes to administrative rules. Under the charters that created us, we have different powers, we can't run an airport, they can't do the planning in Kakaako.
- RW: But you can't run a marina, and they can. No you can't. You have no idea in the world how to run a marina. I mean physically. You have no idea in the world how to run a marina.
- RK: You are sidetracked.
- RW: Oh no, we are not.
- RK: Anyway...
- RW: It used to be sidetracked because we are going to get you out of the picture and get the marina back in to DOT's hands where it belongs so it will be administered by boat people who have the staff to handle the operation without a CAM. They have the expertise, they have the staff and they have the facility.
- RK: Thank you everybody for coming.
- BH: On Tuesday, the authority is not going to be there are they?
- RK: I don't know, it is not a public hearing.
- BH: If they are there it is voluntary it is not because they have to be there.

RK: You are probably familiar with sunshine laws, a certain number can be there, but if there are too many of them it would be a violation. But I have no idea. But I know Dan will be there. It is more to gather information from the users and the public.

RW: I find it very difficult to believe in view of the fact that this is Friday, Saturday, Sunday and Monday are days off for government people. Tuesday is the hearing and you have not yet given the facilitator the instructions on set up and how that is going to be handled.

RK: I have not been involved in that, so no I haven't. I never will either because I'm not involved in that.

RW: Somewhere somebody's got to have the set up on how that is going to go.

RK: I'm sure they do and they are working on it.

RW: You have a plan, Tuesday is the next time, it is damn near 4:00 time for you to go home for the weekend and the holiday with no plan and go in to the presentation with no plan whatsoever, I find that very difficult to believe. If you try to operate a marina without a plan, you really are going to fall on your face and it is going to hurt us. We wouldn't care if it were just you, that is okay, but when you fall on your face and kill all of us in the doing, we all have heartburn with that.

MD: Tell me something in your proposal increase in 2010 right?

RK: The proposal and current draft rules for the second tier all rolls over to the first tier as of 2010. Again that is something that you may want to bring up.

FM: Richard I just want to recap this, so this meeting was a courtesy to tell us what we are going to expect on Tuesday, which is we don't really know.

RK: This meeting was a face to face to follow up on the impersonal e-mail to postpone the hearing and give you a heads up.