

**SMALL BUSINESS IMPACT STATEMENT
AFTER PUBLIC HEARING**

Presented to the
Small Business Regulatory Review Board
August 15, 2007

Agency:

Hawaii Community Development Authority (“HCDA”)

Chapter and Title:

Chapter 211 entitled “Kewalo Basin Rules for Kewalo Harbor and Tariff”; Chapter 212 entitled “Kewalo Basin Rules for Vessel and Harbor Controls”; Chapter 213 entitled “Kewalo Basin Rules for Motor Vehicles”; and Chapter 214 entitled “Kewalo Basin Rules Relating to Services and Procedures, Charges, Tolls and Fees”, of Title 15, Hawaii Administrative Rules

Contact:

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Proposed Rules:

Establishing Rules for Kewalo Basin will govern the use and protection of permittees and visitors to Kewalo Basin under the jurisdiction, management, and operation of the Hawaii Community Development Authority, providing for the well being and safety of all who visit and work in the area. These rules are considered necessary and desirable to facilitate the public’s use and enjoyment of the Kewalo Basin.

- Chapter 211 sets forth definitions and implementation;
- Chapter 212 establishes general operational provisions;
- Chapter 213 addresses rules for motor vehicles; and,
- Chapter 214 identifies fee structures and cost recoveries.

Solicitation of Testimonies:

Public testimony for the public hearing was solicited in a Notice of Public Hearing. The Notice of Public Hearing was published in the Honolulu Star-Bulletin, West Hawaii Today, Hawaii Tribune Herald, The Maui News and The Garden Island on July 2, 2007. In addition, the tenants of affected property were notified via certified mail, state and county agencies and various interested community groups were also notified of this hearing by mail, fax and electronic mail. The notice was also posted on the HCDA website.

The public hearing was held on August 1, 2007. The Rules, Regulations, Charges and Fees for Kewalo Basin to be presented to the Authority for decision making at its September 5, 2007 meeting are attached for your reference as Exhibit A.

Summary of Testimonies:

Copies of the written testimonies presented at the public hearing are provided as Exhibit B. Each testimony is summarized below:

Please note, while many testified in support of KOA position, there was no testimony presented by KOA.

1. Frederick Nunes, Department of Transportation, testified in favor of the proposed rules.
 - DOT lacks jurisdiction to make required repairs
 - Kewalo Basin was intended as part of the comprehensive development of Kakaako
 - Delay in transfer of jurisdiction is not desirable and will not result in better development or better operations

2. Tom Hahn, secretary and director for the Hawaii Longliner Association, testified in opposition to the rules.
 - Supports all of KOA efforts positions
 - Opposes allowing recreational boaters and requests Kewalo remain commercial only
 - States that there is demand from commercial fishermen to occupy the renovated slips
 - Opposes lack of reciprocal agreement allowing ships to use either Kewalo or Honolulu harbor without additional charges

3. Mark Hazlett, Commodore of the Waikiki Yacht Club testified in favor of the proposed rules.
 - Waikiki Yacht Club's original access to ocean was through Kewalo Basin
 - Greatest demand is for slips larger than 40 feet
 - Numerous other state harbors allow mixed use
 - Allowing unused slips to be used by other residents is best way to assure that public lands remain in public hands

4. Tom Hattemer, individual testified in opposition to the rules.
 - Supports KOA testimony
 - At 120 pages rules are more complicated than needed to run harbor
 - Increased and new fees are significant for small businesses

- Permit premium fee is aimed at small corporations and does not apply to Horizon, Matson or Young Brothers
 - Priority of assignment needs to be reviewed. Priority should be for vessels shorter than slip length
 - HCDA's 15 year track record of managing the harbor demonstrates a record of failure
5. Jim Campbell, VP of Makani Nui, Inc. testified requesting actions to proceed with adoption of rules
- KOA is prepared to commence litigation
 - HRS §91-7 allows for declaratory judgment that KOA intends to pursue
 - It is reasonable and prudent to have judge take a look at issues
 - If rules are adopted request delay in implementation
 - Concerned over liability to harbor manager if contract executed before declaratory review
6. Bryan Ho, Esq. representing X-Treme Parasail, Diamond Head Parasail, Honolulu Screamer and Diamond Head Parasail and Watersports testified in opposition to the rules.
- Tenants need to see proposed permit form
 - "Transfer fee" (permit premium fee) should not be assessed
 - Limitation of liability for the state is unreasonable as it makes tenant 100% liable for damages even if not 100% responsible for injury
 - Without adequate safety measures to protect negotiating channel opposes allowing pleasure craft in harbor
 - Objects to Executive Discretion in allocating slips
 - Objects to ticket booth rate of \$250 per month. Requests rate remain at \$40 per month
 - Objects to reserved parking rates increase from \$110 to \$150 and unreserved from \$55 to \$100
 - 2 tier slip fee requires clarification. Requests existing tenants continue on 1st tier.
 - Tenants who have not been issued annual permits by DOT appear to be subject to tier 2 when HCDA takes over. Request that rules specify that they remain on tier 1
7. Dr. Solomon D. K. Nalu'i, representing Ohana Seariders, Hawaii Rainbow Cruises and Executive Committee, KOA, testified in opposition to the rules
- Proposed rules in violation of HRS § 206E-33 which prohibits changing Kewalo from "commercial" harbor

- There are outstanding legal issues that the Attorney General's Office has not expressed opinion
 - HRS § 266-2 requires all commercial harbors to be under care and control of DOT
 - State constitution requires state powers allocated by law and HCDA has no powers allocated by law to operate harbors
 - Legislature has requested that HCDA not accept transfer
 - SBRRB supports KOA's opposition to the rules
8. Gary Dill, part owner of Imua testified in opposition to the rules
 - Supports tier 1 of 2 tier rate
 - Opposes tier 2 and recommends that it be eliminated
 9. Michael DeRego, testified in opposition to the rules
 - Opposes two tier system, feels that all month to month tenants will be subject to tier 2
 - Feels last sentence of §15-214-20 needs to be clarified or eliminated
 - Feels reference to §15-214-35 allows all permit holders to be grouped in tier 2
 - Opposes any permit transfer fee
 - Opposes \$250 ticket booth charge
 - Tenants need to see proposed permit form
 - Opposed to mixed use of harbor
 - Opposes Executive Director's discretion in allowing exceptions to priority list when in the best interest of Kewalo basin operations or tenant mix
 10. Nancy Hedlund Member Ala Moana/Kaka`ako Neighborhood Board testified in opposition to the rules
 - Supports objections raised by Kakaako Owners Association (sic)
 - Feels that Kaka`ako Community Planning Advisory Council should have role in promulgating rules
 11. Michelle Matson, Advisory Working Group (AWG) member speaking individually testified regarding improvements
 - Feels that development is planned in Kewalo Basin area without input from AWG
 - Requests that the "improvement plan" be excluded from any management duties under the rules
 12. Reg White, VP project Development Paradise Cruise, Ltd. testified in opposition to HCDA taking control of Kewalo Basin

- Feels 2 tier rate structure is a trap to double fees
 - Reciprocity must be mandated to DOT
 - Feels that DLNR would better serve as managing agency
 - Feels HCDA is intent on extinguishing fishing and cruising activities in Kewalo Basin
13. Robert St. Romain, Lynell Sportfishing, (Oral Only) testified in opposition to the rules
 - Support KOA testimony
 - Waikiki Yacht Club is not a mixed use, why should it be a mixed here
 14. Bob McCowan, Blue Nun, (Oral Only) testified in opposition to the rules
 - Support KOA testimony
 15. Glen Paxman, Winstedt Fishing Co., (Oral Only) testified in opposition to the rules
 - Support KOA testimony
 16. Wade Vaiciulis, Hawaiian Parasail, (Oral Only) testified in opposition to the rules
 - Support KOA testimony
 17. Carl Mento, Kahala Catamarans, (Oral Only) testified in opposition to the rules
 - Support KOA testimony

Summary of Agency Responses:

The HCDA's responses to the testimony against the proposed rule amendments:

1. **Allowing recreational usage of the harbor should not be permitted:** No changes made, please see comments below.
2. **Reciprocity of slips usage with Honolulu harbor:** No changes made, please see comments below.
3. **At 120 pages, the rules are too complicated to run the harbor:** No changes made, please see comments below.
4. **The increased and new fees are significant for small businesses:** While HCDA acknowledges that any fees could be considered significant upon small businesses, the proposed fee increases generally

do not even cover the inflation since their last adjustment. The fees contained in the proposed rules are not deemed onerous but are necessary so that the operating costs of the harbor can be recovered.

5. **Permit Premium fee is aimed at small business and should not be assessed:** While the sale of state property for private profit should not be allowed, HCDA will amend the rule as described below in order to gain a better understanding on this issue.
6. **Priority of slip assignment should give preference to smaller vessels:** No changes made, please see comments below.
7. **HCDA's 15 year track record of managing the harbor demonstrates a record of failure:** HCDA has never managed the harbor. The harbor has been managed by DOT since statehood.
8. **HCDA should seek declaratory judgment on legality of its assuming jurisdiction of the harbor:** HCDA has referred all legal issues to the attorney generals office and will follow the advice given by that office.
9. **The tenants need to see the proposed permit form:** The proposed permit form is attached as Exhibit A.
10. **Limitation of liability for the state is unreasonable as it could make the tenant 100% liable:** No changes made, please see comments below.
11. **Executive Director should not have any discretion in allocating slips:** No changes made, please see comments below.
12. **Ticket Booth rate of \$250 is too high request keeping rate at \$40:** The proposed rate of \$250 is the same that DLNR charges under its rules and reflects what some tenants have advised that they are paying now. However, HCDA will reduce the current charge for ticket booths to \$125.
13. **Proposed parking rate increase from \$110 to \$150 for reserved space and \$55 to \$100 for unreserved space is excessive:** No changes made, please see comments below.
14. **Tenants who do not have an annual permit will be subject to the tier 2 rate. Request that all existing tenants remain on tier 1:** No changes made, please see comments below.

15. **The language contained in the last sentence of §15-214-20 (“This column also applies to those vessels described in section 15-214-35 [fees for use of facilities for private gain]”) needs to be clarified or eliminated as it allows all such permit holders to be grouped in tier 2:** No changes made, please see comments below.
16. **The Kaka`ako Advisory Planning Council should have a role in promulgating the rules:** The public in general is invited to participate in the public hearing and rule promulgation process and all comments have been considered in drafting of the rules.
17. **A development plan is being proposed without participation of the Advisory Working Group and requests that the “improvement plan” be excluded from any management duties under the rules:** No development plan is being proposed nor is there any proposed “improvement plan” under the proposed rules.
18. **HCDA is intent on extinguishing fishing and cruising activities from the harbor:** HCDA is not seeking to extinguish any existing users from the harbor.

The Authority, will decide on approval of the administrative rules (with amendments described below) at its meeting on September 5, 2007.

Amendments: HCDA has made the following changes to the proposed rules in response to the comments received at the public hearing which will be presented to the Authority for decision making at its September 5, 2007 meeting.

1. The dollar amounts indicated in the permit premium transfer fees contained in §15-214-11 (a) have been reduced to zero. HCDA feels that the reporting requirements under the rules should be retained to secure a better understanding of the transfers and valuations that occur before it considering any amendment to assess fees for the sale of state property.
2. The proposed ticket booth rate of \$250 under §15-214-50 has been reduced to \$125 for ticket booths up to 35 square feet and from \$8.00 to \$2.00 per square foot for larger booths .

Public Hearing Attendance: listed on sign-in sheet

Number of Persons Who Orally Testified: 16

Number of Written Testimonies: 13

If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.

1. **Allowing recreational usage of the harbor should not be permitted:** Kewalo Basin is public land held in trust for the use and enjoyment of the public. Restricting the usage to commercial operators restricts the public's ability to use the property. As pleasure craft previously utilized the Kewalo Channel to access Ala Wai Boat Harbor, the safety concerns are without merit. In addition, the Harbor Manager will be able to restrict traffic during unsafe periods and assure that all users are properly experienced and educated on the dangers of the channel.
2. **Reciprocity of slips usage with Honolulu Harbor:** The proposed rules provide that HCDA may enter into reciprocal agreements with DOT and DLNR to allow vessels to utilize the others harbors. Currently, DOT and DLNR do not have any reciprocal agreements. While HCDA can advocate that the parties enter into agreements, it cannot mandate such in its rules as there is no obligation on the other agency to follow HCDA's rules.
3. **At 120 pages, the rules are too complicated to run the harbor:** The rules are considerably shorter than the DOT harbor rules and are deemed necessary to include all provisions that need to be addressed for the public health and safety in the operation of the harbor.
4. **Priority of slip assignment should give preference to smaller vessels:** The priority in assignment is the same as that utilized by DOT.
5. **Limitation of liability for the state is unreasonable as it could make the tenant 100% liable:** The liability language is identical to that contained in the DOT rules.
6. **Executive Director should not have any discretion in allocating slips:** §15-212-25 (2) (C) allows the Executive Director to make exceptions to the priority (Fishing, Commercial, Pleasure) when in the best interest of Kewalo Basin operations or tenant mix. This discretion has been included based upon concerns raised by existing tenants that if all slips became commercial usage; 60% of them would be out of

business. In addition, exception may be necessary should the slip not have required amenities required for a particular usage.

7. **Proposed parking rate increase from \$110 to \$150 for reserved space and \$55 to \$100 for unreserved space is excessive:** The parking rates were determined based upon current market rates for comparable parking spaces. Due to the scarcity of available parking, the proposed rates do not appear excessive.
8. **Tenants who do not have an annual permit will be subject to the tier 2 rate. Request that all existing tenants remain on tier 1:** The tier 2 rate only applies to specified piers when they are renovated. All other slips regardless of whether annual permit or not will be subject to tier 1, if entering into annual permit, or the daily rate.
9. **The language contained in the last sentence of §15-214-20 (“This column also applies to those vessels described in section 15-214-35 [fees for use of facilities for private gain]”) needs to be clarified or eliminated as it allows all such permit holders to be grouped in tier 2:** The sentence appears as a footnote to all three rate structures and will apply to that type of vessel in any of the rate structures. It cannot change a permittee from one rate structure to another.