



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
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MEMORANDUM

Linda Lingle
Governor

TO: Teney Takahashi, Interim Executive Director
Hawaii Community Development Authority

Theodore E. Liu
Director, DBEDT

FROM: Lynne Woods, Chairperson *Lynne Woods*
Small Business Regulatory Review Board

Mark K. Anderson
Deputy Director, DBEDT

DATE: August 23, 2007

Members

Lynne Woods
Chairperson
Maui

SUBJECT: Proposed HAR Chapters 15-211, 15-212, 15-213, and 15-214,
"Relating to Rules for Kewalo Basin"

Sharon L. Pang
Vice Chairperson
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This memorandum is in response to the Hawaii Community Development Authority's (HCDA's) proposed amendments to HAR Chapter 15-211, 15-212, 15-213, and 15-214, "Relating to Rules for Kewalo Basin," after public hearing.

The Small Business Regulatory Review Board (Review Board) provides recommendations to agencies on proposed rules and proposed rule amendments, pursuant to the Small Business Regulatory Flexibility Act, codified as Chapter 201M, HRS, and the Governor's Administrative Directive No. 99-02.

The Review Board reviewed the proposed rule amendments at its June 20th and July 18th board meetings prior to public hearing and then after the public hearing on August 15th. The Board heard testimony from representatives of HCDA and several small business owners impacted by the changes to these rules. The Review Board is concerned with the proposed amendments and recommends that the proposed rules for Kewalo Basin not be signed. The Board voted unanimously on this recommendation for the following reasons:

1. The current users will be forced to carry the financial burden for the improvements, through increased fees, for work that was to be done by the Department of Transportation (DOT) over the past fifteen years. DOT collected fees overtime, however, slips were continued to be closed due to unsafe infrastructure. The rules indicate a new management with new and increased fees for improvements to existing infrastructure. The businesses should not be held accountable for past governmental mistakes.
2. The permit for moorage has become a multi-page lease. The new document was prepared and submitted to the board members and the users the night before the August 15th Board meeting. As a lease document, it appears to be poorly thought-out and presented. Because it is the intent of HCDA to change from a permitting to a leasing process, the Review Board is concerned that the lease is only for one year and that not all harbors in Hawaii are managed in the same manner.

A business cannot obtain financing with only a one-year lease. Ordinarily, a business will negotiate a three-, five-, or ten-year lease with a landlord. The Review Board is concerned that the users are forced to sign a one-year revocable lease when they are expected to construct and improve the conditions of their own facilities.

3. The proposed rules will be incumbent upon the users to build a ticket booth and to pay rent for the same booth to HCDA. Property taxes and rent are paid by the users for the exact same space, called a "slip." The Board is concerned that this is an excessive and transparent effort to make this moorage too expensive for the existing users.
4. HCDA is ill-equipped to manage a harbor. There is little acknowledgment of the dangers of this harbor and its entrance. HCDA intends to expand the use of the facilities to recreational users which has caused alarm amongst the long-term professional users. Although safety and the potential loss of life due to extreme ocean conditions and lack of experience is not normally the purview of this Board, it is very difficult to ignore this future probability.
5. The proposed rules do not provide reciprocity between harbors. If the current users of Kewalo Basin cannot enter their home harbor due to ocean conditions, it is questioned why they cannot enter any other state commercial harbor to off-load their catch or customers. The Board is concerned about the result of harbor management being divided between many departments. It is also concerned that if HCDA wants the slips for recreational use then why not provide additional facilities for Hawaii's fishing fleet and commercial ocean tour operators.
6. There appears to be inaccurate statements in the Small Business Impact Statement regarding the lack of interest at the public hearing on behalf of the current users and a lack of a compromise. The Board is concerned with these statements because a number of members attended the public hearing even though the impact statement stated otherwise. Given this experience, members on this Board will now scrutinize Small Business Impact Statements with a different eye.

Although there are huge business impacts in these proposed rules, the Board recognizes the need for economic development; the economic development of this region is paramount to HCDA. As it was clear during the Kakaako redevelopment hearings with this Board, HCDA's agenda is to clean-up the area regardless of what happens to small business. However, for HCDA to remove the commercial usage from Kewalo Basin with questionable methods of over- and double-charging fees with no consideration of alternative moorage space, moorage for pleasure craft owned by residences of the newly developed condominiums in the area is a misuse of power. As a result, a large number of small business owners will be forced to close their businesses.

There are many examples of district economic development through improvement of infrastructure that use tax incentives or relocation assistance incentives that could be modeled. Hawaii so often does just the opposite by placing the burden directly on the shoulders of the neighbor businesses. Perhaps we could learn from other communities successfully completing a similar project.

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While Kewalo Basin is part of an effort to clean up the "entrance to Honolulu," let us keep in mind that the development of Kakaako was halted because of a lack of funds. Small business should not be solely responsible for the cost of economic development. They have paid fees and taxes to use extremely deteriorated infrastructure over many years and it concerns this Board that they would have to pay for all of the improvement and higher taxes upon completion.

Thank you for your consideration and understanding of the Review Board's concerns and recommendations.

cc: The Honorable Linda Lingle
Barry Fukunaga, Director, DOT
Richard Kuitunen, Asset Manager, HCDA