

2. DIVISION OF BOATING AND OCEAN RECREATION

- e. Preliminary Approval to Amend Portions of DOBOR's Hawaii Administrative Rules, Title 13, sub-title 11, Chapter 230 et. seq., Parts I, II, and III, and Conduct Public Hearings related to the Proposed Amendments to the Administrative Rules;
- f. Authorize the issuance of Contracts, Concessions, Leases and Other Agreements as Allowed by Law on Lands, Including Submerged Lands Under DOBOR's Management Jurisdiction for Income Production;
- g. Delegation of Authority to the Chairperson to Select the Appropriate Processes for Offering and Disposing of Long-term Parking Agreements as allowed by law for the Generation of Parking Revenues at the Ala Wai Small Boat Harbor and the Kailua-Kona Pier;
- h. Delegation of Authority to the Chairperson to Select the Appropriate Processes to Offering and Disposing of a Long-term Agreement for the Operation of the Heeia Kea Small Boat Harbor Fuel Dock, Convenience Store, and Snack Shop for DOBOR's Income Production, whether by Lease, Concession or other agreement as allowed by law;

STATUTES: Hawaii Revised Statutes, such as Chapters 102, 171 and 200 et seq.

- e. Preliminary Approval to Amend Portions of DOBOR's Hawaii Administrative Rules, Title 13, sub-title 11, Chapter 230 et. seq., Parts I, II, and III, and Conduct Public Hearings related to the Proposed Amendments to the Administrative Rules.**

HAWAII ADMINISTRATIVE RULES:

The Division of Boating and Ocean Recreation (DOBOR) requests preliminary permission to amend portions of Chapter 230-259 Parts I, II, and III of its Hawaii Administrative Rules (HAR) for clarity, to correct longstanding management issues, and to facilitate management of harbors and waterways under its purview now and into the future. Changes are being pursued because there has been a significant increase in the volume and types of recreational and commercial activities taking place in State waters since DOBOR's rules were written and last revised. The proposed amendments encompass a wide variety of administrative rules that include, but are not limited to, commercial use permits, vehicle parking requirements, definitions, mooring requirements, ocean recreation management areas, etc. The proposed changes are expected to greatly improve DOBOR's effectiveness and ability to manage its properties and programs. The proposed changes will also help the Division of Conservation and Resources Enforcement (DOCARE) improve its enforcement efforts. DOBOR plans to announce and circulate these proposed changes to the community for comment prior to any formal hearing and will make modifications if warranted. Upon review and approval by the Department of the Attorney General, DOBOR requests authorization by the Board to conduct public hearings on the proposed amendments detailed in Exhibit A, and the delegation of authority to the Chairperson to appoint staff to be hearings officers for those public hearings.

MOORING AND OTHER FEES:

DOBOR proposes to amend the mooring fee schedule as well as other fees associated with its harbor mooring program. This fee schedule was amended just two years ago, however the purpose of the amendment was to provide funding for capital improvement projects (CIP), such as the replacement of B, C, D, and F docks at the Ala Wai Small Boat Harbor. These replacements docks have been installed and DOBOR is using those fees from the newly replaced docks to pay the debt service on the bonds for the improvements.

DOBOR still needs to address the rapidly increasing costs of utilities and harbor repairs and maintenance. The Division sought to address this shortfall by proposing a statutory change to set mooring fees for state harbors by appraised value. However, the bill did not pass in the last Legislative session. Therefore, DOBOR must base the mooring fees on the actual costs of operation as defined in the Hawaii Revised Statutes, which includes but is not limited to “the use of the vessel, its effect on the harbor, use of facilities, and the cost of administering this mooring program.”

DOBOR proposes two categories of fees, Schedule A and Schedule B. Schedule A is for existing slip holders. It will begin at the level of current mooring fees and will be increased annually in equal increments over a five-year period until it matches Schedule B, the targeted level for mooring fees. Schedule B will be the rate schedule for all new slip holders once the proposed rule change takes effect. A complete list of the proposed HAR amendments addressing mooring and other related fees is attached as Exhibit B. DOBOR also proposes to amend the vessel registration fee schedule to \$5.00 to cover, among other expenses, the costs associated with the new on-line vessel registration service.

- f. Authorize the issuance of Contracts, Concessions, Leases, and Other Agreements as Allowed by Law on Lands, Including Submerged Lands Under DOBOR’s Management Jurisdiction for Income Production.**

FAST LAND DEVELOPMENT:

DOBOR has identified the following properties within its inventory that have revenue generating potential. DOBOR intends to offer long-term Agreements as allowed by law for these properties to generate revenues to help fund Plan B of the Recreational Renaissance.

The Agreements may be issued by public auction, requests for proposals (“RFP”), or any other process allowed by law such as under Chapters 171, 102 or 200, Hawaii Revised Statutes, as amended (“HRS”). The method of disposition for each Agreement will depend on the particular property’s characteristics, e.g. size, location, market demand, and the term of the Agreement will not exceed the maximum allowed by applicable law.

- g. Delegation of Authority to the Chairperson to Select the Appropriate Processes for Offering and Disposing of Long-term Parking Agreements as allowed by law for the Generation of Parking Revenues at the Ala Wai Small Boat Harbor and the Kailua-Kona Pier.**

As of this date, the revenue generating properties (hereinafter referred to as the “Revenue Generating Properties”) identified by DOBOR are as follows:

Ala Wai Small Boat Harbor (AWSBH) Parking Concession

On August 8, 2008, the Board approved DOBOR’s request for the issuance of a Revocable Permit to Diamond Parking, LLC for the management of a parking concession at the AWSBH. The Revocable Permit, valid for a one-year period, would provide DOBOR with a temporary, working model of a parking concession to study, and would provide parking revenues to DOBOR while the division prepared the public offering for a long term agreement such as a concession contract. The Board, as a condition, also directed DOBOR to form an ad hoc committee (Committee) for the purpose of providing input regarding vehicle parking at AWSBH. DOBOR hired a facilitator and supported formation of the Committee as specified over the course of three meetings held April 9, April 16 and April 30 in 2008. DOBOR has phoned, faxed, and sent e-mails requesting comment but has yet to receive any comment or recommendations from the group. To date, the Committee has only requested the financial reports that were received from the current vendor managing the parking area, Diamond Parking, LLC. The current gross revenue report that was submitted by Diamond Parking is provided with this submittal as Exhibit C. The chairperson of the Committee was provided a copy of this submittal and another copy was made available for public review at the Ala Wai Small Boat Harbor on August 7, 2009.

The existing Revocable Permit issued to Diamond Parking LLC expires on October 31, 2009. Lacking feedback from the Committee, the division has independently identified several issues based on comments received from the community and staff. The concerns relate to enforcement and abuse of the free public parking area and inadequate infrastructure for the paid public parking area:

- 1) DOBOR has randomly assigned staff to monitor the free public parking area during early morning hours and inform people parking in those stalls that they are reserved for harbor and ocean users. This is very time consuming and DOBOR does not have the staff to maintain a continuous presence. The division recommends that the parking vendor assist with enforcement by providing a part-time presence to inform the public that the parking area is for harbor and ocean recreation use and that individuals parking and going to work are to use the paid parking area. Also, DOBOR recommends that the parking vendor have a part-time presence during the night to ensure that vehicles do not remain in the closed areas that are subject to towing and to provide some presence to deter drinking, loud parties and other undesirable behavior in the parking area adjacent to the harbor.
- 2) Because of the chronic problem of people working in Waikiki using the free parking areas, DOBOR recommends that a six-hour time limit be implemented for these stalls. This will provide sufficient time for people to engage in harbor or ocean recreation activities, yet discourage people from parking and going to work because they will need to return to relocate their vehicle after six hours. The selected parking vendor will assist with enforcing this time limit. Policies and procedures are already in place to accommodate boaters who plan to take extended voyages exceeding the allowable 6-hour period.

3) DOBOR has received complaints that there is not enough parking pay stations currently installed. DOBOR will require that more pay stations be spread throughout the harbor and that the type of pay station utilized not require the individual to return to place a decal on the vehicle. The pay station will also be able to accept credit cards for payment and may be activated from remote locations via telephone.

As presently being performed by the existing Permittee, the selected operator would assume the full responsibility of issuing all parking permits. The Operator must meet the minimum parking equipment criteria set forth in the selected method of public solicitation, and shall be responsible for funding and installing all equipment used to manage the parking facility and its operations. In addition, the Permittee must provide complete and accurate revenue accounting on a monthly basis. Staff believes that the parking agreement will likely be in the form of a concession and be for an initial term of five (5) years and be renewable at the option of the State for an additional five (5) years. Areas that would fall under the agreement are shown in Exhibit D.

The minimum monthly fixed rent shall not be less than fifteen thousand dollars (\$15,000.00) or the bid rent as set forth in the successful bidder's proposal, whichever is greater. The monthly gross percentage rental shall be Eighty Percent (80%) of the monthly gross receipts derived from the operation of the AWSBH parking facilities or the minimum fixed rent, whichever is greater. Selection of the contractor shall be based on the fixed monthly rent.

The minimum rental shall be paid monthly in advance, prior to the first of each month. The Monthly Gross Percentage Rental in excess of the minimum monthly rental of the previous month shall be paid to the State within twenty (20) days after the close of that month. "Gross" means all revenues collected prior to the payment of any taxes or other expenses.

In August of 2008, the Board directed DOBOR to charge \$.25 per hour in the paid parking areas (\$.40 for metered stalls remained unchanged) while the current Revocable Permit is in place and study the feasibility of the \$.25 parking fee.

Based on the gross revenue reports provided by Diamond Parking, LLC, (see Exhibit C), it is clear that these parking fees do not provide sufficient return on the property for anything other than minimal maintenance at any DOBOR facility. Also, DOBOR is requiring that the parking vendor have an increased presence at the harbor which will create additional expenses.

The purpose of hiring a parking vendor is to assist DOBOR with managing parking and generating additional revenue that could be used for harbor improvements and to enhance recreational opportunities. The average monthly revenue based on the \$.25 parking fee (as shown from the last eight months) is insufficient to cover the costs of the increased presence within the harbor or initiate any substantial infrastructure improvement projects.

Also, the revenue for the current Permittee can hardly justify a commercial vendor's investment in infrastructure improvements for the future, even if over the course of a long-term agreement. In this way, restricting the fee for parking to \$.25 per hour is expected to

affect the quantity and quality of bids DOBOR hopes to receive for the long-term management of the AWSBH parking concession.

DOBOR, like each and every State agency, is obligated to make best use of the properties it oversees and believes that desirable improvements to AWSBH and other DOBOR-managed recreational areas can be made if the parking fee is increased. Already mentioned is the increased presence and heightened security at AWSBH, which would reduce the need for enforcement. Another benefit would be installation of state-of-the-art pay stations featuring all the modern conveniences that technology can provide to meet the needs of AWSBH parking users. The added revenue would also help DOBOR to finally get ahead on maintaining and improving the look and feel of our harbor areas and attracting viable commercial operations to occupy available fast lands.

For these reasons, DOBOR recommends that the parking rate be set at \$1.00 per hour for the paid parking area, commensurate with the rate charged for parking at the Honolulu Zoo by the City and County of Honolulu. At a minimum, the fee should be commensurate with the new public parking fee on the streets of Waikiki which is \$0.50 per hour.

Kailua –Kona Pier

The Kailua-Kona Pier on the island of Hawaii is very active with commercial operations, recreational activities, launch ramp access, as well as cruise-ship tendering activities. In addition, the pier is heavily used by homeless individuals and many people with dogs who leave feces and trash in the area. DOBOR does not have enough staff to provide a full-time presence to manage the site and recommends offering a public solicitation for a parking agreement (such as a concession) for the management of vehicle parking on the pier. Included in the contract will be the requirements that the contractor open and close the entrance gate each day to ensure reliable access to the public boat ramp, provide some security and presence to deter undesirable behavior, manage all paid and public parking, issue parking permits, and provide infrastructure upgrades. With regards to parking fees, DOBOR will base the fee on the cost of managing the pier taking into account existing public parking fees in the surrounding area.

- h. Delegation of Authority to the Chairperson to Select the Appropriate Processes to Offering and Disposing of a Long-term Agreement for the Operation of the Heeia Kea Small Boat Harbor Fuel Dock, Convenience Store, and Snack Shop for DOBOR's Income Production, whether by Lease, Concession or other agreement as allowed by law.**

Heeia Kea Fuel Dock

DOBOR requests that the Board delegate authority to the Chairperson to cancel (at the appropriate time as determined by the Chairperson) Revocable Permit BO-07-31, issued to the Deli Corporation located at the Heeia Kea Small Boat Harbor, and is seeking the Board's general approval to issue contracts, concessions, leases and other agreements as allowed by law on lands, including submerged lands under DOBOR's management jurisdiction for DOBOR's income production purposes. To provide the Department with flexibility, staff requests that the Board delegate to the Chairperson the authority to: (a) select the appropriate

processes for offering and disposing of a long-term agreement for the operation of the Heeia Kea Small Boat Harbor Fuel Dock, Convenience Store and Snack Shop for DOBOR's income production, whether by lease, concession or other agreement as allowed by law; and (b) determine the terms and conditions of each agreement, provided however, all processes selected and terms and conditions in the agreements shall comply with law, such as Chapters 102, 171, or 200 of the Hawaii Revised Statutes.

The Chairperson shall determine the appropriate term of the agreement which term shall not exceed the maximum allowed by law. The parcels and the easement shall be used for the following purposes: Parcel 1 for petroleum storage tanks and facilities and a waste oil containment system; Parcel 2 for dockside fueling operations and a sewage pump-out system; Parcel 3 for operations of a convenience store, ship chandlery, over the counter snack bar and ice house; and the non-exclusive easement for subsurface pipelines for the transmission of petroleum products only and as a right-of-way for the installation, repair, maintenance and replacement of said subsurface pipelines.

LOCATION AND AREA:

Heeia Small Boat Harbor, Island of Oahu,
TMK No. (1) 4-6-006: Por., being a portion of Governor's Executive Order No.2643 containing an area of approximately 5,287 square feet of fast land.

General Description of the Property:

The present parcels of land and a nonexclusive pipeline easement covered by the lease, generally situated at the mole located at Heeia-Kea Boat Harbor, Heeia, Koolaupoko, Oahu, Hawaii, are generally described as follows:

Parcel 1: Containing an approximate area of 1,632 square feet,

Parcel 2: Containing an approximate area of 1,710 square feet,

Parcel 3: Containing an approximate area of 1,945 square feet,

Easement: A common, non-exclusive easement, 6 feet wide, for utilities, subsurface pipelines, together with a right-of-way for the installation, repair, maintenance and replacement thereof. The land affected by the easement is situated between Parcels 1 and 2 described above.

At this time a survey is being completed and the easement and parcels may need to be adjusted with some reconfiguration before the new lease or other agreement is finalized. Please see general location of Parcels 1-3 and Non Exclusive Utility easement in EXHIBIT E.

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES __ NO X

DOBOR RECOMMENDATION:

Requests the Board:

1. Preliminarily approve amendments to selected portions of DOBOR's Hawaii Administrative Rules, Parts I, II, and III, more particularly detailed in Exhibits A and B attached hereto, and delegation of authority to the Chairperson to appoint staff to be hearing officers to conduct public hearings related to the proposed amendments to DOBOR's Hawaii Administrative Rules, Parts I, II, and III;
2. Authorize the issuance of contracts, concessions, leases and other Agreements as allowed by law on lands, including submerged lands under DOBOR's management jurisdiction for income production;
3. Delegate to the Chairperson the authority to: (a) select the appropriate processes for offering and disposing of long-term parking agreements for the generation of parking revenues at the Ala Wai Small Boat Harbor and Kailua-Kona Pier; and (b) determine the terms and conditions of each agreement, provided however, all processes selected and terms and conditions in the agreements shall comply with law, such as Chapters 102, 171 or 200 of the Hawaii Revised Statutes;
4. Delegate to the Chairperson the authority to: (a) select the appropriate processes for offering and disposing of a long-term agreement for the operation of the Heeia Kea Small Boat Harbor Fuel Dock, Convenience Store and Snack Shop for DOBOR's income production, whether by lease, concession or other agreement as allowed by law; and (b) determine the terms and conditions of each agreement, provided however, all processes selected and terms and conditions in the agreements shall comply with law, such as Chapters 102, 171, or 200 of the Hawaii Revised Statutes.
5. Authorize the Chairperson to cancel at the appropriate time as determined by the Chairperson the Revocable Permit, BO-07-31, issued to the Deli Corporation for operation of the fuel dock, convenience store and snack bar concession at Heeia Kea SBH.
6. All legal instruments such as contracts, leases, concessions and other agreements, and public solicitation documents shall be subject to the following:
 - a. Review and approval by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.