State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

December 9, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

RECOMMEND THE BOARD APPROVE THE ISSUANCE OF COMMERCIAL USE PERMITS ACCORDING TO THE PROVISIONS OF §13-231-50 to §13-231-70 FOR COMMERCIAL CATAMARAN ACTIVITIES TAKING PLACE ON WAIKIKI BEACH AND NEAR SHORE WATERS TO THE FOLLOWING OPERATORS: WAIKIKI CRUISES, WELAKAHAO CATAMARAN, INC., KING PARSONS ENTERPRISES, WOODBRIDGE, INC., KEPOIKAI, LTD., ISLAND BEACH ACTIVITIES, INC., AND ANELA KAI CATAMARAN, INC.

REMARKS:

At the Board of Land and Natural Resources (Board) meeting on August 12, 2011, Item J-2, the Division of Boating and Ocean Recreation (DOBOR) recommended that the Board authorize the issuance of commercial use permits to the seven Waikiki Catamaran Operators that currently have exclusive use of Waikiki Beach for the embarking and disembarking of passengers and conducting commercial catamaran operations. DOBOR also recommended that the commercial fee should be either $200 or 3% of gross per month, whichever is greater. This is the same fee that all other commercial operators currently pay for commercial vessel activities.

Testimony was received from representatives of the Waikiki Catamaran Operators as well as their attorney, Cynthia Farias. The issues that were brought up were that there was concern whether proper notice was given to the Waikiki Catamaran Operators when the administrative rules were amended in 2003. The Waikiki Catamaran Operators were against being issued a commercial use permit and recommended that they continue to be issued a registration for the vessel and business. They were also against paying the commercial fee of $200 or 3% of gross per month, whichever is greater, but did agree to pay a higher registration fee.

During the public discussion, it was mentioned that certain vessels were paying as much as 6% in commercial fees at Kewalo Basin and that an additional fee would severely impact their business. Also, there was discussion as to whether it would be feasible to dedicate slips to the Waikiki Catamaran operators in the Ala Wai small boat harbor.

Due to the testimony received and the concerns raised regarding Hawaii Revised Statutes (HRS), §91-3, Procedure for adoption, amendment, or repeal of rules, the Board deferred this item and directed DOBOR to investigate and analyze the feasibility of dedicating slips for the exclusive use of the commercial catamaran operators at the Ala Wai small boat harbor and meet with the

Waikiki Catamaran Operators to discuss alternatives to the issuance of commercial use permits and the commercial use fee of $200 or 3% of gross per month, whichever is greater.

Subsequent to the August 12, 2011 Board meeting, DOBOR researched and analyzed the various issues and met with the Waikiki Catamaran Operators, with their attorney, on September 22, 2011. It was agreed that they would submit a proposal and on October 13, 2011 they submitted their proposal that is attached as Exhibit A.

Upon review and consideration of the various issues and the proposal submitted by the Waikiki Catamaran Operators, DOBOR offers the following comments and recommendations:

HRS, §91-3, Procedure for Adoption, Amendment, or Repeal of rules

HRS, §91-3(e)(3), states in part, "Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to section 91-7, that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule.

DOBOR followed the administrative procedures for the amendment of rules and Hawaii Administrative Rule, §13-251-76 that pertains to Waikiki and Kaanapali Beach and near shore waters, became effective on June 16, 2003. Any challenge to this rule is forever barred according to statute because it has been over eight years since the adoption of the rule.

Dedicated Slips for Waikiki Catamaran Operators at Ala Wai Small Boat Harbor

We are currently finalizing the design for the 500 row in the Ala Wai small boat harbor. The new docks will no longer be fixed but floating and slips are being designed to accommodate multihull vessels. Currently, there are approximately 35 people on the waitlist for multihull slips and the first person on the list has been waiting for over 7 years. In order to dedicate slips to the Waikiki Catamaran Operators, we will need to engage in rule making to give us the authority to bypass the waitlist. We do not feel that this is fair to dedicate slips to the Waikiki Catamaran Operators when there is a waitlist. Also, there are other areas in the harbor where the catamarans can moor, for example, the fuel dock and haul-out areas. Finally, the Waikiki Catamaran Operators did not request exclusive mooring as part of their proposal. Should they be able to operate from the Ala Wai small boat harbor, they will be required to pay the commercial use fee which is $200 or 3% of gross per month, whichever is greater.

Commercial Use Permit vs. Equipment Registration

Currently, the Waikiki Catamaran Operators are the only commercial vessel operators that are only required to register their commercial vessel each year. All other commercial vessel operators are issued commercial use permits. The only guideline for the issuance of an

equipment registration is that a $5.00 application fee is paid along with $3.50 for the equipment decal. They also provide a copy of their insurance and certification of inspection for the vessel.

Issuing a commercial use permit according to HAR §13-231-50 to §13-231-70 will set the guidelines for what is expected of a commercial operator. Commercial operators are required to submit statements of monthly gross receipts, tax returns, insurance, be in compliance with DCCA, pay commercial fees as well as a transfer fee should the company be sold. DOBOR recommends that a commercial use permit be issued instead of an equipment registration.

Commercial Fees

HAR, §13-231-50, states, "No regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public." We are all in agreement that the current fee of $8.50 that is paid by the Waikiki Catamaran Operators does not meet the intent of the law. The current commercial fee of $200 or 3% of gross per month, whichever is greater, is the standard commercial fee paid by all commercial vessel operators to the department in the state except the Waikiki Catamaran Operators. This includes surf schools, kayak operators, jet ski operators, parasail operators, etc. Should the commercial fee be amended for the Waikiki Catamaran Operators, then we expect other commercial operators to request a reduction in their fees. We feel that the current commercial fee should apply to the Waikiki Catamaran Operators but will defer to the Board whether to accept their proposal of $60 per seat per year.

RECOMMENDATIONS:

That the Board:

1. Approve the issuance of commercial use permits for catamaran operations in Waikiki ocean waters, in conformance with the above discussion.

2. Determine whether the commercial use fee should be $200 or 3% of gross, whichever is greater or $60 per person, per passenger capacity, as indicated on the vessels Certificate of Inspection.

Respectfully submitted,

Edward R. Underwood
Administrator

Attachment: Exhibit A

Recommend the Board Approve the Issuance of
Commercial Use Permits According to the Provisions of
§13-231-50 to §13-231-70 for Commercial Catamaran Activities
Taking Place on Waikiki Beach and Near Shore Waters to the
Following Operators: Waikiki Cruises, Welakahao Catamaran, Inc.,
King Parsons Enterprises, Woodbridge, Inc., Kepoikai, Ltd.,
Island Beach Activities, Inc., And Anela Kai Catamaran, Inc.

December 9, 2011

Item J-1

APPROVED FOR SUBMITTAL

William J. Aila, Jr.
Chairperson and Member

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KELLY WALKER

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND EMAIL

October 13, 2011

Edward R. Underwood
Division of Boating and Ocean Recreation
333 Queen Street, Suite 300
Honolulu, Hawaii 96813

Re: Waikiki Catamarans

Dear Mr. Underwood:

This letter is written on behalf of the Waikiki Catamaran Owners Association ("Association"). The Association would like to thank you, Meghan Statts and Rebecca Alakai for meeting with us on September 22, 2011, and for your consideration in listening to the Association's concerns. With your help and input, we are confident we can arrive at an arrangement which is beneficial for the State, the Association and our visitors who use and enjoy Waikiki beach and waters.

Following the meeting, the Association got together to discuss a proposal for increasing the registration fee. The Association considered a number of different proposals and methodologies. In the end, the Association agreed to propose an increase in the registration fee to $60.00 per seat, per year. The number of seats would be based upon the passenger capacity set forth in the respective United States Coast Guard Certificate of Inspection for each vessel. Currently, the seven (7) catamarans operating in Waikiki have a total of two hundred eight (208) seats. Under this proposal, the State would be entitled to total annual revenue of $12,480.00 from registration fees. This would be an increase of $12,420.50 over the current registration fee revenue. The registration fee would be in lieu of commercial use permits, which would not be required of the catamarans.

We believe this proposal is eminently reasonable and provides the State with as much revenue as possible while preserving the ability of our catamarans to continue operating in Waikiki. In arriving at this proposal we looked at our operations and compared them to other beach concessions. We determined that a seat on a catamaran has similar gross revenue potential

EXHIBIT A

to that of a surfboard rental. A catamaran operator offering five (5) trips per day at $20.00 per seat will earn about the same, per seat, as a surfboard business renting at $10.00 per hour on an average ten (10) hour day.

The State charges beach concessions $2.20 to obtain an ORMA sticker for each of their rental surfboards. Based on gross revenue potential comparable to that of surfboard rentals, it would be fair and reasonable for the State to charge catamaran operators a registration fee of $2.20 per seat. Gross revenue, however, is not the only consideration. There are significant differences between catamaran rides and surfboard rentals in terms of operating costs. Fifty (50) longboards, at an average price of $500.00 each, cost $25,000. A 49-passenger catamaran costs roughly twenty (20) times that amount to construct. In addition, the operating and maintenance costs for catamarans, which are regulated by the United States Coast Guard, far exceed the cost of maintaining surfboards. The higher construction/purchase price and maintenance costs associated with catamarans result in significantly lower profits. Thus, an argument could be made that catamarans should be charged less than the $2.20 fee charged for surfboards.

As you know, the Waikiki catamarans play a unique and important role in Waikiki waters. Not only are the catamarans an integral part of the mystique and image of Waikiki, they keep watch over the safety of persons in the water and on smaller craft, and often serve as first responders helping those in need. Given the unique position of the Waikiki catamarans, and in light of the language of Act 197 which we believe supports the position that a registration alone is sufficient to operate on Waikiki waters, allowing the catamarans to continue under the registration system will be legally sound. We further believe that the $60.00 per seat registration fee which we have proposed is very reasonable when compared to the charges levied on other beach concessions.

Please contact us if you have any questions or concerns. We look forward to your response and thank you again for your consideration.

Very truly yours,

Michael J. Nakano
on behalf of Cynthia Farias

MJN/kmw
cc: Waikiki Catamaran Association