

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 10, 2008

Leiopapa a Kamehameha Building – State Office Tower

Conference Room 1403

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:36 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Sharon Pang
- Michael Yee
- Peter Yukimura
- Donald Dymond
- Richard Schnitzler
- Charles Au
- Bruce Bucky

ABSENT MEMBERS:

- Dorvin Leis

STAFF: DBEDT Office of the Attorney General
Dori Palcovich Margaret Ahn
Steve Bretschneider
Ilene Deutsch

GUESTS:

Michael Sheehan, President, Hanalei River, Inc., Hanalei River Holdings, Hanalei-Kalihiwai River Fisheries, and Bail Hai Tours
Richard Wilson, Attorney
Edward Underwood, Administrator, Division of Boating & Ocean Recreation (DOBOR), Department of Land and Natural Resources (DLNR)
Clifford Inn, Boating Safety Education Program Specialist, DOBOR, DLNR
Francis Oishi, Program Manager, Fisheries and Resources Enhancement, Aquatic Resources Division, DLNR
Gilbert Kahele, Paa Pono
Sandra Joy Eastlack, Program Specialist, Adult and Community Care Services Branch, Department of Human Resources (DHS)
Anna Hirai, Assistant Administrator, Liquor Commission, City and County of Honolulu
Gary Ruby, Analyst, Division of Financial Institutions, Department of Commerce and Consumer Affairs (DCCA)
Jay April, President & Chief Executive Officer, Akaku, Maui Community Television
Melissa Ling-Ing, Member Common Ground Hawaii
Mark Meyer, Concerned Citizen
Bruce Middleton, Chair, Ala Wai Marina Community Service Association
David Napoleon, Member Common Ground Hawaii
Ruth Yamaguchi, Assistant Administrator, Hawaii State Procurement Office, Department of Accounting and General Services
Sharon Schneider, Member Common Ground Hawaii
Clyde Sonobe, Administrator, Cable Television Division, DCCA
Lauren Wong, Staff Attorney, Cable Television Division, DCCA
Gerry Silva, Chief Operating Officer, Olelo Community Television
Jeff Garland, Secretary, Community Television Producers Association
Stephen Miyamoto, Engineer, Hawaii Community Development Authority
Reg White, Vice President, Seabird Charters
Tim Lyons, Executive Director, Hawaii Business League
Janet Mandrell, Makai Society
Noa Napoleon, Member, Common Ground Hawaii
Zelei Abordo, Concerned Citizen
Asami Miyazana, University of Hawaii Law School & Surf Club
Jeff Woodland, Administrator, Social Services Division, Department of Human Services (DHS)
Robert Ng, Concerned Citizen
Bill Wynhoff, Deputy Attorney, Department of the Attorney General

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the November 14, 2007 Board meeting were approved as presented.

III. OLD BUSINESS

- A. Review and discussion of post public hearing statement of HAR Chapter 13-233, "Hawaii's Small Boat Harbors" (DLNR) – Mr. Edward Underwood, Administrator at the Division of Boating and Ocean Recreation (DOBOR) of the Department of Land and Natural Resources (DLNR), reported that 190 people attended the public hearing and 83 testified. Major concerns included public access to the beaches, fees, launch ramps and reduction in allowed parking (time from 72 to 24 hours). Launch ramps are primarily used for trailers and DLNR does not want to set aside too many spaces for vehicles. Boat owners can park and request annual passes but family, friends, and crew need parking passes which can be extended, per request, to the Harbormaster. Mr. Yee spoke of a concern regarding whether or not the public was given ample notice to the hearings and Mr. Underwood stated that according to law, there had been ample public notice in the local newspaper.

Members of Common Ground Hawaii and the Ala Wai Marina Community Association testified in opposition to the proposed rules and stated that the community response is overwhelmingly negative in regards to this proposal. It was stated that the proposal is an aggregation of present rules which ultimately gives DOBOR total power in regards to parking. Concerns were made regarding whether notification of public hearings was provided to the small businesses in the area. Mr. Bruce Middleton suggested that DOBOR be required to consult with all user groups and come up with a new package that meets all the requirements of all the users in the harbors. Ms. Janet Mandrell of the Makai Society testified that responses from neighbor islands were negative in regards to this proposal.

Chair Woods indicated that this Board has not heard from the many small businesses that are likely to be impacted by these rules. As the members are unaware of the business impact she was inclined to defer this recommendation until the members heard from small businesses. After much discussion, Mr. Au recommended that the proposed rules proceed to the Governor's Office for adoption and Mr. Yee added an amendment to the recommendation that a notation to the Governor explain that the Board also has some concerns regarding the impact of the small business entities that have not approached this Board; seven members agreed and one opposed. Mr. Underwood stated that the rules will be presented to the Board of Land and Natural Resources at the end of January 2008.

- B. Review and discussion of HAR Chapter 15-20, "Relating to Improvement District 11" (DBEDT/HCDA) – Mr. Stephen Miyamoto, Project Engineer at Hawaii Community Development Authority (HCDA), stated that public hearing was conducted on November 7, 2007, and subsequently at HCDA's regular board meeting on December 5, 2007, where the repeal of the subject rules were approved. This Subchapter is being repealed because the rule is no longer necessary as a result of the cancellation of ID-11 project by HCDA. Chair Woods suggested that should these rules be re-introduced, that HCDA consider tax incentives for the small businesses rather than tax assessments. With Second Vice Chair Yee recusing himself, Mr. Schnitzler recommended that the established rules proceed to the Governor for adoption of the repeal; the remaining Board members which constituted a quorum, agreed.
- C. Follow-up on small business request from Michael Sheehan, Sr., on Hanalei River Holdings, et al., dated October 14, 2007 – This item is deferred until the next meeting or until such time that a formal petition is filed with DLNR.

IV. NEW BUSINESS

- A. Review and discussion of HAR Chapter 3-122, "Source Selection and Contract Information" (DAGS) – Ms. Ruth Yamaguchi, Assistant Administrator at the State Procurement Office in the Department of Accounting and General Services explained that these "interim" rules impact all state and county agencies in regards to how goods are formally procured. The purpose of this request is to have these 18-month rules made permanent pursuant to the requirements of Administrative Directive 99-02, regarding the adoption of administrative rules. Vice Chair Pang indicated that there appeared to be no small business impact. Mr. Au recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.

B. Review and discussion of HAR Chapter 16-131, “Relating to the Designation of Access Organizations” (DCCA) – Chair Woods explained that these rules involve public access television and disclosed that she was the Chairperson at Akaku Maui Community Television for three years approximately five years ago. Ms. Ahn stated that because Chair Woods is no longer involved with this organization and was not compensated, there is no conflict of interest. Chair Woods mentioned that there have been long, ongoing issues between the Department of Commerce and Consumer Affairs (DCCA) and Access Television. Mr. Clyde Sonobe, Cable Administrator with DCCA, summarized the rule proposal which adds a new subchapter 16 that basically states that all contracts DCCA enters into with PEG (Public, Educational and Government) organizations; comply with the State Procurement Code. Mr. Sonobe then went into the history and the reason for these proposals which dated back to late 2005. He also discussed the pending three lawsuits by Akaku Maui Community Television against DCCA regarding the RFP (request for proposal).

Three individuals testified, Mr. Jay April, President and Chief Executive Officer of Maui Akaku Community Television, Mr. Jeff Garland, Secretary of the Community Television Producers Association, and Mr. Gerry Silva, Chief Operating Officer of Olelo Community Television. Mr. April explained the history and background of the pending lawsuits. He is opposed to the proposed rules and requested that this Board not recommend that they go to public hearing. Mr. Garland expressed his opposition to the proposed rules also, claiming violations against the first and fourteenth amendments. He provided the members with the background of Olelo Community Television. Mr. Gerry Silva, Chief Operating Officer of Olelo Community Television, testified in favor of the proposed rules. He suggested that should this Board determine that these rules be deferred, it would be prudent for the members to read the RFP as well as the protests which are posted on Olelo’s website. Much discussion ensued regarding the proposed rules, however, this Board’s purview does not include reviewing rules that impact non-profit businesses and these rules would virtually impact only non-profit businesses. Even though these rules do not impact for-profit businesses, the impact may spill over into profit companies. It was suggested that public hearing be held on every island. Vice Chair Pang recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.

C. Review and discussion of HAR Chapter 16-51, “Fees” (DCCA) – Mr. Gary Ruby, Analyst from the Division of Financial Institutions at the Department of Commerce and Consumer Affairs explained that this proposal relates to State agency fees and to the repeal of two sections of the rules. The repeal is necessary because the rules have been superseded by subsequent legislation that renders the rules obsolete. He described the two sections to be repealed and explained that there is no impact on small business. Vice Chair Pang recommended that these rules proceed to public hearing; the Board unanimously agreed.

D. Review and discussion of HAR Chapter 16-53, “Fees Relating to Boards and Commissions” (DCCA) – Chair Woods noted that a representative from DCCA was unable to attend this meeting but explained that the proposed rule amendments relate to the reduction in fees, which benefit small business. Ms. Pang recommended the proposed rules proceed to public hearing; the Board unanimously agreed.

E. Review and discussion of the repeal of HAR Chapter 17-1454 and establishment of HAR Chapter 17-1454.1, “Regulation of Home and Community-Based Case Management Agencies and Community Care Foster Family Homes” (DHS) – Ms. Sandra Joy Eastlack, Program Specialist from the Adult and Community Care Services Branch at the Department of Human Services, explained that this proposal is to repeal the existing chapter and establish a new chapter, which is based substantially on the repealed chapter. The new chapter will continue with the Agency’s regulatory oversight of Home and Community-Based Case Management Agencies and Community Care Foster Family Homes established under the repealed chapter. It will also incorporate format changes to make the rules clearer, including individual subchapters that establish requirements specific licensure and certification. Additional provisions and other changes have been made to strengthen regulatory requirements to ensure service quality and protection for consumers and to establish requirements for homes to serve three clients, as allowed by Act 270, SLH 2006. After much discussion, Vice Chair Pang recommended that the proposed rule amendments proceed to public hearing; the Board unanimously agreed.

F. Review and discussion of proposed amendments to Rules of the Liquor Commission of the City and County of Honolulu – Ms. Anna Hirai, Assistant Administrator from the Liquor Commission of the City and County of Honolulu, explained that the proposed rule amendments represent twenty rule amendments that was developed in response to three very specific events: 1) the creation of the new condominium liquor license class during the 2007 legislation, 2) the fixing of the formula of the licensing fees in section 3-81-

17.51, and 3) a more comprehensive rule amendment that will give the Liquor Commission more flexibility. She further explained that the proposed rule changes are considered to be “housekeeping in nature” and discussed the various proposals. She noted that the changes that are anticipated to be the most controversial include the largest grouping of changes (fourteen amendments) that relate to the new condominium hotel liquor license class. The second grouping includes an expansion of the Commission’s regulatory flexibility. These will provide the Commission with regulatory responsiveness to individual situations pending the outcome of the 2008 legislative session which the Commission believes will also trigger a more comprehensive rule amendment process. The final grouping, which Ms. Hirai indicated always has the potential for a great deal of feedback, are the fee-related rule amendments where two changes are proposed. After a period of questions and answers, Mr. Dymond recommended that the proposed rule amendments proceed to public hearing and that a letter of notification regarding the public hearing be sent to all the licensees with notations as to specific impacts such as the license renewal fee adjustments; the Board unanimously agreed.

- G. Review and discussion of HAR Chapter 13-60.4, “Miloli’i Subsistence Fishing Area, Hawaii” (DLNR) – Mr. Francis Oishi, Program Manager of the Fisheries and Resources Enhancement Department at the Aquatic Resources Division of DLNR explained that the proposed new chapter would designate the nearshore waters of Miloli’i for subsistence fishing only in accordance with Section 188-22.7, Hawaii Revised Statutes (Act 232, 2005 Legislature). Mr. Oishi further explained that the limits on harvesting are viewed as being consistent with Hawaiian practices and sustainable.

Testifier, Mr. Gilbert Kahele, indicated that he has been working with DLNR representatives, the community, and the legislature relating to this proposed rule in regards to keeping the ocean and its resources safe. He has worked with Mr. Oishi for the past two years and believes that the amendments are good for the State of Hawaii and requested that this Board assist in protecting the shoreline and approve the amendments. Upon discussion, Second Vice Chair Yee recommended that the rules proceed to public hearing; the Board unanimously agreed. Mr. Schnitzler advised Mr. Oishi to send a notification letter to the licensees and small businesses that will be impacted by these rules.

V. ANNUAL PLAN – Update on the following Projects:

- A. Speakers’ Bureau – Nothing was discussed.
- B. Agency Letters / 201M – Nothing was discussed.
- C. Legislative Project – Nothing was discussed.
- D. Regulatory Alert Project – Chair Woods explained that Director Liu is very amenable to the Board’s initiation of its RegAlert project and will pursue its implementation.

VI. REPORT FROM CHAIR AND BOARD MEMBERS - Chair Woods noted that each member has received a copy of this Board’s final annual report.

VII. ANNOUNCEMENTS – Chair Woods announced that Mr. Thomas Smyth, who has worked with this Board since its inception, has retired from service with the State of Hawaii. She expressed to Mr. Smyth her appreciation and wished him well.

VIII. NEXT MEETING: Wednesday, February 20, 2007, No. 1 Capitol Building, 250 South Hotel Street, Conference Room 410.

IX. ADJOURNMENT – Chair Woods adjourned the meeting at 2:47 p.m.