

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 24, 2007

No. 1 Capitol District Building 250 South Hotel Street – Conference Room 436

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:27 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Sharon L. Pang
- Donald Dymond
- Charles Au
- Michael Yee
- George Handgis
- Richard Schnitzler
- Peter Yukimura

ABSENT MEMBERS:

- Dorvin Leis
- Bruce Bucky

STAFF:

DBEDT
Dori Palcovich
Mike Norris

Office of the Attorney General
Margaret Ahn

GUESTS:

Jeri Kahana, Commodities Manager, Commodities Branch, Department of Agriculture
 JoAnne Kushima, Biologist, Aquatic Resources Division, Department of Land and Natural Resources (DLNR)
 Alton Miyasaka, Biologist, Aquatic Resources Division, DLNR
 Clifford Inn, Boating Safety Education Program, Division of Boating and Ocean Recreation, DLNR
 Lawrence Reifurth, Deputy Director, Department of Commerce and Consumer Affairs (DCCA)
 Dennis Ling, Administrator, Strategic Marketing and Support Division, Department of Business, Economic Development and Tourism (DBEDT)
 Francis Oishi, Program Manager, Aquatic Resources Division, DLNR
 Karen Hong, Account Executive, Finance Insurance, Ltd.
 Christen Mitchell, Planner, Division of Forestry and Wildlife, DLNR

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the November 22, 2006 Board meeting were approved as presented.

III. OLD BUSINESS

- A. Review and discussion of post public hearing statement of HAR Chapter 13-209, "Rules Regulating Activities Within Natural Area Reserves" (DLNR) – Ms. Christen Mitchell, Planner at DLNR's Division of Forestry and Wildlife, explained that public hearings were simultaneously held on June 28, 2006 on the islands of Kauai, Oahu, Maui, and Hawaii. Overall, the hearings proved successful as more than 200 people attended with several comments made at each hearing. For most of the issues raised, the recommendation by DLNR was to make no change to the proposed rule amendment, however, for a few of the issues raised, the agency made appropriate changes to the final rules. Upon hearing from Ms. Mitchell, Mr. Handgis recommended that the proposed rules proceed to the Governor for adoption; the Board unanimously concurred.
- B. Review and discussion of post public hearing statement of HAR Chapter 13-65, "Waialua Reservoir Public Fishing Area, Kauai" (DLNR) – Mr. Francis Oishi, Program Manager at DLNR's Aquatic Resources Division, indicated that the public hearing was held on October 12, 2006. One person attended the hearing but did not testify, however, written testimony received during and after the public hearing supported the proposed rules. Mr. Yukimura recommended that the proposed rules proceed to the Governor for adoption; the Board unanimously agreed.

- C. Recommendation of the September 6, 2006 request from Karen Hong, Account Executive, Finance Insurance, Ltd., relating to SB 1843 SD 1, HD2, CD 1, "Relating to Procurement" – Chair Woods explained that after much research and discussion with the State's Attorney General's Office, it was determined that, given that this issue relates to contracts, it is not within this Board's purview, as the Board deals with administrative rules. Further, in speaking with representatives from the Department of Transportation, it was conveyed that the provision that requires contracts to defend the government was always in the contract and if the contractor did not feel comfortable with it, they did not have to sign it. Ms. Hong, Account Executive with Finance Insurance Ltd., asked if the Board would be willing to support this issue through the legislature. Two bills, House Bill 17 and House Bill 963, both entitled "Relating to Procurement," prohibit provisions in certain governmental procurement contracts that require contracts to defend the governmental body, and to allow the contracts to require a contractor to indemnify and hold harmless the governmental body. After much discussion, it was conveyed that even though it is a "contract" issue per se, the members agreed that this Board should be more proactive and support small businesses regarding this initiative. Mr. Au recommended that the Board provide written testimony in support of the proposed procurement bills, in both the House and the Senate; Mr. Yee abstained and the remaining members agreed. In addition, Mr. Dymond recommended that the Board submit correspondence to the Governor explaining that the Board supports the position of the procurement bills; Mr. Yee abstained and the remaining members agreed.
- D. Discussion and approval of prospective board members – Mr. Yukimura introduced Mr. Mark Oyama as a prospective Board member, stating that he is well known in Kauai as the "caterer of the stars." Mr. Oyama has been a small business owner for many years and an active participant in Kauai's business community. He is an assistant professor and owner/executive chef, specializing in Pacific Rim and continental fine-dining cuisine, and is on the Workforce Investment Board. Vice Chair Pang recommended that Mr. Oyama be nominated by this Board and submitted to the Governor for approval; the Board unanimously agreed. The Board also reviewed the application of Mr. Wade Lord, Vice President of Development and Consulting Services at Richard Ellis, Hawaii, Inc., in Lihue, Kauai. Mr. Handgis recommended that because the Board currently has two members in the real estate industry, Mr. Lord's application be kept on file until the Board is in need of another member in the future; the Board unanimously agreed.

IV. NEW BUSINESS

- A. Review and discussion of HAR Chapter 4-60-10, "Minimum Prices in the Hawaii Milk Shed" (DOA) – Ms. Jeri Kahana, Commodities Manager at DOA's Commodities Branch, explained that the proposed amendments will increase the minimum price of class 1 milk paid to the Big Island milk producers to \$29.53 per hundredweight. Retailers would be directly impacted by these amendments as the increase in price plus a profit margin is expected to increase retail costs associated with its compliance. This price was based on two and a half years of collected data utilized to determine the increase. It was noted that the Milk Control Act controls the minimum price paid to the producers by the processors; it does not, however, allow for the control of wholesale and retail prices. Locally produced milk will be provided to the consumers at the cheapest price possible, and so the consumers will be less dependent on imported milk, and the state will be assured of a sustainable dairy industry. Additionally, the dairy farmers will be able to guarantee payment for feed, supplies, and services necessary for the production of milk. Losses by the milk producers averaged 14.2% in 2004, 3.6% in 2005 and for the first six months of 2006, losses were 11.65%, attributed to rising cost in cattle feed, transportation, and other related expenses. Ms. Kahana explained that, as noted in a recent newspaper article, the school lunches are going out to bid and that local companies are no longer provided as a "Hawaiian preference." Mr. Handgis recommended that the proposed amendments proceed to public hearing; the Board unanimously agreed.

Additionally, Ms. Kahana noted that due to the significant impact on small business, DOA is currently having a formal study performed to address quality of milk, the combining the two existing Hawaii milk sheds into one, prices of related supplies, quota and quality of milk, marketing demand, utilization and classifications of milk, and importing. The study is expected to be completed within a few months. Chair Woods suggested that the person performing this study attend a future Board meeting. Mr. Dymond recommended that an investigative task force be created, which will consist of Messrs. Dymond and Handgis and Chair Woods, to meet with the individual performing the study; the Board unanimously agreed.

- B. Review and discussion of HAR Chapter 13-76, "Non-indigenous Aquatic Species" (DLNR) – Mr. Alton Miyasaka and Ms. JoAnne Kushima, Biologists at the Aquatic Resources Division at DLNR, explained

that the rules deal with alien species being introduced to Hawaiian waters through the ballast water holds of ships. All vessels carrying ballast water into Hawaii must have a management plan specific for that vessel. The plan must include procedures on how the ballast water will be exchanged, who is responsible for the various components of the plan, notification to the department prior to the arrival of the vessel into Hawaii, where the vessel originated from, documentation on how often the ballast water is exchanged, identification of any ballast water treatment programs or systems, and other matters relating to the potential for alien aquatic organisms to be present in the ballast tanks of ships entering Hawaii. Mr. Miyasaka stated that because the rule mainly applies to cruise lines, shippers, the Coast Guard, and other state and federal vessels, small business would likely not be impacted. However, since there is the possibility of water fouling from the hauls of vessels that may have organisms growing on them, and because most vessels do not have a good haul maintenance program, ultimately these organisms can be deposited into Hawaiian waters. Upon review, the Board unanimously agreed that the rules, as presented, are not within its purview regarding the impact on small business, but that future rules as they relate to water fouling and its impact on inter-island travel would be.

- C. Discussion of Cigarette Tax and Tobacco Tax Law – The members revisited the cigarette and tobacco tax law that was discussed at the last Board meeting. Mr. Dymond stated that he and a representative from the Attorney General's Office discussed the various documents relating to the law, and it was conveyed that their enforcement is, in essence, a criminal investigation, performed on a draft document with the assumption that a crime has occurred. Ms. Ahn explained that, procedurally, although a consent form to search is asked to be signed, it doesn't have to be because the statute gives the state the right to inspect and examine even without consent, and if there is probable cause to search, then a warrant would be obtained. However, if there is unreasonable conduct or misrepresentation by a state representative, the Attorney General should be made aware of the situation. After much discussion, no action was taken by the members.

V. UPDATE AND OUTCOME OF STRATEGIC PLAN

- A. Update and discussion on the Small Business "Bill of Rights" brochure – Deputy Director Lawrence Reifurth explained DCCA's mission and how it relates to the small business community. He stated that the proposed Bill of Rights brochure was edited by Deputy Attorney Rodney Tam and that if all the noted changes were made, DCCA would be very pleased. The biggest concern is that if the brochure shows there is a "right" and it is not actually a law, it would cause legal concerns. He further suggested that the proposed rights should not specifically address the term "rights" throughout, but should state that there is an "expectation of rights." Much discussion ensued as each member expressed their opinions and concerns with a majority amenable to the idea of a footnote explaining a "right" versus an "expectation of rights." Ms. Ahn indicated that she will work with the Deputy Attorney Tam on the disclaimer language in the brochure. Mr. Dymond will edit the existing brochure and work with Ms. Ahn and Ms. Palcovich.
- B. Discussion and update of strategic planning session in March – Chair Woods updated the members on the upcoming strategic planning session scheduled, and it was unanimously agreed to take place on Oahu on Wednesday, March 7th. Mr. Au offered to hold the event at the Pacific Club and will look into this. Chair Woods mentioned this session is not for a great visionary process in the years to come, but it is for one year. And as we get closer into the session, she asked that each member think about what in their assigned departments need work, and to bring that idea into the planning session.
- C. Discussion of SB 2864, "Making an Appropriation for Regulatory Boards and Commissions" – Chair Woods explained that this bill establishes and makes an appropriation for an administrative assistant position in DBEDT. Senator Espero introduced this Senate bill and Representative Yamashita introduced the House bill, though the latter bill has not yet been heard. Vice Chair Pang recommended that House Bill 1056 be supported; the Board unanimously agreed.

VI. BOARD RULE REQUEST

- A. Recommendation of HAR Chapter 11-186, "Hawaii State Health Planning and Development Agency Certificate of Need" (DOH) – Chair Woods has requested that this Board review these rules. There are currently a few articles in the newspapers regarding this issue, one of which discussed the original appeal from the proposed hospital in Maui. Chair Woods indicated that she had very strong feelings about this issue and these rules and will request that Dr. David Sakamoto be extended an invitation to attend the next Board meeting. It was noted that the last amendments made to these rules was in 1988 but there is also massive business impact to the rules.

VII. REPORT FROM CHAIR AND BOARD MEMBERS – Chair Woods updated the members on the following bills that have been introduced into the legislature:

- House Bill 313 “Relating to Small Business” removes this Board from DBEDT to the Office of the Ombudsman which is part of the legislative body. The Governor’s office has been notified of this bill as it might be a “power play” by the legislators, but it would potentially remove the Governor’s responsibility of this Board to the legislature and it is not funded. It was Ms. Ahn’s impression that permanent commissions, such as this Board, cannot be transferred to the legislature, but allocated only to one of the executive departments; though “temporary” commissions can be transferred. Even so, because it is unclear as to the strategy and purpose behind this bill, Ms. Palcovich has scheduled appointments with several of the legislators that introduced the bill and she and Chair Woods will be meeting with them on Friday, January 26th. After hearing each board member’s opinion, a vote to either support or oppose the bill was not initiated as it was perceived to be “illegal.” and, thus in essence, could not be passed. It would however be discussed with the legislators as a “marketing tool” to assist with other bills, discussed below. After much discussion of the legality of HB 313, Chair Woods recommended that if the bill has a first hearing for the public that the Board is in favor of testimony proposing that the small business defender be transferred to the Ombudsman’s office; seven agreed and one opposed and so the recommendation was carried. Chair Woods also recommended that if the Board hears from the Attorney General’s office that if they will not testify that the Board will; the Board unanimously agreed.
- House Bill 314, “Relating to Small Business,” which re-establishes the office of the small business defender within the legislature represent, defend and provide legal representation to small businesses during proceedings involving civil citations issued by a state or county agency, allow the small business defender to hire attorneys, and appropriate funds for this function. It was noted that no other state provides a small business defender function. After much discussion ensued regarding the history of the small business defender, its specific function, and the potential need for such a function, Mr. Handgis recommended that the Board take a position on House Bill 314; the Board unanimously agreed. Upon discussion, it was noted that it would be difficult for the members not to take a position on this bill. Therefore, Chair Woods recommended that the Board support HB 314; six agreed and two opposed and so the recommendation was carried.
- Senate Bill 188 – “Relating to the Small Business Regulatory Flexibility Act,” which clarifies the wording of the statute that governs this Board and is very similar to what was proposed previously. Chair Woods indicated that the section regarding “Periodic review: evaluation report” changes the statute to state each agency having rules that affect small business shall submit by June 30, 2007 and “every five years thereafter” a list of those rules “adopted in the previous five years” to this board. Mr. Handgis recommended that the change to five years not be supported but remain every two years “of each odd numbered years;” the Board unanimously agreed.

Chair Woods announced that Ms. Palcovich ran into Ms. Dale Evans, President and CEO of Charley’s Taxi who explained that she was very happy with this Board and it managed to do with the issues of Department of Agriculture regarding the Board’s recommendations to begin an open dialogue with the small business community to improve upon the overall communication efforts with the taxi industry regarding ongoing issues, to revisit the administrative rules governing taximeters, and to review and assess the potential tampering with taximeter seals.

VIII. REPORT FROM COMMITTEES – Update from the Marketing Task Force – Mr. Schnitzler explained that three public relations firms were interviewed and though two of the firms stood out, the task force unanimously selected Hastings & Pleadwell to represent this Board in its marketing efforts. Other than presenting a very good presentation, this firm seemed to care about small business and their scope of work presented developed methodically but would last for the long period, and appeared to understand what this Board does. Ms. Kayleen Polichetti, Senior Account Executive and Barbra Pleadwell, co-owner of Hastings & Pleadwell, explained that the first step is to prepare a communications plan for the Board and take an audit of the collateral material the Board is currently utilizing. After this is prepared, a training session will be done to prepare the members to present the Board to the community.

Ms. Pleadwell also explained that the Board should probably focus more on grassroots and public relations strategies so the strategy that the Board should consider taking is expanding on its public image and communication plan. This would be performed through presentations at various small business organizations on all the islands. For the communications strategy, Hastings & Pleadwell will be

interviewing the board members recognizing, though that some of the members would not feel comfortable making presentations in front of organizations about the Board. Some of Hastings & Pleadwell's success stories include Hawaii Module Space and the State Foundation for Culture and the Arts. Chair Woods indicated that Ms. Palcovich will inform them of the monthly meetings, and Ms. Pleadwell indicated that she and Ms. Polichetti will be available to attend the Board's strategic planning session in March and offered to do an exercise with the Board called "Brand or Be Branded," which entails a proactive approach to raising an organization's profile.

- IX. ANNOUNCEMENTS** – Vice Chair Pang mentioned that the nurse aide certification issue that was discussed in August will be coming back to this Board next month. While DOH was instructed to come up with some suggestions as to how the second group of nurses' aides would be able to retain their certifications, Vice Chair explained that this group will apparently lose their certification by the end of the year. Chair Woods suggested that everyone involved in this issue should be extended an invitation to attend the next Board meeting and to discuss the concerns at hand.

Another issue Vice Chair Pang discussed relates to transporters, though she was unsure if transporters were governed by the Department of Transportation or the Public Utilities Commission. She explained that when the health department calls for a pick up to a residence, a taxi, for example, would charge \$4 to drive four blocks whereas a transporter will charge from \$42 to \$75 to drive the same four blocks, allegedly for the mere reason that they are governed by the Department of Health. She furthered noted that there is no fair market price charged for such a service. This will be discussed at a future meeting upon receipt of information from the small businesses.

- X. NEXT MEETING** - Wednesday, February 21, 2007, No. 1 Capitol District Building, Conference Room 410.

- XI. ADJOURNMENT** – Chair Woods adjourned the meeting at 2:05 p.m.