

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

June 20, 2007

No. 1 Capitol District Building – Conference Room 410

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:30 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Lynne Woods
- Sharon L. Pang
- Michael Yee
- Dorvin Leis
- Donald Dymond
- Richard Schnitzler
- Bruce Bucky

**ABSENT MEMBERS:**

- George Handgis
- Charles Au
- Peter Yukimura

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

**GUESTS:**

Laurence K. Lau, Deputy Director, Environmental Health Administration, Department of Health (DOH)  
Kayleen Polichetti, Representative, Hastings & Pleadwell  
Barbra Pleadwell, Owner, Hastings & Pleadwell  
Richard Kuitunen, Asset Manager, Hawaii Community Development Authority (HCDA)  
Bill Foster, Concerned Citizen  
Reg White, Owner and Vice President, Paradise Cruise, Ltd. / Kewalo Ocean Activities (KOA) member  
Anna Fernandez, Remedial Project Manager and Environmental Health Specialist, Office of Hazard Evaluation & Emergency Response (DOH)  
Mike DeRango, President, Inter-island Sport Fishing, KOA member  
Gary Dill, Professional Fisherman, KOA member  
Frank Mento, Vice President of Kahala Catamarans, KOA member  
Mark Hazlett, Private Citizen  
Alton Miyasaka, Biologist, Division of Aquatic Resources, Department of Land and Natural Resources  
Tim Lyons, Executive Director, Hawaii Business League  
Linda L. Smith, Senior Policy Advisor, Governor's Office  
Greg Longnecker, Honolulu Screamer  
Brian Ho, Attorney  
Karl Borgstrom, Executive Director, ABC Hawaii  
Vanessa Stewart, Reporter, KHON-TV  
Alec Wong, Chief, Clean Water Branch, DOH  
Joanna Seto, Section Supervisor, Clean Water Branch, DOH

**WORKING LUNCH AS THE MEETING PROGRESSED**

II. **APPROVAL OF MINUTES:** Minutes of the May 16, 2007 Board meeting were approved as presented. Chair Woods thanked Vice Chair Pang for overseeing the May board meeting.

III. **PUBLIC TESTIMONY** – Chair Wood stated that testimony will be addressed during the respective agenda item.

**IV. DISCUSSION WITH LINDA SMITH, GOVERNOR'S SENIOR POLICY ADVISOR**

A. Administrative Rule Review Process – Ms. Linda Smith, Senior Policy Advisor at the Governor's Office, stated that she appreciated the time to meet with this Board and that Governor Lingle wants to ensure the members that all administrative rules issued by the State are responsive and sensitive to the small business people. She noted that all rules since 2003 have been reviewed and uniformly submitted to

DBEDT and passed onto the SBRRB, with two exceptions, rules that implement a federal law such as Medicare Part D and emergency rules. She further noted that this Board receives copies of the rules before public hearings but not after public hearing because ninety percent of the time no changes have been made. If a rule does change and a second public hearing is required, the rule is again submitted to this Board. She also explained that Ms. Suzanne Ching from the Governor's Policy Office receives legal opinions from the Attorney General's Office if a second public hearing is necessary. Mr. Yee commented that if in this scenario, if the Board does not receive post public hearing statements but the impacted small businesses voiced their concerns at the public hearings, the Board would not have an opportunity to review those concerns. Ms. Smith explained that because all hearings are public, members of this Board could potentially attend the hearings. Ms. Margaret Ahn stated that the statute governing this Board requires that a small business impact statement be provided after public hearing but it does not require a meeting on those rules. It was determined that if such a problem would occur, the Board should notify Ms. Smith. Ms. Ahn explained that the impact statement includes how opinions or comments were solicited from the businesses, summary of those comments, the number of people who attended the public hearing, and what testimony was made. Ms. Smith mentioned that the Governor's Office is currently working on "virtual" public hearings due to convenience improvement in technology.

- B. Signing of SB 188, "Relating to the Small Business Regulatory Flexibility Act" – Ms. Smith indicated that the Governor's Policy Office is currently reviewing this bill and requested the Board's perspective as to why this bill is important; she also mentioned that a provision in the bill requires the Board to inform small businesses to submit complaints to the Office of the Ombudsman when the decision is to uphold a rule. The members conveyed that they had no issues or concerns with Governor Lingle signing off on this bill.

## V. OLD BUSINESS

- A. Discussion of post public hearing statement of HAR 13-75-12.5, "State Waters around Molokai, Special Rules" (DLNR) – Mr. Alton Miyasaka, Biologist at the Division of Aquatic Resources of DLNR, explained that this rule is a special amendment to an existing lay net regulation that was developed through a community-driven process exclusively for the Island of Molokai. The majority of Molokai fishers fish for subsistence with very little commercial lay net fishing due to its inefficiency. Testimony in favor of the rule amendments from the Office of Hawaiian Affairs was distributed to the members. Mr. Miyasaka indicated that the commercial fishing process is the same for all islands and has to go through the regulatory process. However, some of major differences include the length of net statewide which is 125 feet versus 750 feet for Molokai and the length of time to leave the net which is four hours statewide versus twelve hours for Molokai. The Molokai fishing community cares if commercial boats go through their waters but it cannot legally stop them through self-policing. Chair Woods stated that overall the members are supportive of these rules because one size does not fit all and that the rules are an encouraging development to a clear path that should prevent future issues. Mr. Yee recommended that the proposed rules proceed to the Governor for adoption; the Board unanimously agreed.
- B. Discussion and re-review of HAR Chapters 15-211, 15-212, 15-213, and 15-214, "Relating to Rules for Kewalo Basin" (HCDA) – Chair Woods explained that testifiers would speak first with a question and answer period following. Mr. Reg White, owner and vice president of Paradise Cruise, Ltd., explained that Kewalo Basin is small, picturesque and unique to its location and needs to stay small, charming and friendly for the type of clientele it draws. He juxtaposed that HCDA wanted to change the entire image of Kewalo Basin into a mega yacht harbor and could not understand why there was such a big rush to change. He further explained that Hawaii Revised Statute 266 states that because only the Department of Transportation may operate a commercial harbor that this matter has been submitted by HCDA to the Attorney General's office for a formal legal opinion. At a meeting held recently with HCDA, it was indicated that fees would only be raised by twelve percent and that the exact language would be taken out of the rules into the new rules however these revisions have not been done.

Mr. Brian Ho, an attorney representing four companies that operate out of Kewalo Basin including X-Treme Parasail, Diamond Head Parasail and Diamond Head Parasail & Water Sports, believes that it is premature for these rules to be considered or passed for a vote in their current form and questioned whether HCDA has the authority or legal jurisdiction to manage this commercial harbor. He explained that he provided the Attorney General's office with a memo from Reid Nakamura that suggested that HCDA does not have the authority and that the transferability of these slips is a huge issue. He also explained that language in the rules states that if someone is hurt on the Kewalo Basin property, HCDA is not liable unless it owns a hundred percent of the property, which it does not. Mr. Ho requested that this Board not pass the rules in their current form but to encourage HCDA to continue negotiations with the

Kewalo Basin association. It was explained that the formula for calculating the permit premium is the difference between the gross sales price of a vessel and/or business occupying a berth in Kewalo Basin less the appraised value of the vessel and/or business. Commercial boats pay twice the rate on the chart or two percent of monthly gross; the prices are comparable to other commercial harbors operated by municipalities.

Mr. Gary Dill, a commercial fisherman, questioned HCDA's strategic plan for the harbor and explained that HCDA established an advisory task force and sent out sixty tenant surveys to two hundred boat owners with thirteen surveys returned. He noted that parts of the Herringbone Pier have been condemned and there are no vacant slips. A possible problem could occur with the mixed-use designation when there are no commercial boats wanting a slip.

Mr. Frank Mento, vice president of Kahala Catamarans and member of Kewalo Ocean Activities (KOA) stated that significant progress has been made recently with HCDA but the work is not yet finished; his hope is that this Board will recommend that HCDA spend more time to review and modify the rules. Much discussion ensued with Mr. Mento discussing the cancelled A & B proposal, whether the HCDA is fixing up the property to sell to private owners, and the management of the harbor and the lands around it by DOT.

Mr. Mike DeRego, president of Inter-island Sport Fishing operates four charter boats that were started in 1950. He believes that if the proposed rules were to take effect today, the small businesses in Kewalo Basin would not survive due largely to the doubling of the rent charged at the Basin as well as insurance charges; he has requested more time to address these and other issues.

Mr. Bill Foster, who was a former port captain of the Waikiki Yacht Club, explained that he was responsible for the logistics and rule enforcement of the boats, spoke in support of the mixed-use designation for Kewalo Basin, and indicated that he was asked to report on the safety of the harbor surrounding Kewalo Basin. He explained that the occupancy rate of Kewalo Basin at seventy percent is unacceptable and encouraged the Board members to support a mixed-use designation for the harbor. Mr. Mark Hazlett also spoke about the harbor's mixed-use designation and added that the slips at the harbor are in need of repair.

Chair Woods requested that each Board member review the legal opinion of Mr. Reid Nakamura regarding the transfer of the Kewalo Basin property from DOT; the opinion is entitled Overlapping Jurisdiction: the Necessary Separation between Land-Based Jurisdiction (HCDA) and Function-Based Jurisdiction (DOT). Mr. Richard Kuitunen, Asset Manager at HCDA, indicated that he believed that Kewalo Basin which is part of the Makai area was transferred to HCDA by the legislature because it wanted HCDA to take a holistic approach of the entire Makai area. He is awaiting a formal legal opinion from the Attorney General's Office regarding Attorney Nakamura's legal opinion, but there has been informal and inconclusive word that at this point it appears that it is within HCDA's authority for this land to be transferred to HCDA. Overall, much discussion with an extensive question answer period ensued regarding these rules and their impact on the small businesses in Kewalo Basin. Board members encouraged both the KOA members and HCDA to continue to work diligently together in order to resolve the remaining issues. As a result, Mr. Yee recommended that the Board's decision to proceed to public hearing be deferred until the July 18, 2007 meeting in the hopes that the outstanding issues at hand will be resolved by this time period; the Board members unanimously agreed. Chair Woods noted that HCDA would continue to schedule the public hearing.

## **VI. NEW BUSINESS**

- A.** Review and discussion of HAR Chapter 11-55, Water Pollution Control" (DOH) – Mr. Laurence K. Lau, Deputy Director of DOH's Environmental Health Administration, explained that there are three major parts to the rule changes; the rationale for the revisions include both content and technical changes. The rule changes include re-adoption of eleven national pollutant discharge elimination system permits, complying with the Application of Pesticides to Waters of the United States in Compliance with Federal Insecticide, Fungicide, and Rodenticide Act, adopting of regulations to enable the use and distribution of field citations, updating of references and complying with the latest changes of the Hawaii Revised Statutes; Code of Federal Regulations, Title 40; and the Clean Water Act, conforming to the Hawaii Administrative Rules format specified in the Hawaii Administrative Rules Drafting Manual, and revising the rules for clarity, consistency, and corrections of errors and policies. After much discussion, Mr. Yee recommended

that the proposed rules proceed to public hearing and to come back to this Board after public hearing for review; the Board members unanimously concurred.

- B. Review and discussion of draft rules of HAR Chapter 11-452, "Interim Guidelines and Procedures for Decontamination and Cleanup of Illegal Clandestine Laboratory Methamphetamine Manufacturing Sites" (DOH) - Mr. Laurence K. Lau, Deputy Director of DOH's Environmental Health Administration, introduced Ms. Anna Fernandez, Remedial Project Manager and Environmental Health Specialist at the Office of Hazard Evaluation & Emergency Response who provided the members with a presentation. The presentation included the background of Act 170 which relates to the decontamination of illegal drug manufacturing sites and the purpose of the proposed rules, which is to provide procedures and guidelines for emergency and long-term decontamination and cleanup of illegal methamphetamine (meth) manufacturing sites. Ms. Fernandez explained that DOH is responsible for the oversight of the clean-up of illegal meth manufacturing sites which includes pre-clean-up sampling, a formal work plan and post-clean-up sampling. Mr. Yee recommended that the proposed rules proceed to public hearing; the Board members unanimously concurred.
- C. Review and discussion of "Agenda Item Request Form" – The members reviewed this form and after a brief discussion no changes were made. It was recommended and approved unanimously that the Agenda Item Request form be approved as presented.

#### **VII. REPORT FROM HASTINGS & PLEADWELL**

- A. Discuss and review preliminary results of Ward Research, Inc.'s Survey – Ms. Kayleen Polichetti discussed the preliminary results of Ward Research's recent survey that was conducted in regards to this Board. The most notable results were that 70.5 percent of the three hundred companies contacted did know that DBEDT assisted small business, while 20.9 percent were aware of this Board.
- B. Discuss and update and finalizing of the Small Business Bill of Rights brochure – Ms. Kayleen Polichetti indicated that she would have a final draft of this brochure for the Board's July 18<sup>th</sup> annual planning meeting with the final format on legal-sized color paper. Mr. Steve Bretschneider will approach DBEDT's Director Ted Liu for his approval, and once this has been accomplished, the brochure is expected to be placed on DBEDT's website.

#### **VIII. REPORT FROM CHAIR AND BOARD MEMBERS**

Chair Woods requested that in preparation of the planning meeting that each member email Ms. Palcovich one priority that they would like to see this Board achieve for the fiscal 2008 year; Chair Woods also mentioned that the members would be voting on Board officers.

#### **IX. REPORT FROM COMMITTEES** – Nothing was reported.

#### **X. ANNOUNCEMENTS**

Chair Woods announced that this Board's website is now accessible on DBEDT's front website page; she thanked Mr. Bretschneider for his assistance on this.

#### **XI. NEXT MEETING** – Annual Plan - Wednesday, July 18, 2007, No 1 Capitol Building, 250 South Hotel Street, Conference Room 410.

#### **XII. ADJOURNMENT** – Chair Woods adjourned the meeting at 2:55 p.m.