

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 14, 2003

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

CALL TO ORDER: Chair Woods called the meeting to order at 11:20 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Dorvin Leis
- David Rietow
- Denise Walker
- Brian Zinn
- Edward MacDowell

ABSENT MEMBERS:

- Al Inoue
- Phyllis Shea
- Robert Speers, Ph.D.

STAFF:

<u>DBEDT:</u>	<u>Office of the Attorney General</u>
Steve Bretschneider	Linden Joesting
Thomas Smyth	
Dori Palcovich	
Shawn Pelley	

GUESTS: Vince Kanemoto, Deputy Attorney General, Department of the Attorney General
Francis Oishi, Program Manager, Aquatic Resources Division, Department of Land and Natural Resources
Richard Peterson, Esq.
Mark Willman, Owner, Planet Ocean Watersports
Dierdre Mamiya, Administrator, Land Division, Department of Land and Natural Resources

WORKING LUNCH AS THE MEETING PROGRESSED

II. INTRODUCTION OF NEW BOARD MEMBER: Chair Woods welcomed the newest member, Mr. Edward MacDowell, to the Board. Mr. MacDowell agreed to be the "discussion leader" for the Department of Labor and Industrial Relations (DLIR).

III. APPROVAL OF MINUTES: Ms. Joesting recommended that the board's minutes not reflect "Board Action" under each agenda item; board members concurred. Minutes of the September 9, 2003 meeting were approved as amended.

IV. PUBLIC COMMENTARY: Ms. Dierdre Mamiya, Administrator of the Land Division, Department of Land and Natural Resources (DLNR) was introduced. She discussed DLNR administrative rule, Chapter 13-221, "Unencumbered Public Lands." This is discussed at length in Section VI. New Business.

V. OLD BUSINESS:

A. Petition under Chapter 201M, Hawaii Revised Statutes, regarding DLNR rules for "Wai'Opae Tidepools Marine Life Conservation District" – Testimony was received from Messrs. Peterson, Willman, Oishi, and Kanemoto regarding Planet Ocean Watersports' petition to DLNR through the board. Upon hearing the testimony, Ms. Joesting instructed the board as to their options when determining a decision after reviewing and discussing the testimony. A motion was made by Mr. Rietow, seconded by Ms. Woods, and passed unanimously to go into Executive Session under the provisions of Section 92-5, HRS. The board went into Executive Session at 12:45 p.m. The Executive Session ended at 1:05 p.m. The Board discussed the testimony, and had several concerns. Some of those concerns included, the rule stopped a business from operating, the Department of Land and Natural Resources (DLNR) improperly executed the administrative rule,

there was an impact and it was denied in the agency's initial impact statement, DLNR overstepped its authority and took it upon itself to act without considering the full impact of the business.

- B. Update on Maui Counties permitting for Hawaii Kite Boarding Association – Chair Woods announced that the Federal government, Maui County, and the kite boarding association have all come up with a compromise solution, whereby, kite boarding activity will not be banned from the beaches, and defined security and safety procedures will be implemented.
- C. Update and Discussion of proposed “Fast Track” comment procedure for draft Administrative Rule Review – Chair Woods drafted revisions to the Regulatory Flexibility Act (RFA) Bill, which would remove the “fast track” process. State agencies would submit “draft” rules as well as “draft” small business impact statements to the board for review. She distributed the Bill for review, explained the process involved and the timelines required. Mr. Smyth discussed the impact of the Bill. Ms. Walker suggested that two issues were needed before the board could make a determination on a rule, the receipt of a small business impact and a list of the impacted businesses that were consulted, if any. Ms. Joesting suggested having the departments provide more inquiry and information at an earlier stage either through the Administrative Directive or by sending a letter to the agency. After much discussion, it was decided by the board to revise the proposed RFA Bill for the board's review.
- D. Update of Legislative Items – Mr. Smyth explained that there are currently 11 bills in DBEDT's administrative package. Most of those bills are narrow-based administrative or “housekeeping,” and are related to budget and repeal changes, and are moving forward. Mr. Smyth discussed the Workers' Compensation Bill and the concerns of DLIR with an alternate version.
- E. Update of the Internship Program with the Richardson School of Law – Mr. Smyth indicated that there is an intern, a lawyer, and MBA student, available to DBEDT who is with the University of Hawaii's Department of Business Administration, Jim Weisman. Mr. Weisman is working with Mr. Smyth through December 2003, on a full-time basis, and will work concurrently with the Review Board whenever there is an administrative rule to be reviewed. Mr. Smyth informed the Board he is hoping to acquire an accounting major to do an analysis of the tax structures of other states, and will keep the Board informed of these or any other intern support.
- F. DBEDT Review of Administrative Rules in fiscal year 2004, to date – The Board reviewed the rules that have been analyzed by DBEDT so far this year. Ms. Palcovich explained the added information being provided to the board. The members requested additional information regarding the specific changes and description of each rule on the form; Chair Woods and Ms. Palcovich will add that information.
- G. Discussion of Board Member Nominations – Ms. Jeanette Otsuka Chang was recommended as a new board member. Chair Woods indicated that Ms. Chang was quite an interesting businessperson. The board was in favor of submitting Ms. Chang's name to Governor Lingle for nomination to the board.
- H. Marketing – Review of Proposed Power Point Presentation to Small Business Groups – Chair Woods stated that the board had agreed to the newly formed speaker's forum and development of a power point presentation. She further indicated that she had scripted the presentation, however, it was done the way that she would present the information, and that each member would need to use the material in any way that they felt comfortable. With the assistance of Mr. Bretschneider, the board reviewed each slide and modified the narrative. Mr. Bretschneider suggested that members present examples of the board's accomplishments. Chair Woods is planning to take the presentation to the Maui County Council and to the Maui's Mayor's meeting.
- I. Discussion and Update on compliance with Chapter 201M-7 HRS, “Periodic Review, Evaluation” – Chair Woods explained that each board member has part of the “Periodic Review” report to review. As a reminder, Ms. Palcovich read the August 28, 2003 minutes. Dr. Speers had proposed a prioritization strategy focusing on new promulgated and existing administrative rules from agencies that pertain to business complaints. In addition, he stated that each Board member should provide a report on the impact and updated status for each assigned agency. It was agreed that by the end of November 2003, each member would provide a status of all rules reviewed. Mr. Rietow had also offered to prepare and submit an evaluation sheet to assist the members in the rule review. Mr.

Rietow indicated that upon completion of the evaluation sheet, he would send it to Ms. Palcovich, who would then provide it to each member.

- J. Review letter from Department of Health regarding HAR Chapter 11-54, "Water Quality Standards," (DOH) – Ms. Walker indicated that the board was "fast on the uptake" of these rules as she received a great deal of community input. She reflected that Deputy Director Lau complied with most of the changes recommended by the board, although she was somewhat concerned with the outstanding natural resources, which is a very costly program. She recommended that the board send a letter to Mr. Lau, thanking him for the changes that were made, but requesting that the department proceed with the board's recommendation to reconsider adding back the "outstanding natural resources." This was unanimously supported by the board.

VI. NEW BUSINESS:

- A. Discussion and Review of HAR Chapter 13-221, "Unencumbered Public Lands" (DLNR) – Mr. Smyth introduced Dierdre Mamiya, Administrator of the Land Division of DLNR, who was also recently named as the State's "Manager of the Year." Mr. Zinn indicated that it appeared the rules would have a huge impact on small business as they were directed primarily for "enforcement" that may or may not be detrimental to small business operations. Ms. Mamiya first explained the definition of "unencumbered lands," which encompasses 1.3 million acres of non-leased land, but mainly little used beaches, unlike the beach parks in Waikiki. Specific questions were posed to Ms. Mamiya including the location of the unencumbered lands, the businesses operating on these lands, the commercial permits involved, and those businesses that would be affected by the rule changes. Also discussed were the Maui beach parks and that community's reactions to the rules. Chair Woods will bring to the next board meeting specific data from Maui businesses regarding the community and public meetings. The Board deferred further comment until the next board meeting when Ms. Mamiya will present additional information.
- B. Discussion and Review of HAR Chapter 16-77, "Contractors" (DCCA) – Chair Woods reviewed these rules, indicating this was another "win" for small business. DCCA made licensing and renewal easier and gave the contractors a little more time to comply with the requirements. Overall, the rules had a good impact. The board supported the rules.
- C. Discussion and Review of HAR Chapter 4-28, "Poultry and Birds" (DOA) – Mr. Rietow indicated that there is some business impact but the reasons for the rules far out shadow any negative impact. For example, if the West Nile Virus ever hit Hawaii, it would completely devastate its bird population. The rules are rational, and the negative impact is minor. The board supported the rules unanimously.
- D. Review of post hearing HAR Chapter 13-275 to 13-284, "Historic Preservation Program" (DLNR) – Mr. Zinn indicated that due to the increase in fees, that there was some impact on small business, however, it was unclear as to exactly what the specific impact was. Recommendation on the rules was deferred until the next board meeting.

VII. REPORTS FROM COMMITTEES

- A. Update from the Legislative Subcommittee regarding the Small Business "Bill of Rights" – Ms. Woods had initially volunteered to find a legislative consultant to draft the Small Business Bill of Rights, however, because the consultant was unavailable and due to time constraints, Chair Woods volunteered to draft the Bills herself. Her strategy was to take the Bill of Rights, topic by topic, and create separate Bills. She provided copies and read each of those Bills to the members.

Much discussion ensued among the members. Mr. Zinn recommended that due to time line issues, particularly involving the completion of these Bills, the board might meet every other week rather than once a month. Ms. Walker suggested that we keep the Bills as presented with comments going to Ms. Palcovich in order to incorporate them into the Bills. She also suggested that the bills go into the Governor's Administration Package. Chair Woods recommended that the draft Bills be provided to an appropriate legislator for inclusion of proper bill language. Mr. Smyth suggested that any revision of the draft of the Bills would also have to come from the agencies that will be affected. It was agreed that, time wise, if the rules are not complete for the administration package, then the rules should go directly to the legislature for introduction. Mr. Rietow recommended that the Bills be rewritten in

appropriate bill language, that Dr. Speers review those draft Bills, and if he had concerns, that he will bring them back to the board for discussion. The board was in unanimous agreement.

Update from the Subcommittee on the Revision of the Administrative Directive on Draft Rule Processing – No additional updates were provided.

VIII. REPORTS FROM THE CHAIR

Chair Woods announced that she was having monthly meetings with DBEDT Director Liu, which was going well. She appreciates the work from DBEDT and is very pleased with the way things are going along. She will be unable to attend the next month's meeting; Vice Chair Rietow will oversee that meeting.

IX. POLICIES AND PROCEDURES

X. ANNOUNCEMENTS

Mr. Zinn announced that he was able to download the Board's newsletter on Small Business Hawaii's website. He composed an article for the October 2003 issue of *Small Business News*, entitled "Help the SBRRB Help You." Mr. Zinn was also interviewed by KGMB regarding the Small Business Survival Index Committee's report placing Hawaii 50th in the nation's ranking system. His interview was aired on the 5:00, 6:00 and 10:00 news, and expressed on the air that the SBRRB was ambitiously attempting to change Hawaii's ranking to fifth in the nation.

Ms. Joesting thanked the board very much for their dedication. She has always enjoyed working with the board members, as she has seen how committed each member is to the small business community. She has been appointed as the Deputy Director, Harbors Division, Department of Transportation.

Next Board Meeting – Wednesday, November 12, 2003, at 11:00 a.m. – No. 1 Capitol District Building, 250 South Hotel Street, 4th Floor, Conference Room 436.

ADJOURNMENT: Chair Woods adjourned the meeting at 2:43 p.m.