

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING – Need to draft

August 24, 2011

Conference Room 410 - No. 1 Capitol District Building, Honolulu, Hawaii

CALL TO ORDER: Chair Pang called the meeting to order at 10:34 a.m. with a quorum present.

MEMBERS PRESENT:

- Sharon L. Pang
- Charles Au
- Richard Schnitzler
- Bruce Bucky
- David De Luz Jr.
- Howard West
- Roland Sagum III

ABSENT MEMBER:

- Peter Yukimura

STAFF:

DBEDT
Milton Kwock

Office of the Attorney General
Margaret Ahn

APPROVAL OF JULY 20, 2011 MINUTES

Vice Chair Au made a motion to accept the July 20, 2011 minutes as circulated. Mr. West seconded the motion and the Board members unanimously affirmed the motion.

OLD BUSINESS

A. Post public hearing statement on proposed amendments to Chapter 13-256-39, HAR, “Ocean Recreation Management Rules and Areas,” which relates to vessel operations in Hanalei Bay and river, adoption of new Chapter 13-256-71, 13-256-72, 13-256-73 and 13-356-77, HAR, which implements the Kaneohe Bay Master Plan per HRS § (Department of Land and Natural Resources (DLNR))

Chair Pang stated that this Board received a request from the Office of Information Practices (OIP) as to whether this agenda item violates Part I of Chapter 92, HRS (the Sunshine Law) by insufficiently describing the rules to be discussed. Deputy Attorney General Margaret Ahn stated that after consulting with OIP, it is her recommendation that this rule be deferred and to ask DLNR for an elaboration of the description of the proposed amendments.

Mr. Edward Underwood, DLNR Administrator for the Division of Boating and Ocean Recreation (DoBOR) stated that he respectfully disagreed with the Sunshine Law violation allegation and that DLNR’s attorneys general do not dispute the wording. Therefore, Mr. Underwood noted that DLNR will plan to move forward with the rule package and send it to the Governor for his approval to go to public hearing. In response, Deputy Attorney General Ahn stated that, even so, until OIP renders an opinion that the rule description is sufficient for Sunshine Law purposes, the review of the rules will be deferred. Chair Pang explained that deferring these rules is not a Board decision but it comes from the Attorney General’s Office,

and that it will be anticipated that DLNR return to this Board with a sufficient description of the rules.

B. Follow-up on proposed adoption of new Chapter 17-1445, HAR, "Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings," which establishes standards for certified nurse aides in State-licensed or State-certified health care settings who choose to be recertified or who recertification is required by their employers (DHS/SSD)

Chair Pang stated that no representatives from DHS are present at this meeting but recently DHS submitted to this Board a report entitled "CAN Recertification Stakeholders Meeting," dated August 15, 2011. This is a response to the Board's request asking that DHS engage a broader population of stakeholders in order to solicit feedback on the proposed new rules. Representatives from DHS indicated that the rules are being amended based on the meeting with the stakeholders and will be coming back for the Board's review. However, Chair Pang indicated that she received a call from State Representative John Mizuno who noted that DHS representatives were under the impression they did not need to come back to this Board. As these rules have been a pet project of this Board for the past several years, there will be close tracking and follow-up with DHS.

C. Status of Chu Lan Shubert-Kwock's nomination to fill vacant board position

Chair Pang stated that a memorandum from the Board was recently submitted to the Governor's Boards and Commissions Division request that Ms. Shubert-Kwock's application be considered to fill an Oahu vacancy on this Board; a response has yet been received. Also, Chair Pang stated that a memorandum was sent to Mr. John Leong thanking him for submitting his application for consideration to this Board, but that Governor Abercrombie had appointed another nominee to fill the vacant Oahu position, and that the application remains on file with the Boards and Commissions Office for re-consideration once another Oahu vacancy occurs.

D. Revised discussion leader assignments

This item was deferred until a later time. Chair Pang will absorb the two agencies Mr. Leis was assigned to, the Office of the Lieutenant Governor's Office and the Department of Accounting and General Services.

NEW BUSINESS

A. Proposed amendments to Chapter 13-230, 13-231 and 13-234, HAR, "Ocean Recreation and Coastal Areas, Parts I and II," which increase fees associated with the use of facilities and services provided at State small boat harbors, and adoption of new Chapter 13-244, HAR, which proposes a certificate of completion on the safe use and operation of power-driven vessels (DLNR/DoBOR)

Chair Pang indicated that this Board received a request from the OIP regarding whether this agenda item violates Part I of Chapter 92, HRS (the Sunshine Law) by insufficiently describing the rules to be discussed. Deputy Attorney General Margaret Ahn explained that after speaking with OIP, the description of the rule was appropriate; as a result, it was determined that this agenda item will be reviewed.

Mr. Edward Underwood, Administrator of DLNR's DoBOR, discussed the proposed rules and explained that the additional fee increases were added into the rules from the previous time this Board reviewed the proposed rule amendments, along with a requirement to complete a boating education course under the National Association of State Boating Law Administrators (NASBLA) prior to operating or renting a power-driven vessel. There are currently thirty-five states and territories that require this course. Mr. Underwood believed the NASBLA would not be a major small business impact because most commercial marine operators are currently required to obtain licenses from the United States Coast Guard, and so long as this license is obtained, the NASBLA course would not be required. There is a one-time \$35 fee required to take the course for those commercial boaters that are not operators with a captain's license. Mr. Schnitzler read a portion of testimony submitted to this Board by Sea Escape Boat Rentals, Inc., stating that the required 3 ½ hour course at a cost of \$35 per client would terminate their ability to do business in this state as 95% of their customers are from the mainland and primarily rent their boats while on vacation. While Mr. Underwood confirmed that these rules would affect small businesses that rent boats out to vacationers, he noted that there are very few of these types of businesses in Hawaii. Mr. De Luz concurred with Mr. Underwood who suggested that DLNR allow for certain commercial operators to provide for their own type of self-accountable certification.

Much discussion ensued regarding other state's mandatory education courses, reciprocity, acceptance of the Coast Guard auxiliary course, the requirement that everyone is to carry a course certification card on them, accommodating boaters to take a portion of the course, and water accidents. Mr. Clifford Inn, DoBOR Program Specialist, stated that the course's requirement is intended to enhance business and to improve water safety. Although it is difficult to place an expectation on how many accidents occur each year, Hawaii has a relatively higher accident ratio than many other states. Vice Chair Au stated that two of the written testimonies noted that there have been "zero" boating accidents within their business; in this respect, he juxtaposed that the accident ratio cannot be improved upon. Mr. Sagum questioned whether these rules include divers as boaters; Mr. Inn stated that diver requirements are included in the NASBLA course.

Testifier Mr. Pat Shaw, Hawaii representative of the North West Canada Cruise Ship Association (NWCCSA), stated that the increase in the passenger fees, regarding Section 13-234-26 of the rules, would ultimately result in a substantial financial burden on the cruise ship industry. This is particularly so for Norwegian Cruise Lines, a branch of NWCCSA, and which owns the Pride of America cruise ship that is ported in Hawaii. Thus, Mr. Shaw recommended that DLNR invoke a graduated increase over a number of years rather than a one-time increase.

Testifier Ms. Janet Mandrell explained that she is a recreational boater who owns a vessel in the Ala Wai Harbor; she believed the proposed fee structure was not provided to the stakeholders. She expressed concern that DLNR is reducing five levels of the harbor into two, and she would like to review DLNR's cost projections and understand why some of the harbors are being classified into the same category. With regard to the educational requirement, she noted that if a boater does not carry the educational certificate on them, they will be subject to being cited; she recommended that the certificate requirement be tied to the registration of a vessel. Chair Pang noted there does not appear to be enough

information provided to the members in order to come up with a reasonable justification to the proposed fees.

Mr. Edward Underwood stated that these rules have been vetted with the stakeholders over the past three years and today is the first time he received testimony against the fee increases. He also stated that there is a fixed cost to maintain the boat harbors and that the proposed fee increase is the minimum amount to be charged. He noted there have been substantial improvements throughout the State's harbor facilities as well as a \$35 million harbor improvement project currently in process. Mr. De Luz stated that the fee schedule presented is drastically different from when DLNR first presented it to this Board and that a few of the harbors were excluded in the rules. Mr. Underwood concurred that a few of the harbors were inadvertently excluded but will be added back into the rules and that some of the offshore moorings that are shown as harbors will be dropped from the rules. Mr. De Luz concurred that the fees should be increased but recommended that the Board of Land and Natural Resources consider a phase-in schedule, and that an explanation be shown to the stakeholders that would account for the fees.

Upon review, Mr. Au recommended that a motion be made to move the rules forward to public hearing with the caveat that DLNR consider 1) administrative changes in regards to the NASBLA course requirements, 2) alternative means as to whether a boater must carry a certificate or if an on-line verification process can be accomplished, and 3) incremental fee increases over a period of time. Mr. Sagum seconded and the motion and the Board members unanimously affirmed the motion.

- B. Review and discussion of Stacie Thorlakson's application to fill vacant board position**
Board members reviewed Ms. Stacie Thorlakson's application to fill one of the Maui board member slots. Chair Pang stated that Ms. Thorlakson worked with the Maui Chamber of Commerce for seven years, has her own radio show in Maui where she is an advocate for the small business community, and is familiar and comfortable with sitting on boards. Vice Chair Au recommended that Ms. Thorlakson meet with and provide the members with a better understanding of her knowledge of owning and running a business in addition to her being an advocate for businesses. Mr. West stated that he went on Ms. Thorlakson's website where he determined she is an independent entrepreneur who is very interested in "being out in the community."

C. Status of vacant board position for the County of Maui

The Board members expressed their appreciation for Mr. Leis' contribution to this Board; Mr. Leis' term expired on June 30th of this year. Mr. Leis mentioned that he had not been on a board that was more dedicated than this one.

REPORT FROM CHAIR

- A. Post public hearing statement on proposed amendments to Chapter 13-5, HAR, "Conservation District," which amends the entire chapter that regulates land uses within the Conservation District. This includes new definitions, new identified land uses, new subzone designations, increased application fees, language clarification, consolidation and reorganization of Chapter 13-5-2 through 13-5-45, HAR, including exhibits to improve work efficiency; to contributed positively to the Office of Conservation and Coastal Land's core**

objectives related to natural resource conservation, and to benefit landowners and agencies alike in managing their land (DLNR/OCCL)

Chair Pang stated that DLNR representatives were not present due to the Board members' recommendations.

B. Small Business Regulatory Review Board PowerPoint presentation

Deferred until a future meeting.

REPORT FROM BOARD MEMBERS - None

ANNOUNCEMENTS - None

NEXT MEETING – Scheduled for Wednesday, October 5, 2011, 250 South Hotel Street, Honolulu, HI, Room 436.

ADJOURNMENT – The meeting adjourned at 12:35 pm.