

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

July 20, 2016

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:01 p.m. with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge
- Harris Nakamoto
- Kyoko Kimura
- Robert Cundiff
- Garth Yamanaka
- Mark Ritchie

**ABSENT MEMBERS:**

- Barbara Bennett
- Nancy Atmospera-Walch

**STAFF:** DBEDT  
Dori Palcovich

Office of the Attorney General  
Dawn Apuna

### II. APPROVAL OF MAY 18, 2016 MINUTES

Vice Chair Nakamoto made a motion to accept the May 18, 2016 minutes, as presented. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

### III. OLD BUSINESS

- A. Discussion and Action on Small Business Statement After Public Hearing and Proposed Amendments to Governing of Commercial Surfing and Stand-up Paddle Instruction, Part V, Section 40, Time of Use (a), (b), Section 43(f), and Sections 43(u) and (v), promulgated by Department of Parks and Recreation, County of Kauai

Mr. Yamanaka stated that the public hearing was held and the rules were sent to the Mayor for adoption. The only concerned comment made at the public hearing was the ability to provide more access in dropping off customers; this change was adopted in the final proposal. Mr. Yamanaka had no other concerns regarding the amendments.

Mr. Yamanaka made a motion to support the amendments for adoption. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Small Business Statement After Public Hearing and Proposed Amendments to the Rules of Practice and Procedure of the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund Commission, by Adding New Chapter V. Report Process, Relating to the Process of Receiving Proposals, and Analyzing and Recommending Land or Property Entitlements for County Council Approval, promulgated by the County of Kauai Public Access, Open Space and Natural Preservation Fund Commission

Mr. Yamanaka stated that he read through the commentary of the public access commission meetings, which indicated that the purpose of the proposed rules is to clarify the process of providing recommended acquisition sites to Kauai City Council. No comments were made and no one showed up at the public hearing. Essentially, the overall rule changes are to make the process clearer for the Council.

Chair Borge noted that it would be interesting to find out if there was any communication between Kauai County and the Kauai Chamber of Commerce or other business organizations. Mr. Yamanaka stated that in reviewing the Council's commentary, there did appear to be some confusion as to how small businesses would be impacted with regards to the proposed rules.

Mr. Yamanaka made a motion to support the amendments for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Small Business Statement After Public Hearing and Proposed Amendments to the Rules & Regulations of the Liquor Control Commission of the County of Kauai, promulgated by Department of Liquor Control, County of Kauai

There was no opposition to the proposed amendments and no one attended the public hearing. The proposal is necessary due to the changing of the accommodation units and the increase in the fines, from \$150 to \$300, which is affordable. It is expected that this same proposal may be brought in front of the other counties. Chair Borge again questioned if the County had any communication with the stakeholders and/or the Kauai business organizations.

Mr. Cundiff made a motion to support the amendments for adoption. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS**

A. Discussion and Action on Proposed Amendments to HAR Title 13, Chapter 74, License and Permit Provisions and Fees for Fishing, Fish, and Fish Products, promulgated by DLNR

Mr. Alton Miyasaka, Acting Program Manager from DLNR's Division of Aquatic Resources, explained that the proposed fee increase is based on the Federal Court's ruling, which states that the difference in the charged fees of residents and the fees of non-residents must be done by a specific calculation or process in order to justify the difference. So, unless there is

a justification, different fee amounts cannot be charged. The Court ruled that having two separate/different fees is an interference with interstate commerce, which applies to the federal commerce clause and pertains to commercial licenses, not recreational licenses. Due to this ruling, DLNR decreased its existing non-resident fee from \$250 to \$50 to match the resident in-state license fee, effective January 2016. However, this has resulted in a potential loss of \$150,000 in revenue. In order to make up the loss, DLNR is proposing that both resident and non-resident fees are incrementally increased over the next few years.

Mr. Miyasaka further explained that the fee increase is being phased into two stages. The first increase, from \$50 to \$100, will take place in January 2017; the second phase in January 2018 will increase the fees to \$150. Approximately 4,000 licenses are issued per year with about 1,000 issued to non-residents. Many of the non-residents are transient (foreign) workers where the employers would be required to pay the non-resident fees.

Mr. Ritchie made a motion to send the proposed amendments to public hearing. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 4, Chapter 72, Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules, Section 12, Quarantine Restrictions on Ohia and Soil from Rapid Ohia Death Infested Areas, promulgated by DoAg

Mr. Lance Sakaino, Acting Plant Specialist from the DoAg's Plant Quarantine Branch, introduced co-workers, Mr. Keevin Minami and Christopher Kishimoto, and discussed the purpose of the proposed new Section 12. Section 12 will replace the current "interim" rules by restricting soil and all plants and plant parts of the Ohia tree coming out of the Big Island. This is due to a fungus (*Ceratocystis fimbriata*) that has been found to be a causal agent of "rapid ohia death" and is killing large numbers of Ohia trees on Hawaii Island. In addition to this Board, the proposed amendments are currently with the Governor for approval to proceed to public hearing. It was noted that the difference between the existing interim rules and the proposed rules is that the restriction of soil is now included whereas soil was not included in the interim rules.

Discussion leader, Mr. Cundiff, stated that the Plant Quarantine Branch did a very good job in preparing the small business impact statement, and reiterated that this proposal will replace the emergency/interim rules expiring August 31, 2016. Overall, the rule addresses the restriction on the export of the Ohia and the soil from continuing destructive impact of "rapid ohia death" and the threat of the disease to Hawaii's native forest, which is essential to sustaining the State's groundwater reservoir and native flora and fauna populations.

In regards to the impact on small businesses, a fairly nominal fee, \$50, is imposed for inspection purposes, plus mileage (direct costs to businesses), with labor costs for sampling of the logs and soil (indirect costs to businesses). There is also an estimated \$133 shipment fee per twenty (20) logs, which is reasonable. Business organizations, such as Hawaii Floriculture and Nursery Association, were approached and are aware of the restrictions. Also, many of the loggers are in compliance with the rules and are working closely with the DoAg.

Regarding the treatment of the fungus, it was indicated that it continues to grow and ultimately affects the water shed, which is very critical. It can spread many different ways so DoAg is doing what it can to prevent the fungus from leaving Hawaii Island. Various strategies are currently being reviewed but, to date, scientific-based material and information for the State to determine an accurate and safe treatment has resulted in “nothing” to eliminate the fungus, at this point in time.

Mr. Cundiff made a motion to move the proposed amendments to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

## V. ADMINISTRATIVE MATTERS

### A. Update on this Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers, under Section 201M-5, HRS

- 1) IPads/Computer - The Board assistants’ computer was ordered, has arrived, and will be installed soon; a purchase order was issued for the members’ iPads. The cost for the computer and ipads totaled \$7,576.10.
- 2) Think Tank Hawaii – Three board members, Chair Borge, Vice Chair Nakamoto, and Ms. Kimura participated in Mr. Reg Baker’s streamlined video show, Think Tank Hawaii. The show had the most viewers, to date, of any of Mr. Baker’s other shows. There will be another opportunity to do a second show, which is good exposure for this Board.
- 3) Regulation Review Card – The draft Regulation Review Card, which is to become part of the Board’s website, was reviewed with a few recommended additions. It was also recommended that an immediate automatic response be sent, such as “someone will get back to you within a specific time period.” Each request will require DBEDT staff to gauge the appropriate response.

Mr. Cundiff made a motion to accept the Regulation Review Card with the recommended changes. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

- 4) Hawaii Small Business Development Center – This Center, located in Manoa, puts on various seminars for small businesses, which would be a good resource for this Board. It was discussed that writing an article for the SBDC’s newsletter may be another way to tap into this resource. The center is a State and Federal partnership (i.e., U. S. Small Business Administration), and the director is Mr. Joseph Burns.
- 5) Amendments to Chapter 201M, HRS – Chair Borge explained that this summer would be a good opportunity to work on changes to the Board’s statute for the legislature’s review during the 2017 session. He has already met with House Speaker Souki and DBEDT Director Salaveria for their support and is planning to meet with Senate President Kouchi for the Senate’s support, as well.

Some of the potential changes discussed include streamlining the definition of “substantial” financial conflict (Chapter 84, HRS), redefining the members’ mandated qualifications, and increasing the number of existing members from nine to eleven (Chapter 201M, HRS). These suggestions, and others, will be researched for fact-finding purposes in order to analyze the pros and cons, which will be brought back in front of this Board for discussion.

- VI. NEXT MEETING** – The next meeting is scheduled for Wednesday, August 17, 2016, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.
- VII. ADJOURNMENT** – Ms. Kimura made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 2:35 p.m.