

May 3, 2013

To: KIRC Commissioners
From: Rowena Somerville, Deputy Attorney General
Subject: Limited Meetings for years 2013-2014

RECOMMENDED MOTION:

Move to make the following findings and determinations:

1. That it is necessary to meet on the island of Kaho‘olawe several times in the next fiscal year to do a site visit to better understand the Commission’s statutory duties, responsibilities and programs relating to the restoration and management of the Reserve;
2. That Kaho‘olawe is a location which remains dangerous to the health and safety of the public due to the presence of unexploded ordnance (UXO);
3. That public attendance at the on-site inspection of Kaho‘olawe related to the Commission’s business is impracticable;
4. That the Commission will not make decisions at the meetings on Kaho‘olawe in accordance with HRS 92-3.1(b)(3); and
5. That the Executive Director:
 - a. Notice said meeting in accordance with HRS 92-7;
 - b. Provide minutes of said meetings in accordance with HRS 92-9; and
 - c. Seek the Director of the Office of Information Practice’s waiver of videotaping such meetings in accordance with HRS 92-3.1(b)(1).

BACKGROUND:

The Commission finds it necessary to visit Kaho‘olawe on a periodic basis to fact-find, appreciate, understand, and gather general knowledge that otherwise might not be available through reports or other means. The need to visit Kaho‘olawe has become increasingly important and relevant towards management of the Reserve and projecting future needs. Such on-island meetings and fact-finding by the Commission are considered valuable and important to the KIRC’s transition planning and management responsibilities. At this time, the Commission has been looking at various funding opportunities through the State especially in the areas of capital improvement and alternative energy. Due to budgetary shortfalls, the Commission will need to implement cost-saving efforts directly affecting the operations of the Kaho‘olawe Island Reserve. Additionally, the KIRC is beginning the process to create a new Strategic Plan and is actively working towards restoring and preserving archaeological and cultural sites on island.

Pursuant to HRS 92-3.1, a Commission vote is required to determine that it is necessary to hold a “Limited Meeting” at a dangerous location and to specify, after sufficient public deliberation, that the location is dangerous to health or safety, or that an on-site inspection

is necessary and public attendance is impracticable. A copy of the relevant provisions of the State statutes on limited meetings is set forth below.

Limited meetings are not open to the public because of the determination that the location is dangerous to the health and safety of the public or that public attendance is impracticable. Thus, there is a requirement to video tape limited meetings. Additionally, the KIRC may also request that the Director of the Office of Information Practices waive the requirement for videotaping the meeting and provide minutes to the meeting in compliance with the requirements under section 92-9, H.R.S. A similar request has been made in the past, and the Director of the Office of Information Practices waived the videotaping requirement where it was hazardous or impracticable to film.

RELEVANT LAW:

Section 92-3.1, H.R.S., Limited meetings, provides that:

- (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location, that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
 - (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that on-site inspection is necessary and public attendance is impracticable;
 - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
 - (3) Notice of the limited meeting is provided in accordance with section 92-7.
- (b) At all limited meetings, the board shall:
 - (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
 - (2) Make the videotape available at the next regular meeting; and
 - (3) Make no decisions at the meeting.

RECOMMENDATION:

To determine that it is necessary for the Commission to meet on Kaho‘olawe at least four times in the next fiscal year, in order to have a site visit to better understand the needs of the island and to understand the progress made towards the Commission’s statutory duties and responsibilities relating to the restoration and management of the Reserve. Further, in doing so, the Commission:

1. Determines, after sufficient public deliberation, that Kaho‘olawe is a location which remains dangerous to the health and safety of the public due to the presence of unexploded ordnance (UXO);
2. Determines, after sufficient public deliberation, that the public attendance at the on-site inspection of Kaho‘olawe related to the Commission’s business is impracticable;
3. Declares that it will not make decisions at the meetings on Kaho‘olawe in accordance with HRS 92-3.1(b)(3); and
4. Directs the Executive Director to:
 - a. Notice said meeting in accordance with HRS 92-7;
 - b. Provide minutes of said meetings in accordance with HRS 92-9; and
 - c. Seek the Director of the Office of Information Practice’s waiver of videotaping such meetings in accordance with HRS 92-3.1(b)(1).