



MICHELE MCLEAN  
*Chairperson*  
AMBER NĀMAKA WHITEHEAD  
*Vice-Chair*  
WILLIAM J. AILA, Jr.  
N. EMMETT ALULI, M.D.  
C. KALIKO BAKER  
COLETTE Y. MACHADO

*KŪKULU KE EA A KANALOA*  
**KAHO‘OLAWE ISLAND RESERVE COMMISSION**

811 Kolu Street, Suite 201, Wailuku, HI 96793  
Telephone (808) 243-5020 Fax (808) 243-5885  
Website: <http://kahoolawe.hawaii.gov>

Michael K. Nāho‘opi‘i  
*Executive Director*

**MEETING MINUTES**

**Friday, August 10, 2012**

9:00 AM

Office of Hawaiian Affairs  
Board Conference Room, 5<sup>th</sup> Floor  
711 Kapi‘olani Boulevard  
Honolulu, Hawai‘i

**COMMISSION MEMBERS**

**PRESENT:** Michele McLean, Chairperson; A. Namaka Whitehead, Vice Chair; N. Emmett Aluli, M. D.; C. Kaliko Baker; Colette Y. Machado

**EXCUSED:** William Aila, Jr.

**KIRC STAFF:** Michael Nāho‘opi‘i, Executive Director (ED); Ka‘ōnohi Lee, Administrative Officer(AO); Rowena Somerville, Deputy Attorney General, (DAG); Kuiokalani Gapero, Cultural Resource Project Coordinator (CRPC); Terri Gavagan, Commission Coordinator (CC)

**GUESTS:** S. Joe Estores; Eric Brundage (Zapata, Inc.); Hilary C. Arakaki (PKO); Hoku Cody (PKO); Lancelot Haile Lincoln (Na Keiki O Hawaii Lahui); D. Kai Nakamoto; Keala Norman (Hawaiian Club, Leeward Community College (LCC)); Kepo‘o Keli‘ipa‘akaua; Keoni Fairbanks; Kim Ku‘ulei Birnie (PKO); Lisa Croft (Deputy Regional Administrator for the Pacific Islands Region, NOAA Fisheries); Dr. Jeff Walters (NOAA Fisheries); Stanton Enomoto; Katie Kamelamela (PKO); Kylee Mar (PKO)

**I. Call to Order**

The meeting was called to order at 9:15 am by Chair McLean. A quorum was established with five Commissioners. Commissioner Machado asked for clarification of the amended agenda. Staff explained that **Item IV. D. ‘Aelike Palapala Working Group Report, Clarifications and Follow-ups on Huaka‘i Injuries and Reporting Requirements** was added and the language was changed.

The Commission decided to move **Item V. A. Request for Exemption from the Administrative Access Approval Policy Regarding Marine Mammal Removal during the RIMPAC Exercises** and **Item V.B. Determine the Need for the Establishment of a Strategic Planning Working Group** before **Item IV. Administrative Business**. It also decided to hear **Item IV. D. Aelike Palapala Working Group Report, Clarifications and Follow-up on Huaka‘i Injuries and Reporting**

**Requirements and Item IV. C. Report on Status of Pōhaku Kāneloa Project** before the rest of **Item IV. Administrative Business** due to time constraints.

## II. APPROVAL OF JUNE 19, 2012 MEETING MINUTES

**MOTION:** Commissioner Machado moved to approve the minutes of June 19, 2012. Vice Chair Whitehead seconded the motion.

**Discussion:** Commissioner Aluli liked the new section of the minutes listing follow up items.

**ACTION:** Motion was approved by all Commissioners present.

## III. COMMUNITY AND PUBLIC COMMENTS

Joe Estores presented oral and written testimony regarding strategic planning. He suggested that clean up should be the first priority. The island needs to be put back the way the Navy found it. The Commission should also look at the other nations which bombed the island for help; develop new advocates and start over with the Navy. The Commission should make the island the piko of a new future. It should also utilize the National Geographic and History Channels to distribute mo'olelo and engage with the American people. He encouraged the Commission to establish strategic planning that will operate with pono. Negotiations should be government to government and not between the US government and either the PKO or the KIRC. The KIRC needs to do a better job of opening up the island to the Hawaiian people; if money is the issue the American military should pay.

Commissioner Machado requested clarifications about **Item IV. C Report on Status of Pōhaku Kāneloa Project** during the public comments because she needed to leave the meeting early and may not be present during KIRC CRPC Gapero's presentation. She wanted to know if Pōhaku Kāneloa and Loa'a Stone is the same thing. Staff confirmed they are the same. Staff also confirmed that there was no communication from 2003-2012 regarding the treatment plan and no decision has been made on the treatment plan. It was also clarified that the Archaeological Technician Training Kahoolawe Practicum Report (Draft Report) was provided to the Commission for informational purposes only. Commissioner Machado indicated the KIRC may be able to get some money from OHA for this project. OHA will be realigning its budget next month. ED Nāho'opi'i will submit a request for funding to Commissioner Machado next week. Commissioner Aluli commented that there needs to be consultation with the stakeholders regarding this project since it is on the National Register of Historic Places.

## V. ACTION ITEMS

### A. Request for exemption from the Administrative Access Approval Policy Regarding Marine Mammal Removal during the RIMPAC Exercises

ED Nāho'opi'i explained that there have been prior studies of the effects of sonar on marine mammal behavior. It is possible that marine mammals may suffer from the bends due to surfacing too quickly as a result of being startled by sonar which may result in the stranding of marine mammals. The National Oceanic and Atmospheric Administration (NOAA) approached the KIRC for assistance in conducting studies to

document if the Rim of the Pacific (RIMPAC) military exercises have an impact on marine mammals. Staff informed NOAA of the current KIRC access policy which allows outside organizations to enter the Reserve in consultation with KIRC's Cultural Working Group (CWG). If a stranded marine mammal is alive the focus is on saving the animal; the animal can be removed for the purpose of saving it. There is a prohibition against euthanasia within the Reserve or eventual euthanasia. KIRC does request the return of the animal should it die during the rescue operation. If the stranded mammal is deceased, soft tissue sample collection for analysis is allowed as well as on-site necropsy, but no iwi or niho can leave the Reserve.

Mr. Jeff Walters of NOAA Fisheries appeared before the Commission to answer questions. He explained if there is a marine mammal stranding a full CT scan of the animal needs to be conducted to determine if there are air embolisms. It would require the removal of the mammal from the Reserve as on-site CT scanning is unavailable within the Reserve. NOAA is requesting a onetime exemption of the current KIRC policy regarding removal of a deceased mammal.

Ms. Lisa Croft of NOAA Fisheries added that if NOAA finds there is evidence of negative effects from sonar on marine mammals NOAA can stop the RIMPAC exercises. NOAA would not want to stop them unless they really think the animals are at risk. It is very important for NOAA to have this information during this particular period. NOAA will begin consultation process again before the next RIMPAC exercises.

Commissioner Aluli inquired about the status of an agreement based on the Earth Justice lawsuit filed in 2006 which outlines cultural concerns and cultural impacts to the kinolau of Kanaloa. There is a need to consult with other cultural practitioners. Ms. Croft responded that she was unfamiliar with the lawsuit and will follow up on its status as it relates to NOAA's harassment policies and present the information during their next consultation. She clarified that the RIMPAC consultation is not done in Honolulu but at NOAA headquarters because it involves the State Department and several other countries.

It was suggested by Vice Chair Whitehead and Commissioner Aluli that a one time exemption be allowed, provided that the removal is done in consultation with the Culture Program staff, Cultural Working Group (CWG) and Mr. Craig Neff. Commissioner Baker noted he and KIRC CRPC Gapero are currently compiling a list of individuals who will be notified after a stranding has been reported.

The Commission asked if there were going to be surveys done and about the logistics of removal. Staff explained any stranding would be called into ED Nāho‘opi‘i and he would contact the phone tree. If a NOAA official is present at the sighting he or she would contact their superior. Mr. Walters responded that NOAA would follow KIRC staff's guidance on how to access the island. Cultural protocols will drive the decision making process. NOAA would use the ‘Ohua, a Coast Guard vessel or possibly the Humpback Whale Sanctuary vessel, depending on availability. They could work with the Coast Guard to survey the coastline after the RIMPAC exercises. NOAA can also work with cultural practitioners and take samples based on the state of decomposition

and would repatriate the remains as soon as possible. Commissioner Baker asked for a specific time frame. Mr. Walters replied the remains can be returned within days or weeks depending on the veterinarians' confirmation that the X-rays provide enough evidence. Vice Chair Whitehead noted that in the past when a mammal was removed it was gone for a while. Mr. Walters responded that NOAA and Hawaii Pacific University learned important lessons from that incident and assured the Commission that it will not happen again.

Vice Chair Whitehead asked how old can the remains be for NOAA to still want to remove them for study and what would happen if the body was too large for the transporting vessel? Mr. Walters responded if a body has been decomposing for more than one week, NOAA would probably not want to remove it for acoustic trauma study. NOAA is also concerned about ships striking the animals. NOAA would want to remove a severely decomposed body for X-rays if there was a question of a vessel strike. Mr. Walters commented cutting the head off is a possibility although it is the least preferred option. Vice Chair Whitehead asked if there were any other options. He responded if the carcass is fresh, an onsite necropsy could be done working with the cultural practitioners. A mobile X-ray unit is another option; however it would be quite an operation to transport it to the island. There may be a CT scan on Maui which may be appropriate for scanning small marine mammals.

Vice Chair Whitehead asked what happens if the cultural practitioners say no? The Commissioners decided this needed to be discussed as part of the criteria for approving the request. Commissioner Baker stated the CWG is not going to approve the partial removal of the head. Mr. Walters observed that it is currently summer so humpback whales are not in the area so NOAA would be looking at smaller marine mammals such as pilot whales and melon head whales which could be loaded onto a vessel. The Commission asked for more information about the effects of the bends on marine mammals. Mr. Walters responded that David Schofield, who was not present, is the expert on the bends. He also understood that approval of this motion was not a guarantee that all requests for removal would automatically be approved. The Commission decided the timeframe of how long the carcass could be kept by NOAA needed to be defined in writing. Mr. Walters thought one month was a reasonable amount of time. He added that no chemical additives would be used and that the niho and iwi can be returned.

Commissioner Baker observed that this discussion should serve as a foundation for establishing criteria for future RIMPAC exercises.

Vice Chair Whitehead stated the following conditions should be attached to the motion: 1) there is to be consultation with the CWG including Mr. Craig Neff and 2) the remains are to be returned within one month of removal and 3) pending CWG consultation and approval the complete remains including niho and iwi (small tissue samples excluded) are to be returned. The Commission discussed the expense of bringing the CWG including Mr. Neff to the island. Ms. Croft and Mr. Walters responded their agency could help with travel expenses.

**MOTION:** Commissioner Baker moved to authorize a onetime exemption to current Administrative Access Approval Policy, Section 2.3 amended on August 26, 2010 to allow dead marine mammals to be removed from the Reserve if stranding(s) occurs during and up to four weeks after the current 2012 RIMPAC military naval exercises. The date for RIMPAC 2012 is July 1 to August 7, 2012. This exemption is to extend to September 5, 2012. The reporting, consultation and approval process listed in Section 2.3 will be required. Cultural practitioner Craig Neff shall be consulted. Any marine mammal removed from the Reserve shall be returned within one month. The complete mammal, including iwi and niho shall be returned, excluding any soft tissue samples used for analysis. Commissioner Aluli seconded the motion.

**ACTION:** A roll call vote was conducted: Chair McLean: yes, Vice Chair Whitehead: Yes, with reservations; Commissioner Aluli: yes; Commissioner Baker: yes; Commissioner Machado: yes. Commissioner Aila: absent. Motion was approved based on roll call vote.

Vice Chair Whitehead commented her reservations were based on trust issues from the Commission's previous experience with NOAA.

Commissioner Machado was excused at 10:35 am. There was a break from 10:35 am to 10:45 am.

**B. Determine the Need for the Establishment of a Strategic Planning Working Group**

Staff noted if a working group is established parameters need to be set. Chair McLean clarified that a working group typically includes commissioners as well as other individuals whereas a taskforce includes only Commissioners. Only two Commissioners are allowed in a working group. Vice Chair Whitehead commented that the working group is an easier format to work with and can also include individuals outside the Commission. The Commission determined the Strategic Planning Working Group should decide: 1) to whom to reach out; 2) the number of meetings to be held; 3) the timing of the meetings; 4) the locations of the meetings; and 5) whether there should be a facilitator. It would be the Strategic Planning Working Group's responsibility to set up the process and parameters for Strategic Planning. It can also make a recommendation to the Commission of the next strategic plan's timeframe. Vice Chair Whitehead and Commissioner Aluli volunteered to be on the working group. A presentation to the full Commission will be made of the working group's findings at the next meeting.

**MOTION:** Commissioner Aluli moved to establish a Strategic Planning Working Group consisting of Vice Chair Whitehead and himself. Commissioner Baker seconded the motion.

**ACTION:** The motion was approved by all Commissioners present.

#### **IV. ADMINISTRATIVE BUSINESS**

##### **D. 'Aelike Palapala Working Group Report, Clarifications and Follow-up on Huaka'i Injuries and Reporting Requirements**

The Commission explained this relates to a recent PKO access during which an injury occurred. The Commission wanted to discuss what happened and if any corrective action was necessary.

Commissioner Aluli asked if this item was on the agenda as a reaction to a previous incident three years ago.

DAG Somerville stated the main focus of this agenda item is reporting requirements. Incidents need to be reported immediately to KIRC Base because KIRC as a state agency needs to comply with certain requirements within a specific timeframe.

ED Nāho'opi'i stated that the current administrative process requires the reporting of injuries in the workplace which also includes the Reserve. A sample of the State of Hawaii Supervisor's Accident Report (HRD 414 Rev 2/2000) and instructions for its completion were distributed to the Commission. They will also be distributed to the stewardship organization's access coordinators. The Supervisor's Accident Report needs to be turned in within 24 hours of the injury. There is also the investigation portion of the form (Part B) which is submitted after all the information is gathered.

Commissioner Aluli asked why the word "incident" was changed to "injury" on the agenda. ED Nāho'opi'i responded that he changed the language because the reporting requirement is for injuries. If there is no injury from an incident, it does not need to be reported in the same way.

Vice Chair Whitehead asked for clarification of what was discussed at the stewardship meeting regarding the definition of the three categories of activities.

Staff explained activities which fall under the authorized activities category are those which are listed under HRS 6-K. The next category contains those activities in which the stewardship organization will be participating within the Reserve. The last category consists of those stewardship activities which the Commission approved. These are KIRC approved and authorized activities. They meet the criteria in Section 8 of the Stewardship Agreement. Members of the stewardship organization are considered employees of the State while engaged in these activities. However, if any injury occurs during any activities it should be reported to KIRC Base. KIRC Base can assist by contacting the necessary medical support.

It was clarified by staff that the last stewardship meeting minutes reflected there were three instances that the stewardship organization was to call into KIRC Base: 1) discovery of UXO, 2) mammal stranding, and 3) injuries.

Ms. Kim Birnie (PKO) objected to the change of the wording in the agenda from incident to injury. ED Nāho'opi'i responded that KIRC staff were told there was

bruising from the incident which indicates there was an injury. If there was not an injury, the injury report forms would not need to be filed.

Ms. Birnie stated that the stewardship organizations kua were confused about what to report and when.

Chair McLean expressed concern about the non-reporting. It wanted to impress upon the PKO representatives present the importance of calling in incidents to KIRC Base because KIRC has the responsibility of submitting the reports. KIRC staff will work with the kua and access coordinators to complete the required paperwork. Ms. Birnie agreed that their organization needs to take responsibility for reporting incidents but they need time to train the kua and access coordinators.

The Commission asked for clarification of PKO's current process. Ms. Kylee Mar (PKO) responded that the minutes from the last stewardship meeting are still being finalized. Access guides are being trained to call things in and that they do not have to call the off-island coordinator.

Chair McLean stated that KIRC Base's function during stewardship accesses is purely supportive. KIRC Base personnel do worry about the stewardship group's safety when the group does not call into KIRC Base. Staff stated they understood when an injury occurs the initial reaction is to take care of the person, but the incident should still be called into KIRC Base once the person is stabilized. Staff asked the stewardship organization to have radio contact with KIRC Base during the boat transit to island.

Ms. Mar responded that there already has been an informal adoption of texting and that the kua will be given a sample of the huaka'i log so they can see what information is required.

The Commission also suggested that participants be aware of the location of the ropes or rings on vessels when they utilize a different vessel than usual.

Commissioner Aluli summarized that any noteworthy incident should be called into KIRC Base so it can be logged in case an injury later develops. Staff added if there is an injury the report needs to be submitted when the group comes off island. PKO representatives stated the 'Aelike Working Group would clarify and write up the reporting procedures.

Ms. Birnie commented that witness statements and the supervisor's report have been submitted.

It was determined that this matter will be handled administratively by ED Nāho'opi'i and AO Lee; no further Commission review or action is needed.

### **C. Report on Status of Pōhaku Kāneloa Project**

Mr. Kuiokalani Gaperu, KIRC Cultural Resource Project Coordinator (CRPC) presented a PowerPoint presentation on the status of the Pōhaku Kāneloa project. He

requested that the language in the first line in the last paragraph of the Cultural Program Update dated 10 Aug 2012 be changed from "Since the decisions were made already ..." to "Since the recommendations were made already . . ." He reviewed a previous interpretation of the stone's cultural significance as "an earthly reflection of the sky" (Kanahele et. al.). The first sun study was conducted on March 21, 2008 at sunset during which it was observed that the sun's shadow moved across five cupules on the west side of the stone. It is a possibility the stone measures the sun's movements. The most recent study was conducted on March 23, 2012 at sunrise during which the sun's shadow moved across two to three cupules.

Previous archaeological work was reviewed including those which mention Pōkāneloa: "The Petroglyphs of Kaho'olawe, Hawaii" (KICC Consultant Report No. 21, 1993), "Archaeological Technician Training Kaho'olawe Practicum Report " by Uyeoka et. al.(2009) as well as the Clearance HP Report for Task Order 32 by Hammatt et.al.(2002) which categorized the stone site important for information content for research potential and recommended that the site should be preserved as is. Staff is going to "exhaust all possibilities but we are going according to what ancestors say." (Kanahele et.al. 2009) Culture staff conducted research on the name of Kāneloa. This stone was previously named Loa'a by Rubellite Johnson in her initial study of the stone. The name Kāneloa was given to the stone because of its location, Kāneloa Gulch. In Nā Alahēle Ma Kai O Kohala Hema which is a book that names certain boundaries by konohiki or people who were raised during konohiki (land management) times, Kamoehau references a place in Kawaihae on Hawaii Island. He states he knows the poho pa'akai called Kāneloa at Kawaihae Hikina. Poho is on this stone Kāneloa. It may be a coincidence. Another reference may refer to heiau at Kuaokalā. There were sun worshippers among the original arrivals in Hawaii and there were two temples dedicated to the sun on Oahu; one at Kāneloa in Waikīkī under Kapi'olani Park and one at Kuaokalā in Wai'anae. These temples were not for the general population, but only for a privileged few. This reference is from Nakuina and Metcalf 1904. There maybe a relationship between the Kāneloa Stone and these temples. He also summarized a story about Mololokai from Mākaha. There were two stones, Pōhaku Kāne and Pōhaku Kāneloa. They were used as observation points by cannibals who would hide behind them and yell out to others hiding on the trails. If there were a lot of people they would yell, "The tide is high." meaning there were too many people for them to take. If the group was small they would yell, "The tide is low." They would attack these travelers and consume the flesh. The bones would be put in a pit near the ocean.

The current threat to the stone is erosion which is inevitable. The area around Pōkāneloa is hard pan so the original composition is unknown. An overview of the treatment plan background was given in a draft of the Pōkāneloa Treatment Plan. There are three options in consultation with the Protect Kaho'lawe 'Ohana (PKO):

- 1) Do nothing to site which would not require any Commission action
- 2) Stabilize the stone in place which would not require buffer zones and would require Commission approval
- 3) Move the stone by either helicopter or forklift, stabilize the site and return the stone, which would require determining buffer zones and Commission approval

The pros and cons of each option were discussed:

Option 1) Do nothing to the site

Pros: It would be "natural"

Cons: The erosion has been promoted by human activity, including bombs, so the processes at work are not really "natural"

It was noted that Ms. Pualani Kanaka'ole Kanahale and EKF have observed changes over the years and feel that is an urgent need to save this unique instrument passed on from our ancestors. This is a unique pōhaku which could be lost to future generations.

Staff is unable to determine if the stone is moving based on pictures taken over a period of one month. Staff would like to observe the site for a year. If the stone is moving are the Sun studies applicable? If Pōkāneloa is moving perhaps another site could be created for it.

Option 2) stabilize in place with erosion control and re-direct water

Pros:

- Stabilization would involve a lot of people in the community and raise awareness about the site.
- Preserve mana created at the site when the pōhaku was placed; moving it may dislocate this mana

Cons:

- A lot of work for nothing
- Is expensive and labor-intensive
- The result may be the same as before the stabilization
- There has been a lot of change over the past two years, pointing out the urgency of moving the pōhaku.
- Efforts were made to stabilize the pōhaku in place with pili grass. However, no methodology or strategy for stabilization has been developed.
- A lot can be learned from the pōhaku even though the placement will be lost.
- Stabilization will take a long time and a 100-year rainstorm could take out the pōhaku.

A determination needs to be made about the site's stability. If it is stable, a kauhale could be built. If it is unstable staff will need to make sure enough data is collected from the site.

Option 3) move the pōhaku, stabilize the site and return it

Con:

- The pōhaku could be moved by either helicopter or with a huge forklift. A helicopter would be ideal. Staff would need to calculate an accurate weight to determine if a helicopter could

transport the pōhaku. Utilizing the on-island JCB forklift would require moving some of the surrounding rocks so the JCB could get to the pōhaku. The JCB would damage the area.

Staff has estimated the weight of the stone by using the density of basalt (3 grams/cm<sup>3</sup>) and creating a grid using a photo of the stone to get its volume. There were a total of 60 squares on the grid. Staff estimated the percentage of the area of the stone which covers the grid to determine the approximate volume of the stone. Its approximate weight is 5318 lbs. KIRC would need to bring a large helicopter (CH-47, Chinook, etc.) to move it.

The essential question of how to treat Pōkāneloa will need to be decided by finalizing the mitigation procedure and consulting experts and the community for other options. Staff wanted to know if the Commission wanted a mitigation treatment plan developed first or have consultation with community members for other options first. Chair McLean commented that she believes consultation should come first to determine whether and how to proceed with mitigation or treatment. Staff confirmed that, once the Commission has made a decision, the treatment plan is forwarded to the State Historic Preservation Division (SHPD) for approval.

The Commission wanted to know why the surrounding stones would need to be moved if the stone is moved by helicopter. Staff explained the loading straps need to be placed around the pōhaku to secure it properly; otherwise, the stone might break. Staff would need to move some of the surrounding stones to get equipment to Pōkāneloa so it can be lifted and the straps be placed around it. It might be possible to return the stones, depending on the condition of the area. The Commission wanted to know where the pōhaku would be relocated. Staff responded it could be moved 50 meters directly behind the site to the west. The staff would like to contact other cultural practitioners for any other information that might exist about the site. When KIRC staff Gapero first saw Pōkāneloa his impression was that it was a birthing stone. The Commission asked whom would he consult. He responded his primary resources would be his teachers, Hokulani Holt-Padilla, Keali'i Reichel and Snowbird Bento. He would also consult any other cultural practitioners that might have a relationship with Ki'i pōhaku or with any sun measurements. La'akapu Lenchenko, the kahu for Kūkaniloko is another possibility. Commissioner Aluli stated that no other group has paid attention to Kaho'olawe for 35 years other than the PKO and EKF. He commented that staff need to respect Ms. Kanaka'ole (Aunt Pua) by contacting her and explaining to her that further consultation is required. Staff agreed and has already tried to contact her. Staff does not want to leave anyone out. Commissioner Aluli expressed concern that if there are several opinions regarding the pōhaku the mitigation plan will never be worked out.

Vice Chair Whitehead's opinion was this is an urgent matter; the pōhaku seems to be moving and this needs to be documented and the pōhaku moved.

Mr. Lincoln commented the pōhaku is his family's 'aumakua. He suggested the pōhaku should be left as is and be allowed to move on its own. It should not be moved as this is a cultural site. The pōhaku is still there even after all the bombing.

Ms. Kamelamela (PKO) provided public testimony. She has been on all the trips to the site discussed during the staff's presentation, is one of co-authors of the PATH Report and works for Culture Surveys. She expressed concern that only options two and three were discussed in detail. All options need to be presented to the public or there might be grounds for a lawsuit. Staff clarified that option one is still in the mix. However, it does not need Commission approval. Staff spent more time presenting options two and three because either option requires Commission direction and approval. Commissioner Baker commented he too was under the impression that option one was being discarded.

The Commission asked staff and Ms. Kamelamela when the Commission should make the decision in the process and when should SHPD make a decision.

Ms. Kamelamela speaking as an individual understood the project is going on because it was one of the higher recommendations in the Cultural Use Plan which is a great plan. However, given the state of the KIRC and the funding and the partnerships which need to be developed with stewardship organizations she did not see Pokāneloa as a priority. There are other things the KIRC should be working on.

Commissioner Aluli was excused and quorum was lost from 12:12 to 12:15 pm during which public testimony was still heard.

Commissioner Baker observed that one of the things Ms. Kamelamela would like the KIRC to work on is increasing involvement on Kaho'olawe. Ms. Kamelamela stated the KIRC should at least identify 'ohana which are actively involved. She agreed with Commissioner Baker that this could be an outreach opportunity to other 'ohana and cultural practitioners.

Commissioner Aluli referred to the consultation plan contained in Draft 2 dated 2/6/11 and written by Mr. Craig Neff, Dr. Davianna McGregor and Ms. Kahale Saito which was distributed to the Commission, staff and public by Commissioner Aluli. It outlines what they hoped to accomplish two years ago. This plan allows a period of approximately 134 days for the consultation process.

Vice Chair Whitehead stated she preferred this consultation plan particularly because of the urgency of the situation and to go out with a preferred option to move things along. Staff explained that a technical procedure to do the preferred option needs to be developed and Commission approval is needed for the preferred option before consulting with the public.

Ms. Keala Norman (Leeward Community College) testified that when her group visited the site while on access last week they were given no prior information about it. She noticed pōhaku around it. Her initial response was to move it. However after discussing it with other access participants she changed her mind. It should not be

treated as an artifact. This is a cultural site. Perhaps a retaining wall could be built, allowing the pōhaku to remain in place. She believes it is a birthing site because directly above that pōhaku she believes is a birthing rock. She also opposes moving any pōhaku because some could be birthing stones. She would like to see it preserved in place. She believes the petroglyphs represent the genealogy of the people born there. She feels it is very important to preserve this site.

The Commission inquired if staff looked at a retaining wall as a possibility. Staff responded it was explored earlier but the challenge is how to harden the gully base so it stops eroding.

The Commission asked staff what the next steps are. Staff responded consultation needs to be completed before a treatment plan can be written. The Commission wanted the next step to include consultation with the individuals and organizations on the list on page two of the Draft Consultation Plan Regarding the Stabilization of Pōkāneloa dated 2/6/11 and other interested parties. This needs to be done within the next couple of months. The results of consultation are to be presented to the Commission.

Justin Kēpa‘o Keli‘ipa‘akaua testified he had just returned from his fourth access and believed it is important to protect the pōhaku. This is an opportunity to bring in more community members. Everyone should have a say. He was in favor of Option 1 and building a retaining wall.

The Commission requested the staff to: 1) provide ethnographic information supporting the possibility that the site might be birthing place; 2) provide a plan of action, 3) conduct consultation at the same time as item 2 and 4) work with the CWG on this project. Staff is to present their findings at the next meeting.

The Commissioners decided to review the program status updates and FYI materials on their own due to time constraints.

## **VII. ANNOUNCEMENTS/FYI**

Commissioner Aluli announced he would be speaking at the World Conservation Congress in Korea in September which is why he requested a copy of ED Nāho‘opi‘i's and KIRC Staff Higashino's talks given at this year's Hawaii Conservation Conference.

Commissioner Baker announced editing of the Sacred Lands film project will begin on 9/1/12. The project should be finished by the end of the year.

Vice Chair Whitehead invited any interested Commissioners to attend either Ipu a Kāne or Koholo Kalani ceremonies to open the planting season. The huaka‘i date for Kaho‘olawe will be from Sept. 28 to Oct. 2. The ceremony at Pu‘u Mahoe will be held on September 30. The contact person is KIRC Staff Gapero.

## **VIII. NEXT MEETING/FOLLOW UPS**

The Commission decided the evaluation of ED Nāho‘opi‘i should be placed on the next meeting's agenda.

Staff is to present the consultation results regarding Pokānehoa.  
The Strategic Planning Working Group is to make a presentation regarding their findings.  
Commission Coordinator Gavagan is to poll Commissioners for the next meeting date.

**IX. ADJOURNMENT**

There were no objections to adjourning the meeting. The meeting adjourned at 12:45 pm.

# Executive Director's Report

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*Kaho`olawe Island Reserve Commission Meeting  
August 10, 2012*

## Budget, Finance and Funding

**FY12 Expenditure Report and Budget Variance:** See attached variance report.

**Grant application update:** See the attached Grant Status Update and accompanying grant narratives.

## Plans, Policies and Procedures

**Long-range Scheduling:** See attached.

**Stewardship Meeting:** KIRC Executive Director Nāho`opi`i, Administrative Officer Lee and Culture Project Coordinator Gapero along with the Deputy Attorney General Somerville met with PKO Representatives Davianna McGregor and Kylee Mar for the regular stewardship agreement meeting on July 13, 2012 at DLNR. The PKO announced that they purchased General Liability insurance coverage. The Deputy AG began evaluating the insurance policy that was forwarded to the KIRC to determine what activities are covered under the policy. The State of Hawaii Office of Risk Management will most likely make the final determination that the insurance policy is sufficient.

The group reviewed the list of KIRC approved activities and defined some key terms when discussing the stewardship agreement. The group agreed to the term "authorized activities" as those activities permitted within the Reserve as specified in HRS 6K-3, "stewardship agreement authorized" as those activities approved in the stewardship agreement section 2 and lastly, "KIRC approved and authorized" as those activities that have been formally approved by Commission decision as meeting the criteria of Section 8 of the stewardship agreement.

**Bio-Propecting Issues:** At a previous Commission meeting a question was raised regarding the need for a policy on bio-propecting. Bio-propecting was defined in a 2004 Senate Bill (SB643) as the "collection, removal or use of any biological or genetic resources of any organism, mineral or other organic substance found on public lands of Hawaii for scientific research or commercial development." The State of Hawaii Legislature took up the issue of bio-propecting on State properties in 2006 and established an advisory group to develop policy recommendations for legislative consideration. A 2006 report was generated that explored the problematic issues concerning the fair and equitable sharing of benefits arising from biological resources that are held in trust by the State of Hawaii for the people of Hawaii.

The included fact sheet from this report states that in the absence of state and federal law, bio-propecting is not regulated in the State of Hawaii. The same report also states the AG's opinion is that the State does not automatically hold title to the genetic material derived from biological samples taken from public lands.

HRS 171-2 Definition of Public Lands provides the AG opinion that "Legal title to biogenetic resources gathered from state public lands will not still be vested in the State if third persons were allowed to

remove from public lands the natural resource or thing from which the biogenetic resources were extracted or the State sold or leased title to a parcel of public land without reserving title or retaining control of the resources or things connected to the transferred land, or their biogenetic contents.”

The KIRC is in a unique situation with regard to the management of the public lands it holds in trust for the State. By statute, the KIRC controls all access to the Reserve and by Administrative Rule controls the removal of all biological, mineral and other resource from the Reserve. Staff will work with the AG to develop specimen transfer documentation that will accompany all biological samples approved by the KIRC or its assigned designate for removal from the Reserve in order that the State retains its genetic rights to all biological material removed from the Reserve. The receiving entity will be required to sign the receipt documentation acknowledging the State does not relinquish its right to the genetic material being transferred. This action does not require commission approval as it is administrative in nature and protects the State's fiduciary responsibility with regards to managing public lands.

**Commission meeting outreach:** The current process for announcing Commission meetings include electronic press releases that are distributed to the KIRC e-distribution list of 750 recipients and all media outlets including television and print. People can either sign up for e-distribution at our webpage or at one of the KIRC's outreach events. Commission meeting notices are also posted on e-Hawaii.gov for incorporation into the State of Hawaii Government calendar, as required by OIP. KIRC meeting announcements are forwarded on other distribution lists including the PKO's kua list and CNHA's Native News Clips which has over a thousand Native Hawaiian subscribers.

## Administration, Staffing and Personnel

**Cultural Project Coordinator:** Cultural Project Coordinator Kui Gapero began working for the KIRC during the last week of June 2012.

**Ocean Resource Specialist:** Ocean Resource Specialist Cheryl King's employment contract for FY13 was not renewed due to work attendance issues. We are evaluating filling this position and are currently leaning towards downgrading the position to an Ocean Technician that will focus on implementing cultural-based ocean management projects and activities.

## Public Information, Outreach and Governmental Relations

**Public Comment on USFWS Critical Habitat Designation:** KIRC staff met with USFWS Representatives to discuss the proposed critical habitat listing for the Maui Nui region. USFWS is proposing to add 38 new species to the Federal Endangered Species List for Maui Nui and designating critical habitat for 138 species in the Maui Nui region.

A critical habitat designation for the Blackburn's Sphinx moth currently exists in the Luamakika region of Kaho'olawe. USFWS is proposing the creation of three coastal regions and two dry land forest regions for designation. The three coastal region encompasses the eastern cliff line from Kanapou to 'Ale'ale and along the western shoreline from Honokanai'a to Laepakī. These areas are primarily designated for *Kanaloa kahoowawensis* (Palupalu o Kanaloa), *Sesbania tomentosa* ('Ōhai) and *Vigna oahuensis*. The two dryland habitats include the ma'ō fields of Kealaikahiki and the upper slopes of the Hakioawa and

Papaka`ili. These areas include the previous listed species as well as additional species including *Hibiscus brackenridgei*. USFWS selected these areas based upon historical sightings of these species in the region and similarity to the current habitats occupied by these species.

Staff will be providing comments requesting the Honokanai`a Base Camp complex be excluded from the critical habitat as it is already a developed industrial area. KIRC's current restoration project sites will also be listed for informational purposes.

## Capital Improvement, Reserve Operations and Logistics

**Hakioawa Hale Update:** Five bids were submitted for consideration for the construction of the Hakioawa Shelter Project. DLNR Engineering, which is managing the construction process, selected GSI Pacific as the winning bid at \$396,800 which is just under the CIP funding amount from the State. BLNR has approved the award of the contract and GSI has just signed the contract document. The next phase is for the pre-construction meeting to review the contractor's plans and to discuss scheduling. Staff will be requesting the on-island portion of the project begin after the closing Makahiki ceremony in February 2013, unless the project can be fully completed prior to the opening Makahiki ceremony in November 2012 based upon manufacturer's schedule to fabricate and deliver the components for the project,.