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*KŪKULU KE EA A KANALOA*  
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**MEETING MINUTES**  
**Thursday, February 16, 2012**

9:00 am

Department of Land and Natural Resources  
Boardroom

1151 Punchbowl St, Room 130  
Honolulu, Hawaii

**COMMISSION MEMBERS**

**PRESENT:** Michele McLean, Chairperson; A. Nāmaka Whitehead, Vice Chair; William Aila, Jr.; N. Emmett Aluli, M.D.; C. Kaliko Baker (arrived 11:00 am); Ka'iulani Murphy

**EXCUSED:** Colette Y. Machado

**KIRC STAFF:** Michael Nāho'opi'i, Executive Director (ED); Ka'ōnohi Lee, Administrative Officer (AO); Rowena Somerville, Deputy Attorney General (DAG); Dean Tokishi, Ocean Resources Program Manager; Kahale Saito, Cultural Resource Project Coordinator; Terri Gavagan, Commission Coordinator (CC)

**GUESTS:** Kalehua Lu'uwai; Davianna McGregor (Protect Kaho'olawe 'Ohana [PKO]); Kylee Mar (PKO); Stephen Morse; Kim Birnie (PKO); Eric Brundage (Zapata, Inc.); Donne Dawson (PKO); Katie Kamelamela (PKO)

**I. CALL TO ORDER**

Chair McLean called the meeting to order at 9:11 am. A quorum was established with five Commissioners present.

**II. APPROVAL OF MINUTES**

Dr. Davianna McGregor (PKO) requested her comments regarding the Hanakūpono Task Force's purposes be clarified under Community and Public Comments section of the Draft Minutes of December 15, 2011.

**MOTION:** Vice Chair Whitehead moved to approve the minutes of December 15, 2011 as amended. Commissioner Murphy seconded the motion.

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

### **III. COMMUNITY AND PUBLIC COMMENTS**

Dr. Davianna McGregor noted HRS 6K attaches the KIRC administratively to the Department of Land and Natural Resources (DLNR) which she believes provides for the accountability that the legislators are seeking. She also believes that the law also keeps the island separate from DLNR so the island is protected as a trust. She urged the Commission to oppose SB3056 because she believes it would undermine the trust responsibility and would set back the process of transitioning the island to the sovereign governing entity.

Chair McLean asked Dr. McGregor why she thinks SB3056 would impact the transfer of Kaho‘olawe to the governing sovereign entity; it is her understanding there is no proposal to change the language of HRS 6K. Dr. McGregor said that the Commission is a semiautonomous entity as a separate branch of DLNR but by having DLNR oversight over the Commission it takes away KIRC’s authority to oversee and manage the land as a cultural reserve and the process of transitioning it to a sovereign governing entity. This is because DLNR has a different set of operating parameters and oversees the entire state. She believes there is a contradiction between giving oversight of the Kaho‘olawe Island Reserve (KIR) to the DLNR and the intent of HRS 6K. Chair McLean understood that this could be a concern, but she did not see how SB3056 would actually impact HRS 6K and the transition. The bill does not put the Reserve in the DLNR land base; it keeps the Reserve separate. Dr. McGregor disagreed; she believes that it would go into the DLNR land base.

Commissioner Aluli added that the Commission does not know the impact of this bill. He asked Commissioner Aila how much of the ceded lands are managed by DLNR. Commissioner Aila responded 1.2 million acres, plus forests and submerged lands. Commissioner Aluli stated the KIR would be placed in the DLNR inventory and the legislature has everything to do with this inventory. Chair McLean responded that she did not read the bill in the same way. Commissioner Aluli noted that ceded land trust responsibilities have changed with different administrations. He noted that there has been other legislation modeled after HRS 6K such as Ha‘iku Valley. The issue of the Commission’s role as steward of this ceded land needs to be examined during the next strategic planning process. Dr. McGregor stated the intent of providing DLNR oversight could be misinterpreted at the point of transfer.

Kim Birnie (PKO) stated that SB3056 changes HRS 6K. HRS 6K is ground-breaking legislation and she sees no reason to change it at this time. The PKO would like to address concerns raised by the legislature, but she does not think legislation is a way to do that. Kaho‘olawe is looked at as a model of stewardship and self-governance in other parts of the United States. She said that the same legislative language is being used in the Ha‘iku Valley and the Aha Moku bills.

She is nervous if a little change will lead to more changes later. She testified individually against SB3056 and the PKO testified organizationally against it.

Kylee Mar (PKO) stated that she has attended the ‘Aelike meetings when the proposed activities for the Stewardship Agreement were discussed. She believes that HRS 6K should not be changed. Whatever problems exist can be resolved outside of legislation. PKO will stand by its testimony opposing SB3056 and she personally believes that the law should not be changed until it is discussed and they are clear as to what the motivations are.

DAG Somerville asked Ms. Mar for clarification of the first activity (DLNR Revegetation Phase II Grant) listed in the “Proposed PKO Activities.” Ms. Mar responded that it is an ongoing PKO grant. The PKO has monies to expend for projects and must submit reports to DLNR. Chair McLean asked if DLNR reimburses the PKO. Ms. Mar responded once the PKO turns in its final report they will receive final payment.

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

##### **A. Executive Director’s Report**

###### **1. Status Update on Budget, Finance and Funding**

There was a budget variance in the Ocean Program’s nonpersonnel cost. The NOAA marine debris grant was divided between FY11 and FY12. There were issues with the original helicopter transport contract which resulted in a new solicitation and award of a new contract in FY12. The funds placed in FY11 budget needed to be expended this year in order to receive reimbursement from NOAA. The amount exceeded the FY12 budgeted amount but not the grant amount. Staff will be proposing to amend the budget to increase the Ocean Program’s nonpersonnel costs but not change the overall budget. Currently nonpersonnel costs are running 6% under budget.

Staff is requesting additional procurement training as a result of the generator rental procurement violation.

The long range KIRC schedule in the Commission packet was reviewed. The long range schedule is working well. Base Camp personnel have a better picture of upcoming activities and staff is getting better at long term planning.

###### **2. Status Update on Plans, Policies and Procedures**

A Stewardship Agreement meeting was held on December 15, 2011 and a list of proposed 2012 activities will be presented at this meeting for approval.

**3. Status Update on Administration, Staffing and Personnel**

Staff announced the Commission's upcoming Native Hawaiian Organization vacancy. Interested parties will apply at the Boards & Commissions' website.

Staff has compiled a short list of candidates for the Public Information Specialist position and will be conducting interviews shortly.

Cultural Project Coordinator Kahale Saito will be leaving at the end of February 2012. Staff will be requesting to fill her position later in the meeting.

**4. Status Update on Public Information, Outreach and Government Relations**

Staff met with legislators and conveyed the KIRC's positions on the conveyance tax and asset forfeiture bills. ED Nāho'opi'i met with the DLNR Chair regarding the possibility of adding the KIRC to the DLNR's general fund request for FY2014.

**B. Review December 2011 Expenditure Report**

The expenditure report for December 2011 was submitted for review. There were no questions or comments.

Vice Chair Whitehead asked for an update on the Kihei Executive Order (EO) language. ED Nāho'opi'i responded that he has been unable to contact the land agent on Maui.

Chair McLean commented the Mayor of Maui County may be requesting a \$25,000 appropriation for the KIRC in his proposed FY2013 budget.

ED Nāho'opi'i noted that there is one open solicitation for Base Camp management. This solicitation will be closing on February 21, 2012.

**C. Report and Recommendations from the Maui Marine Conservation Action Plan Workshop**

KIRC Staff Tokishi gave a PowerPoint presentation highlighting the findings from the Maui Marine Conservation Action Plan Workshop. There were three workshops held over a period of six months focusing on Molokini, Kahekili and Kaho'olawe. One of the highlights of the workshops was the peer review. Each team from these areas consisted of 10-12 people with different backgrounds—scientific, community and historical. ED Nāho'opi'i, KIRC Staff Tokishi, VanderVeur, King, Higashino and Saito, Commissioner Murphy, and from the community Eddie Chang, Jr. participated in the workshops as the Kaho'olawe team. There were four steps: 1) defining the

project; 2) developing strategies and measures; 3) implementing those strategies; and 4) improving the objectives.

Step 1 identified the resources staff thought it should focus on. The four objectives of most concern in the Kaho‘olawe area were: a) shoreline habitat; b) cultural landscape; c) near-shore and coral reef ecosystems and offshore fisheries; and d) bottomfish.

Commissioner Aluli asked how the kinolau was being interpreted. KIRC Staff Tokishi responded that there is a need to identify the species by working with KIRC Staff Saito and consulting the Cultural Plan compiled by the Edith Kanakaole Foundation.

Step 2 assigned key ecological attributes (KEA) to each objective or target. The area for the Kaho‘olawe site was limited to Kealahakiki ‘ili. Staff determined what would constitute good, fair, and poor ratings for these objectives. Then staff determined each target’s current status. This information was placed within a CAP (Conservation Action Plan) matrix system which determines the ranking for each target in terms of threat. There were not a lot of high threat areas where immediate action needs to be taken. The KIRC targets were ranked from a medium to low threat.

Dr. McGregor asked if UXO (Unexploded Ordnance) was looked at as a threat. ED Nāho‘opi‘i clarified that human interaction was not being looked at with the exception of how human interaction affected water quality.

Vice Chair Whitehead asked about the cultural landscape practices as a target. ED Nāho‘opi‘i responded the concept of cultural landscape was introduced to look at the relationship between the shoreline, water and the view plane. Staff wanted to be sure that any structures or infrastructures would take into consideration view plane issues and existing archaeological features in the coastal zone area. Vice Chair Whitehead said she thought it has something to do with the percentage of *ko‘a* that were actively used. KIRC Staff Tokishi responded that staff was still working on that issue.

Dr. McGregor said UXO studies show that one of the highest concentrations of UXOs in the water is off Kealahakiki. It is also one of the largest lipoa seabeds. She did not see lipoa or seaweed mentioned as a previous indicator of the health of the ecosystem.

KIRC Staff Tokishi responded that the examples he was sharing were just a sample of the issues examined and the limu issue was addressed but is not one of the staff’s immediate objectives because of the health of the resource. ED Nāho‘opi‘i added this process allowed staff to identify the biggest issues with regard to limited funding.

KIRC Staff Tokishi explained the first objective is the coastal terrestrial area, specifically shearwater burrowing. There is ideal habitat and surrounding food source. The birds are seen on the water but there is no nesting. The prevalent theory is that this is due to predation by the island's feral cats. Staff then determined the steps to correct the situation. Commissioner Aluli asked if the staff was actually identifying nesting. KIRC Staff Tokishi responded staff is identifying the target as the shoreline habitat; the KEA is the burrowing success and the rating is poor because there is no nesting.

The second objective is cultural landscape which staff ranked fair but would like to improve to good. The way to achieve this is to determine the number of known *ko'a* in that region as well as other cultural sites and be sure they are maintained, understood and utilized by multiple practitioners. It is unknown how long it would take to process one *ko'a* or other cultural sites, so the goal is to complete this by 2050. Staff's current goal is to process one *ko'a* site, Site 216, by 2013.

The third objective is near-shore and coral reef ecosystems and offshore fisheries. The KEA is the fish biomass, abundance and movement. Staff ranked it as fair but wants to improve it to good. Staff wants to see the population increase. Staff believes it can be done by increasing the percentage of megaspawners, average size proportion of catch that is reproductively mature, and school size. The high threats are violation of state rules—catching undersized fish, fishing during closed seasons, violations of bag limits and not receiving catch reports. The staff wants to reach this goal by:

- ❖ increasing the number of catch reports for both trolling and near shore fishing;
- ❖ requiring an education class similar to DLNR's hunting class - anyone who would like to remove resources from the KIR would need to attend the class;
- ❖ decrease poaching and illegal fishing by random staff presence in the KIR;
- ❖ working closely with PKO Kuas;
- ❖ utilizing existing equipment such as the zodiac; and
- ❖ implementing changes to the fishing program that would increase the chances of compliance such as increasing penalties, e.g. asset forfeiture

The Ocean Program realizes that it needs to collect more data using scientific methods; some would be considered "take." Staff could determine if internal *kapu* or changes in state rules are necessary based on the data collected. The staff would also communicate their findings to both the Commission and the fishing community.

The fourth objective is bottomfish—staff wants to see its rating go from fair to good and would like to monitor the “deep 7” (pakapaka, ulaula koeae, kulikuli, hapupu, lehi, and ehū). The Ocean Program will report to the Commission when The Nature Conservancy (TNC) action plan is received. Staff would like to request changes in the catch report system making it mandatory and consistent with DAR (Division of Aquatic Resources) requirements where a monthly catch report is filed whether or not there was a catch or entrance into the KIR. They would like to have a mandatory boater education class which would also be an outreach opportunity. Staff would also request approval for tagging and fisheries projects. The tagging, handling of the fish and the use of fishing gear would require Commission knowledge at a minimum

Commissioner Murphy added that she appreciated the opportunity to participate in the workshops. She thinks that the KIRC will need help moving forward in learning what exists because the staff will not be able to do the whole process on their own.

ED Nāho‘opi‘i commented it was a good opportunity to integrate ocean, land and cultural aspects to get tangible results. There was a lot of expertise at the workshops that gave staff the opportunity to develop working relationships with other experts.

Commissioner Aluli asked about the collaboration between the three areas. KIRC Staff Tokishi responded that all three areas are marine protected areas and are all under the DAR within the DLNR. TNC brought them together and the most important aspect of the workshops was the peer review process.

KIRC Staff Saito noted that the success of this plan will be dependent on the collaborative work with the Ocean Program, the community, lawai‘a, the practitioners, particularly in the PKO who are subsistence gathering. The Ocean Program cannot do it alone. The Ocean Program needs to be willing to work with the community and the practitioners and vice versa.

Vice Chair Whitehead asked when the Commission would be receiving the plan. ED Nāho‘opi‘i responded that it is still being worked on.

Commissioner Aila observed that Hawaiian culture is an accumulation of science because it was observation and experimentation by which what worked was kept and what did not work was not kept. Science and culture should not be seen as separate approaches because they have the same foundation.

There was a recess between 10:45 am and 11:00 am.

## V. ACTION ITEMS

### A. Authorize Executive Director to fill Cultural Resource Project Coordinator position

Staff is seeking a motion to fill the position of Cultural Resources Project Coordinator which Kahale Saito will vacate on February 29, 2012.

KIRC Staff Saito distributed a Transition Document to the Commissioners which listed the status of Cultural Program projects as of January 2012. She noted that there have been five managers who were cultural giants in this position prior to her. It is important to keep managers for a sustained period of time. The person in this position will need to be a mediator and be able to provide cultural *mana* 'o for the Ocean and Restoration Programs.

She believes there needs to be more Commission support of the Culture Program which has been lacking since the departure of Commissioner Neff. There needs to be support from all the stakeholders and more inclusion of cultural practitioners past and present. Additionally, KIRC support needs to be provided for the people doing the cultural work. The Culture Program has been given the least amount of support both in the budget and in personnel.

Commissioner Aluli asked how much of the Cultural Use Plan has been her kuleana. KIRC Staff Saito responded that she has reviewed all the suggestions and is working on the Pōkāneloa and Ala Loa. Commissioner Aluli noted that the information she has gathered needs to be left behind for her successor.

Commissioner Baker asked if the program would be different with two people. AO Lee gave a history of prior KIRC cultural staff. Hokulani Holt came to the KIRC while the Navy was still there and she felt it was important to educate the staff so they could gain cultural knowledge. Kaleikoa Kaeo came to the KIRC during the transition of the KIR from the Navy. During this time, a draft of a cultural education curriculum was completed. There was also a second person in the program at this time, Kalei Tsuha, and she was mostly on island. When Kaponō'ai Molitau came into the position there was only one position. He attempted to integrate cultural knowledge with the other programs. AO Lee stated the next person needs to be able to provide cultural expertise and there needs to be a balance between science and culture.

Commissioner Aluli asked if this need is reflected in the job description. AO Lee responded no. ED Nāho'opi'i added that the job description states that the person is a coordinator not a project manager.



Vice Chair Whitehead asked KIRC Staff Saito what she would recommend. She finds it odd that Culture is a separate program. It should be the foundation of the entire organization. The Commission needs to look at the organization and how it fulfills its mission with cultural practitioners.

Commissioner Aluli asked Commissioner Aila how the DLNR addresses culture. Commissioner Aila said that they are trying to identify cultural experts and to come up with a common goal. He also asked KIRC Staff Saito what she would be taking away from Kaho‘olawe. She leaves behind folders with much information and is taking with her a lot of experience and time spent on the island. Commissioner Aila observed that this *'ike* needs to be applied to other places.

Chair McLean asked KIRC Staff Saito what she meant by needing more support, and whether that meant more support from other Hawaiians. Saito responded there should be more support from all stakeholders. Chair McLean wanted to know what type of KIRC support is needed. KIRC Staff Saito replied both financial and personnel. It is hard to get PKO kua on island; airfare could be paid for by the KIRC. Chair McLean noted that there was a lot of money budgeted for the Culture Program previously but was not spent. Chair McLean asked if the Commission should prioritize the Cultural Program projects. Saito responded she was afraid that prioritizing would lead to the elimination of some projects.

Vice Chair Whitehead commented the focus should be on what direction the Culture Program should take. AO Lee said that it is a question of qualifications versus duties. Vice Chair Whitehead wondered if the position needs to be upgraded or if the Culture Program needs two people. Chair McLean noted that all previous predecessors left for different reasons. Commissioner Baker stated he had the same question as Vice Chair Whitehead; even if the position was upgraded there are many hats to wear and perhaps two people are needed. AO Lee responded that there is still a Cultural Resources Specialist II position open that is not currently funded. Commissioner Baker said the job description may need to be updated to include the Cultural Use Plan. AO Lee asked KIRC Staff Saito if that would have made a difference. She stated yes.

Commissioner Aila asked KIRC Staff Saito if her job was mostly coordinating. She stated no, if she could not get experts to the island then she had to do the work. Commissioner Aila commented that the job description may need to be changed.

Chair McLean stated that the KIRC did have cultural practitioners in the position previously but there were complaints about how cultural practices were being conducted by these practitioners. Commissioner Aila stated that

there should be a reassessment of what can be accomplished within the current budget.

Commissioner Baker stated that KIRC Staff Saito did a great job.

**MOTION:** Vice Chair Whitehead moved to authorize ED Nāho‘opi‘i to fill the position of Cultural Resource Project Coordinator and assign Commissioner Baker to sit on the interview panel. Commissioner Aluli seconded the motion.

**Discussion:** Commissioner Baker stated that he would like to look into filling the second position.

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

**V. B. Authorize Executive Director to extend Communication Services contract with Harmer Radio and Electronics, Inc. for FY13**

The amount of the requested extension for communication services is \$62,075. The contract would include the maintenance and licensing of 35 radios.

**MOTION:** Vice Chair Whitehead moved to authorize ED Nāho‘opi‘i to extend the communication services contract with Harmer Radio and Electronics, Inc. for FY13. Commissioner Aluli seconded the motion.

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

ED Nāho‘opi‘i requested that **Item V.E. Discuss and Approve Legislative Plan of Action** be discussed before **Item V.C. Approval of Memorandum of Understanding regarding the restoration of the plant Ka Palupalu o Kanaloa (*Kanaloa kahooolawensis*)** and **Item V.D. Discuss and approve proposed activities and projects to be performed under the Palapala ‘Aelike Kahu‘āina Stewardship Agreement between the Kaho‘olawe Island Reserve Commission and the Protect Kaho‘olawe ‘Ohana through its non-profit and fiscal agent Kohemalamalama O Kanaloa/Protect Kaho‘olawe Fund** due to time constraints and the possibility that Item V.D. might go into executive session. There was no objection.

**E. Discuss and Approve Legislative Plan of Action**

**4. Potential changes to the Burial Councils (Senate Bills 2385 and 2854)**

Vice Chair Whitehead asked if there were any updates regarding the Burial Councils legislation. Commissioner Aila stated that one bill was passed (Senate Draft 1) which will allow a quorum of one in order for a Burial Council meeting to be held.

Commissioner Baker commented it was important to speak with the people who actually do the burials on island. Commissioner Aila added that the KIRC should have its own policy regarding burials. Commissioner Aluli agreed. Commissioner Aila suggested that the KIRC could notify the Burial Council Task Force that it would want to have a say in whether unidentified Hawaiian remains could be buried on Kaho‘olawe.

Vice Chair Whitehead stated that the KIRC should oppose the bill or at least seek the removal of the language regarding Kaho‘olawe.

**MOTION:** Vice Chair Whitehead moved to oppose Senate Bill 2385. Commissioner Murphy seconded the motion.

**Discussion:** If the bill moves forward, the Commission would like the language regarding Kaho‘olawe removed. Commissioner Aila stated that the intent of the bill was to put burials in a safe place.

Dr. McGregor commented that those who are responsible for the burials on Kaho‘olawe have opposed this bill.

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

Vice Chair Whitehead recommended that the KIRC oppose Senate Bill 2854. Chair McLean stated that it is important for the KIR to retain its own burial council authority. Vice Chair Whitehead added that she thought the people on the individual islands would want to retain the *kuleana* for their own island. Chair McLean said that the people on the individual islands could speak for themselves.

**MOTION:** Vice Chair Whitehead moved to oppose Senate Bill 2854 and if it does move forward that the KIRC wants to retain responsibilities as the Burial Council for Kaho‘olawe. Commissioner Aluli seconded the motion.

**ACTION:** Roll call vote: Chair McLean: No; Vice-Chair Whitehead: Yes; Commissioner Aila: Yes; Commissioner Aluli: Yes; Commissioner Baker: Yes; Commissioner Murphy: Yes; Commissioner Machado: Excused. Motion approved.

Chair McLean stated that she voted no because the other island councils should have their own say, but she does agree with the provision that the KIRC retain its burial council authority.

**2. Limited commercial use of the Reserve**

At the last meeting, the Commission requested this item be placed on the agenda for discussion. It was noted that there are no bills pending regarding this issue.

Vice Chair Whitehead stated that during the last discussion it seemed that there was some consensus for the position of maintaining Chapter 6K and no commercial use until the KIRC reaches out to the Hawaiian community during the next strategic planning process.

**MOTION:** Vice Chair Whitehead moved that, in the event that bills are introduced in the Legislature that propose commercial activity in the Reserve, the Commission's position would be to oppose them so that a discussion of commercial activity could be discussed with the broader Hawaiian community in the context of strategic planning. Commissioner Aluli seconded the motion.

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

**5. Statewide user fee for recreational use of environmental resources**

Last meeting, the Commission requested this item be placed on the agenda for discussion. It was noted that there are no bills pending regarding this issue.

ED Nāho'opi'i stated that the only fee the KIRC might be involved with is the MCD (Marine Conservation District) fee that has been deferred. Vice Chair Whitehead asked if staff thought it would affect the volunteers by requiring them to pay the user fee. Chair McLean stated it is her understanding that the fee would not be applied to the Reserve, but that the KIRC might get a portion of the user fee collected statewide.

Chair McLean commented that she did not know if the Commission should take a position on this issue. The Commission might support getting money, but it might not support how those fees are established. The Commission decided to defer action on this issue pending specific proposals.

**3. Molokini management (Senate Bills 817 and 2911)**

Commissioner Aila said DLNR will oppose these bills because the area needs to be better managed. DLNR will take steps to adopt rules to address this. There is too much use now; it is overcapacity. DLNR needs to find a way to reduce capacity to a manageable level and make the users pay for the management. As a KIRC Commissioner, he wonders if it fits with the KIRC's mission.

Commissioner Aluli wanted to know if the bills would extend the KIR's boundaries to the waters surrounding Molokini.

Vice Chair Whitehead stated that last year it was decided that while this topic made sense from a cultural perspective, it would be difficult from a logical and operational perspective because the KIRC has a full plate already.

Chair McLean stated that commercial activities would be prohibited under the bill because it would fall under the KIR's restrictions. She does not think that was the intent of the bill but it would put the responsibility on the KIRC to sort it out.

Commissioner Aluli commented that he understood the original idea behind the bills was to provide more ceded lands to the Hawaiian nation.

ED Nāho'opi'i noted that no hearing has been set for the new bill (SB 2911).

Vice Chair Whitehead asked ED Nāho'opi'i about KIRC's position last year. He responded the Commission took a neutral position on the proposal but it had technical issues with the bill regarding the boundaries and prohibiting commercial use. The Commission recommended it be a separate portion of HRS 6K to allow for different use in that area, e.g. a Molokini Island Reserve under the management of the KIRC. Chair McLean added that last year's bill (SB 817) was also seen as a potential source of revenue for the KIRC based on user fees.

**MOTION:** Vice Chair Whitehead moved to oppose Senate Bills 817 and 2911. Commissioner Baker seconded the motion.

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

**1. Commission membership and authority (Senate Bills 609, 2686 and 3056)**

Vice Chair Whitehead noted that the KIRC has opposed legislation in the past that proposed this language. At the last meeting, ED Nāho'opi'i said the Commission took a position that the Commission was supportive of the conveyance tax but opposed any changes to the oversight of the KIR from KIRC to DLNR. Chair McLean added that there were concerns SB3056 would affect the transfer of the island to the Native Hawaiian sovereign entity and that the language in the bill needs to be clarified. Vice Chair Whitehead added that if justification is added to the testimony some of the mana'o shared by the public this morning should be included particularly that HRS 6K is visionary language and a model.

Commissioner Aluli stated that there is a belief that the bill would change HRS 6K. He asked Commissioner Aila if the KIRC would be a burden to DLNR. He believes that KIRC's administrative attachment to DLNR was well executed. He does not know what it means to be under more DLNR oversight. DAG Somerville responded there would be no change in the Commission's duties unless the legislators made the Commission an advisory committee. Commissioner Aila noted that oversight is not defined. Chair McLean stated that her interpretation is that the DLNR Chair would essentially have veto power over the decisions of the KIRC or the ED. It is not clear to her what it means in terms of day to day operations. She thinks having more structure to the KIRC would be beneficial. She does support keeping the Reserve separate from DLNR lands and making sure that such language stays in HRS 6K. The oversight aspect is not clear to her though she believes that there might be some benefits to it.

Commissioner Aila shared that he was asked to find two words that were between oversight and partnership and submit that as Senate Draft 1 to Senator Malama Solomon by 10:00 am today, which he did. He had a conversation with Senator Solomon where he proposed having the DLNR Chair co-chair the Commission. She was not comfortable with that and wanted the OHA Chair to be the co-chair on the Commission. Both versions went over to the legislators to decide.

Vice Chair Whitehead asked Commissioner Aila what would it mean if the DLNR Chair was the co-chair of the KIRC. He stated that if one Chair could not attend the meeting then the other Chair would run the meeting. He continued that the legislative committee had a problem with oversight but they also wanted something a little bit stronger than partnership so co-chair was seen as a compromise. He thinks it is likely that SD1 will have the OHA Chair as the co-chair of the KIRC. He believes the legislators are looking for more influence over decision-making. Commissioner Aila stated that the Commission should definitely take a position on this bill.

ED Nāho'opi'i read SB3056 with the changes to the Commission. It proposes that the Governor shall appoint the Co-Chair of the KIRC and the Chair of DLNR or OHA (depending on what version) shall serve as the other Co-Chair. That is the only proposed change to the statute. It would not affect the oversight paragraphs.

Commissioner Baker asked Commissioner Aila if the DLNR currently has a say in KIRC operations. Commissioner Aila said no; he is just one member on a Commission of seven members. He said that HRS 6K-4 states that the DLNR and other departments and agencies of the State shall be subject to the oversight of the Commission with regard to the control and management of the KIR.

Vice Chair Whitehead said that the KIRC is a semi-autonomous entity; a trustee for the Hawaiian nation. Commissioner Baker said it would be a step backwards.

Commissioner Aila was excused at 1:00 pm.

**MOTION:** Vice Chair Whitehead moved to oppose Senate Bill 3056. Commissioner Murphy seconded the motion.

**Discussion:** Vice Chair Whitehead stated she would like the KIRC to oppose any changes to HRS 6K. Chair McLean responded that is too broad a statement for her to vote on. She does not know what changes to HRS 6K could be beneficial but she just does not want to issue a blanket statement. The impact of SB3056 is unclear.

Commissioner Baker commented that, in his view, decision-making in the Commission is generally by consensus. There is rarely a vote in opposition. Therefore, he thinks it is unnecessary to have oversight or co-chairing.

Vice Chair Whitehead suggested that the KIRC should oppose any changes to HRS 6K that undermines the semi-autonomous authority of the KIRC so it is not quite such a blanket statement but it does make the point the Commission is opposing the oversight language.

Chair McLean stated that she is uncomfortable with voting on a position on the bills because it is not clear to her what they would do. Commissioner Baker stated although he understood Chair McLean's position, the reason why the KIRC should oppose these bills is because they violate the spirit of HRS 6K. Commissioner Aluli added that the spirit of HRS 6K is that the Commission is the trustee for this land.

Commissioner Murphy withdrew her second and Vice Chair Whitehead withdrew her original motion.

**MOTION:** Vice Chair Whitehead moved to oppose SB3056 and any other changes to HRS 6K that would diminish the authority of the Kaho'olawe Island Reserve Commission as the trustee for the future sovereign entity. Commissioner Murphy seconded the motion.

**ACTION:** Roll call vote: Chair McLean: Abstain, Vice-Chair Whitehead: Yes; Commissioner Aluli: Yes; Commissioner Baker: Yes; Commissioner Murphy: Yes; Commissioners Aila and Machado: Excused. Motion approved.

Vice Chair Whitehead stated that last year the Commission's position on similar legislation was that the Commission was fine with reducing the number of seats on the KIRC as long as one of those seats was filled by a PKO member.

Commissioner Aluli asked for a history of this bill (SB609). SB609 was the carryover bill from last year which reduces the number of Commissioners but keeps one seat as PKO. Vice Chair Whitehead stated that SB2686 removes the PKO member seat and reduces to one the number appointed from a list provided by the PKO and increases to three the Native Hawaiian Organizations seats. Vice Chair Whitehead asked if either bill has been set for a hearing. ED Nāho'opi'i noted that no hearings have been scheduled for either. He stated that SB609 was deferred last year. Commissioner Aluli asked why it was never heard. ED Nāho'opi'i stated because they voted to not hear it.

Commissioner Aluli stated there was an agreement that the bill would not be heard because of the resignation of Commissioners Neff and McGregor. He stated that there was a resolution after Governor Waihe'e's testimony to create a task force to resolve the issues. It also requested a fiscal audit of KIRC. AO Lee clarified that in SB2686 one position would be appointed by the Governor from the list provided by the PKO and three members shall be appointed by the Governor from a list provided by Native Hawaiian Organizations. Commissioner Aluli asked Dr. McGregor to explain how this came about from a resolution passed by the Association of Hawaiian Civic Clubs. Dr. McGregor stated Annelle Amaral made an amendment to the resolution to ask that the list that the PKO submits include Native Hawaiian Organizations. That information was forwarded to the senator who introduced the resolution.

Commissioner Baker asked Dr. McGregor if the Hawaiian Civic Club submitted opposing testimony on SB2686. She was told they would submit testimony against this bill because it does not reflect their intent.

Chair McLean stated that she does not know the history of SB2686. With regard to SB609, at the conclusion of a Commission meeting about a year ago, she was asked to meet with Senator Kidani. Senator Kidani asked Chair McLean if Commissioners McGregor and Neff had resigned. She told Senator Kidani no and that was the first she had heard of this. Senator Kidani said the PKO had put together a group of people who were tasked with communicating with the Senators to resolve those issues. Part of that



discussion was the resignation of Commissioners Neff and McGregor. Senator Kidani told Chair McLean to relay the message to the PKO. Chair McLean saw the three PKO representatives while leaving her meeting with Senator Kidani. Chair McLean contacted Commissioner Neff and passed on Senator Kidani's message. She did not know what deals were being made, but she did not think it was appropriate for the Senate to tell a Commissioner to resign. Her understanding at that time was that SB609 came about because of the Makena accident and fishing violations not being addressed. It is still not clear to her if these issues have been resolved; if they have been resolved it has been internal and not open and she feels that it should be open. She submitted testimony in favor of SB609 last year because at that time it seemed like less was being discussed in the open and she was not comfortable with that.

Commissioner Aluli commented that this follows what Dr. McGregor stated earlier that the PKO and KIRC need to support each other and begin talking and trusting one another.

Vice Chair Whitehead stated she would like to discuss the Makena accident and the fishing violations at the next Commission meeting. She would like to address how to fix the process so that the Commissioners know how these issues are treated now and in the future. She noted there was a discussion at the last meeting on taking a position on the bills, and that Chair McLean had reservations because she felt there was a conflict of interest with sitting Commissioners taking positions on bills that would affect their seats. Vice Chair Whitehead's *mana'o* was even if it does affect sitting Commissioners the greater effect is on the future composition of the Commission outside of who is currently sitting on the Commission. She does think that the Commission should take a position on these bills.

Commissioner Aluli stated he felt this goes back to the earlier discussion of not wanting to change the language in HRS 6K until the Commission looks at the strategic plan.

Commissioner Baker stated the composition of the Commission should be looked at after an assessment of the Commission as a whole is conducted with the new strategic plan. Commissioner Aluli commented that in the past there was little interest from Native Hawaiian Organizations to sit on the Commission.

Chair McLean noted that the process is different now because the applicants apply directly to Boards and Commissions.

Commissioner Baker stated he felt that the Commission should take a position on SB 2686.

**MOTION:** Commissioner Murphy moved to oppose Senate Bills 2686 and 609. Commissioner Baker seconded the motion.

**Discussion:** Commissioner Baker stated that he felt that the Commission should see if the Association of Hawaiian Civic Clubs is able to provide applicants. If there is an overwhelming demand then the Commission should sit down and talk story with the NHOs. In his opinion, the Commission should stay as autonomous as it can. He and Vice Chair Whitehead are opposed to any change to the composition of the Commission at this time. This language should be included in the testimony: The Commission opposes SB2686 and SB609 and further opposes any other changes to the composition of the Commission at this time.

Commissioner Murphy stated that the Polynesian Voyaging Society (PVS) sees the value of having PKO representation on the Commission which is why it is opposing these bills.

**ACTION:** Roll call vote was conducted: Chair McLean, No; Vice Chair Whitehead: Yes; Commissioner Aluli: Yes; Commissioner Baker: Yes; Commissioner Murphy: Yes; Commissioners Aila and Machado: Excused. Motion approved based on the roll-call vote.

Vice Chair Whitehead suggested finding a more efficient way to come up with the Commission's positions on legislative proposals next session. Vice Chair Whitehead suggested getting an earlier start and not focus so much on the bill numbers as on the topics. Chair McLean agreed.

There was a recess from 1:55 pm to 2:10 pm. Commissioner Aluli was excused at 2:10 pm.

**C. Approval of The Management Plan for *Kanaloa kahoolawensis* (*Ka palupalu o Kanaloa*)-2011 and Memorandum of Understanding regarding the restoration of the plant *Ka Palupalu o Kanaloa* (*Kanaloa kahoolawensis*)**

Chair McLean suggested that this item be deferred due to time constraints. There were no objections from the other Commissioners.

DAG Somerville requested an executive session for **Item V.D. Discuss and approve proposed activities and projects to be performed under the Palapala 'Aelike Kahu'aina Stewardship Agreement between the Kaho'olawe Island Reserve Commission and the Protect Kaho'olawe 'Ohana through its non-profit and fiscal agent Kohemalamalama/Protect Kaho'olawe Fund** so that the Commission could consult with its attorney.

**MOTION:** At 2:15 pm Vice Chair Whitehead moved to enter Executive Session pursuant to HRS Chapter 92-5(a) (2) and (4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. The motion was seconded by Commissioner Baker.

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

Commissioners McLean, Whitehead, Baker and Murphy, ED Nāho'opi'i, DAG Somerville, AO Lee and CC Gavagan resolved into executive session.

At 2:50 pm Vice Chair Whitehead rose to report out of Executive Session, seconded by Commissioner Murphy.

**D. Discuss and approve proposed activities and projects to be performed under the Palapala 'Aelike Kahu'āina Stewardship Agreement between the Kaho'olawe Island Reserve Commission and the Protect Kaho'olawe 'Ohana through its non-profit and fiscal agent Kohemalamalama O Kanaloa/Protect Kaho'olawe Fund (continued)**

The Commission continued discussion of approved activities. Vice Chair Whitehead suggested that Activity 1 DLNR Revegetation Phase II Grant be renamed Revegetation or Restoration. Vice Chair Whitehead asked if the Commission could change it. DAG Somerville responded yes.

DAG Somerville presented what she proposed as approved activities and explained it is up to the Commission to determine what it would like to approve. She emphasized this is not prohibiting access in any way; it is to determine what activities will fall under the Stewardship Agreement. The reason why this all came about is because the KIRC is under close scrutiny due to the lawsuit. It does not mean that the PKO cannot do activities not covered under the Stewardship Agreement.

She reviewed the proposed activities of the PKO contained in memo dated February 16, 2012 to the Commissioners from ED Nāho'opi'i and DAG Somerville (pages 7-17 were hand issued to PKO representatives):

- 1) DLNR Revegetation Phase II Grant: Staff recommends approval  
Ms. Mar explained that the DLNR Revegetation Phase II Grant is for two grants that the PKO received. Vice Chair Whitehead suggested renaming Activity #1 "Revegetation and invasive weed management" because it is better to be more general and that would cover anything the Restoration Program staff would want the PKO to do. DAG

Somerville requested the PKO write down what the activity is called and the actions that will be done so that it can be approved. Vice Chair Whitehead stated she would write down the merger of activities 1 and 15.

2) Ka 'Ai A Kanaloa: Staff recommends deferral pending clarification; Ms. Mar agreed.

3) A) Beach rubbish: approval is recommended because it is consistent with the KIRC's current Kanapou Beach clean up and a report is required to be used to secure future grant funding.

B) Erosion control: this was put into Activity 15 (or Activity 1).

C) Ka 'Ai A Kanaloa: Monitor and document fish and reef conditions: Staff recommends having the Ocean Program provide PKO with a list of projects or monitoring sites which is consistent with Ocean Resources Management Plan and then the PKO can report back to Ocean staff. In order to be considered a volunteer, the KIRC must look at what the PKO can do for the KIRC that the agency would normally be doing. KIRC staff Saito asked DAG Somerville what happens if the PKO wants to monitor something that KIRC staff does not identify. DAG Somerville responded that is when the Ocean Program and PKO need to communicate. Ms. Mar confirmed that PKO will have to sit down with each of the programs. DAG Somerville explained that the KIRC program managers would indicate what they want documented or monitored. DAG Somerville suggested that before the annual meetings are held, the PKO get the programs' requests and the PKO decide if they want to work on them.

D) Subsistence Fishing: Staff recommends denial. KIRC staff Tokishi said that the Ocean Management Plan allows for it but a conversation can be started about how to improve the language and ensure reports are submitted indicating what type of fish is being taken, the location and quantity. ED Nāho'opi'i added that this information has to be integrated into a knowledge base. KIRC staff suggested this activity be deferred pending more information and development of a process. Vice Chair Whitehead suggested that it could be like the Mo'omomi Program in which a lot of information is being recorded which helps to better manage the resource. DAG Somerville cautioned that the catch rules must be followed closely. Katie Kamelamela (PKO) asked if KIRC staff complete reports when they are fishing. KIRC staff stated that they are not allowed to fish. Vice Chair Whitehead clarified that the Commission is not saying that the PKO cannot fish, just that it will not be covered by the Stewardship Agreement. Ms. Kamelamela asked what happens if there is a cultural group on a KIRC access that wants to do subsistence fishing. ED Nāho'opi'i responded that they do not do it on a KSAR (Kaho'olawe Stewardship Access Request). It is only allowed under SARs (Stewardship Access Requests). PKO agreed with the recommendations for Activities 3A and 3C.

- 4) A) Archaeological Site Restoration & Maintenance: Staff recommends approval consistent with the KIRC Cultural Use Plan  
B) Hakioawa well maintenance: goes into Activity #15
- 5) Practice of Hawaiian Arts & Sciences (manufacturing of traditional material): Staff recommends denial; it can be resubmitted when the KIRC implements this type of program
- 6) Practice of Hawaiian Arts & Sciences (study, practice and training of sailing, navigating, etc.): Staff recommends denial; it can be resubmitted when the KIRC implements this type of program
- 7) Practice of Hawaiian Arts & Sciences (implementation through observations, recording, documenting and reporting and training of cultural practitioners through Kulukulu Ke Ea A Kanaloa: Cultural Use Plan): Staff recommends coordination with the Cultural Coordinator
- 8) Practice of Hawaiian Arts & Sciences (study, practice and training of health field practitioners): Staff recommends denial; it can be resubmitted when the KIRC implements this type of program
- 9) Ala Loa: staff recommends approval

DAG Somerville stated that spiritual and religious activities are specifically excluded from the Stewardship Agreement.

DAG Somerville suggested that other stewardship agreements could be examined. An example might be the Hokule`a. Commissioner Murphy stated that the Hokule`a does want to come to Kaho`olawe. DAG Somerville commented that they could make the request directly to the KIRC instead of on a PKO access.

Ms. Dawson (PKO) commented that is an interesting precedent if someone goes directly to the KIRC. They have to prove they are covered by statewide liability, whereas if they come to the stewardship organization and are doing the same exact activities they are at risk of being denied. DAG Somerville explained that they could have a stewardship agreement with the KIRC. Currently the KIRC does not have these kinds of programs so the KIRC would not be sponsoring them. Ms. Dawson stated that it could be as simple as the organization showing proof of insurance naming the KIRC as being additionally insured. KIRC staff stated that is what it has been asking for.

Ms. Mar indicated that the reporting requirement is intimidating. She also asked if the PKO would get KIRC reports, and what the KIRC programs do with their reports. ED Nāho`opi`i said the KIRC publishes its reports. DAG Somerville added that the reports have been added because they are expected of KIRC staff. If volunteers are held to the same standards as employees of the state they should also provide reports.

Commissioner Baker commented that ED Nāho‘opi‘i suggested a coordinated approach to access coordination. He stated if there could be a meeting once or twice a year with the KIRC program managers and Cultural Coordinator along with access coordinators and other stewardship people to talk story about what can and will happen it would be beneficial for the island.

DAG Somerville suggested that if the Commission is comfortable approving the activities as recommended except for the reporting requirements this topic can be revisited at the next meeting due to time constraints.

Ms. Mar stated she agreed with all the recommendations except Activity #14, Support Activities for Work Projects (On-island cooking, cleaning and bathing). It is very hard to understand how that is not part of the work day. DAG Somerville clarified that PKO volunteers would be acting under the Stewardship Agreement while eating lunch and walking to and from a work site, but would not be acting under the Stewardship Agreement for cooking, cleaning and bathing after the work day is finished. Chair McLean suggested if the Commission was comfortable in voting on this motion then this particular denial could be explained to the PKO representatives after the meeting due to time constraints.

**MOTION:** Vice Chair Whitehead proposed to follow the recommended motion in Memorandum to KIRC Commissioners from ED Nāho‘opi‘i and DAG Somerville dated February 16, 2012 regarding Proposed activities and projects to be performed under the Palapala ‘Aelike Kahu‘āina Stewardship Agreement between the Kaho‘olawe Island Reserve Commission and the Protect Kaho‘olawe ‘Ohana through its non-profit and fiscal agent Kohemalamalama O Kanaloa/Protect Kaho‘olawe Fund except for the reporting requirements. Commissioner Baker seconded the motion.

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

## VIII. ADJOURNMENT

**MOTION:** Vice Chair Whitehead moved to adjourn the meeting. Commissioner Baker seconded the motion.

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

The meeting was adjourned at 3:20 pm.