



CRAIG NEFF  
*Chairperson*  
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*Vice-Chair*  
WILLIAM J. AILA, JR.  
COLETTE Y. MACHADO  
DAVIANNA P. MC GREGOR, Ph.D  
KA'IULANI MURPHY

*KŪKULU KE EA A KANALOĀ*  
**KAHO'OLAWÉ 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*

**MINUTES MEETING**  
**Thursday, February 10, 2011**  
8:30 am

Department of Land and Natural Resources  
Board Room, Room 130  
1151 Punchbowl St  
Honolulu, Hawaii

**COMMISSION MEMBERS**

**PRESENT:** Craig Neff, Chairperson; A. Nāmaka Whitehead, Vice-Chair; Colette Y. Machado; Davianna McGregor, Ph.D, Ka'iulani Murphy; William Aila, Jr.

**KIRC STAFF:** Michael Nāho'opi'i, Executive Director (ED); Ka'ōnohi Lee, Administrative Officer (AO); Terri Gavagan, Commission Coordinator (CC)

**GUESTS:** Noa Emmett Aluli, Protect Kaho'olawe Ohana; Eric Brundage, Zapata Engineering

**I. CALL TO ORDER**

Chair Neff called the meeting to order at 8:40 am. A quorum was established with five commissioners present.

**II. APPROVAL OF AGENDA**

**MOTION:** Commissioner Murphy moved to approve the agenda. Commissioner Machado seconded the motion.

Discussion: Commissioner Machado needs to leave by 11:00 am.

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

**III. COMMUNITY and PUBLIC COMMENT**

Chair Neff recognized Dr. Aluli and invited any public comment. Dr. Aluli commented that it was nice to be on the opposite side of the table and that he was here mostly to listen. He added that the original vision for the Commission was to be a board made up of cultural practitioners who would then manage the island and not be a division of DLNR. There is also a concern that Kaho'olawe will become more commercial with the request for state funding.

Commissioner McGregor pointed out that Senator Kidani has offered a compromise of having one PKO representative on the Commission, which would then make the Commission a board of five. She asked for Dr. Aluli's opinion and the possible impact on the KIRC with that possible change. He pointed out that Uncle Leslie Kuloloio presented a proposal to the Senate committee proposing a commission of seven with one PKO representative, one Honua'ula family representative either in or out of the Aha Kiolo and one Maui Nui representative. Dr. Aluli's *mana'o* is to try to make the transition internally

by doing our own homework, keep the Commission at seven members and come back in a year with a proposal.

Chair Neff welcomed Commissioner Aila to the meeting.

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

ED Nāho‘opi‘i provided the update on the following bills:

##### **A. HOUSE BILL NO. 1223, RELATING TO THE KAHO‘OLAWE ISLAND RESERVE; ASSET FORFEITURE**

HB 1223 passed the Hawaiian Affairs Committee. Supporting testimony was submitted by DOCARE, OHA, Aha Kiole, and Ai Pohaku. The only opposing testimony was submitted by the Ocean Tourism Coalition, a group of small commercial boaters. The bill was referred to the Judiciary Committee but no hearing date has been set.

##### **B. SENATE BILL NO. 815, RELATING TO ASSET FORFEITURE**

This bill was referred to Judiciary. No hearing has been set yet.

##### **C. HOUSE BILL NO. 1224, RELATING TO THE KAHO‘OLAWE ISLAND RESERVE; REHABILITATION TRUST FUND (CONVEYANCE TAX)**

This bill was referred to Hawaiian Affairs, Water, Land and Ocean, and Finance Committees. It was passed by the Hawaiian Affairs Committee. There was no opposing testimony submitted. Supporting testimony was submitted by Aha Kiole, PKO who also submitted a petition of support and many individuals, including Commissioner Murphy who also provided testimony.

##### **D. SENATE BILL 816, RELATING TO THE KAHO‘OLAWE ISLAND RESERVE; CONVEYANCE TAX**

This bill was heard by the Water, Land and Housing Committee. A lot of supporting testimony was submitted by Commissioner Murphy, Aha Hui Malama I Ka Lokahi, PKO, as well Ocean Tourism Coalition and individuals who have been to the island. Opposing testimony was submitted by the Tax Foundation of Hawai‘i and the State Department of Taxation on the grounds that it would result in a decrease in general funds.

##### **E. HOUSE BILL NO. 711, RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS; BURIAL SITES**

This bill was referred to the Hawaiian Affairs, Water, Land and Ocean, and the Finance Committees. It was scheduled to be heard by the Hawaiian Affairs Committee but the Committee recommended that the measure be deferred which means it may be dead for now. The KIRC was specifically exempted from this bill.

There was concern among the Commissioners about the direction Senator Kidani is heading. For instance, Commissioner McGregor was informed by Senator Kidani that she (Senator Kidani) will be strongly recommending that the ED be appointed by the DLNR Chair and that the KIRC fall under DLNR. ED Nāho‘opi‘i was asked if he could provide any information about what Senator Kidani is looking at. ED Nāho‘opi‘i responded that there has only been one meeting in December 2010 with Senator Kidani and there have been no other

conversations with her and is unaware of the recommendations nor where it originated from. They are not coming from him or KIRC staff. Staff has received a list of questions and a response was provided. A copy of the response was distributed to the Commission regarding the following:

- ❖ fishing violations on the island
- ❖ fees collected by the PKO
- ❖ KIRC financial reports for the last 3 years
- ❖ copies of the KIRC's annual report
- ❖ on-island catch reports
- ❖ who is recommending closure of Base Camp
- ❖ is the PKO required to register with DCCA (Department of Commerce and Consumer Affairs)

## V. ACTION ITEMS

**Discuss Legislative Bills listed below and Develop Testimony for Approval:**

### A. SENATE BILL 817, RELATING TO KAHO'OLAWA ISLAND RESERVE; MOLOKINI

The concern of the Commission is that by including Molokini in the Reserve would move the KIR toward being more commercial. Staff pointed out that although the KIRC does have the fiscal capabilities to include Molokini; deficiency lies in administrative enforcement. KIRC would need to revise the Administrative Rules and possibly place Molokini in an additional zone. There is also the question of liability with regard to boat tours and putting the trust fund at risk. It is possible that commercial activities at Molokini would need to be stopped if it was brought into the Reserve right now. The commercial fishing and tour industries are in favor of the status quo. Commissioner Aila stated DLNR will be submitting testimony opposing the bill as it will take away revenues from DLNR.

The Commission asked if the inclusion of Molokini could be deferred for a year so that rules could be drafted. There are currently two sets of rules which govern Molokini—boating (which has to do with the day use mooring) and marine conservation district. There are also two types of permits; one to enter the marine conservation area and one to use the day moors. Those rules would have to be deleted and new ones drafted. Another zone may have to be added and have separate rules for each zone (which is the case now). Putting Molokini in the KIR would shut down all commercial activities based on the way the bill is currently written. Other issues raised by the Commission were 1) would the potential revenue from Molokini really help increase the trust fund and 2) the possibility that it would create a bad relationship with the fishing and tourism communities. Staff's recommendations if the KIRC had to manage Molokini were 1) the fee structure for Molokini would be changed to be comparable to the amount of work and to reach a certain goal for return on investment, 2) a separate subsection of 6K be established that would put Molokini into a separate reserve that would be under the management of the KIRC. Non-commercialization rule would stay with the island but separate rules could be set up for Molokini.

**MOTION:** Commissioner McGregor moved to oppose Senate Bill No. 817, relating to the Kaho'olawe; Molokini and outlined the reasons included in the Issues

and Recommendation sections of the memo from ED Nāho‘opi‘i to the KIRC Commissioners regarding Senate Bill 817, Molokini:

- ❖ KIRC’s technical and operational capability to manage Molokini’s resources
- ❖ KIRC’s ability to administer new Molokini rules
- ❖ potential conflict with KIRC’s fiduciary duties to the Trust Fund
- ❖ provisions of the bill be delayed for at least one year
- ❖ boundary of the Molokini Shoals Marine Life Conservation District remain where it is currently

Additionally there needs to be 1) an analysis of the revenue stream, 2) KIRC staff requirements, and 3) impact on DLNR. Vice Chair Whitehead seconded the motion.

**Discussion:** A suggestion was made to develop a resolution recommending that DLNR and KIRC work together. It was also suggested that the effective date be contingent on the adoption of new rules.

Does the KIRC want Molokini? Commissioners McGregor and Machado said no due to commercialization; it is uncertain if it would add to the Reserve and it could lead to the commercialization of Kaho‘olawe. Chair Neff and Vice Chair Whitehead and Commissioner Murphy said yes for cultural reasons, but not now and only if it would add to the KIRC’s mission. Commissioner Aila felt the inclusion of Molokini was inappropriate considering the KIRC’s mission at this time.

ED Nāho‘opi‘i is to submit the written testimony to the Legislative Working Group (LWG). ED was also directed to speak with Senators English and Galuteria before the submission of the written testimony to explain the KIRC’s position. Chair Neff reiterated Commissioner Aila’s comment that when legislative bills come before the Commission, the Commission and the staff must look at the original mission of the KIRC.

**ACTION:** Motion with the recommended amendments approved by all Commissioners present.

## **B. SENATE BILL NO. 609, RELATING TO THE KAHO‘OLAWE ISLAND RESERVE COMMISSION; COMMISSION MEMBERSHIP**

Commissioner McGregor updated the Commission on her meeting with Senator Kidani on February 9, 2011. Senator Kidani offered a compromise on SB 609. The Commission would still be reduced from 7 to 5 but that one Commissioner would be from the Protect Kaho‘olawe Ohana. Senator Kidani also stated that if the Ohana were to be specified in the legislation it must be registered with the Department of Commerce and Consumer Affairs. The Ohana was registered last night with DCCA and Commissioner McGregor is awaiting confirmation today. Senator Kidani added that she would rather have the ED appointed by the DLNR Chair rather than the Commission so that the ED does not feel his job is on the line when dealing with the Commission and alleviate some of the undue influence of the PKO on the KIRC. Commissioner McGregor got the same impression from Senators Hee and English. She received an e-mail last night that a Senate Draft 1 would be put on the agenda for February 12. It would probably have these amendments. Senator Kidani also spoke to General Wong of the National Guard and he is willing to provide helicopter support for the KIRC provided that certain conditions and protocols could be fulfilled.

Senator Kidani asked if the 'Ohana had insurance for its ocean transport. Commissioner McGregor responded that it did not but that it would be looking into it and possibly develop something similar to the arrangements of the Hawaii Canoe Racing Association has. Senator Kidani also asked if the 'Ohua was insured. Staff explained that the 'Ohua is self-insured as it is a state vessel, not a commercial vessel. Senator Kidani suggested that the 'Ohana's system of charging fees to bring volunteers to the island could be considered commercial by the AG's office. Commissioner McGregor explained to her that the 'Ohana is a non-profit organization and that the fees just cover the costs. Commissioner McGregor advised Senator Kidani that the bill does not provide for a transition or a time table. Senator Kidani's intent is to dismiss all the current Commissioners and appoint new Commissioners to start at the same time although the Maui County appointee and DLNR Chair would remain. It was mentioned that the Ohana is not excluded from the group of Native Hawaiian organizations referred to in the legislation. Staff is concerned about the language in the SB609 regarding how the Commissioners are appointed making it more difficult to get the Commissioners on board in a timely manner.

Currently there are only three non-PKO Commissioners since there is no Maui County representative yet. Therefore, should the KIRC be taking a position on this bill? Commissioner McGregor suggested that perhaps the Commission should advise the Senators on the bill's impacts.

Commissioner Machado stated that OHA would be opposing this bill with amendments; disagreeing with the decrease of the Commission from 7 to 5 and requesting to reinstate the Ohana on the Commission. It also disagrees with arbitrarily setting the Commissioners' term at 4 years as opposed to whatever the standard requirements or practice for other boards and Commissions are currently. Commissioner Machado's opinion was that the KIRC should submit testimony or have another community organization do so. It is unclear to Vice Chair Whitehead how decreasing the number of Commissioners from 7 to 5 or getting rid of all PKO Commissioners would benefit the island. Mr. Brundage commented that there is a pervasive perception that the PKO has an undue influence on the KIRC due to the number of PKO Commissioners. Therefore it is seen as having trouble providing oversight of the stewardship organization. He also pointed that the Commission has not provided an official review of the PKO's corrective actions as an agenda item in a public meeting. This feeds into the perception of oversight abilities. Commissioner McGregor concurred with these statements as reflecting what she has heard from the senators she has met with. Staff explained that Senator Kidani's position is that if the State is going to give the KIRC funding then it needs to act more in line with other commissions and noted that there would be even more restrictions and oversight requirements with general funding as compared to the conveyance tax.

Would decreasing the Commission from 7 to 5 affect the KIRC's ability to do work? The Commissioners determined that it could but that PKO must have representation on the Commission because it reminds people of the genealogy and principles of this initiative. Commissioner McGregor added that the PKO is the constituency of the island. It is the ideal situation to have people who are working the land and know it the best; who are the practitioners and study the landscape to be represented in the management of the island. It should also serve as a guardian to protect the island from commercialization and elevate it to a sacred status. Commissioner Machado noted

that by decreasing the presence of the PKO would be minimal as PKO members are usually at the KIRC meetings, they are on the mailing list and do come and articulate their requests and opinions. There is a process set up for the PKO to request access to the island. Commissioner McGregor stated that having 3 PKO Commissioners has not always worked in their favor because the staff and Commissioners feel that they have to bend over backwards to not show favoritism. She has struggled with that a lot to the point they she felt PKO was being discriminated against because they had 3 members on the Commission. Currently she feels PKO has a better standing with DLNR than with the KIRC because current DLNR rules require acknowledgement of rights of those who have established access. She believes that the PKO has established a clear legal record that they are the *hoa 'aina* to this land.

There is also the issue of the term lengths of Commissioners and how many terms they can serve. Staff clarified that currently Commissioners serve 2 terms and then stay out for 4 years. The statutes on Boards and Commission are silent on this. The bill would be very specific on term limits.

Commissioner McGregor also suggested that maybe the DLNR Chair should be able to appoint a designee if appropriate since he is the busiest. Commissioner Aila responded that he would appreciate that as it would give the DLNR Chair the opportunity to name someone who is interested in the KIRC and can make it a priority.

**MOTION:** Commissioner McGregor moved that the Commission provide testimony expressing the following concerns with SB 609 (whichever form is passed), Relating to the Kaho‘olawe Island Reserve Commission:

- ❖ at least 1 member of the Protect Kaho‘olawe Ohana should be on the Commission because
  - 1) the primary constituency of Kaho‘olawe should be represented on Kaho‘olawe Island Reserve Commission to give input to the management of the island;
  - 2) it has been integral in the establishment of the Kaho‘olawe Island Reserve Commission and the formulation of the Hawaii Administrative Rules guiding the management of the island;
  - 3) has worked in partnership with the KIRC to provide best stewardship practices;
  - 4) the genealogy of the KIRC goes back to the Protect Kaho‘olawe Ohana and the kupuna who guided the Ohana; if there was not a PKO there would not be a KIRC;
  - 5) the perspectives of the practitioners who listen to and care for the land need to be brought into the formulation of management policies
- ❖ the bill also needs to outline a transition from the current structure to the new structure with a time line to provide continuity of KIRC oversight
- ❖ the Commissioners’ terms need to be in alignment with the Boards and Commissions statutes
- ❖ it is recommended that the DLNR Chair be allowed to assign a designee to sit on the Commission to be consistent with OHA and also due to his busy schedule

Commissioner Machado seconded the motion.

Discussion: The Commission does not want to have the ED appointed by the DLNR Chair because 1) it would become a political appointment, 2) it does not allow for continuity, and 3) if the Commission decreases from 7 to 5 it would relieve the concern of undue pressure on the ED by the Commission. It is most important that there be a PKO representative on the Commission. ED Nāho‘opi‘i was directed to work with the LWG to compose the written testimony and to testify on behalf of the KIRC.

ACTION: Motion approved by all Commissioners present.

Commissioner Machado was excused at 11:05 am.

### **C. SENATE BILL NO. 1402, RELATING TO OPIHI**

Staff informed the Commission that this bill does not impact the KIRC because the Reserve is exempted from its provisions. Therefore no action is needed by the Commission.

There will be a meeting on February 28, 2011 so that the draft of the consultation process can be reviewed and an update on the status of all the legislative bills. The staff will stop tracking the bills regarding OHA and burial sites and opihi since it does not impact the Reserve. All violations should be discussed generically in the staff updates.

## **VI. ADJOURNMENT**

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

ACTION: Motion was approved by all the Commissioners present.

Meeting was adjourned at 11:10 am.