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KŪKULU KE EA A KANALOA
KAHO'OLAWE ISLAND RESERVE COMMISSION

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Michael K. Nāho'opi'i
Executive Director

MINUTES MEETING

Monday, February 28, 2011

8:30 am

Department of Land & Natural Resources

Board Room

1151 Punchbowl St, Room 130

Honolulu, HI

COMMISSION MEMBERS

PRESENT: Craig Neff, Chairperson; A. Nāmaka Whitehead, Vice-Chair; Michele McLean; Davianna P. McGregor; Ka'iulani Murphy

EXCUSED: William J. Aila, Jr.; Colette Y. Machado

KIRC STAFF: Michael Nāho'opi'i, Executive Director (ED); Ka'ōnohi Lee, Administrative Officer (AO); Kahale Saito, Cultural Resources Project Coordinator (CRPC); Terri Gavagan, Commission Coordinator (CC)

GUESTS: Joan Manke (Senator Kidani's office); Manuel Kuloloio; Keoni Fairbanks; Kehau Watson (NOAA Cultural Consultant); Hinalei Wong (NOAA Cultural Consultant); Eric Brundage (Zapata)

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

Commissioner McGregor requested that the cultural program update be moved up after **Item V.C Review and Accept Draft of Annual Report for FY2010** as she needs to leave by 10:30 am. It was also suggested that **Item VI.D Presentation by Kehau Watson, Ph.D. and Hinalei Wong, NOAA Cultural Consultants and Discussion on Kinolau o Kanaloa in relationship to NOAA** be heard after **Item VI.A Executive Director's Report**.

MOTION: Vice Chair Whitehead moved to approve the agenda with the changes stated above. Commissioner McLean seconded the motion.

ACTION: Motion was approved by all Commissioners present.

III. APPROVAL OF MINUTES

MOTION: Commissioner McGregor moved to approve the minutes of October 8, 2010. Commissioner McLean seconded the motion.

Discussion: Chair Neff asked if DAG Somerville saw the clarifications made on page 3 in the first paragraph. Staff stated that the clarifications were submitted by DAG Somerville.

ACTION: Motion was approved by all Commissioners present.

MOTION: Commissioner McGregor moved to defer action on the minutes for January 18, 2011. Commissioner McLean seconded the motion.

Discussion: Commissioner McLean stated that there were a couple of typos in the minutes for January 18, 2011. Commissioner McGregor requested deferral because she had not had a chance to review the minutes.

ACTION: Motion was approved by all Commissioners present.

IV. COMMUNITY AND PUBLIC COMMENT

Joan Manke, introduced herself and stated that Senator Kidani asked her to come on the Senator's behalf and take back any questions the Commission might have. KIRC CRPC Saito and Mr. Brundage of Zapata were also recognized. Chair Neff welcomed Commissioner McLean to the KIRC and asked if she had any comments. Commissioner McLean stated that her main purpose for being on the Commission was to improve communication between the Commission and staff. Manuel Kuloloio was recognized and reserved the right to make comments at a later time.

V. ACTION ITEMS

A. DISCUSS SENATE BILL NO. 609 SD1 AND DEVELOP TESTIMONY FOR APPROVAL

Testimony submitted by KIRC was read and is available on the KIRC and Legislature's website. In summary, testimony stated KIRC is agreeable to the reduction in commission members provided one member is a Protect Kaho'olawe 'Ohana (PKO) member. Commissioner McLean stated she was not comfortable taking a position given the uncertainty of the current sitting commissioners. Commissioner McGregor believes that is important for the Commissioners to finish their term. Commissioner McGregor informed the commission that she withdrew her application and would not be serving beyond June 30, 2011. The normal process is that at the end of the term there is a guarantee that someone will come on in Commissioner McGregor's place from the 'Ohana as she holds the position as a member of the 'Ohana. She has already informed the 'Ohana of her decision and they will begin the process of nominating someone to take her position.

Concern was expressed regarding how this measure would be implemented. The KIRC is requesting that a transition plan be developed to provide continuity in the management of the Reserve.

MOTION: Commissioner McGregor moved to seek a deferral on SB609 SD1 in favor of a resolution which would establish a working group that would analyze the management of the island and its surrounding waters as a cultural reserve that is being managed for eventual transfer to the sovereign Hawaiian entity, to be completed by June 30, 2012 which would include public hearings on each island. Commissioner Murphy seconded the motion.

Discussion: Staff informed the Commission that there is no opportunity to provide testimony at this time. The Commission's concerns could be conveyed in a letter addressed to all committees that have heard SB609. It is important that there be an analysis of how the Commission operates as a whole, not just focus on one entity.

Commissioner McGregor stated that according to former Governor Waihe'e's testimony regarding this bill he had deliberately crafted the language of the act which created the Reserve to acknowledge the 'Ohana as the trustee for the island in recognition that the state had an obligation to those people who had given their lives and worked so hard to return the Island to the people of Hawaii and that the State has an obligation to recognize that the 'Ohana be the trustee for the Island based on that contribution. She stated that he set up the island so it would not be incorporated into the corpus of the land managed by DLNR but that it would be held distinct from the Ceded Public Lands Trust corpus because it was to be transferred to a sovereign Hawaiian entity. Commissioner McGregor sees this as a new articulation that informs the Commission and staff about the intent of HRS 6-K. The intent of HRS 6-K was to begin the process of building a land base that would be transferred to a sovereign entity. It puts a different frame of the management of the island and on the request for budget to support the functioning of the island. It is her view that the state has an obligation to Native Hawaiians to repatriate the Hawaiian national lands that it now holds and receives revenues from. If Kaho'olawe is being held in trust for the Hawaiian sovereign entity then the State needs to begin to look at its obligation to manage lands that it is now holding for transfer to a sovereign entity and what resources it is going to commit to that obligation. There was a question of whether there is a connection between SB609SD1 and SB816 (Conveyance Tax). Staff stated that there was nothing to indicate that they are connected. AO Lee conveyed the staff's concern regarding the possible changes in the Commission. It makes it difficult for staff to concentrate on their tasks, however, she has advised staff to continue operating as they have been and if there is a change, hopefully it will be a smooth transition.

Manuel Kuloloio was hoping to see former KIRC Commissioners, Native Hawaiian organizations, former representatives of Maui County and former DLNR Chairs at the hearing but they were absent. It is as if everything he fought for as a Honua'ula descendant is being lost. If the Commission wants his help they need to ask for it today. In the past KIRC staff knew what was going on in the legislature and lobbied very hard. He hopes that all the KIRC employees understand that this was never about getting vested after 10 years by the state. It was more than about getting a job. This was never a permanent job to get a high three. He has told the 'Ohana not to ride the vehicles from Kealahiki back to Moa'ula and not to drink the water bottles. He doesn't get a sense of urgency among the Commissioners. He wants to see how the 3 'Ohana members are going to talk; does the 'Ohana deserve the 3 positions? He and his father stepped forward and it seems like everything they wanted will be lost. He did make some calls. He knows

that Commissioner McLean knows of the problems since she used to work at the KIRC. He knows that everyone thought he was the mole that was trying to dismantle the KIRC. He wanted the KIRC to know that he fought against the state senator who did want to dismantle the KIRC. The person who took her place was Shan Tsutsui, his best friend. As a Honua'ula descendant why would he want to give it (Kaho'olawe) away to a Native Hawaiian organization like the Hawaiian Civic Club? He testified only because he felt that Dr. Aluli was being unfairly attacked that day. It hurt him. He feels that he has failed Dr. Aluli to let this thing get to this point. He sees this bill as retribution. If, the 'Ohana does not have members who want to sit on the Commission, then the 'Ohana should get off the Commission. He will make some phone calls today. It sounds like there's some deal already requiring someone to step down. He apologized if he offended anybody.

The pros and cons of PKO representation going from 3 to 1 were discussed. The cons were discussed first. Chair Neff pointed out that the Ohana Commissioners always provided a quorum. Vice Chair Whitehead stated that the Commissioners appointed from the PKO list provide a greater diversity of perspectives and expertise which is really important. Commissioner McGregor agreed and added that the PKO has always tried to provide someone who knows the cultural practices and protocols to help provide cultural stewardship as well as a representative to oversee natural resources. The pros of decreasing the size of the Commission were then addressed. Commissioner McGregor pointed out that fewer people would need to travel to KIRC meetings which would result in less expense. Commissioner McLean stated that in the past there were conflicts between the state's interests and the PKO's interests with the PKO dominated Commission being a stronger advocate for the PKO's interests; the decrease of PKO membership would result in the strengthening the government-oriented Commissioners which may result in more cooperation with the state. She added that the PKO has had difficulty in finding 3 people to serve on the Commission in the past. Chair Neff pointed out that the issues raised by Senator Kidani would have been handled better at the administrative level rather than in a law. The role and management of the Commission needs to be looked from the Commission and staff levels. KIRC CRPC Saito expressed her appreciation of the kokua that the PKO representatives have given her program and that she does not support the reduction of the number of Commissioners. She believes that it would result in limiting her program's capabilities. She suggested that the PKO could be more inclusive when submitting their list of candidates for Commissioner.

Manuel Kuloloio stated that it is not just about culture, it's about the Clean Air Act, and the Clean Water Act. It (Kaho'olawe) is beyond culture, beyond being a playground for the weekend or 4 days for people who return to O'ahu. The residents of Maui have to live with what the PKO does or doesn't do. It is about credibility. Everyone including the PKO should be held accountable for what they do on the island. Why wasn't the incident regarding the helicopter landing not written up in the paper? We want to know who these people are that break the rules. Commissioner McGregor responded that she has always done her best to uphold rules and standards. She has always confronted anyone who is not abiding by those rules. She has also been consistent and everyone knows that she is consistent. She was surprised by the things that were put before her because she always implements the rules and standards. The incidents that Mr. Kuloloio is referring to happened a long time ago and that the PKO has dealt with any infraction. She does not know the source of the issue. She has tried to find out so that it can anything outstanding

can be resolved. The Commission has dealt with every matter in an appropriate manner. Commissioner McLean commented that the infractions that were listed in Senator Kidani's letter happened recently. Commissioner McGregor responded that all of those things can be explained but the 'Ohana has never been allowed to respond to those incidents. Commissioner McGregor clarified that she is referring to things that were brought up to her at the hearings; things that she had never heard before and were not contained in the letter. An example is an access going out in 2009 in spite of KIRC's stating the PKO should not go out. Commissioner McGregor was not the coordinator for that access but her understanding from the coordinator is that the PKO was never told that. The coordinator was told that if they needed to come off on Sunday that there would be support. Commissioner McLean stated that she knew for sure that that was never conveyed. The KIRC was never going to run the boat on a Sunday. Commissioner McGregor stated that the PKO was never told not to go out because of the predicted tropical storm that was due on the Wednesday following the access.

PKO did submit testimony that they would support having one 'Ohana member on the Commission even though they did not agree with decreasing the size of the Commission. There should be a process to review the concerns cited in Senator Kidani's letter and a working relationship should be established with the KIRC, PKO and a representative of the senator (if that is appropriate) to deal with these issues. Commissioner McLean stated she would be voting no on this motion because it is unclear to her if this bill is somehow connected to the conveyance tax bill. She likes the idea of the working group but she believes that the conveyance tax is so critical. The conveyance tax bill needs to be scheduled for hearing in the Finance Committee in the House and with the Ways and Means Committee in the Senate. It would need to be scheduled by this week in order to go anywhere. Staff has not heard of any direct connection between SB609 SD1 and the conveyance tax bill. Ms. Manke stated that if there was a resolution to SB609 SD1 then the other bills would probably be supported by Senator Kidani. The Senator's priority is the resolution of SB609 SD1.

ED Nāho'opi'i would work with the LWG to send out the letter prior to Thursday.

ACTION: Roll call vote was conducted: Chair Neff: Aye; Vice Chair: Whitehead, Aye; Commissioner McGregor: Aye; Commissioner McLean; Nay; Commissioner Murphy: Aye. Commissioner Aila: absent; Commissioner Machado: absent. Motion approved based on roll call vote.

B. REVIEW KIRC'S STATUTES, ADMINISTRATIVE RULES AND ENFORCEMENT OPTIONS; ASSIGN WORKING GROUP TO 1) CODIFY THE "REASONABLE AND APPROPRIATE ACTIVITIES" CONDUCTED DURING STEWARDSHIP ORGANIZATION ACCESSES; AND 2) DEVELOP AND PROMULGATE AN ENFORCEMENT PROCESS RELATING TO ALL ACTIVITIES WITHIN THE RESERVE

ED Nāho'opi'i presented a PowerPoint presentation on statutes, administrative rules and enforcement options regarding the KIR.

Hawaii Revised Statute 6K allows:

- ❖ DLNR to enforce provisions to enforce HRS 6K
- ❖ DLNR employees to serve and execute warrants and arrest offenders

- ❖ The Commission to adopt rules
- ❖ Establishment of penalties for any violation of law or rule

Hawaii Administrative Rules 13-261 establishes:

- ❖ that rules are applicable to all persons entering the Reserve (13-261-1)
- ❖ penalties for violation of rules (13-261-5)
- ❖ procedures for authorized entry into the Reserve (13-261-11)
- ❖ allowed activities (13-261-13)
- ❖ prohibited activities (13-261-14)

Enforcement options include:

- ❖ criminal penalties—petty misdemeanor: a fine of not more than \$1,000 and imprisonment of not more than 30 days; enforcement is done by DOCARE
- ❖ administrative penalties—not more than \$10,000 for the first violation, additional fines of up to \$5,000 per specimen taken
- ❖ both criminal and administrative penalties may be imposed

The criminal process includes:

- ❖ documentation of violation with witness statements and photos
- ❖ forwarding of documentation by KIRC to DOCARE for citation
- ❖ serving of citation by DOCARE
- ❖ criminal case being heard in Maui District Court

The administrative process:

- ❖ has not been used by the KIRC because there has been successful prosecution in criminal court
- ❖ needs to have recommended penalties established by the working group
- ❖ allows for the establishment of self-enforcement process by stewardship organizations as an internal management procedure

In the administrative process a hearing would be held at which time the individual could accept the fine or could contest the citation; it would then be referred to administrative officer who will hear the case and make a judgment. The KIRC would need to set up this process as well if the Commission wants to go with administrative penalties. The purpose would clarify “reasonable and appropriate” activities, codify them and place appropriate limitations of place and time. Staff will put together a list of the activities the Commission has previously approved. The task force would also determine if sanctions will be incremental. The enforcement would be applicable to all violations.

MOTION: Commissioner McGregor moved to establish a Hanakūpono Task Force to 1) codify the “reasonable and appropriate activities” conducted during stewardship organization accesses; and 2) develop and promulgate a process for implementing sanctions and penalties for unauthorized activities within the Reserve. Commissioner Murphy seconded the motion.

ACTION: Motion was approved by all Commissioners present.

C. REVIEW AND ACCEPT DRAFT OF ANNUAL REPORT FOR FY2010

It was suggested that ED Nāho‘opi‘i work with Commissioner McGregor to finalize the annual report.

VI. PROGRAM STATUS UPDATES

Culture Program

CRPC Saito reviewed the consultation process document developed by the Cultural Working Group and Commissioner McGregor. It is an internal administrative process which does not need Commission approval. DAG Somerville and Hinano Rodrigues from SHPD reviewed the document and supported it. The document was being presented to the Commissioners for any *mana’o* the Commissioners would like to provide. The document describes the triggers to start the consultation process as well as check points, time frame and the list of potential consultants. The Commissioners suggested that the activities and consultants be categorized to determine which organization, individual or family should be consulted. Perhaps at least 2-3 families, organizations or individuals could be consulted at the discretion of staff. Also, all former KIRC cultural staff could be added to the list of potential consultants. The staff would be tasked with an updated list which could also be posted on the KIRC website. It was suggested that letters could be sent to all potential consultants to see if they would like to participate in the consultation process and under what circumstances. It was also suggested that the triggers also be placed on the KIRC website so all can see, but also contact the potential consultants separately. The Office of Hawaiian Affairs (OHA) should be added to the list of potential consultants. The Commissioners had concerns about the length of the proposed time frames. The length could interfere with the Commission’s ability to deal with emergency situations. Vice Chair Whitehead suggested that an emergency clause needs to be added to the process. Staff is to inquire with Theresa Donham regarding SHPD’s process of emergency action.

Commissioner McGregor was excused at 10:50 am.

VII.A. PRESENTATION BY KEHAU WATSON, Ph.D. AND HINALEI WONG, NOAA CULTURAL CONSULTANTS AND DISCUSSION ON KINOLAU O KANALOA IN RELATIONSHIP TO NOAA

Dr. Watson explained that she was here on behalf of NOAA to apologize for the misunderstanding between NOAA, PKO, the Commission, and KIRC staff regarding what are appropriate activities within the Reserve. A dolphin carcass in the waters off Kaho‘olawe was being attacked by tiger sharks. The KIRC boat pulled the carcass onto the boat and called NOAA. NOAA retrieved the carcass and took it back to Hawaii Pacific University where various tests were run on the skeleton. It is her understanding that that was not supposed to have happened. The Commission requested the return of the *iwi*. NOAA did not understand the KIRC protocols regarding the remains and prepared and returned only part of the skeletal remains. The dolphin skeleton will be returned to the KIRC. She is uncertain of the exact date. NOAA is currently in the process of requesting the return of the remains via a parts letter to HPU. NOAA is attempting to document the health of the ocean and its inhabitants and would like to know if there is a potential for dialogue for allowances of future

analysis of *iwi* and *niho* found within the Reserve. The Commissioners response was that the current KIRC rules are clear; that no *iwi* can leave the Reserve. ED Nāho‘opi‘i has the authority to allow scientists to enter the Reserve to gather tissue samples only. It was suggested that NOAA consult with the CWG and the CWG could come before the Commission with any suggested changes to the current policy. Dr. Watson gave a brief overview of NOAA’s community Liaison Program for Hawaiian Monk Seal Recovery and Marine Mammal Response document which describes the community liaisons for some of the islands. She also wanted to inform the Commission about a NOAA program being developed which would temporarily relocate juvenile monk seals from the NE Hawaiian Islands to the main Hawaiian Islands until they mature and return them to the NE Hawaiian Islands. Staff clarified that no wildlife can be brought into the Reserve unless it is authorized by the Commission. Dr. Watson and Hinalei Wong stated that they are looking at how Native Hawaiians can utilize the best of current technology along with cultural protocol and practices. They are looking at how to develop relationships and collaborations in resource management while maintaining cultural practices. Chair Neff explained that the KIRC is not opposed to talking to scientists and researchers but that there must be a balance with culture. Dr. Watson responded that NOAA is trying to become more balanced in its approach. Hinalei Wong agreed that there has been a lack of respect and diplomacy in various areas of Hawaiian culture. She is an advocate for a proactive advocacy for Native Hawaiians. Both stated that NOAA is committed to being more culturally sensitive.

There was a break from 11:20 am to 11:40 am.

VII.B. EXECUTIVE DIRECTOR’S REPORT

Plans, Policies, and Procedures: The DLNR Chair delegated to the KIRC Chairperson the authority to spend funds from the Kaho‘olawe Rehabilitation Trust Fund. The KIRC Chairperson has also delegated these authorities to the ED. Copies of both letters are included in the Commission packets.

Administration, Staffing and Personnel: An Access Guide Training Class was conducted in February by UXO/Safety Manager Maybee for KIRC interns and 1 stewardship organization candidate. The focus was ensuring all field staff received UXO training and can effectively implement UXO safety procedures. This will be a major concern during the Navy’s post-clearance Land Use Control inspections at the end of March. Three of the four personnel out due to injury or illness have returned to work. One is expected to be out for an extended period of time.

C. REVIEW AND ACCEPT DECEMBER 2010 AND JANUARY 2011 EXPENDITURE REPORTS

Staff is keeping a close watch on the cost of fuel which is increasing quickly, particularly the cost of fuel for the ‘Ohua. Fuel bladder operations have been implemented thus reducing the number of boat runs. Staff is currently working on the budget for next year but there are still questions regarding the status of employee furloughs, whether they will end or not. Currently staff is working on a \$2.7 million proposed budget.

MOTION: Vice Chair Whitehead moved to accept the December 2010 and January 2011 Expenditure Reports. Commissioner McLean seconded the motion.

Approved 6/24/2011

ACTION: Motion was approved by all Commissioners present.

D. LEGISLATIVE UPDATE

Staff reviewed Status of Bills Relating Kaho‘olawe, Hawaii State Legislature-2011 Regular Session As of February 23, 2011. The Commission was provided with an updated version of the document which included an update on SB 815 (Asset Forfeiture).

SB816 SD1 (Conveyance Tax) would give the DLNR Chair oversight of purchases and would control spending. The Commission would continue to keep all of its control. This bill has been heard and passed by Water, Land and Housing (WLH) and has been assigned to Ways and Means (WAM) but no hearing has been scheduled. The only opposing testimony regarding the conveyance tax measure came from the Budget and Tax offices because they feel that it would be taking money from the General Fund.

HB1223 (Asset Forfeiture) this bill is awaiting a hearing by the Judiciary Committee.

SB815 (Asset Forfeiture) this bill is also awaiting a hearing by the Judiciary Committee.

SB817 (Molokini) This bill has been deferred.

SB609 (Commission Members) This bill is scheduled to be voted on this week.

VI. PROGRAM STATUS UPDATES – cont’d

1. Restoration Program

There was a lot of rain on island this past month. There was a reduction in the number of volunteers in January. The road was blocked and repairs were done on contract before the second big rain. These repairs prevented run off into the bay or rutting of the road. The Management Plan for *Kanaloa kahoowawensis* was reviewed. The first part of the document updates the management strategies for the one plant on ‘Ale‘ale. The second part discusses the management of the two living plants currently at Maui Nui Botanical Gardens and Ho‘olawa Farms on Maui. Receivers of seeds from this plant must abide by this management plan. Vice Chair Whitehead suggested that staff contact the National Botanical Garden on Kaua‘i and find out why all their specimens died.

2. Ocean Program

There are full nets of debris that need to be brought out of Kanapou. The Nature Conservancy has offered to help update the KIRC Ocean Resource Management Plan. The KIRC team for the workshops will include CRPC Saito, ED Nāho‘opi‘i, ORSIII Tokishi, and Commissioner Murphy.

3. Culture Program

KIRC Access Specialist Tina Keko‘olani attended an Edith Kanaka‘ole Foundation workshop on Haumea in Kona. Her overview is included in the Aloha ‘Āina page in the Commission packet. Vice Chair Whitehead stated that the overview was a great summary of the workshop which she also attended. The workshop discussed Haumea’s genealogy, Haumea’s relationship with Papahulihonua, Papahanaumoku and Papahulilani. Afterwards an offering of awa was made at a former heiau south of Hapaiali‘i where chants were offered then released.

Culture staff assessed the Kaneloa site and documented it for a development of a site treatment plan. Staff will try to get out there more often. Culture staff also assisted with the PKO Huaka'i.

VIII. ANNOUNCEMENTS/FYI

The correspondence included in the FYI section of the Commission packet was reviewed:

- ❖ Letter to DLNR Chair Aila dated 2/3/11 regarding Delegation of Authority
- ❖ Letter to DLNR Chair Aila from Chair Neff through ED Nāho'opi'i dated 2/3/11 regarding Delegation of Authority
- ❖ Governor's interim appointment letter of Commissioner McLean, dated 2/11/11
- ❖ Letter from ED Nāho'opi'i dated 2/21/11 to Senator Kidani's memo dated 2/16/11; there have been no more questions from Senator Kidani's office since this letter was sent
- ❖ Letter from ED Nāho'opi'i dated 2/18/11 responding to Kylee Mar's request for government records to an incident which occurred between August 12-17, 2009

It was suggested that a Commission meeting be scheduled on either March 14th or 15th if the legislative bills stay alive. Staff will notify Commissioner McLean of the March meeting date as soon as possible because of her schedule. If the legislative bills are no longer alive after this weekend then a Commission meeting may be scheduled for April 4th to discuss the budget. Chair Neff also suggested that there might be a limited meeting on the Island since there is a new DLNR Chair.

IX. ADJOURNMENT

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

ACTION: Motion was approved by all Commissioners present.

The meeting adjourned at 12:30 pm.