

Kaneohe Bay Regional Council
Minutes of September 29, 2016
Hale Kuhina Rm 115
Windward Community College, Oahu

Ms. Rocky Kaluhiwa provided the evening pule

Agenda Item #1, Opening of the meeting

Acting Chair (AC) Miyasaka called to order the meeting of the Kaneohe Bay Regional Council (KBRC) at 6:45 PM

Agenda Item #2, Approval of Agenda

AC Miyasaka amended the agenda to move ahead item #5, the NEERS presentation, to item #4, to accommodate one of the presenters

Member Lemus made a motion to approve the agenda with amendments, Member Radke second; all voted in favor; motion passed

Agenda Item #3, Approval of the minutes of July 28, 2016

AC Miyasaka called for a motion to approve the minutes of July 28, 2016

Member Lemus made the motion, Member Radke second; all voted in favor; motion passed

Agenda Item #5, Presentation on the He'eia National Estuarine Research Reserve System (NERRS) by Ms. Justine Nihipili and Ms. Jean Kanemoto

AC Miyasaka move the discussion to the NERRS

Ms Kanemoto provided an update of the NERRS designation process as a year has passed since the last time the KBRC was given an update

The Draft EIS was published on September 1, 2016, with public comments open until October 17, 2016

Ms Nihipali announced that on October 6, 2016 is a public hearing to discuss the draft EIS, from 6:00 – 7:00 PM at He'eia State Park. A pre-hearing, open discussion meeting is scheduled from 4:30-5:45 PM before the formal hearing to allow for a question and answer period.

Member Lemus asked about the state match requirements for federal funding relating to the NERRS; Ms Nihipali responded that a large portion of the state's match would be provided by the Hawaii Institute of Marine Biology (HIMB); Member Lemus represents HIMB on the KBRC and her understanding was that the match would be provided by

staff salaries; Ms Nihipali confirmed that was her understanding as well but the decision would be for the university to make.

A question from the public asked for website info; Ms. Kanemoto provided the link at www.coast.noaa.gov; NOAA office of coastal management home page, the He'eia NERRS link is near the bottom of the page.

Agenda Item #4, Commercial Committee Recommendations

AC Miyasaka reminded the KBRC that the Commercial Committee presented its recommendations at the KBRC's meeting of July 28, 2016; KBRC decision making was deferred to tonight's meeting

AC Miyasaka read a summary of the Commercial Committee recommendations

During its meeting of October 15, 2015, the KBRC approved the forming of the Commercial Committee and tasked them to do the following:

- 1) Have further discussions on the operations of Kama'aina Kids and their related businesses (Holokai Tours);
- 2) Discuss if these operations are in accordance with the intents and purposes of the commercial and educational provisions of the Kaneohe Bay Master Plan;
- 3) Develop recommendations; and
- 4) Report these recommendations to the Council.

Recommendations

- 1) Holokai Tours should be considered a commercial entity within the context of the master plan;
- 2) A majority believed that Holokai Tours does not qualify as an educational entity but a minority did believe that they were;
- 3) The Council should form another committee to specifically define the terms "commercial" and "educational" in the context of the master plan; and
- 4) The Council should also task this new committee to make recommendations on how the master plan should be amended or updated to add in these definitions and may include any new types of commercial activities that are being conducted in the bay that were not previously considered in the 1990s when the Kaneohe Bay Task Force created the master plan.

Member Tanaka asked in view of the committee recommendations if there would be any follow up to enforce this finding?

AC Miyasaka responded that should the KBRC approve these recommendations, they will be sent to the Division of Boating and Ocean Recreations (DOBOR) for their consideration.

Member Lemus asked if the recommendations would be changed prior to them being sent to DOBOR; AC said there are no plans to make any changes prior to submittal to DOBOR

Member Tanaka asked for an update of what steps DOBOR took in response to the recommendations

AC Miyasaka said those updates would be presented in future KBRC meetings

Member Radke commented that he would like to receive a response from DOBOR on these recommendations

AC Miyasaka called for public comments;

Amy Lewerson was one of the original members of the KBRC; chaired the long range planning committee in 1985(?); provided her remembrances from those discussions; thinking around what commercial meant; supported continuance of commercial activities that provided for local kids and community members; she agreed that the recommendations that this is a commercial activity; no new commercial operation would be allowed; if one of the existing commercial operations wanted to change their activities then that could be considered

Ms Kaluhiwa: part of planning committee; the bay was overwhelmed with commercial activities; would recommend that no new commercial operations be allowed, should follow the master plan, should look for more educational opportunities on the bay

Bob Twogood: glad that the committee came to the conclusion that Holokai Tours is a commercial activity; they have been operating for about three years; the master plan only allows educational activities if they operating with a permit and only charging for labor and fuel; Holokai Kayak Tours has been selling their activities through a Waikiki activities desk; they are charging retail prices (\$115-\$120); yet has been allowed to operate clearly illegally; encourage the KBRC to support the committee recommendations; Holokai Tours should be fined and shut down immediately and until they are legally allowed to operate through a master plan amendment.

Member Kaluhiwa commented that he started back during a seaweed project; they had to go through a safety training, and they are not doing that now; really concerned about the activities are having an impact on the bay's resources

AC Miyasaka called for a motion to vote on the commercial committee recommendations; Member Lemus so moved to approve, Member Radke second; all voted in favor; motion passed

Meghan Statts (DOBOR) provided an update in anticipation of the KBRC vote to support the commercial committee recommendations; DOBOR worked with Department chairperson and based on community concerns, they would be offering Kama'aina Kids a commercial permit for operations that existed on July 1, which consisted of after-school and summer programs involving kayaking, sailing, canoeing and swimming instructions and water safety. These are the only activities the department would be issuing a permit for. Regarding the other activities, they would be prohibited from conducting any commercial kayak tours, stand up paddleboard tours, and snorkeling tours, that they have been advertising in Waikiki. The DOBOR rules limit the kinds of permits we could issue, but the rules changed in 2014 to enable the issuance of a commercial use permit. The

reason DOBOR is doing this is because this organization (Kama'aina Kids) was already in effect doing after school and summer programs on the bay when the master plan went into effect.

Member Lemus asked clarification on the July 1st date and Meghan said July 1, 1993. Member Lemus followed up with a question on the commercial permit with the educational exemption as provided in the master plan or if the commercial use permit allows expansion of commercial activities provided they existed in 1993?

Meghan explained that the commercial permit they are issuing is not covered under that master plan but is provided in their administrative rules. The rules provide that anybody doing any commercial activity has to get a commercial permit. The permit provides that any other activity Kama'aina Kids wants to add would have to be approved by the KBRC prior to DOBOR's decision on a permit change. DOBOR agreed with the KBRC determination that the activities of Holokai Tours were not consistent with the master plan.

AC Miyasaka opened public comments; Ms Lewerson commented that Kama'aina Kids was operating in the bay in 1993; how is what they are doing now considered not an expansion since 1993? Ms Statts responded that DOBOR does not consider Kama'aina Kids to be a new commercial operation. The new rules require that any commercial activity on the water has to obtain a commercial permit from DOBOR. Kama'aina Kids was never issued a permit for the activities they were doing at Kokokahi but they need to be under some permit now. They cannot expand beyond what they were doing at that time. They are only allowed to conduct the after school and summer programs for kids because that was what was being done at that time.

Joe Picard asked what if Kama'aina Kids brings in a busload of kids from out of state. The master plan group looked at every commercial activity on the bay, where they were operating out of, and no one was doing anything like this from He'eia. So this is a new activity, never supported nor anticipated.

Ms. Kaluhiwa commented that she was on the Board of Directors at He'eia State Park (in the 1990s), Ray (Kama'aina Kids) tried back then to bring in kayaks and she thought this wasn't right. She thought that giving Kama'aina Kids a commercial permit now has a potential to create other problems.

Member Lemus asked Ms Statts if the current operations doesn't look like what was operating in 1993, such as programs for kids not from Hawaii, would that be something that would come back to the KBRC? Ms Statts responded that this was something they would have to look at and may bring back to the KBRC. DOBOR would look into the comments expressed tonight.

Bob Twogood followed up as Kama'aina Kids was not at Kokokahi in 1993 so this needs to be checked and that when they did start at Kokokahi, they were charging zero dollars because they were using the kayaks as part of their other activities. He strongly recommended that any fees allowed should be limited to only cover costs of labor and fuel (and there's no fuel in a kayak).

Member Lemus asked Ms Statts if the commercial permit limits how much they can charge. Ms Statts clarified that they (Kama'aina Kids) has not been issued a permit, only sent a letter, and DOBOR has not received a response from then yet. But the limitation on what can be charged could be put into the permit.

Bob Twogood commented that the state should look at the He'eia state park contract with Kama'aina Kids to see if it allows commercial activities on the bay.

Agenda item #6, new voting members

AC Miyasaka updated the status of Mr. Hanagami's nomination; AC has been inquiring with the Boards and Commissions office in the Governor's office about the status since our submittal last year but has not received a response to this action. Member Lemus asked if there is anything else that can be done to fill vacant seats? AC would draft a written request to the Boards & Commissions office on behalf of the KBRC asking for a response to Mr. Hanagami's nomination.

Mr Hanagami announced that he has since retired his commercial business and wondered if his nomination should be left as is. AC responded that it would be a decision of the Commercial Boating Association who they would want representing them on the KBRC. Ms Kaluhiwa and Member Radke both suggested that Mr Hanagami might continue to ably represent the commercial boating interests due to his past experience and continued connections to commercial boaters should he chose to do so.

AC Miyasaka reminded the KBRC that the recreational boating and fishing panel voting member positions are vacant so these will need to be filled as well. The fishing panel representative is chosen from amongst the members of the fishing panel, who are not formally nominated themselves. Once they self-select the KBRC representative, that person would need to be formally nominated.

Member Radke suggested that every future KBRC meeting should include a discussion on filling of vacancies.

The discussion continued on the matter of the fishing panel. The fishers will need to have experience and care for the resources. Member Kaluhiwa commented that when he sees people causing damage to the bay, he encourages them to take care of the bay. Everyone using the bay needs to keep this in mind. If we lose what we have now, there is nothing for the future. AC added that the panel members might know of specific issues they would want to discuss and bring before the KBRC.

Agenda item #7, agenda items for future meetings

Following Member Radke's suggestion, future meetings will include a discussion on filling vacancies.

AC Miyasaka also added the commercial committee recommendations to form a separate committee to discuss “commercial” and “educational”

Also would be updates on the response of Kama’aina Kids to the DOBOR letter and related developments.

Member Radke suggested that potential committee members might be those persons who attend the KBRC meetings so we should be prepared to ask persons in attendance to serve on the committee.

A discussion on whether the committee could be formed at this meeting occurred. The action of the KBRC was to accept the commercial committee recommendations, one of which was to form the committee.

A discussion also occurred regarding how items are put on the agenda. Mr. Picard mentioned the poor condition of the restrooms at He’eia harbor. He was willing to work with DOBOR, the state, and neighborhood boards to correct some of these problems.

Ms Kaluhiwa mentioned the use of portions of the state lands next to the state park that are not currently being used. She also wanted to include other commercial businesses (non-boating types) that are around the bay into the discussions.

Agenda item #8, adjournment

AC Miyasaka called for a motion to adjourn; Member Lemus so moved, Member Radke second; all voted in favor; motion passed

Meeting adjourned at 8:05 PM.