

Kāneʻohe Bay Regional Council Meeting

Agenda

August 3, 2022

6:00 PM-8:00 PM

Online or call-in via ZOOM

(Zoom info listed below)

or

In-person at:

The Key Project, RM 102

47-200 Waihee Rd, Kaneohe, HI 96744

1. Opening (Introductions)

Brian Neilson - DLNR-DAR, Administrator and Chair of KBRC (non-voting member)

Fred Reppun – NERR Education, HIMB Representative (voting member)

Clifford Loo - Kahaluʻu neighborhood board representative (voting member)

Liko Kaluhiwa – Community of Heʻeia, Kāneʻohe bay recreational boating association (voting member)

Josh Hekeka - Office of Planning

Casey Ching – Heʻeia NERR

Jason Redulla – DLNR DOCARE

Kirk Deitschman – DLNR DOCARE Makai Watch Coordinator

Rocky Kaluhiwa

Joe Pickard

Charles Naumu

“Shaggy”

“Kaleo”

“NM”

“Rallen”

2. Approval of Agenda (Action Item)

Quorum was not present to approve agenda.

3. Approval of Council minutes of the July 6, 2022 meeting (Action Item)

Quorum was not present to approve meeting minutes.

4. Discussion regarding commercial activity in Kāneʻohe Bay (Non-Action Item)

Chair Neilson requested participation from DLNR DOCARE, DLNR DOBOR, and DLNR DOFAW at this meeting. Chief Redulla from DLNR DOCARE and Jason Misaki from DLNR DOFAW were present.

Jason Misaki provided an overview of Ahu o Laka’s designation to the council.

- Ahu o Laka’s current status is through an executive order by DLNR Division of Forestry and Wildlife, but it holds no specific designation as to what kind of rules apply.

- DOFAW could not come to a consensus for the most appropriate designation according to land use categories, so the effort fizzled out.
- Staff from DLNR DAR conducted surveys to evaluate its natural resources and support designation as a sanctuary prior to covid.
- It is difficult to take on as a forestry management sanctuary and DOFAW is open to suggestions to make a better recommendation to BLNR.

Aunty Rocky Kaluhiwa expressed concerns with establishing Ahu o Laka as a sanctuary due to DLNR mismanaging the area for many years. She suggested putting a kapu on the area to avoid restricting access to locals.

Joe Pickard explained how the harbor master has been documenting unpermitted activity from He'eia Harbor, but DOCARE officers say the rules are not specific enough and the language of the rules prevents officers from enforcing restrictions under the master plan. He directed a question to Chief Redulla to clarify this situation.

Chief Redulla responded by sharing how DOCARE investigates unpermitted and illegal commercial activity.

- A financial transaction needs to be proven, either in-person or online. In Waikiki, they found an unpermitted individual selling canoe lessons to visitors through airbnb.
- In many cases, DOCARE will send a covert officer to make a buy from the individual to build their case.
- These operations are complicated, time-consuming, and difficult to handle because they need probable cause before they can take enforcement action.

Joe Pickard followed up asking if operations are done jointly with the US Coast Guard. He shared his previous experience with the agency and how they are able to board the vessel and question passengers to make sure captains are properly licensed. Chief Redulla responded that DOCARE has worked with USCG in the past, but not recently. Chief Redulla shared that DOCARE does question individuals about payments, but visitors are usually briefed by the illegal business owners and given a scripted line to say to law enforcement if they are ever approached. In the past, covert DOCARE officers have successfully infiltrated and made buys.

Joe Pickard suggested DOCARE work with the IRS or State Tax office to do a targeted audit and see if illegal commercial businesses are evading business taxes. Chief Redulla responded that they work closely with the Dept. of Taxation. Following the Waikiki incident, DOTAX launched an investigation immediately.

Shaggy asked about entrapment circumstances and shared a situation where he was approached at He'eia Pier and repeatedly asked if he would take money for a trip to the sandbar despite replying that he did not charge. He also asked if current permit holders are being looked into, given that there has been transfer of 3 permits even though it is not allowed under the master plan. Chief Redulla explained that police entrapment is when police provide an individual with the motivation to commit a crime as opposed to the opportunity to commit a crime. For instance, leaving a bait car in an area where people are known to steal cars is not entrapment. DOCARE pays attention to all activity on Kāne'ohe Bay, both permittees and nonpermittees. Shaggy

repeated his concerns with DOCARE enticing individuals to be paid for trips to the sandbar when they are not advertised.

Member Reppun asked if evidence of illegal commercial activity provided by community members is helpful to DOCARE. Chief Redulla answered that it may provide an investigative lead by pointing them in the right direction. However, DOCARE needs to formally investigate and look into a transaction to make a case.

Member Reppun asked if DOCARE has a mechanism in place to issue civil fines. Chief Redulla clarified that officers have an enforcement toolbox of criminal and civil processes. Criminal citations and arrests can be made. On the civil side, they have the Civil Resource Violation System (CRVS) with a ticket book of fines for different violations or they can have violators go before BLNR to be issued a fine. DOBOR does not have a CRVS fine schedule, but other DLNR divisions do. Criminal and civil violation tools are all helpful depending on the situation. Sometimes CRVS is helpful, but sometimes it is more effective to go before BLNR.

Member Reppun referenced a situation where kayaks are rented from other places and towed on the side of the road to He'eia and asked if a ticket system would be helpful. Chief Redulla responded that enforcement action is situational and has to do with the discretion of the officer. For an illegal fishing situation, they may use the civil book to offer a learning experience for the fisher versus a potential criminal record.

Aunty Rocky Kaluhiwa elaborated on the situation at He'eia Harbor. She shared that a group of community members have been taking pictures of activity at the harbor for a long time and the illegal operators think they are being picked on. She stated that usually, illegal operators will say they are taking out family and friends, but that is not what is actually happening and they would not use that amount of gas recreationally. It is hard for the community who helped to establish this pier to see how badly managed it is. She recommended putting a kapu on the pier where only the current 7-8 permitted boats are allowed. She predicts there are almost 100 boats currently using the harbor and that the bay is being overused and abused.

Joe Pickard asked if picture-taking at the harbor is allowed. Chief Redulla said he is unaware of any rules or laws that prevent people from taking photos in a public place.

Shaggy clarified a statement previously made at another meeting and shared that picture-taking can have the potential to cause an altercation. He shared that it only takes about a gallon of gas roundtrip from the pier to the sandbar. He clarified with Chief Redulla that he is allowed to operate his boat as frequently as he wants, take out as many people as he wants, and it shouldn't be an issue if he does not charge.

Chief Redulla shared that DOCARE is severely understaffed. However, as of August 8, 2022, they have 42 new officers undergoing training and Oahu will receive 14 of them. He stated that understaffing means they are in a reactive mode instead of a proactive mode. They want to be where they are needed, but need to be realistic with the resources they have.

Shaggy asked if it is illegal to drop people off at Ahu o Laka. Chief Redulla responded that no rule prohibits that at this point.

Shaggy shared that three commercial permits were transferred this year, which goes against the Kāneʻohe Bay Master Plan. He elaborated that shutting down the sandbar and leaving it to commercial operators should be a bigger concern than the locals. He stated that the bigger operations can do more damage to the resources and a kapu would restrict the sandbar for the local community allowing big corporations to continue making money.

Aunty Rocky Kaluhiwa shared that she was against commercial businesses in Kāneʻohe Bay and was part of the effort to create the Kāneʻohe Bay Master Plan, which involved over 100 people. At the time, they made compromises to the commercial businesses, such as giving them 6 days of operation a week and designated areas. She emphasized that the Ahu o Laka situation needs to be fixed and if not, it should be closed down until we come up with a solution. She asked if this meeting is being recorded and stated that if something does not happen soon, it should be taken to BLNR.

Chair Neilson asked if this should be discussed in the Master Plan update meetings. Shaggy replied that he has been excluded from those meetings.

Shaggy questioned the group if they agree that 3 permits were transferred to existing owners of permits when the master plan says no expansion, growth or transfer. Joe Pickard responded that the process for transfer of permits is the same throughout the State of Hawaii for commercial harbors. He explained that if you have a corporation that runs the business and a permit is applied for under the corporation, and another company purchases the stock and assumes control of the corporation, the permit stays with that entity under the new owner because the permit doesn't change hands. There is a similar process with commercial boats, who have their slips under a corporation instead of an individual. The company then needs to go through the State, request permissions and approval, and pay a fee. If there is an effort to change that rule, it would have to be changed for all uses of harbors and all corporate owned vessels throughout the state. Overall, there has been no expansion.

Shaggy stated that it is a loophole in the plan to acquire additional permits to expand business. He shared that he is unable to apply for permits because they were given out a long time ago. He suggested that commercial permits be opened up to allow other people to have a chance since there is a loophole to continue these permits.

Joe Pickard responded that as someone who participated in the writing of the rules, they were all aware of the situation. It was intended to not hurt the fishing businesses. They followed the precedent set by all the harbors and he experienced the same thing in other places and was unable to acquire a permit because he could not purchase the business. His permit application was accepted in Kāneʻohe Bay, but the loophole was never a loophole. A permit cannot be reissued.

Shaggy asked why the three permits that were sold were not made available to the public to purchase. Joe Pickard responded that they were not public companies. Private companies are able to sell their corporation to any individual without announcing the sale.

Joe Pickard emphasized that the permits will never be reissued. When there is a transfer of sale of the full service permits, most of the water activities decrease and slowly get ratcheted down to snorkeling tours. This transfer is also approved by DOBOR. The same is for fishers who have slips at the harbor. If a father passes away and wants to give a slip to his daughter, it will be lost if it is in his name. If it is under an LLC, he can pass it to his daughter and it can transfer.

Aunty Rocky Kaluhiwa shared that Hawaiians plan for 7 generations ahead and are planning for those who haven't been born yet. Most of the commercial fishing boats will go outside of Kāneʻohe Bay. The focus needs to shift from fishermen who are fishing for their livelihoods, giving back to the community, and catching fish for the kupuna. We need to sustain what is left in the bay.

Shaggy added that if a corporation is not successful and it is bought out by another corporation, it increases the amount of people in the bay. He stated that the corporations are buying/selling their LLCs to keep the money within their family and friends and for their own business gain.

Member Reppun asked what it would entail to have Ahu o Laka designated as a wildlife sanctuary. Jason Misaki was not present to answer, but Chair Neilson responded that BLNR would enter the Chapter 91 rule-making process. It could be managed similar to how the Mokolua Islands are a wildlife sanctuary, where kayaks are regulated through DOFAW. However, there may be hesitation due to its popularity as a recreational area. There would need to be strong community support and partnership, potentially facilitated by the Heʻeia NERR.

5. Adoption of Council resolution relating to kayak rentals around Kāneʻohe Bay (Action Item)

Chair Neilson stated that without quorum, the resolution can only be discussed. Nothing can be formally introduced or voted on.

After the last KBRC meeting, there was a push for the council to take action on the issue of commercial activity in Kāneʻohe Bay. Mo Radke drafted a resolution to introduce. Member Reppun and Casey Ching revised it between then and this meeting.

Member Reppun shared that the issue may need a different process than the one proposed in the original resolution, which asked the council to adopt new language in the updated master plan. The master plan revision is ongoing may move too slowly. The draft resolution includes language from the Kahaluʻu Neighborhood Board's resolution mainly "to urge DLNR to work with KBRC to develop clarifying rules to address the proliferation of kayak rentals and watercrafts in Kāneʻohe Bay through a community process where input is given." Having agencies participate in meetings to answer questions helps KBRC to get clarity on these issues, but it needs to be worked out at the higher level.

Chair Neilson inquired if increased DOCARE capacity may address some of these issues. There is a need for additional rules to help enforcement, make it easier to enforce, and strengthen regulations. Member Reppun agreed and brought up that DOBOR not having rules in place for a civil process should be taken up to a higher level of DLNR.

Member Reppun asked the group if the commercial activities issue should be in the same resolution as the kayak issue. They are all linked, so the commercial activities and permitting issues may impact the kayak issue. There should be community input on the rules to ensure they are clear and serve the community well. There is another resolution that can potentially be lumped in or addressed separately, to address Ahu o Laka.

Joe Pickard expressed concern regarding the kayaks and how they are not operated safely. The Makai Watch group witnessed many of them coming out of the mangroves and getting blown near a shallow reef area. They don't have someone next to them and there is a large number of them. Without proper insurance, it is a liability issue. They may get hurt and sue the state costing tax payers money. He suggested putting the kayak resolution through separately so it is easily passed, but is supportive either way. Shaggy agreed with Joe Pickard to keep the resolutions separate.

Shaggy asked about enforcement of the kayak situation, noting that tourists are allowed to rent them in other places and put them in the water at Kāneʻohe Bay. He added that MCBH rents kayaks as well and operates their boats more dangerously. Kayaks require a QR code and have a designated place to launch. He suggested more education about kayak use. Member Reppun responded that the concern is moreso around the volume of kayak rentals and the safety of how many are out there. MCBH has been in council meetings before and spoken about the issue of their boats. The number they currently have is more than they had in the 90s. This should be incorporated into the Ahu o Laka resolution, since that is where they typically go.

Aunty Rocky Kaluhiwa agreed that kayaks should be addressed separately and asked if there is a replacement OHA representative appointed to KBRC. Chair Neilson responded that the seat is currently empty. One more person is needed for quorum. Aunty Rocky Kaluhiwa requested the kayak resolution be an action item for the next meeting.

Aunty Rocky Kaluhiwa expressed her worry that we have to work with the rules we have and solve those issues before looking into making new rules. Chair Neilson added that Chief Redulla was transparent about DOCARE enforcement issues and that with new officers incoming, Kāneʻohe should see some elevated enforcement.

Member Reppun summed up thoughts of the group that the resolution should urge DLNR to fully regulate and enforce current laws and develop a process where community may give input and gain clarity on existing rules. He requested input from the council on the revised draft.

Chair Neilson suggested KBRC come up with a plan to address the legislative resolution passed last session, which requests DLNR DOBOR in consultation with KBRC to conduct a study of

commercial activity in Kāneʻohe Bay to develop a plan to reduce nonpermitted commercial activity operating in violation of the master plan. KBRC is named to conduct the study.

Chair Neilson agreed that the revised resolution drafted by Member Reppun should be put on the next meeting's agenda.

Member Reppun suggested breaking the issues up into 3 different resolutions, with one addressing kayaks, one addressing commercial boats, and one regarding Ahu o Laka.

Joe Pickard asked if interim appointments can be made for KBRC to reach quorum. Chair Neilson suggested the group look into it for the OHA representative. Aunty Rocky Kaluhiwa shared that they may have forgot to fill the seat since it is election time and she volunteered to remind them.

NM suggested a resolution be created for MCBH. MCBH has a seat on KBRC as a non-voting member. Aunty Rocky Kaluhiwa suggested they have a seat at the table so they are present at meetings and engaging with the community. Chair Neilson volunteered to reach out to Megan Ostrem, the designated representative. Shaggy added that it was a gentlemen's agreement to have 10 boats when the original master plan was drafted, but now they have 34. He believes it is unfair that they can operate through the base. Chair Neilson shared that the military base has an exemption.

Member Reppun requested that the next meeting discuss Senate resolution SCR205 for KBRC to potentially adopt a position as a council on the boat operations from MCBH. Chair Neilson shared that the resolution is passed so MCBH cannot be added, but the study can include the issue. He clarified that we need to comply with this bill and complete the study within a year. It is an unfunded mandate which needs to be provided by 20 days prior to the 2023 legislative session.

Aunty Rocky Kaluhiwa suggested including Senatore Riviere and asking him to vote on proposed resolutions.

6. Introduction of Council resolution concerning commercial activity in Kāneʻohe Bay (Action Item)

7. Suggestions of future agenda items (Non-Action Item)

Chair Neilson summed up that the agenda for the next meeting will include the kayak resolution and a discussion to come up with a plan to comply with the Senate resolution moving forward. Aunty Rocky Kaluhiwa suggested they be action items and the maker of the resolution be included in the next meeting.

8. Scheduling of next Council meeting (Non-Action Item)

The group decided on September 7th, 2022 from 6-8pm for the next meeting.

Member Loo added that he has witnessed kayak renters dragging their kayaks over the reef and walking over the corals causing damage. When the tide is low, they don't have a channel to go out from. Chair Neilson suggested that education be improved with signage in the areas where they launch. Shaggy agreed and that they should launch from a better area or be required to watch an educational video, adding that education needs to be better around the state.

9. Adjournment (Action Item)

Meeting adjourned.