

## Kāneʻohe Bay Regional Council Meeting

### Agenda

March 12, 2024

6:00 PM-8:00 PM

Online or call-in via ZOOM  
(Zoom info listed below)

or

In-person at:

Kāneʻohe Atrium Building  
46-004 Kawa St., Ste. 104  
Kāneʻohe, HI 96744

#### 1. Call to Order (Non-Action Item)

Brian Neilson – DLNR DAR, Chairperson and non-voting member  
Cedric Bertelmann – Kāneʻohe Bay fishing panel, voting member  
Fred Reppun – Hawaiʻi Institute of Marine Biology, voting member  
Clifford Loo – Kahaluʻu Neighborhood Board Rep, voting member  
Liko Kaluhiwa – Kāneʻohe Bay recreational boating association, voting member  
Joe Pickard – Kāneʻohe Bay commercial operators, voting member  
Elena Bryant - Kāneʻohe Neighborhood Board Rep and KBRC Legislative Chair, voting member  
Rocky Kaluhiwa – Koʻolaupoko Hawaiian Civic Club  
Kristi Kaluhiwa - MCBH  
Kimberly Fuller – DLNR DAR  
Kendall Tucker – DLNR DAR  
Megan Ostrem – US Navy  
Casey Ching – Heʻeia NERR  
Josh Hekekie – Office of Planning

Meeting called to order at 6:09pm.

#### 2. Meeting ground rules (Non-Action Item)

Chair Neilson reviewed the ground rules including the process for how comments will be received with each agenda item.

#### 3. Approval of March 12, 2024 Agenda (Action Item)

Member Reppun moved to approve. Member Loo seconded. All were in favor. Item passed.

#### 4. Approval of Council minutes of the January 23, 2024 meetings (Action Item)

Member Reppun moved to approve as posted. Member Loo seconded. All were in favor. Item passed.

5. Review of Hawaiʻi State Legislative Bills related Kāneʻohe Bay introduced in the 2024 Legislative Session: HB2476, HB1546, SB2329, HB2626/SB513, SB2296, SB3327, HB2703, SB2147, HB1544, HB1900, SB2814, HB2695 (Non-Action Item)

Member Bryant summarized the 8 bills of interest to KBRC that are still live.

HB1546 amends the definition of “beach restoration” to include additional restoration activities.

SB2329 requests funding for fishpond hatchery support for mullet production and stock enhancement.

HB2626 addresses streamlining leases for government owned fishponds.

HB1544 relates to water code penalties and increases the ability of the water commission to assess increased penalties. It also ties into SB3327.

HB1900 appropriates funds to improve the states water resource management and hydrologic data collection.

SB2814 requires the Department of Agriculture to conduct water infrastructure studies.

HB2695 requires the County Board of Water Supply to prioritize sustainable watersheds when allocating water for development.

SB3327 requires the Commission on Water Resource Management to prioritize water use for public trust purposes and allows the Commission to retain independent legal counsel. It restructures the Water Commission leadership, changing the Deputy Director to an Executive Director to allow the Commissioner to act independently.

Member Bryant submitted testimony for SB3327 on behalf of KBRC. The bill will deter political influence, and promote increased penalties for violations helping to deter people in violation of permits or water code. She added that current penalties are not enough of a deterrent for offenders with deep-pockets. Last session, a bill passed allowing an ability to declare waater shortages, but it was veto-d by the Governor. This bill revitalizes that language and allows the Water Commission to adapt faster and respond quicker to water crises. The bill also highlights the need for public trust purposes to have priority in water allocation. She thanked the other KBRC members who weighed in for their individual capacities and emphasized the need for the State of Hawaii to deal with problems caused by larger water-users.

Member Reppun requested a list of the bills and a copy of the testimony submitted for SB3327. He also volunteered to help with drafting testimony.

Chair Neilson added that DAR has seen restoring water flows to East Maui streams having beneficial impacts on the fish communities and estuaries. Fishermen have always said the health and water flow of the stream restore fish populations and DAR’s monitoring is now showing that. Member Bryant agreed, and added that the health of Kāne‘ohe Bay is dependent on the health of the watersheds, streams, wetlands, and estuaries, and we should be looking at bills that address the entire watershed and not just the nearshore waters.

6. Update on reef damage of Navy P-8A aircraft grounding in Kāneʻohe Bay (Non-Action Item)

Kimberly Fuller, the DAR Oʻahu District Biologist, presented an update on the status of the damage assessment.

- 12/4 and 12/5: Site inspection and impact delineation was performed
  - o DAR, NOAA, and USFWS were involved in describing areas of impact and removing deployed booms
- 12/6: Rapid emergency restoration involved overturning 180 coral colonies
  - o Most overturned colonies were between .5ft – 1ft, or 1.5ft
  - o Large colonies close to 1m (3ft) were prioritized. These required Navy Divers with specialized training.
- Follow-up Natural Resource Assessment
  - o 2/24 Fringing reference sites and areas of impact were denoted. 15 transects were completed.
  - o March 2024, cancelled due to weather
  - o 3/16 and 3/17 surveys planned to address main impact area and reference areas.
  - o DLNR, NOAA, and USFWS were involved in data collection
- Signs of recovery
  - o New tissue is observed growing off of fragmented parts
  - o Some coral mortality from damage
  - o Some loose pieces in an upright position ideal for recovery
  - o Flipped over ~3 more colonies, that may have been loose and knocked over. DAR will continue to upright corals that they see.

Meagan Ostrem with Navy Regional Hawaiʻi volunteered to reach out to the main POC if there were any questions KBRC had or feedback she could pass on to the Navy.

Meagan Ostrem asked if there is an acreage that DAR is working towards restoring and what the next steps are moving forward given the damage of the site. Kim Fuller responded that the area investigated is 4.6 acres in size, including the impact area and the deployed booms. The actual estimated damage is 0.25 acres in size, with modified polygons for surveys. Once the polygons are reassessed, the actual amount will be detailed in the report, but they will need QAQC before providing a number. Chair Neilson added that the assessment will describe the damage to various coral species and live rock, with the findings being put into a report and shared with a Navy along with an opportunity to meet and discuss the damage. A tool characterizes ecological units of coral colonies, which helps to inform the type of mitigation needed. This would also be shared with KBRC, but the assessment may take longer due to the area being an active airfield and the need to coordinate multiple agencies. Kim Fuller added that DAR has put in approximately 400 hours of work, but this type of assessment requires time, coordination, and staff overtime.

Kristi Kaluhiwa asked if the report will be shared with MCBH. Kim Fuller responded that Jane, Lance, and Julia Rivers have seen the presentation that was just shared and once the report is formally written, it will be shared with all interested parties. Chair Neilson added that MCBH

has been very helpful providing access allowing DAR to conduct these surveys in a cooperative effort.

Aunty Rocky Kaluhiwa shared that DAR did a good job addressing the damage, and wish there was more emphasis on the damage done by other boats in Kāneʻohe Bay. She described recently seeing a boat getting stuck on the reef, but how that damage is not getting measure and monitored like the plane damage.

7. Approval of Letter to the Department of Land and Natural Resources encouraging the Department to seek compensation from the Navy for damages to the reef by the downed plane (Action Item)

Chair Neilson opened this agenda item by describing that a draft letter is still pending the damage report. Kim Fuller added that the report may be ready by April or early May, but is pending data analysis and QAQC following fieldwork.

Member Bryant shared that this agenda item was requested because it was unclear whether DLNR would pursue any reimbursement or compensation for damages from the Navy plane incident. She emphasized that with 400+ hours of work being put into this, she encourages DAR to pursue compensation so the taxpayers do not have to shoulder the costs. She agreed to push this to the next meeting until the assessment is completed and DAR has a better idea of what is needed to remedy the situation.

8. Update from the Division of Aquatic Resources in pursuing Ch. 91 Rule Making to ban commercial aquarium harvest statewide (Non-Action Item)

Chair Neilson shared that a petition was brought to BLNR on December 8th for DAR to pursue a rule-making ban on aquarium harvest statewide. The petition was approved by BLNR with added language for “DAR to amend language to comply with statutory obligations, while taking into consideration the testimony presented.” DAR is unsure how to proceed given the unclear language and the diverse testimony presented. DAR is going back to BLNR on April 12 to ask for clarification. At the same meeting, they will be giving an informational brief on the West Hawai‘i EIS to bring new BLNR members up to speed on the aquarium fisheries issue and the background of the EIS.

Member Bryant shared concern with not hearing about these agenda items for the next BLNR meeting and frustration with how BLNR voted to support the petition before the AG brought up a potential conflict that should have been worked out prior to the meeting. She added that it seems like the decision is being brought back to BLNR to reconsider. Chair Neilson responded that if BLNR had approved the petition as read, it would be clear, but they went into an executive session and came back with new language. He is concerned if DAR moves forward, actions might not be complying with what the petitioners or BLNR wanted. This would be good to get clarification to avoid a setback or misunderstanding when rule-making is taken to public hearing.

Member Bryant voiced appreciation for the clarification. She followed up by asking about the West Hawai‘i EIS and whether there is an intention to brief them for permits coming down the

pipeline. Chair Neilson responded that the brief will be for multiple different reasons, one of which that many BLNR members have changed over since the EIS approval. Testimony mentioned a white list of 40 species, but any proposed permit moving forward would be a much more reduced white list with catch limits. There are requests by aquarium collectors for DAR to issue permits, but DAR will bring those requests to BLNR to make the decision.

Member Bryant questioned the inconsistency with DAR bringing forward a petition and rule-making to ban aquarium collection while also potentially bringing aquarium collection permits to BLNR. Chair Neilson responded that BLNR is the decision maker and DAR would rather take these to BLNR to carry out the decision.

Member Bryant asked about the timetable for the permits. Chair Neilson guessed the second meeting in April or May.

Member Bryant raised the point that the West Hawai'i EIS acceptance is still pending with the Supreme Court and that it seems problematic to bring permits before BLNR, though she understands they should be the decision-maker. She added that things should be settled before additional steps such as this are taken and not waiting would be problematic and not received well with the community. Chair Neilson responded that it is preferred for BLNR to make these decisions in a public forum where the public can weigh in on the decisions as well.

#### 9. Community concerns (Non-Action Item)

Aunty Rocky Kaluhiwa asked if the Kahalu'u Neighborhood Board could be added to the BLNR agenda through DLNR DAR to discuss the kayak businesses. Chair Neilson responded that they could request Chair Chang to provide time for an information briefing or put in a petition for a type of action. He volunteered to check about an informational briefing. Aunty Rocky Kaluhiwa requested a response before the next Kahalu'u Neighborhood Board meeting because a person outside of her home has said she has permission from both the City and the State to operate.

Aunty Rocky Kaluhiwa shared that people are renting pontoon boats out of He'eia Pier for others to use unsafely. Kristi Kaluhiwa added that she came across a website called "rent my boat", where boat owners can post an available boat for rent. They have seen an individual bringing a pontoon boat, detaching it from his truck, giving others instructions, and sending them along their way. Member Kaluhiwa shared that he filmed them struggling to maneuver the boat and saw them across the reef while others directed them to the sandbar. He did not think they were properly educated boat operators.

Member Pickard requested a briefing from DOCARE regarding the bill that was passed to prevent illegal commercial activity. He emphasized that they should be enforcing the bill and seizing boats that violate the permit. Aunty Rocky Kaluhiwa added that DLNR should start enforcing.

Member Bryant looked at the website and saw 38 pontoon boats available for rent in Kāne'ohe Bay. Other members of KBRC clarified that it is illegal to advertise according to the law that was passed last year. DOCARE also has the authority to seize vessels during the course of

investigation, with the burden of proof on the suspected violator of the rule to prove they are not operating or renting that vessel for commercial use.

Member Reppun asked about the tours operating out of Paradise Bay hotel. Member Pickard clarified that they do not have a permit. Member Reppun mentioned that they are still operating and advertising their tours.

Member Loo brought up an illegal kayak business run by a lady claiming she has permission from the City and State to operate. Her operation runs out of the small park by Aunty Rocky's house, but she blocks the street so cars cannot pass through. Aunty Rocky Kaluhiwa added that someone shot a video of a person stopping traffic on Kamehameha Hwy to drop off her kayaks. Member Reppun found the business online titled "Ohana Kayak Rentals".

Member Pickard reiterated the need for DOCARE to come in and brief KBRC. He added that they should share about their case with Twogood.

#### 10. Announcements (Non-Action Item)

Aunty Rocky Kaluhiwa brought up the need for an OHA representative. Chair Neilson responded that he has reached out to them a few times and had some responses with no follow-up. Aunty Rocky Kaluhiwa volunteered to call them.

Chair Neilson also reminded Member Reppun that he needs to do a confirmation hearing for his renewed seat, but he will still carry over to the next session.

KBRC scheduled the next meeting for April 9th.

#### 11. Adjournment (Action Item)

Member Bryant moved to adjourn. Member Loo seconded. All were in favor. Item passed.