



*KŪKULU KE EA A KANALOA*  
**KAHO‘OLAWEISLAND RESERVE COMMISSION**

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COMMISSION MEMBERS

MICHELE MCLEAN  
*Chairperson*  
AMBER NĀMAKA WHITEHEAD  
*Vice-Chair*  
C. KALIKO BAKER, Ph.D.  
SUZANNE CASE  
HŌKŪLANI HOLT  
JOSHUA KAAKUA, Ed.D.  
CARMEN HULU LINDSEY

Michael K. Nāho‘opi‘i  
*Executive Director*

**PUBLIC MEETING MINUTES**

**Thursday, October 15, 2015**

9:00 am

Kalanimoku Building, 1151 Punchbowl St, Room 322C  
Honolulu, Hawai‘i

**COMMISSION MEMBERS**

**PRESENT:** Michele McLean, Chairperson; C. Kaliko Baker, Ph.D. (arrived at 11:30 am); Suzanne Case; Hōkūlani Holt; Joshua Kaakua, Ed.D.; Carmen Hulu Lindsey

**EXCUSED:** A. Nāmaka Whitehead, Vice Chair

**KIRC STAFF:** Michael Nāho‘opi‘i, Executive Director (ED); Ka‘ōnohi Lee, Administrative Officer (AO); Daniel Morris, Deputy Attorney General (DAG); Terri Gavagan, Commission Coordinator (CC)

**GUESTS:** Stanton Enomoto; Davianna McGregor, Ph.D., Protect Kaho‘olawe ‘Ohana (PKO); Kylee Mar (PKO)

**I. CALL TO ORDER**

The meeting was called to order at 9:00 am. Quorum was established with five Commissioners.

**II. INTRODUCTION OF NEW MEMBER-Joshua Kaakua**

Chair McLean introduced the newest member of the Commission, Joshua Kaakua, Ed.D, who had been appointed to represent the Protect Kaho‘olawe ‘Ohana (PKO) on an interim basis. Commissioner Kaakua stated he was honored to be on the Commission.

**III. APPROVAL OF MINUTES**

A. Minutes of June 1, 2015 Regular Commission Meeting

**MOTION:** Commissioner Case moved to approve the minutes of June 1, 2015. Commissioner Lindsey seconded the motion.

**ACTION:** The motion was approved by all Commissioners present.

**IV. COMMUNITY AND PUBLIC COMMENTS**

No public comments were offered at this time.

The Commission decided to hear **Item VI. Administrative Business** and **Item VI. Program Status Updates** before **Item V. Action Items** since Commissioner Baker was delayed.

## **V. ADMINISTRATIVE BUSINESS**

### **A. Executive Director's Report**

ED Nāho‘opi‘i explained there was a budget variance in personnel cost because the previously approved FY16 budget did not include the Commission's authorized extension of all staff at full time during July 2015. This action will be corrected with the amended budget.

ED Nāho‘opi‘i reviewed current grants and upcoming projects. The KIRC has received funding for the third year of the Hui Kāpehe Program through Alu Like. Another large grant of \$90,000 has been received from the Department of Health (DOH), Clean Water Branch to extend the Hakioawa Watershed Management Planting Program through this fiscal year. The Institute of Museum and Library Services (IMLS) has granted the KIRC an extension of one year for the Virtual Museum Pilot Project. A grant of \$25,000 has been awarded to the KIRC by the Office of Economic Development, County of Maui for Photovoltaic Energy for Base Camp, Part III which continues the PV program at Honokanai‘a . There was also a NOAA Marine Debris/NOAA-administered gift fund originating from the Japanese government for marine debris removal on Kaho‘olawe. Commissioner Case stated there had been a lot of interest and appreciation in Japan for the return of tsunami items and suggested that the KIRC notify the appropriate authorities and offer to return tsunami items. Lastly, the Hawaii Invasive Species Council (HISC) awarded a \$49,000 grant to the KIRC to create a bio-security plan for the boat house which will lead to a bio-security plan which would extend to Kaho‘olawe.

Prospective grants included a grant of \$150,000 from the National Fish and Wildlife Foundation (NFWF) to implement the second phase of the KIRC's faunal restoration work which will look at whether the pueo were a permanent population on the island or transient. The KIRC is looking at the fourth year of Office of Economic Development grant for photovoltaic systems. Staff had also applied for a grant from Hawaii Tourism Authority (HTA) for the Kīhei site. Staff decided against applying for a CPEP grant because it could only be used for marketing materials.

Chair McLean asked that the Commissioners be notified of grant applications that allow for support letters so that they could write letters of support that could be included in the grant packet or sent in as follow ups.

Commissioner Case commented that this was an impressive grant list. She asked for the current total of state funding and grants. Staff responded \$1.56 million; \$1 million in state funding and \$560,000 in grants so far.

Commissioner Lindsey asked what happened with the funding request to OHA. Staff responded they had not heard back. Commissioner Lindsey asked what the OHA administration's last words to staff were. Staff responded they were trying to figure out how to place the KIRC's mission within OHA's strategic plan. Commissioner Lindsey suggested staff keep pursuing the request with OHA.

Commissioner Case asked if the KIRC had a cash reserve fund. Staff responded that staff works from the trust fund.

ED Nāho‘opi‘i commented there was a shorter period of time for volunteers to get grant work done because there has been a reduction in the number of base camp staff.

Commission Case commented she was impressed with the management of the huge budget reduction and the transition to the modified camp schedule. She understood there was concern whether it could be done. ED Nāho‘opi‘i responded this was survival mode but that he was unsure whether it could be sustained for a long period time. If one thing goes such as the ‘Ōhua's hull cracking he was unsure if the KIRC could recover. Staff was getting very tired. Boat runs have minimal crew due to lack of manpower.

Chair McLean noted that ED Nāho‘opi‘i reported in earlier emails that staff was behind on regular maintenance of the ‘Ōhua so there was a possibility that the KIRC might end up without a way of getting volunteers to island. ED Nāho‘opi‘i noted that the Base Camp staff supported volunteer activities due to the lack of KIRC staff manpower. This reduced their time for maintenance and upkeep of Base Camp.

ED Nāho‘opi‘i noted that a “plan of the day” process was created. Two weeks prior to going out to the island the program managers and project managers meet to compile the plan of the day for each access day. Logistic requirements were looked at for each planned activity. Using the plan as a planning tool encouraged staff to focus on achieving what needed to be done to accomplish grant projects. After the accesses staff goes through them at the scheduling meeting and document what actually happened and when. This could be used by the project managers as documentation of what was accomplished on their grant projects.

Commissioner Case asked if staff is able to use the remaining funds in the trust fund to set aside for a capital reserve fund because expenses like a major boat repair would be hard to fund when it happens. Commissioner Holt stated that the Maui Arts and Culture Center had a maintenance reserve fund for that purpose. ED Nāho‘opi‘i responded that the budget being presented today had contributions to the trust fund. Chair McLean commented that she did not think that there was a reserve fund but just a line item for repair and maintenance. AO Lee stated she did not know if staff could set aside a fund but in its own manner of keeping track of its funds it can be done. ED Nāho‘opi‘i stated the biggest challenge was to be sure that there was enough trust fund to expend in order to get reimbursements. AO Lee added that staff included maintenance cost in the budgeting of the grants.

ED Nāho‘opi‘i discussed the staff's other planning document, the long range schedule. He explained that staff only scheduled out until January because the base camp contract was for the entire year but the KIRC had only given Zapata funding through December. Staff thought they could fund it through the whole fiscal year given the current grants. Therefore, volunteer trips were scheduled through June 2016.

Chair McLean asked if the contractor kept all its people at a reduced time or did it just keep a couple. ED Nāho‘opi‘i responded only two were kept. One of the two kept on was actually an EOD person. The KIRC EOD was currently half time.

ED Nāho‘opi‘i gave an update on I Ola Kanaloa. The final edits were done. The document was ready for printing. The KIRC and PKO would pick up the printing costs of 100 copies each. The KIRC was paying to host the I Ola Kanaloa.org name off of the KIRC website. If it was hosted on the KIRC website it would have to be kahoolawe.hawaii.gov/iolakalaoa but staff was trying to make sure that I Ola Kanaloa had an independent identity. Eventually the Strategic Planning Working Group (SPWG) would have to make a decision on how to perpetuate that identity.

Mr. Stanton Enomoto added the group had discussed a business plan for one of the program areas for I Ola Kanaloa, development of a cultural learning center on island. I Ola Kanaloa through the Protect Kaho‘olawe Fund (PKF) received a \$25,000 Hawaii Community Foundation (HCF) grant for the development of this plan. The SPWG anticipated having a draft of the business plan completed by the end of this month. It should go through internal review in early November and finalized by the end of November. The SPWG hoped to use that plan as part of communication materials to engage the legislature and get it to support the contents of the plan as well as use it as an opportunity with the legislature to advocate for their continued support and management of the island via funding to the KIRC. The SPWG was looking to set up some legislative appointments before Thanksgiving. Additionally, the SPWG was looking to develop some communication material to educate the broader public about the plan such as a media release or if there was a legislative supporter perhaps doing a joint briefing. Although Kaho‘olawe was the only island not represented in the Native Hawaiian Convention process, part of the I Ola Kanaloa plan dealt with advocacy around the transfer of the island to that new entity. The SPWG was thinking of a way of engaging delegate candidates and informing them about the plan; perhaps getting a pledge from them should they get elected that they will support I Ola Kanaloa and the intent of the Reserve as defined under HRS §6-K.

Dr. McGregor (PKO) stated the SPWG was beginning to implement the plan. The KIRC has responsibilities in certain areas and the ‘Ohana has responsibilities in certain areas. The KIRC and the ‘Ohana were collaborating on a lot of the plan. In terms of implementation the KIRC was in charge of raising funds for the restoration projects in the plan and the PKO received a \$34,000 grant from the National Park Service last year to work on a protection plan for Pokāneloa. PKO also received a \$100,000 grant from OHA for training cultural practitioners on the island at different levels. The business plan focused on the expansion of the learning center. It anticipated providing training for cultural practitioners and others at different levels, particularly at the university and master levels. Perhaps a collaboration could be developed with University of Hawai‘i-Maui College to set up the infrastructure.

Commissioner Kaakua stated that the SPWG had a good meeting and a lot of progress was being made on I Ola Kanaloa. I Ola Kanaloa was a powerful, inspiring vision. A healthy KIRC was the foundation of I Ola Kanaloa.

ED Nāho‘opi‘i added the supplemental budget request of \$1.8 million for a total of \$2.8 million was being requested because it would accomplish three key things which are the KIRC's responsibility in I Ola Kanaloa: 1) restoration and natural resource management for the island, 2) necessary infrastructure for others on the island to achieve success, 3) provide health and safety measures on the island.

Commissioner Case stated currently there was focus on homelessness and she thought the KIRC would need to have an OHA match to justify funding.

Dr. McGregor stated she thought the \$2.8 million budget was to sustain operations at the basic level which would provide security and protect the State from exposure to liability from people encountering UXO on the island. Additional funding would be needed for a fully functioning learning center for the public. All the involved organizations were dedicated to raising these funds. She wondered if the State would be willing to fund the basic infrastructure and operations so that other partners would be attracted to come and help rebuild the island into an important learning center for indigenous knowledge and science in Hawai‘i and internationally.

Commissioner Case stated that she thought the job would be to make this case as persuasively as possible.

Mr. Enomoto commented that the SPWG discussed a joint briefing under I Ola Kanaloa.

Commissioner Holt commented there needed to be people standing next to ED Nāho‘opi‘i, not people standing on the fringe.

Dr. McGregor commented that future partners would be asked to bear some of the operating costs and not just expect the KIRC to cover all the operating costs. The learning center must be built first. The SPWG was dedicated to accomplishing the goals of I Ola Kanaloa without changing the language in HRS§6-K. It was believed that revenue could be generated through tuition and partnerships with other institutions.

Commissioner Holt stated she also did not want to change HRS§6-K.

Commissioner Case asked if staff was packaging the operating costs for boat rides, base camp operations into grant proposals. Staff affirmed that they had. Commissioner Case stated if the KIRC had a commitment from an entity like OHA for base funds that would be a stronger statement.

ED Nāho‘opi‘i notified the Commission that Commissioner Holt's first term would expire next year and that the process could start to request a confirmation hearing for

a second term. Commissioner Holt agreed to serve another term. ED Nāho‘opi‘i also notified the Commission that Vice Chair Whitehead's term ends next year and that she could not serve another term because she had already served two terms. Dr. McGregor stated that the PKO would be submitting Jonathan Ching's name for consideration. Staff also confirmed that Commissioner Kaakua needed to be confirmed by the Senate. Staff will check with Boards and Commission about the current process.

ED Nāho‘opi‘i notified the Commission that Volunteer Coordinator ‘Ānela Evans left the KIRC. The boat crew was now reduced by one person. Staff was looking for a replacement. The person in this position would retain volunteer forms, handle the short range schedule, and would be part of the boat crew. Other staff were currently handling these duties in addition to their normal duties.

ED Nāho‘opi‘i reported that he tried to coordinate a site visit with Senator Sylvia Luke of the Finance Committee but was unsuccessful. Commissioner Lindsey stated that the OHA Commissioners had also wanted to go but were wary of swimming but would be willing to go if the legislators were going. ED Nāho‘opi‘i stated that members of the Ways and Means Committee (WAM) were mostly committed to visiting the Kīhei Boat House next Tuesday. Staff will be there to discuss different programs that operate out of there--the nursery, boat operations as well as the hale.

ED Nāho‘opi‘i informed the Commission that the KIRC and the PKO would be sending a joint letter to the House Finance Committee.

ED Nāho‘opi‘i stated that the KIRC was awarded \$500,000 in CIP funds to create plans for the Kīhei property. He was hopeful the contractor to do the final site plans would be hired by the next Commission meeting. The final plans would be presented to the Commission for final approval.

ED Nāho‘opi‘i added that there were two CIP projects. The largest one was the photovoltaic system at Base Camp (\$2.5 million). There are four major goals for this project: 1) modify existing buildings to reduce solar radiation and heating so that air conditioning was no longer needed, 2) remodeling the galley to be more energy efficient, 3) replacing the reverse osmosis system to be more efficient; looking at the feasibility of digging a well for brackish water versus ocean intake because the piping currently had to be replaced yearly and it needed to be cleaned of sand often, 4) the largest part of this project which would be the photovoltaic (PV) system itself which would take the camp off the generators. One option was to have smaller PV systems in clusters so that residential components could be used which would be easier to maintain and repair. A consultant was already been found for this project. A design build concept was being used. Normally a separate design contract would go out for bid and then a contractor bids on building it. Staff wanted to do a design build because the construction was going to be integral to the design portion due to the island’s remote location and limited equipment so whoever designs the project will have to know how to build it.

The other CIP project was the Kīhei project. Staff will be working with DLNR Engineering on this project.

Staff was also working with DLNR Engineering on marine debris cleanup on island in which a contractor would be used to do the cleanup on three beaches.

Chair McLean asked if the KIRC would be getting construction drawings for the Kīhei property for \$500,000. Staff responded yes. Staff will check with DLNR Engineering about what was included in the scope of service. There was a discussion about permit requirements and certificates of occupancy.

## **VI. PROGRAM STATUS UPDATES**

### **A. Status Update on current and planned Restoration Program Projects: Hawaii Community Foundation (HCF), Coastal Restoration; DOH 3; National Fish and Wildlife Foundation; Upcoming grant proposals**

ED Nāho‘opi‘i reported that the largest project in the Restoration Program included finishing the HCF grant restoration project in Honokanai‘a that included the removal of roi, taape and toau from the ocean. All the kiawe had been removed from the beach except for the one underneath the picnic table and the one on the little island in the middle of the beach. ‘Aki‘aki grass was starting to cover the whole beach. The other project was the Department of Health (DOH) grant project which was a surface water runoff prevention project. The project location was on the slope above Hakioawa. Staff still had 4000-5000 more plants to put into the ground through the project’s current extension. Twenty years ago there was hardly any vegetation in that area. There was now ‘āweoweo, a‘ali‘i and ‘ohai. Staff and volunteers have planted uala in other gullies and it was beginning to take. These also hold back the soil which forms more dirt behind them and the uala patches are growing larger. Grasses have started to choke out other seedlings such as ma‘o. Commissioner Case asked if staff had tried using seed packets dropped aerially. Staff explained that they use mud balls with seeds inside them and use slingshots for distribution. They have tried using paintballs inserted with grass seeds and were looking at its viability. If they can be inserted with native grasses they could be used to grass previously unreachable gulches. Commissioner Kaakua commented that the Wailuna trailhead was healthy.

### **B. Status Update on current Ocean Program Projects: NOAA Marine Debris Grant; JTMD/DLNR Marine Debris Funding; DOH III; HCF Grant; Outreach & Education; Collaboration and Partnerships: DAR Maui; NOAA, UH, TNC & USCG**

ED Nāho‘opi‘i reported that the Ocean Program had been mostly working on marine debris removal. The old marine debris NOAA grant was completed. Staff would begin the marine debris removal grant funded by Japanese government funds in December 2015. Staff and volunteers removed 12 tons of marine debris under the last NOAA grant from Kanapou, ‘Oawawahie, and Puhianenu. They supported the Restoration Program’s DOH III grant by placing sediment tubes in the ocean. They have also supported the Restoration Program’s HCF grant project in Honokanai‘a by catching roi. They have caught 434 lbs so far; the goal was 500 lbs.

ED Nāho‘opi‘i reported there was coral bleaching in Reserve waters. Water temperature was 2 degrees higher than normal. The bleaching could make the coral more susceptible to disease.

ED Nāho‘opi‘i reported that staff worked with DLNR Communications Manager Dan Dennison on a series of films about the ocean around Kaho‘olawe. They are currently on the DLNR website. Staff also worked with the Nature Conservancy on state wide dives. Staff also worked with Dr. Oceana Francis of UH’s School of Ocean Engineering on two projects. One focused on Pōkānehoa and looking at how to protect a cultural site both from engineering and ecological standpoints. The second was an ocean monitoring project in Honokanai‘a. It provided current and temperature data which was utilized in the HCF project. It was also a precursor to a potential ocean energy system grant project proposal Dr. Francis might be creating. Staff would tie the ocean energy system to Base Camp and run power to it as part of her demonstration project. This was still in the discussion phase. ED Nāho‘opi‘i commented that her graduate students were the first from Hawai‘i to request permission to do a project in the Reserve.

ED Nāho‘opi‘i reported a baby monk seal was born on island.

### **C. CULTURE PROGRAM**

ED Nāho‘opi‘i reported the Culture Program was still working on the Hui Kāpehe grant. Sixty interns needed to be processed through the program. A memorandum of understanding (MOU) had just been signed with UH Maui College (UHMC). UHMC would provide recruiters and track the students. Once new recruiters were hired a new class would be coming in. Staff anticipated these new students would go to the island in December or January. Staff was also working with Honolulu Community College, Leeward Community College and UH Mānoa. The students would be on the island for a 1 ½ weeks. They then would do more detailed internships with the staff.

Staff was still waiting for the rock structure construction team to move forward with the site stabilization plan for Site 110 BU. The team was busy building ahus. Staff had been stockpiling all the needed material. The original idea was to utilize a dry stack rock wall as a retaining wall. However, the current idea was to keep the dry stack wall as the face of the retaining wall and use gabions which were nylon mesh baskets stitched up like a box and filled with rocks as used as retainers. Staff found that the dry stack wall might not be able to hold as a sole retaining wall. Gabions had been used in the past to hold back erosion near some of the roads and worked really well.

Staff also worked on the CPEP program which was a community engagement program. This included work days for the community at the Kīhei site. Kīhei Charter School had built an interpretive trail at the site. The students also helped staff with the nursery and hale. The hale was built of kiawe. The framing was up. Loulu palms were going to be used to thatch it but the rains have damaged the palms which would need to be re-dried. The nursery consisted of two 40 ft conex boxes and the space between the boxes covered with shade cloth and it would have tables to grow out plants which

will be taken to island. One species staff hopes to plant on island was *Pritchardia remota*, a loulu palm which had adapted itself to very dry, remote islands. Seeds were obtained from Keith Robinson. The Four Seasons started the seeds for the KIRC.

Culture staff and volunteers have also been doing regular maintenance on the Ala Loa trail from Base Camp up to Kealaikahiki to Honoko'a.

ED Nāho'opi'i referred the Commission to the Access Report in the Commission packet for information on who went to island recently and what work had been done.

## **VII. ACTION ITEMS**

### **A. Review and Approve Pacific American Foundation as Fiscal Sponsors**

ED Nāho'opi'i explained the Pacific American Foundation (PAF) is a nonprofit located in Kāne'ohe. They have done a lot of work in the area of education, especially Native Hawaiian education. They look at all Pacific Islanders. They work in areas that the KIRC was not in, especially in the US Department of Education. The KIRC had worked with them previously in the Malama Kaho'olawe Curriculum Program. They have done a very good job in curriculum development and teacher education. It was a way for the KIRC to get into a new field and expand in an area that staff already participates (on island education, resource education) a more formalized way. PAF was very good with standards based education (No Child Left Behind, Common Core). They were also very good at making sure that the curriculum which is utilized matches DOE requirements.

Another reason the staff would like to work with PAF was that it had a very sophisticated fiscal management system. They run the Akamai Program which was an investment banking program in which Native Hawaiians are trained to become stockbrokers. Their electronic transfer fund capabilities were probably the best of nonprofit organizations. Currently the KIRC submits paper reimbursement requests to one of its current fiscal sponsors, Tri-Isle, which submits a paper copy to the funder. The funder cuts a check to Tri-Isle which they deposit. They in turn cut a check to the KIRC. It can take up to three weeks to receive a reimbursement. PAF does all electronic transfers. The KIRC could send it a request for reimbursement electronically and receive the reimbursement within one day. It was very critical for the KIRC to get reimbursements quickly for cash flow purposes.

Chair McLean noted that Tri-Isle used to charge 10% and PAF charged 11%. However, she also noted that Tri-Isle had a new administrative support fee structure where there are other add on charges so depending on the amount of the grant it could exceed 11%.

Chair McLean asked for any public comments. Dr. McGregor stated she had worked with PAF and its staff was very good and professional. She noted that PAF had also worked with the KIRC on the archaeological internship program with Cultural Surveys.

ED Nāho‘opi‘i noted that the KIRC would still be using Tri-Isle for Maui-based grants and restoration grants. PAF’s focus was on education and human services. It would be a new market of funding the KIRC would be looking at.

Chair McLean suggested that staff might be able to submit grant requests through PAF with some of the larger corporate grantors on Maui as well.

Commission Kaakua asked for clarification of the role of the fiscal sponsor. He wanted to know why the KIRC did not have its own way of bringing in and managing money from different sources. ED Nāho‘opi‘i explained the KIRC did bring in money and the KIRC only used fiscal sponsors for grants that require a 501(c)3. The KIRC used fiscal sponsors to expand its reach. The preference was to apply for a direct grant. Commissioner Kaakua stated the KIRC should have its name out there to raise funds. ED Nāho‘opi‘i explained that even with grants that required a 501(c)3 the KIRC was the entity which applied for the grant and PAF would be the fiscal sponsor. In the proposal the KIRC would be the organization doing all the work. The fiscal sponsor would guarantee the work gets done. The award would go to PAF and the KIRC would become a subawardee. It was similar to how the Hui Kāpehe Program was being run. Alu Like is the 501(c)3. They get the money and the KIRC was the subawardee. The KIRC may not be the only subawardee on a larger grant. In the Hui Kāpehe grant the community colleges were also subawardees. Each had their own programs. The subawardees support each other. The KIRC received a lot more benefits by working with the consortium of subawardees.

Commission Holt pointed out that the collaboration with the other subawardees looked really great in the grant narrative. ED Nāho‘opi‘i agreed that Alu Like really liked the way the KIRC was working with other entities.

**MOTION:** Chair McLean moved to authorize the use of PAF as a fiscal sponsor agency for the purposes of soliciting and managing grants and other funding sources. Commissioner Case seconded the motion.

**ACTION:** The motion was approved by all Commissioners present.

There was a recess from 11:15 am to 11:30 am.

**B. Review and Approve Legislative Positions for 2016 Session**

ED Nāho‘opi‘i explained the first motion was to authorize the Executive Director to submit testimony in support of the following expected legislative issues in 2016: 1) the DLNR supplemental budget request for 2017, 2) direct appropriation request for 2017, 3) additional asset forfeiture if it comes up and 4) support conveyance tax if it comes up. No bills were planned. There may be bills from last year which may be revived.

ED Nāho‘opi‘i explained the Legislature last year appropriated \$1 million from General Funds for FY16 and FY17 for KIRC operations. Staff submitted a request to

DLNR for a supplemental increase of \$1.8 million for FY17. The purpose of the increase was to fund unbudgeted personnel and continuation of operating funds.

ED Nāho‘opi‘i explained that there were a couple of bills from last year which made it to conference committee hearings. One was a direct appropriation request for the KIRC. It did not make it through the hearings but it could be resurrected. Another bill was for asset forfeiture which was introduced by Senator Keith-Agaran. It made it through the Senate but did not get picked up by House Judiciary. It would give the KIRC asset forfeiture authority. Asset forfeiture could be done through the rule-making process. The goal was to have it done as a statute change. Staff will check with the senator to see if he would prefer it done through statute change or rule-making process. Other senators were also looking at this issue. The other bill which could return was conveyance tax. Staff would like to be able to submit testimony in favor of receiving a portion of the conveyance tax if it should come up again.

ED Nāho‘opi‘i discussed a summary of two funding bills which were introduced through Senator English and Representative Yamane. Both bills were amended during the committee hearing in which language was inserted to request the KIRC develop self-sufficiency and sustainability plan through limited commercial activity. Neither bill passed out of committee. The Commission packet contained a summary of the committee hearing reports for these bills. It also included some of the language regarding limited commercial activity discussed at the UH Law School. Staff provided recommended language if this issue comes up. It would be better for the KIRC to try to control how the language was written. The motion before the Commission was to authorize the Executive Director to provide testimony to support the three funding items above and asset forfeiture.

Commissioner Baker and Dr. McGregor stated that the ‘Ohana was against any commercialization on Kaho‘olawe. Chair McLean stated she thought there was a difference between revenue generation and commercial use. Dr. McGregor agreed. Chair McLean agreed that she would not want to see commercialization on the island. She stated that the UH Law school language was really closer to the revenue generation concept. It was really not talking about anything different than what was already permitted on island. It might be that the statute did not need to be amended to recoup costs like with access permit fees. Other things could still fall under that umbrella. Maybe HRS §6-K did not need to be amended to be able to generate the kind of revenue that could be acceptable to almost everybody.

ED Nāho‘opi‘i commented that the KIRC did have a lot of flexibility. The permit system process was not commercial activity because it was not an exchange of goods and services for money because the permit did not provide any goods or services. It provided the right to enter the Reserve. There was a lot of discussion about the pricing of permits. Permits have to relate to the administrative part of the permit; the fee cannot fully recover costs because it would become an exchange of goods and services. DAG Morris stated that his office did look at something comparable to a nonprofit which was allowed to generate a certain amount of money as long as it

supported its mission. There was a pretty clear view that this type of prohibition of commercial activity was different and stricter than would be applicable to nonprofits.

Commissioner Case commented there was an analogy for nonprofits which was unrelated taxable income. For example, if tickets were being sold to plays because the purpose was to provide theater, it was related so it was revenue generating but not taxable. However, if one was growing vegetables to sell at the market so that one could fund a theater, it was unrelated and taxable. Commissioner Holt added the MACC is a nonprofit but it had a multimillion dollar budget that primarily gets its money from ticket sales of events. The more people come, the more events they attend, the more money is generated and the MACC can further the work because the work fits. The Smithsonian Museum is nonprofit; it had stores in each of its museums. Everything sold was related to the museum exhibits. That might be a possible approach. There was a site on Maui which could be used to generate revenue in many different ways.

Commissioner Case stated it was worth getting the clarification from the AG because there was a whole range of things which could be done and people have different comfort zones. The more the KIRC can demonstrate revenue generation which was consistent with its mission to fill out its budget the more sympathetic the Legislature would be.

Commissioner Baker wondered how collecting an access fee was different from the MACC's collecting a ticket fee. ED Nāho'opi'i responded that the ticket was a service or the MACC was providing something. Chair McLean stated she thought the difference was the MACC's activities were still commercial and they did not have a prohibition against commercialization. Commissioner Holt added the activities stayed within the mission. It was commercial within the nonprofit mission. ED Nāho'opi'i commented that the KIRC required an access permit fee in which the KIRC grants the right to go to the island since the KIRC was the government agency which controls access to the island. It was not a service.

Commissioner Case commented the more one can charge for the actual cost of the access, the more it does not feel like commercial activity to most people and it was still revenue generating. ED Nāho'opi'i stated that permits are supposed to be based upon the recovery of administrative costs. Once one starts basing it on goods and services one crosses the line to commercial activity.

DAG Morris stated the prohibition in HRS§6-K was not equivalent to the limitations to nonprofits. The permit system might be something which can be explored. He was happy to get the AG's opinion on that but did not know what the time frame would be.

Dr. McGregor also suggested looking at tuition as a revenue source since a key element of I Ola Kanaloa was fundraising. Commissioner Baker asked if it would be considered commercial if the KIRC were to seek cost reimbursement. DAG Morris responded when he discussed it with his supervisor it was not okay just to make

enough to recover costs. It did not follow the language of HRS§ 6-K. That was an unofficial review of the language.

Chair McLean asked DAG Morris to give more explanation as to what was commercial by the statute, particularly tuition, cost reimbursement and utilities. ED Nāho‘opi‘i also wanted the AG's office to look at the language in the revenue generation memo. Dr. McGregor suggested that if the language was broad that it might still allow cost reimbursement and tuition. Instead of discussing revenue generation language when setting up the process of rulemaking, the language should be specific as to what was allowed at this point. Commissioner Baker added only if it came back that in the AG's opinion the cost reimbursement and tuition was not covered within the current statute. DAG Morris suggested that the Commission request an opinion from the AG.

Commissioner Case commented one way to soften it was to look at limiting revenue generation to program related activities. Chair McLean added that was similar to the UH Law School's recommendation.

Chair McLean stated she was in agreement about commercial activities in terms of revenue generation. She liked the UH Law students' language which was more appropriate. Even if there were all kinds of activities which would be contemplated under revenue generating activities related to specific and exclusive uses permitted under HRS§6-K, they would still have to go through rulemaking before anything could happen. That seemed to her to be a safety net. Her first preference would be to have the Legislature give the KIRC the money needed. However, if they were only willing to do that if something like this could be enacted, even if we never move forward with it, the Commission would need to do its part. ED Nāho‘opi‘i commented that the Legislature would want to see the KIRC have the ability to generate part of its funding. Chair McLean stated she could support Dr. McGregor's suggestion just the two activities of tuition and cost recovery be exceptions. The KIRC may be able to tell the Legislature that HRS§6-K did not need to be changed if the AG's opinion confirms this. The Commission could also offer a plan for the Kīhei site to provide revenue generation.

The Commission decided to divide the recommended motion into two parts.

**MOTION:** Commissioner Lindsey moved to authorize the Executive Director to submit testimony in support of the four expected issues: DLNR supplemental budget request, direct appropriation request, asset forfeiture and conveyance tax. Commissioner Holt seconded the motion.

**Discussion:** ED Nāho‘opi‘i reminded the Commission that staff was testimony would be provided only if these issues came up. Staff was only sure of submitting the supplemental budget request.

**ACTION:** The motion was approved by all Commissioners present.

Chair McLean noted that the Commission might be unable to meet again before the commercialization issue comes up, and ED Nāho‘opi‘i would need to represent the opinion of the KIRC before the Commission receives the AG's opinion. She suggested that the position could be to support tuition and cost recovery. The Commission was trying to determine if those are allowed outright. If not, the Commission could support adding those two specific activities. If there needed to be commercial activity, the Commission would support allowing those two types of revenue generation.

Commissioner Case suggested the Commission could authorize the ED to represent the Commission in supporting language to authorize program related revenue generation but not nonrelated revenue generation.

Commissioner Kaakua asked what the current Commission position was on commercial activity. Commissioner Baker responded the Commission voted that they were not in support of commercial activity. He commented that he would like to pull the reins back on the broadness of the statement; he wanted the language to be more specific. If the Executive Director did need to express an opinion on changing the language on HRS§6-K, that the change would be limited to tuition and cost recovery.

**MOTION:** Commission Baker moved if the AG determines that tuition and cost recovery would be considered commercial uses under HRS§6-K then the Commission's position would be to seek an amendment or rule change to add those two revenue generating activities as the only types of commercial revenue generating activities under HRS 6-K. Commissioner Lindsey seconded the motion.

**Discussion:** Commissioner Kaakua commented that was a position that many in the ‘Ohana would support. However, the current position of the ‘Ohana was no changes. Commissioner Baker and Dr. McGregor agreed. AO Lee asked if the ‘Ohana would accept "no commercial activity except for tuition and cost recovery." Commissioner Baker and Dr. McGregor stated the ‘Ohana could support tuition and cost recovery.

Commissioner Case asked whether an activity that included either cost recovery or tuition would come before the Commission for approval. ED Nāho‘opi‘i responded it would if it was a new activity that was not a KIRC program.

Commissioner Kaakua stated that at the ‘Ohana retreat there were discussions about I Ola Kanaloa. They discussed whether the prohibition on commercial activity prevents activities discussed in I Ola Kanaloa. ED Nāho‘opi‘i stated it could. Commissioner Case asked if allowing tuition and cost recovery go far enough for I Ola Kanaloa activities. ED Nāho‘opi‘i explained that tuition and cost recovery are the foundation of the business plan for I Ola Kanaloa. Commissioner Kaakua asked whether the Commission was changing for somebody else or was it changing for itself and for the island.

ED Nāho‘opi‘i commented that it the discussion of revenue generation helped demonstrate the capability of I Ola Kanaloa becoming self-sustaining. The plan needed to self-sustain beyond the initial request. It might also be beneficial for the Nation. Commissioner Baker stated some of the major concerns in the past of the ‘Ohana included some outside company coming in and running a tour operation on Kaho‘olawe with the opening of a commercial activity. The commercial activity would have to come before the Commission for approval. That does not fulfill the goals of what the purpose of Kaho‘olawe to be over the years. The present Commissioners could be gone and the whole makeup of this Commission could change. All that can be trusted was the language in HRS§6-K. He personally thought the ‘Ohana could live with tuition and cost recovery. He was against commercial activity. The KIRC definitely needed to be able to recover costs because it was so expensive to go to Kaho‘olawe.

Commissioner Lindsey asked how the motion reads now. Commissioner Case suggested the language of the motion could be to authorize the Executive Director to support legislation that amends the statute to provide an exemption from the commercial activity limitation for tuition and cost recovery.

The Commission decided that the motion had been changed in the discussion. Commissioner Lindsey pulled back her second of the original motion. Commissioner Baker pulled back his motion.

**MOTION:** Commissioner Lindsey moved to authorize the Executive Director to support legislation that amends the statute to provide an exemption from the commercial activity limitation for tuition and cost recovery. Commissioner Holt seconded the motion.

**ACTION:** Motion approved by roll call: McLean aye; Baker aye; Case aye; Holt aye; Lindsey aye; Kaakua no; Whitehead excused.

Commissioner Kaakua wanted the minutes to reflect that the ‘Ohana discussed this and this was not their stance.

### **C. Approval of amended FY16 Budget**

Staff asked the Commission to approve an increase in the current budget from \$1.35 million to \$1,560,197, primarily for the addition of grants from DOH, HISC, Japan marine debris funding, Office of Economic Development and Alu Like (Year Two carry over and Year Three funding). Staff was asking for an increase of \$210,000. The diagrams in the documents given to the Commission showed increases in personnel and non-personnel costs. The increase in non-personnel costs was due to stipends for Hui Kāpehe interns in the Culture Program as well as additional funds which would help to pay for operating costs through the Hui Kāpehe Program. Trust

fund interest was estimated at \$20,000, depending on the market. There was at least \$80,000 in other revenue. Staff already raised over \$40,000 in the GoFundMe campaign. Access fee have totaled \$5,000-\$6,000 so far. Staff expected the access fees to total \$8,000 this year. The KIRC had a net positive of \$47,000 which would go back into the trust fund. There would be an increase in the trust fund for the first time in a number of years.

Commission Case stated she would not want the Executive Director to feel that staff would need the Commission to approve the budget every time KIRC is awarded a new grant. She thought the Commission would want to give the Executive Director the authority to expend funds as demanded by the grants to the extent that staff had additional grant income.

Commission Baker also stated he did not understand why staff needed to have the Commission approve a new budget. ED Nāho‘opi‘i explained that it was in the KIRC policy and the KIRC statutes required the Commission to approve expenditures.

Commission Case stated she thought the Commission might feel comfortable approving the Executive Director’s expenditure of funds identified in the future. ED Nāho‘opi‘i explained the state statute actually states that the Commission must approve expenditures from the trust fund. Staff always had to dip into trust funds. It was his understanding that the Commission did not have the authority over general funds since it comes directly from the State. However, staff has to dip into the trust funds in order to receive reimbursements from grant funds and then replenish the trust fund.

Chair McLean did not know whether it would be appropriate to expand the agenda item to give the Executive Director authority to expend funds after budget approval. DAG Morris stated that it should be a separate agenda item to delegate to the Executive Director the authority to expend grant funds which come in after the budget is approved. Staff stated there would not be another amended budget submitted this year. Chair McLean suggested that it be a future agenda item.

**MOTION:** Commissioner Holt moved that the Commission approve the amended budget for Fiscal Year 16. Commissioner Lindsey seconded the motion.

**ACTION:** The motion was approved by all Commissioners present.

#### **VIII. ANNOUNCEMENTS/FYI**

There were no announcements from the commissioners.

#### **IX. NEXT MEETING/FOLLOW UPS**

Staff was to follow up on:

- a) OHA grant request

- b) ED Nāho‘opi‘i to give notice to Commissioners when grant applications are being submitted if support letters are needed
- c) Submit a letter to the Attorney General requesting a definition of revenue generation
- d) Submit a joint letter with the PKO to House Finance for a site visit; Commissioner Kaakua suggested that OHA might also like to submit a letter with the KIRC and PKO if some of the OHA Commissioners were interested in coming on the site visit

**X. ADJOURNMENT**

The meeting adjourned at 12:45 pm.