

LEGISLATIVE PROPOSALS FOR 2016
KAHO‘OLAWA ISLAND RESERVE COMMISSION
October 2016

1. DLNR supplemental budget appropriations for FY17:

Background: The KIRC has been funded since its inception in 1993 from the Kaho‘olawe Island Rehabilitation Trust Fund. This Trust Fund was initially funded from a portion of the federal funding used to clear unexploded ordnance from Kaho‘olawe. Other than Capitol Improvement Project Funding, the KIRC has never received State funding for its staffing and operations.

During the 2015 legislative session, the Governor signed into law Act 084 of 2015 Legislative Session that appropriated \$1,000,000 in General Funds for each fiscal year 2016 and 2017.

Request: The KIRC is submitting a General Fund request through the Department of Land and Natural Resources' (DLNR) supplemental budget request to the legislature. The KIRC is asking for a general fund budget request of \$2,831,279 for Fiscal Year 2017. This is an increase of \$1,831,279 from the \$1,000,000 already authorized for Fiscal Year 2017. The supplemental request would restore the KIRC to full staffing and full time operation of the Honokanai‘a Base Camp. If the administration does not approve the request, staff will be seeking legislative support to insert the request during Finance and WAM Committee reviews.

Justification: The funding is necessary to implement the State’s management responsibilities with regard to the Kaho‘olawe Island Reserve (Reserve). This includes protection of its natural and cultural resources, implementation of appropriate management of its fisheries resources and protection of the general public from the inherent danger due to the remaining unexploded ordnance hazards still within the Reserve.

The funding is necessary to continue the KIRC’s innovative and acclaimed restoration program that seeks creative and cost efficient means of preventing surface run-off erosion from damaging the pristine and unique marine resources of the Reserve. The KIRC is also incorporating traditional indigenous practices and modern scientific methods at the same time.

This funding is required to maintain operation of the base camp and logistic system for the implementation of the \$2.5 million CIP funding approved in FY14 for the alternative energy conversion of the Honokanai‘a Base Camp. The KIRC must keep the Honokanai‘a Base Camp open to implement the energy conversion projects as well as continue to generate electricity, water and operate the KIRC landing craft in support of these projects.

The funding is also needed to keep the island open to the public and allow public volunteer trips to Kaho‘olawe. Every person that has touched the island has come away saying it was a transforming experience. We would like to keep this experience available for future generations.

The KIRC would like to host a 2016 site visit by the World Conservation Congress to show how Hawaii is transforming a devastated landscape and former weapons range to a traditional

landscape on a large scale. We can demonstrate to the world that Hawaii is in the forefront of not only protecting its pristine areas, but also finding ways to reverse the damage done by civilization.

2. Direct Appropriation of \$2.8 million for FY17:

Background: During the past four years the KIRC has introduced a measure to utilize a portion of the conveyance tax for the Kaho'olawe Rehabilitation Trust Fund. Most of the testimony against this measure and comments from many legislators indicated that a direct appropriation would be more appropriate for the KIRC. During the development of the FY13 department legislative package the Governor denied this request, but did promise bridge funding until the island is transferred to a Native Hawaiian Sovereign entity.

During the 2015 legislative session, the Governor signed into law Act 084 of 2015 Legislative Session that appropriated \$1,000,000 in General Funds for each fiscal year 2016 and 2017.

Request: A direct appropriation request of \$2.8M for FY2017 to the Kaho'olawe Island Restoration Trust Fund.

Justification: The funding is necessary to implement the State's management responsibilities with regard to the Kaho'olawe Island Reserve (Reserve). This includes protection of its natural and cultural resources, implementation of appropriate management of its fisheries resources and protection of the general public from the inherent danger due to the remaining unexploded ordnance hazards still within the Reserve.

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not only protecting its pristine areas, but also finding ways to reverse the damage done by civilization.

3. Addition of Asset Forfeiture to the KIRC Statutes (SB470):

Background: On June 2, 2008, a helicopter landed on Kaho‘olawe in violation of the KIRC's access control of the island and its surrounding waters. The helicopter was observed on Kaho‘olawe’s southern shoreline by KIRC staff who approached the pilot and inquired if there were any medical or equipment problems. The pilot stated that there were no problems and that he decided to land on Kaho‘olawe to have lunch. The Division of Conservation and Resources Enforcement (DOCARE) cited the owner and pilot of the helicopter for trespassing while the Maui Prosecutor’s Asset Forfeiture Branch seized the helicopter.

The Hawai‘i Supreme Court, in *Carlisle v One (1) Boat and Tran* (Nov 17, 2008), overturned an Intermediate Court of Appeals decision that allowed asset forfeiture in cases of resource destruction – ultimately taking the teeth out of any enforcement rules in place. According to the decision, the penalty sections of DLNR (and, therefore, the KIRC) rules must specifically authorize forfeiture. Eventually, the helicopter was returned to the owner, but he was still found guilty of trespassing.

During the 2015 legislative session, Senator Keith-Agaran introduced SB470 Relating to Kaho‘olawe Island Reserve, Forfeiture, Seizure and Disposal. The bill crossed from the Senate into the House, but was not heard by the House Water and Land Committee before the session deadline. The bill can still be heard this session.

Request: The KIRC will request that SB470 be heard in the House and passed for a full vote.

Justification: Since FY 2009, the KIRC has implemented a vessel permit and registration process that has raised awareness of permitted activities within the Reserve. There has been a marked decrease in fishing and trespassing violations since this program was enacted. However, the addition of the forfeiture clause to HRS 6K-8 would greatly increase the penalties for violators, thus strengthening enforcement capabilities and protection of the Reserve’s resources.

4. Conveyance Tax Revenue (HB1235/SB867):

Background: The Conveyance Tax (Chapter 247, HRS) is imposed on all transfers or conveyances of real property. The distribution of this tax revenue is as follows:

- 10% to the Land Conservation Fund (legacy land acquisitions).
- 50% to the Rental Housing Trust Fund (increased from 30% in FY14).
- 25% to the Natural Area Reserve Fund (increased to 20% in FY13).
- Balance to the General Fund.

In FY2014, the legislature passed SB2542 SD1 HD1 CD1 and was signed into law by Governor Abercrombie as Act 163. This increased the conveyance tax distribution to the Rental Housing

trust Fund from 30% (25% in FY13) to 50% in FY15. The remaining 15% of the conveyance tax distribution goes to the General Fund.

In FY2015, the KIRC proposed to introduce a bill to secure 10% of the conveyance tax to the Kaho‘olawe Rehabilitation Trust Fund. In FY2016, two measures (HB1235 and SB867) were introduced and referred to committee but did not receive a hearing in their respected chambers.

Request: The KIRC will request that the Kaho‘olawe Rehabilitation Trust Fund be added to HRS 247-7 as an additional recipient for the distribution of Conveyance Tax revenue.

Justification: The purposes of the Kaho‘olawe Rehabilitation Trust Fund are similar to the purposes of the Land Conservation Fund and the Natural Area Reserve Fund so that Kaho‘olawe could be considered as an additional recipient to the disposition of this tax.

The Land Conservation Fund, was established under Chapter 173A, HRS to acquire and manage lands that “have natural, environmental, recreational, scenic or historic value” to the State. HRS 173A-5 allows these funds to be used for the “cost necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands...” These funds can be used for invasive species control, as well as reforestation and run-off mitigation controls. The last two purposes are core functions and great challenges of the Kaho‘olawe Island Reserve Commission (KIRC).

The Natural Area Reserve System (NARS) was established under Chapter 195, HRS to protect and preserve unique natural assets, for the enjoyment of future generations and to provide base lines against which changes in the environment can be measured. The Natural Area Reserve Fund was created for the identification, establishment, and management of natural area reserves.

Both funds echo the KIRC’s mission and vision for the restoration and preservation of the Kaho‘olawe Island Reserve (Reserve) and to provide meaningful and safe use of the Reserve. Therefore, the Kaho‘olawe Rehabilitation Trust Fund could be considered an ideal match to the existing beneficiaries of HRS 247-7.

Implementation: The Kaho‘olawe Rehabilitation Fund could be added as an additional beneficiary to the Conveyance Tax distribution. We are proposing a 7.5% distribution to the Kaho‘olawe Rehabilitation Trust Fund as an additional beneficiary; this would mean a reduction in the distribution to the General Fund by the equivalent amount with no changes or impacts to current recipients. Based upon the Council on Revenue forecast, the increase in collections over the next six years will offset the distribution to the Kaho‘olawe Rehabilitation Fund and therefore should not diminish the distributions currently received by the General Fund.

October 15, 2015

MEMO TO: KIRC Commissioners

FROM: Michael K. Nāho‘opi‘i, Executive Director

SUBJECT: Approval Legislative Positions for the 2016 Session

RECOMMENDED MOTION:

To authorize the Executive Director to submit testimony in support of the following expected legislative issues for the 2016 legislative session:

- DLNR supplemental budget request for FY2017
- Direct appropriation request of \$2.8 million for FY2017
- Addition of asset forfeiture to our statute
- Conveyance tax revenue

And to support specific language regarding Limited Revenue Generation should such a bill/amendment is introduced this session.

BACKGROUND & SUMMARY:

During the past several legislative sessions, the Commission has authorized the Executive Director to submit testimony on behalf of the Commission to support legislation that provides funding for the KIRC (general fund appropriations, conveyance tax revenues and various user fees), introduces cost saving initiatives (procurement exemptions for food and fuel) and strengthens its resource management capabilities (asset forfeiture).

During the legislative session, the Executive Directors works with the Legislative Working Group to develop testimony on behalf of the Commission for issues that are not covered in this approval.

OTHER DICUSSION:

Staff is asking for the similar Commission support on the issues above going into the next legislative session, specifically as the following bills were introduced into the 2015 Legislative Session and could still be brought back for hearings.

- HB438 HD1 SD1 KIRC Self-sufficiency Plan Appropriation: This bill submitted by Representative Yamane made it to conference by did not receive a release of funds in the final minutes of the bill.
- SB897 SD2 KIRC Appropriation: This bill passed the Senate but was not heard in the House. The two amendments introduced language to allow revenue-generating activities consistent with the purposes of the Reserve.

MEMORANDUM: KIRC Commissioners

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- HB1235 Conveyance Tax: This bill was referred to committee but never received a hearing.
- SB867 Conveyance Tax: This bill was referred to committee but never received a hearing.
- SB470 Asset Forfeiture: This bill was heard in the Senate and crossed but never received a hearing in the House.

The attached document entitled; “Legislative Proposals for 2016” provides background information, justification and the KIRC’s stated position regarding the most possible legislative initiatives that will impact the KIRC in the 2016 session. In summary they are:

- DLNR supplemental budget request for FY2017
- Direct appropriation request of \$2.8 million for FY2017
- Addition of asset forfeiture to our statute
- Conveyance tax revenue

Additionally, the attached memo entitled; “Legislative Language for Limited Revenue Generation” provides an overview of the 2015 Legislature’s request for the KIRC to develop revenue generation opportunities as a means of funding the KIRC’s future. This document is included to summarize the 2015 Legislature’s record on this topic and to document the various third party discussions that occurred in reference to this issue. This document concludes with a recommended language to be used should the 2016 Legislature re-introduces legislation that amend HRS-6K to include revenue generation. We recommend that the Commission supports the amendment to HRS-6K should a one be introduced and direct the Executive Director to offer suggested amendments to such legislation so that the final amendment is consistent with the language provided in the attached document.

RELEVANT LAW:

None

RECOMMENDATION:

To authorize the Executive Director to submit testimony in support of the following expected legislative issues for the 2016 legislative session:

- DLNR supplemental budget request for FY2017
- Direct appropriation request of \$2.8 million for FY2017
- Addition of asset forfeiture to our statute
- Conveyance tax revenue

And to support specific language regarding Limited Revenue Generation should such a bill/amendment be introduced this session.

October 15, 2015

MEMO TO: KIRC Commissioners

FROM: Michael K. Nāho‘opi‘i, Executive Director

SUBJECT: **Legislative Language for Limited Revenue Generation**

SUMMARY:

This past legislative session, two requests for funding bills were introduced by Senator English and Representative Yamane (SB897 and HB438 respectfully). Both bills were amended during their committee hearings language was inserted requesting the KIRC to develop financial self-sufficiency and sustainability through limited commercial activities.

Both bills did not pass during the last legislative session, but are still active until the end of the following session. In preparation for the 2016 legislative session, the Commission will need to be briefed to understand the legislative concerns regarding this issue and establish a consolidated position in preparation for the next session.

BACKGROUND

Senate Bill 897: Relating to the Kaho‘olawe Island Reserve Commission. Authorizes limited revenue-generating activities within the Kaho‘olawe Island Reserve. Appropriates moneys to the Kaho‘olawe island reserve commission for the management, restoration, and preservation of the Kaho‘olawe island reserve.

During Senate committee hearings for SB897, the members of the Senate Committee on Hawaiian Affairs found that:

“Your Committee finds the need to support the financial viability of the Kaho‘olawe Island Reserve Commission. In addition to appropriating funds, it is the Committee’s hope that the Kaho‘olawe Island Reserve Commission be able to emulate the models for areas such as the Northwestern Hawaiian islands, Hawaiian Islands Humpback Whale Marine National Sanctuary, Marae of New Zealand, and other similar models which utilize limited commercial activities to help the achieve financial sustainability.” (SSCR No. 288)

Accordingly, the committee amended this measure by inserting language enabling the Kaho‘olawe Island Reserve to be used for limited commercial activity for the purpose of generating revenue to support the rehabilitation and environmental restoration of the Kaho‘olawe Island Reserve, and other purposes consistent with Chapter 6K, Hawaii Revised Statutes.

The specific amendment added by the Senate Hawaiian Affairs Committee to HRS 6K-3 Reservation of uses: “(5) Limited commercial activities, as permitted by the commission pursuant to rules adopted in accordance with section 6K-6(9), for the purpose of generating

revenue to support the rehabilitation and environmental restoration of the island reserve, and for other purposes consistent with this chapter.”

During the Senate Ways and Means Committee hearings for SB897, they found that:

“Your Committee finds that the Kaho‘olawe Island Reserve Commission is primarily funded by the Kaho‘olawe rehabilitation trust fund that was created during the federal cleanup of unexploded ordnance on Kaho‘olawe. Your Committee further finds that a 2013 report by the Office of the Auditor found that the Kaho‘olawe rehabilitation trust fund will be depleted by 2016. Your Committee believes that this measure will provide necessary funding to enable the Kaho‘olawe Island Reserve Commission to continue its management of the Kaho‘olawe Island Reserve beyond the 2015-2016 fiscal year.” (SSCR No. 896)

The committee further amended this measure by;

- (1) Replacing the language that repeals the strict prohibition on the use of the Island Reserve for commercial activity, by allowing limited commercial activities as permitted by the Commission, with language that instead authorizes the use of the Island Reserve for limited revenue-generating activities, as permitted by the Commission, to support the rehabilitation and environmental restoration of the Island Reserve;
- (2) Requiring the Kaho‘olawe Island Reserve Commission to submit a financial self-sufficiency and sustainability plan to the Legislature prior to the Regular Session of 2016;
- (3) Making conforming amendments to the purpose section to reflect amendments made to the substantive provisions of the measure;

The Senate Ways and Means Committee intended that Commission consider engaging in limited revenue-generating activities at its Kihei properties as well as within the Kaho‘olawe Island Reserve.

Specifically, Senate Ways and Means Committee changed the previous amendment by replacing the language regarding “limited commercial activities” to “limited revenue-generating activities as permitted by the commission pursuant to rules adopted in accordance with section 6K-6(9), for the purpose of supporting the rehabilitation and environmental restoration of the island reserve, and other purposes consistent with this chapter.”

House Bill 438: Making an Appropriation to the Kaho‘olawe Island Reserve Commission, Appropriates funds to the Kaho‘olawe Island Reserve Commission for restoration and preservation projects.

During Senate hearings for HB438, the Senate Hawaiian Affairs Committee found that

“Your Committee finds that this measure would provide funding for the Kaho‘olawe Island Reserve Commission to continue to undertake projects relating to the restoration and preservation of the natural, cultural, and historic resources of the Kaho‘olawe Island

Reserve. Your Committee notes that it heard testimony from several students who participated in projects with the Kaho‘olawe Island Reserve Commission and who were in strong support of the continuation of those programs. Your Committee also received testimony from the Kaho‘olawe Island Reserve Commission with regard to land in its control on Maui. Your Committee encourages the Kaho‘olawe Island Reserve Commission to continue to pursue the development of the property on Maui with the goal of generating funding for its mission.”

Further amending HB438 by adding a requirement that the Kaho‘olawe Island Reserve Commission submit a financial self-sufficiency and sustainability plan to the Legislature no later than twenty days prior to the 2016 Regular Session.

UH Law School Recommendation

Students at the University of Hawaii Richardson School of Law attended some of the legislative committee hearing held on the two bills above. The following are recommendations to the amendments put forth:

The following was provided by the UH Law School class regarding SB897

- SECTION 2. "(5) Limited revenue-generating activities related to one or more of the permitted uses in subsections 6K-3(a)(1)-(4) and approved by the commission."
 - We propose this amendment as a way to clarify the difference between the "revenue-generating activities" we suggested and the "commercial activities" previously proposed. Permitted revenue-generating activities will be only those consistent with the reserved uses of the Kaho‘olawe Island Reserve. This also removes the need for a administrative rulemaking process.
- SECTION 2. We suggest that "except as authorized pursuant to subsection (a)(5)" is unnecessary.
 - By limiting revenue-generating activities to the reserved uses, we feel there may not be a need to condition the prohibition on commercial uses. The clear prohibition may remain while still allowing KIRC a mechanism for generating revenue.
- SECTION 3. We suggest that "Any moneys generated by activities permitted pursuant to section 6K-3(a)(5)" be moved to subsection 6K-9.5(a)(3), below "Any moneys appropriated by the legislature to the trust fund."
 - We propose this amendment as an extra precaution to clarify the original intent for funding KIRC. As stated in the federally-mandated Kaho'olawe Island Conveyance Commission final report to Congress in 1993: "In the long term, however, state revenues will be needed to continue and enhance those activities initiated with federal funds." We want to clarify that those "state revenues" should be "moneys appropriated by the legislature to the trust fund" *supplemented* by "moneys generated by activities permitted pursuant to section 6K-3(a)(5)." It's a small point and we don't want to overemphasize its importance, so maybe it's something we should frame as a "housekeeping measure" later in the process.

RECOMMENDED LANGUAGE:

Amend HRS 6K in the following means:

- Amend HRS-6K(3) by adding a subsection (5):

(a) The Kaho'olawe island reserve shall be used solely and exclusively for the following purposes:

- (1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes;
- (2) Preservation and protection of its archaeological, historical, and environmental resources;
- (3) Rehabilitation, revegetation, habitat restoration, and preservation;
- (4) Education; an
- (5) Limited revenue-generating activities, as permitted by the commission pursuant to rules adopted in accordance with section 6K-6(9), for the purpose of supporting the rehabilitation and environmental restoration of the island reserve, and other purposes consistent with this chapter.

- Changing HRS-6K(3)(b) to read:

(b) The island shall be reserved in perpetuity for the uses enumerated in subsection (a). ~~Commercial uses shall be strictly prohibited.~~

- Amend HRS 6K-9.5 to read:

(a) There is created in the state treasury a trust fund to be designated as the Kaho'olawe rehabilitation trust fund to be administered by the department with the prior approval of the commission. Subject to Public Law 103-139, and this chapter:

- (1) All moneys received from the federal government for the rehabilitation and environmental restoration of the island of Kaho'olawe or other purposes consistent with this chapter;
- (2) Any moneys generated by activities permitted pursuant to section 6K-3 (a) (5);
- (3) Any moneys appropriated by the legislature to the trust fund;
- (4) Any moneys received from grants, donations, or the proceeds from contributions; and

- (5) The interest or return on investments earned from moneys in the trust fund, shall be deposited in the trust fund and shall be used to fulfill the purposes of this chapter."

DICUSSION:

The proposed language limits the types of revenue generating activities to those that support rehabilitation and environmental restoration of the Reserve and those other purposes that are consistent with the authorized use of the Reserve (Native Hawaiian cultural activities, restoration, rehabilitation and education).

The addition of Section 6K-6(9) requires that the Commission develop administrative rules relating to limited revenue generation. The administrative rules would include the submission process for creating a limited revenue-generation activity, the process to grant such activity, the decision making process and limits that would be placed on and to terminate such approval.