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Vice-Chair
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C. KALIKO BAKER
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KŪKULU KE EA A KANALOA
KAHO'OLAWE ISLAND RESERVE COMMISSION

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Michael K. Nāho'opi'i
Executive Director

MINUTES MEETING
Thursday, October 27, 2011

9:00 am

Kalana O Maui Building
Mayor's Conference Room, 9th Floor
200 South High St.
Wailuku, Hawaii

COMMISSION MEMBERS

PRESENT: Michele McLean, Chairperson; A. Nāmaka Whitehead, Vice Chair; William Aila, Jr.; C. Kaliko Baker

EXCUSED: Colette Y. Machado; Ka'iulani Murphy

KIRC STAFF: Michael Nāho'opi'i, Executive Director (ED); Ka'ōnohi Lee, Administrative Officer (AO); Rowena Somerville, Deputy Attorney General (DAG); Paul Higashino; Dean Tokishi; Kahale Saito; Mei Mailou-Santos; Jamie Bruch; Tina Keko'olani; Charlie Lindsey; Lyman Abbott; David DeMark; Lopaka White; Terri Gavagan, Commission Coordinator (CC)

GUESTS: Thelma Shimaoka (OHA); Leslie Kuloloio (Families of Honua'ula); Don Cameron; Eric Brundage (Zapata Engineering); Doug McLeod, Energy Commissioner (County of Maui); Mark Harmer (Harmer Communications); Representative Gilbert Keith-Agaran, (State of Hawaii House of Representatives); Burt Sakata

I. CALL TO ORDER

Chair McLean called the meeting to order at 9:03 am. A quorum was established with four Commissioners present. Chair McLean stated this was the first "real" meeting she has chaired since the previous meeting was rushed and focused on approval of the budget. She did not seek the chair appointment, but does take the appointment seriously and will try to do her best. She does not have any sort of agenda other than trying to find money for the KIRC. She continues to have a concern about the KIRC and the 'Ohana being clear on the rules and following those rules. Kaho'olawe is a very dangerous and remote place as well as being a very special place. Those rules were implemented for good reason and both the KIRC and the PKO need to follow them. She would like everyone to give her a chance in this position but if she does not have the support to be an effective Chair she would consider stepping down as Chair.

II. APPROVAL OF AGENDA

MOTION: Commissioner Aila moved to approve the agenda. Vice Chair Whitehead seconded the motion.

ACTION: Motion was approved by all Commissioners present.

III. APPROVAL OF MINUTES

Minutes of April 18, 2011-Vice Chair Whitehead requested that the phrase “she was frightened by the current budget” in paragraph 6 on page 8 of 9 be deleted so that the sentence reads “Acting Chair Whitehead stated she would be like to see a lower budget, but is okay with a \$2.8 million budget.”

MOTION: Commissioner Aila moved to approve the minutes of April 18, 2011 with the above change. Vice Chair Whitehead seconded the motion.

ACTION: Motion was approved by all Commissioners present.

Minutes of June 24, 2011-Vice Chair Whitehead and DAG Somerville requested that the sentence in 1st paragraph on page 6 of 7 in the top paragraph, “There was no public testimony regarding this request,” be deleted as public comments regarding the proposed hydrogeological study had been submitted prior to the meeting on June 24, 2011. Vice Chair Whitehead also requested that the sentence later in the same paragraph: “Vice Chair Whitehead wondered if it would provide all the answers staff is looking for and asked if staff could be involved in determining the locations being tested,” be deleted or she be allowed to provide more explanation. She provided the following sentence to replace the one above: “Vice Chair Whitehead stated that due to the narrow scope of the project, she doubted the study would meaningfully improve understanding of Kaho’olawe’s groundwater resources, and asked if staff could be involved in determining the locations being tested.”

Commissioner Baker requested that CC Gavagan verify the amount stated by Vice Chair Whitehead in the sentence: “She assumes that it will cost more than \$200 in direct costs especially if an archaeologist is necessary to assist the KIRC with the stabilization process,” located in last paragraph of page 4. CC Gavagan stated that according to the meeting’s recording Vice Chair Whitehead did state \$200. CC Gavagan will double check the recording.

MOTION: Commissioner Aila moved to approve the minutes of June 24, 2011 with the above changes. Vice Chair Whitehead seconded the motion.

ACTION: Motion was approved by all Commissioners present.

IV. COMMUNITY AND PUBLIC COMMENTS

The written statement of Davianna Pōmaika'i McGregor, regarding the Hanakūpono Task Force and Preliminary Discussion for 2012 Legislative Session was entered into the record (see Attachment 1).

Mr. Leslie Kulololoio stated that he was invited by Senators Ryan and Hanohano to assist them during their legislative visit to the island. He wanted to thank the ED and KIRC Chair for initiating the process. He commented that the legislators were very curious and inquisitive about the island. He also wanted to thank KIRC staff. He was especially impressed with the kitchen, the food, the hale lua and the campsite as well as the K-1 road. He was surprised that there was a lot of stuff on the right side of K-1 going up from Base Camp. He wasn't sure of what the stuff is, it appears to be new buildings and he hopes that the KIRC pays attention as they were not there during the clean up and he asked that they be taken off the island if they were not permanent. He also noted that a lot of federally-funded projects do not appear to be cared for once the project period has ended. He also thanked KIRC Ocean Resources Program Manager Tokishi for the information he provided during the access. He commented that Capt. Lindsey's crew (Captain Lindsey was on vacation during the legislative access) was the best boat crew he has ever seen. He suggested that the project managers be on island when there is a legislative access. Mr. Kulololoio thanked the PKO members for holding and maintaining the mo'olelo of the island for the past 25 years. He congratulated the KIRC Chair for demonstrating the need for a KIRC Chair to remain strong and not get personal. He also commented that ¾ of the data he is looking for is not in the KIRC office.

V. ADMINISTRATIVE BUSINESS

A. Executive Director's Report

Budget, Finance and Funding:

There is a budget variance of 2% in Reserve Operations' nonpersonnel cost for this period, mostly due to pest control cost because of a mice bloom on island. Staff commented that there is ample stock of pest control materials now on island. The other reason is the cost of generator repair and maintenance. The rented generator was used longer than anticipated because of the time it took to procure the new generator and transport it to island. Staff intends to continue monitoring the nonpersonnel cost spending in order to get back within budget within the next month. The remaining budget for that line item is sufficient for the rest of the year and staff does not anticipate requesting a budget increase. The Commissioners requested that the ED give estimated dollar amounts when reporting a budget variance in the future rather than just percentages.

Staff is working to revive the annual gift giving campaign prior to Christmas. The next issue of the newsletter is being compiled as well as other literature, mailing and e-mailing lists. A new electronic gift giving web page is also being developed. The target amount for this campaign is \$10,000.

The Ocean Resources Management Program has submitted a proposal to the Hawaii Community Foundation for roi and other marine invasive species removal from the Reserve with a budget of \$80,000.

Plans, Policies and Procedures:

The KIRC calendar for accesses for the next 9 months is included in the Commission packet. Scheduling meetings are held monthly to review accesses which are scheduled 9 months in advance. Staff gets inputs from PKO about their monthly activities. Staff takes inputs from all the programs and lays them out on the schedule and determines which open and dark weeks will best fit the schedule. The schedule is locked down at the 3 month period so that Zapata can provide appropriate staffing on island. Chair McLean inquired about the open trolling schedule for 2012. Ocean Resources Program Manager Dean Tokishi responded that he is currently working with the PKO to obtain their access dates. Staff will also look at the moon phases and is hoping to get the calendar out in December. Chair McLean inquired whether the rain and planting ceremonies were a KIRC or PKO activity. ED Nāho'opi'i responded originally it was part of the cultural practice to open the KIRC's planting season. It is actually a KIRC ceremony with 'Ohana practitioners. Vice Chair Whitehead clarified that it is now considered a joint KIRC and PKO access. This year no KIRC staff was able to attend on island, but there were KIRC staff that participated at Pu'u Mahoe.

Administration, Staffing, and Personnel:

The contract for the passenger helicopter services has been awarded to Windward Helicopters for \$40,700 for one calendar year. The bidding for the heavy lift helicopter contract has been closed with a bid from CDF Engineering.

Scott Broadbent submitted his letter of resignation as Public Information Specialist and staff will begin to solicit to fill the position in November.

Governmental Relations:

A legislative site visit to the island was held from October 5-6. Those attending were: Senator Pohai Ryan; Representatives Faye Hanohano, Jessica Wooley and Chris Lee; advisors to Representative Hanohano including Leslie Kulolio and Leimana Demata as well as staff representing Senator Brickwood Galuteria and Representative Angus McKelvey. KIRC representatives included Commissioners McLean and Baker as well as ED Nāho'opi'i, AO Lee and staffers Tokishi and Abbott. It started at Base Camp, then the group met with student volunteers from the University of Hawai'i at Mānoa who were working at Keāliālalo. The group continued on to the rain koa at Moa'ula and Sailor's Hat. That evening a discussion was held about potential KIRC funding opportunities and legislative initiatives for the 2012 legislative session. Vice Chair Whitehead expressed her disappointment that no seats were made available to PKO members for this access as she had repeatedly asked about this from the beginning. She was informed that the PKO representative who contacted ED Nāho'opi'i was denied a seat the day before the access because the Chair felt that there was already enough 'Ohana participation. Vice Chair Whitehead wanted to know if the Commissioners needed to make that decision in the future. She thought it was the ED's responsibility to make those operational calls. ED Nāho'opi'i apologized for the last minute notification. Staff will take her comments under advisement. Chair McLean commented that a month or so before the access took place, when it was clear that Commissioner Baker and ED Nāho'opi'i were going on the access with only two legislators, she thought it was best to keep the group small. The purpose of the

access was get feedback on funding for the KIRC and as such should be more focused on the KIRC rather than other types of accesses. While she was on the mainland, ED Nāho'opi'i e-mailed her a request for Derek to go and she responded one or two days later stating that she had already said no. She added that it was only her opinion. She agreed with Vice Chair Whitehead that it is the ED's call on arranging KIRC accesses. Chair McLean did agree with the ED's decision and that there was sufficient PKO representation with Commissioner Baker in attendance. The PKO member was informed the previous week that he would be traveling on a stand-by basis. Vice-Chair Whitehead stated her view was that Commissioner Baker was there as a KIRC Commissioner, ED Nāho'opi'i was there as the KIRC ED and Leslie Kuloloio was there in the capacity as an advisor to Representative Hanohano and that even though they are all PKO members, PKO did not have a representative there. In the future if she feels the PKO needs to be represented at an access she will be making a motion at a Commission meeting. DAG Somerville clarified currently the Chair's approval is needed for non KIRC staff in state travel according to the travel policy in the Executive Policy Manual. Vice Chair Whitehead stated that the PKO representative was not traveling at KIRC expense, he was planning to pay for his own airfare but was denied access at the last minute. She added that she had asked ED Nāho'opi'i and Chair McLean that the Commissioners be provided a written list of Chair's duties so that the Commissioners could better understand the Chair's role. She has asked for this several times and has always been referred to the Executive Policy Manual which does not have anything listed except that the Chair's duty is to insure proper conduct of Commission meetings. If there are additional duties she requests that they be written down and included in the Executive Policy Manual. ED Nāho'opi'i confirmed the Chair's written duties are listed only in the Executive Policy Manual and that there are no unwritten policies.

NOAA's Monk Seal Critical Habitat and Programmatic Environmental Impact Statement (PEIS) for the Monk Seal Recovery Program impacts the KIR in two ways: 1) in the Critical Habitat program NOAA is proposing all KIR waters up to the high water mark would be designated as critical habitat and 2) in the PEIS (which is completely different) NOAA is proposing translocating young female monk seals from the northwestern Hawaiian Islands to the main Hawaiian Islands to increase the chances of survival from predators and older seals. Once matured, they would be returned to the northwestern islands. Kaho'olawe would be one of the relocation sites. KIRC staff has been attending public hearings on NOAA's Monk Seal Critical Habitat and PEIS for the Monk Seal Recovery Program to gather information but has not submitted testimony. ED Nāho'opi'i stated that the KIRC has participated in DLNR's testimony. Commissioner Aila stated that DLNR's testimony was any critical habitat designation should be based on the following criteria: 1) minimal impacts on humans and 2) healthy resources which can handle the impact of additional seals. Hearings will resume in November. Vice Chair Whitehead asked if the KIRC would have to approve anything regarding the monk seal recovery program within the KIR. Staff affirmed that the Commissioners would have to make the decision regarding the introduction of any wildlife per administrative rules. The Commission could decide to enter into a Memorandum of Understanding (MOU) with the organization responsible for the recovery if it were to approve participation.

Vice Chair Whitehead suggested staff might look into any possible funding opportunities from NOAA with respect to the monk seal recovery program. Staff is trying to look for some funding through the state co-manager for the marine mammals sanctuary. The funding is typically for a state wide coordinator position. Vice Chair Whitehead pointed out that there might be some leverage if the KIRC is included in the program. Les Kuloloio stated it would be nice to get funding from a federal agency but was very disturbed when he walked from Base Camp to Sailor's Hat and saw for the first time a sign in a natural area reserve or at any shoreline that is state-owned. The sign was by the KIRC stating "Beware seals in the area." He is worried that it might set a bad precedent regarding signage. He did not see any seals. There are no signs by NOAA in the Honua'ula area stating the same. He cautioned that the KIRC be careful regarding this. He does not understand why there is a sign if there are no seals there. Staff explained there has been documentation of 8 or 9 seal pups in the area by Sailor's Hat in the last 10 years. There is no way to know when the seal is going to be there. Staff can look at the possibility of keeping the sign up only during pupping season. Staff wants people around the area to be aware of the mother and pup. Mr. Kuloloio understood this but the KIR is not a public access area—it is a controlled cultural, educational and scientific access area. Staff explained that the KIRC is required to follow all signage regulations within the Department of Land and Natural Resources rules. Mr. Kuloloio responded then all archaeological sites should be ribboned and signage should be put up reading "Beware of buffer zones—you are in an archaeological site." Those signs had been taken down before the cleanup.

Staff attended DLNR listening sessions which were held on Maui on September 17. Most of the concerns were not connected to the KIRC. However there was great concern about the debris from the tsunami which hit Japan and its potential impact on the shorelines in Hawai'i. KIRC Ocean Resources Manager Tokishi is looking into the possibility of more funding from NOAA to deal with the debris expected to wash up on the KIR shoreline.

Capital Improvement, Reserve Operations and Logistics

DLNR Engineering is issuing a solicitation for the Hakioawa Hale. The contract will be awarded by DLNR Engineering. The funding for the contract will be coming out of the CIP funding of \$400,000 that was approved in last year's State budget. DLNR Engineering will be managing the contract. Staff will be informing DLNR Engineering of any island specific requirements for the project such as escort requirements, orientation, and UXO safety.

The Gillette 60kw generator has been transported to the island and has been installed. Some parts are missing from the exhaust system and staff is currently working on getting those parts. The donated 50kw generator is now operating and is the primary generator but it will be eventually be the back up to the new generator.

Hakilo is still under repair. Two motors have been reinstalled. Some injector work still needs to be completed on one of the motors and new hoses are needed. The trailer for the Ohua has been sandblasted, repaired and repainted. Commissioner

Baker inquired about Hakilo's future purpose. Staff envisions using Hakilo primarily as a dive boat and for increased ocean patrols. It can also be used for small groups going to the island. Staff sees it as a means to increase ocean projects as well as making KIRC more efficient and flexible in transportation particularly during dark weeks.

The microwave communication problems on island have been linked to 2 defective modules on Lana'i and Kaho'olawe and have been resolved per Mr. Harmer.

B. Review and Accept June-September 2011 Expenditure Reports

The Commissioners' packets contain 2 sets of budget reports—end of FY2011 budget and the quarterly budget. The ending expenditure for FY2011 was \$3.047 million. The KIRC was 15% under budget for FY2011. The KIRC is 2% under budget for the first quarter of FY2012.

Vice Chair Whitehead asked when does the Commission need to revise the fund development goal since the goal has not been reached? Staff responded that target goal was the trust fund balance and the KIRC is close to the goal. The goal was met by cutting the operating budget rather than raising money. Setting fund raising goals in this economic climate is very difficult. If the PI position is filled with somebody with fund development and fund-raising experience, that person and the Commission could develop a plan.

MOTION: Commissioner Aila moved to approve the June-September 2011 Expenditure Reports. Vice Chair Whitehead seconded the motion.

ACTION: The motion was approved by all Commissioners present.

Chair McLean suggested that **Item VI.C. Preliminary Discussion for 2012 Legislative Session** be discussed before **Item VI.A. Review of Task Forces** since there were resource people invited by Chair McLean present to provide information relating to Item VI.C and who may have time constraints.

MOTION: Vice Chair Whitehead moved to approve placing Item VI.C. Preliminary Discussion for 2012 Legislative Session before Item VI.A. Review of Task Forces. Commissioner Baker seconded the motion.

ACTION: The motion was approved by all Commissioners present.

VI. ACTION ITEMS

C. Preliminary Discussion for 2012 Legislative Session

ED Nāho'opi'i opened the discussion with a summary of the proposed legislative topics for 2012:

1. Develop a permanent funding source for KIRC operations
 - a. Reintroduction of Conveyance Tax Proposal
 - b. Possible statewide user fees for natural resources activities
 - c. General Fund request
 - d. Molokini user fee
2. Authorize Asset Forfeiture as a KIRC enforcement tool
 - a. Reintroduce Asset Forfeiture proposal
3. Renewal of KIRC's food and fuel procurement exemption
 - a. Renew exemption or remove sunset clause
4. Authorize limited commercial activities within the Kaho'olawe Island Reserve
 - a. Authorize limited commercial activities permitted by the Commission
 - b. Limited commercial ocean use

During the legislative access the attending legislators did indicate that the conveyance tax proposal does not have a good chance of passing this year. Chair McLean noted that it should be reintroduced as a way of keeping it in the legislators' minds. Chair McLean also spoke with Speaker Emeritus Joe Souki who indicated that he would have issues with the conveyance tax but he could see KIR getting a line item in the general fund budget but only when the balance in the trust fund has decreased substantially. Senator Kalani English has agreed to introduce legislation to remove the sunset clause entirely from the procurement exemption or to at least get the sunset date moved back. Chair McLean explained that the last item on the proposed topics, limited commercial activities, was as a result of a discussion she had with Doug McLeod, County of Maui Energy Commissioner, who asked her about the possibility of commercial energy on Kaho'olawe. She had immediately responded negatively. She later came to the conclusion that that was not a decision she should make unilaterally. She wanted to have a discussion during a meeting to see if this is something the Commission wants to explore further. She invited Mr. McLeod to discuss potential types of commercial energy on island. Similarly she asked Mark Harmer of Harmer Communications to speak about the potential for commercial telecommunications infrastructure on island. Chair McLean is not advocating any of these things but she thinks that the Commission needs to hear about these ideas and then decide whether to continue discussion about them or that it is inappropriate and that state law should stay as it is. She also noted the presence of Representative Keith-Agaran and welcomed any advice from him.

ED Nāho'opi'i reviewed legislative briefing documents regarding conveyance tax funding and asset forfeiture, containing a summary of their importance and background and a copy of Act 159 which specifies the procurement exemptions for the KIRC. Currently, KIRC statutes specify that no commercial activities are allowed in the KIR. Staff has reviewed other areas within the state that have similar statutes. Even though Molokini does have a no commercial activities statute, there is an administrative rule that grants limited commercial use by permit. If the Commission were to consider limited commercial use, the statute would have to be changed to authorize the Commission to grant permits. The Commission would control the permitting process. DAG Somerville added that the administrative rules would also have to change.

Doug McLeod, Energy Commissioner for Maui County, does not advocate commercial uses in the KIR. The County is offering to be a resource. His office was getting contacted as a result of letters sent to The Moloka'i Dispatch during the wind project discussion. Some of the letters from Hawaiians to the editor were asking why the wind turbines were not being put on Kaho'olawe and if there a way that this project could benefit Hawaiians. This eventually led to Chair McLean allowing the County to make this presentation. He provided general information on the types of commercial energy projects that may be commercially viable on Kaho'olawe in a 4 page handout which was accepted into the record (see Attachment 2):

- ❖ Solar and wind energy to produce 600-800 gigawatt hours of electricity for O'ahu. It is estimated that \$60-100 million annually would be transferred from O'ahu to the power producers. It would require about 2,000 acres of solar photovoltaic (pv) panels or 40 of the largest 5 MW turbines or about 70 of the 3 MW turbines which are approximately 430 feet high. Utility scale wind turbines would not be feasible given existing harbor facilities on island. There are 2 models for developing energy producing farms—developer/codeveloper sharing the revenue and one in which royalties are paid by the project's developer to the landowner. Royalties would be between 2% and 10% of revenues (between approximately \$60,000 and \$3 million) annually.
- ❖ Ocean Thermal Energy Conversion (OTEC) which uses the temperature difference between warm surface water and deep water to create a steam cycle that supplies energy; the NELHA facility on Hawai'i island shows the potential use of this method. It pumps water from a depth of 2,000 feet and uses it for: salt water air conditioning, cold water agriculture, aquaculture, ocean thermal energy conversion and fresh water generation. There is a possibility for OTEC off the side of the island that faces Hawai'i and is within the 2 mile range of KIRC jurisdiction.
- ❖ Desalination which includes the traditional methods of reverse osmosis (RO) and flash condensation as well as a new method, electrochemical seawater desalination also known as The Singapore approach. This combines electrodialysis (ED) and continuous electrodeionization (CEDI), both applying an electric field to draw sodium and chloride ions across ion exchange membranes and out of the water. The process can run at low pressure and therefore result in lower power consumption.
- ❖ Concentrated solar energy in which the solar panels direct solar rays to a specific tower to generate energy.

Mr. McLeod stated that the county is willing to provide technical support regarding solar batteries and anything else with which the KIRC might need help. The Commission thanked Mr. McLeod for the offer and the information he provided. Vice Chair Whitehead stated even though she is strongly against amending 6K for commercial uses it is valuable to know about available options. Chair McLean pointed out in the KIRC's quest for funding it will also be useful to tell legislators

that the Commission did revisit the issue of commercial use and had an informed discussion about it.

Mark Harmer of Harmer Communications presented information about the possibilities of telecommunications infrastructure on island, specifically providing signal to Lana'i and Maui from LZ Eagle or LZ Seagull. It would require building a cell site. The challenge would be to provide the energy to build the site. It would require a significant amount solar photovoltaic panels (possibly ½ acre) as well as wind power (1 ½ MW wind generator). A cellular site consists of some type of shelter, perhaps a 20 x 30 foot building in which the equipment is housed and a tower. It would need to be about 25-30 feet in height. The carriers would stack their antennae on the tower and put their equipment inside the shelter. Cellular phone carriers would be interested in the unique coverage this could provide to primarily upcountry Maui which currently has a weak signal. He received positive feedback from two carriers. The 5 major carriers currently utilize Harmer Communications' two sites and pay \$2500 per month per carrier. The equipment used today is more reliable so there would be few technician visits to the site. Access to the site could be done by helicopter if it is an emergency or by boat and use of a vehicle from Base Camp if just for maintenance. Maintenance could also be done on a cooperative basis. Mr. Harmer emphasized that this is just a possible concept. The expected gross revenue would be approximately \$2500 per month per cell phone carrier. It would cost approximately \$1 million to construct the site. Mr. Kuloloio asked if one day there might be the type of tower that could be transported by helicopter to reduce costs and if the building would include Tier 1 and Tier 2 standards so that when the anchoring and footing is done it would minimize the survey required of the KIRC in case of ordnance in the area. A possibility is to put the tower on the existing bunker buildings and bolt it down as it may only require a 35 foot tower. Mr. Kuloloio asked which would make for a better site. Mr. Harmer stated that LZ Eagle would be a more preferable site than LZ Seagull even though LZ Seagull already has the needed structures. LZ Seagull looks very well at Lana'i and West Maui, however, its signal to other parts of Maui may be blocked by the island itself. Staff added DLNR communications staff has expressed interest in installing relays for the DOCARE and emergency management radio systems. They need coverage on the southern side of Maui that Kaho'olawe would provide. This could provide the funding for building the project. The Maui Police Department has also expressed interest in the site. KIRC staff Charlie Lindsey asked if this could also support the Coast Guard and the mariners out at sea. Mr. Harmer stated it would; however, with the Coast Guard's repeaters on top of Haleakala he doesn't know if it would augment their signal. He does think NOAA would be very interested in putting a weather transmitter on the site. The Commission thanked Mr. Harmer for his time and information.

Representative Gilbert Keith-Agaran provided insights about the State Legislature. He noted that there has been a consistent turnover of legislators and many of the new legislators are not aware that the KIRC is on its own in terms of funding. The KIRC is at a disadvantage because all of Maui's legislative delegation, except for Representative George Fontaine, is currently in leadership positions or serve as committee chairs or vice-chairs. Therefore, they may not be able to advocate for KIRC

issues unless the issues relate to their respective committees. He has observed that most successful bills have been introduced within administrative packages. He thinks that the KIRC may be able to get CIP funding. The KIRC is also at a structural disadvantage because any legislation related to KIRC would be referred to at least 3 if not 4 separate committees with each requiring their own hearing and testimony. He commented that the KIRC would have a tough time getting a portion of the conveyance tax because a lot of groups are trying to get a portion of it. He was surprised that the asset forfeiture legislation did not get out of committee. However, the commercial interests at Molokini have a lot of influence within the delegation. He suggested that the legislators need to be educated about the asset forfeiture process. He also complimented staff and the Commissioners for a good job in educating the new legislators who went on the legislative access. The Commission thanked Representative Keith-Agaran for his time and his helpful insights.

There was a recess from 10:55 am to 11:05 am. Chair McLean reconvened the meeting at 11:05am.

VI. ACTION ITEMS

C. Preliminary Discussion for 2012 Legislative Session (continued)

Chair McLean had asked resource people to address limited commercial ocean use but they were reluctant to do so in a public meeting. Commissioner Aila asked if there is an ability to have just a general discussion as suggested in the written testimony from Davianna McGregor about whether or not there should be a discussion about opening up commercial activities. Her suggestion is that the community associated with Kaho'olawe should have this broader discussion first before the Commission takes it to the legislature. He continued that it would seem that there has to be a gut-wrenching discussion about the future of Kaho'olawe in terms of where it began and the proclamations made at that time and whether they are still relevant today. That discussion must occur before the Commission can talk about any of these other issues. He is unsure of what the venue should be. Chair McLean stated that this specific topic could be posted on a future agenda. Commissioner Aila asked if it could be the sole topic. It could take several meetings for this discussion. DLNR is willing to initiate a public discussion. Vice Chair Whitehead stated that she felt it would be better if it was a specific Kaho'olawe community discussion. She feels that the prohibition of commercial activities is a foundational piece of Chapter 6K and until she hears otherwise from a vast majority of the Hawaiian community she remains strongly against allowing commercial activities. She thinks if the Commission does discuss this again it should be on the agenda so that people will know the Commission will be discussing it. Community meetings are really needed before the Commission takes a position. It could be part of a larger strategic planning process as the current strategic plan ends in 2013 as well as a larger discussion about the island's future. Commissioner Baker commented that 2013 is the fiscal year the KIRC needs to start pushing for a budget line in the general fund. Commissioner Aila asked if the Commissioners wanted it to be a KIRC initiated discussion or part of a larger DLNR discussion. Commissioners Whitehead and Baker preferred it to be a KIRC initiated

discussion. AO Lee commented that when the initial strategic plan was presented on all islands there was pretty good attendance on each island except Maui (the initial meeting had to be cancelled and rescheduled due to the weather). It was a controlled discussion based on an agenda. Chair McLean summarized that there seems to be a consensus that the discussion should be held in the broader context of strategic planning beginning sometime in the next calendar year. The strategic planning sessions could be workshops which do not require a quorum. Mr. Kuloloio asked how and when does culture begin? The culture and land use plans are very important. Commerce goes all the way back to Biblical times and started with obsidian glass and to be very careful of what obsidian glass is. Kaho'olawe has an obsidian quarry. Pu'umōiwi was the source of the obsidian glass flakes found on other islands. Commercialism, commerce and trade are all tied to artifacts on the island. This discussion needs to be kept in house first and the KIRC needs to know the PKO's position on this. Commissioner Baker cautioned that the seed has been planted just by bringing up this issue for discussion—it is unknown how the seed will grow. Additional seeds have been planted just by having the informational talks about possible sources for money. This is a concern for him. When does the flood gate open and eco-tourism or even a hotel get established? Perhaps it is best to nip it in the bud. Mr. Kuloloio added that things need to be cleaned up for science funding. It is a trade off. He is concerned about the possibility of limited commercial activity but does not have the answer.

Commissioner Aila commented that the discussion about increasing cell signal coverage in and around Kaho'olawe needs to be examined from the view of what would it do for maritime safety. Times and technology have changed and there are new tools. The Commission needs to have that discussion because somebody's life might be at stake. The challenge is how to manage the tools against the backdrop of protecting the culture just as our kūpuna had the discussion when the first cannon arrived. Commissioner Baker agreed the discussion needs to happen and that the VHF was a great idea as it could save lives. Commissioner Aila cautioned that it would hinge on commercialism. These proposals should be reviewed on a case by case basis. Commissioner Baker agreed that the proposals would have to have strong principles in keeping with the culture and land use plans. Commissioner Aila suggested examining how other cultures such as the Maori handle this issue so as not to reinvent the wheel. Vice Chair Whitehead commented that other peoples do not seem to have the same concerns about culture and commercialization that many of our people do. They seem to be more open to things such as geothermal and seem to be able to rationalize it. Commissioner Aila cited geothermal as a good example of changing times. Some of the people protesting it are now in support of it. Commissioner Aila asked if the issue of increasing cell coverage should be put on a future agenda or should the Commission have a broader discussion with the PKO and other cultural practitioners to figure out if this door should be opened. Chair McLean stated that was the intent of having the discussion today to determine if the Commission wants to take another step. She remains very skeptical of allowing commercial activity on the island. It needs to be a collective decision by the Commission and the stakeholders. Commissioner Aila requested a clarification of what is meant by limited commercial ocean use. Was it in reference to Molokini or

potential use on Kaho'olawe? Chair McLean clarified that it refers to limited commercial ocean use within the KIR as the staff has been approached about this in the past.

There was a break from 11:25 am to 11:30 am as quorum was temporarily lost.

Mr. Kuloloio expressed his appreciation for the very open, frank discussion of the issue. It needs to be worked out together; he does not have the answer. He also announced that he has been invited to be a guest speaker at Colgate University regarding Kanaloa-Kaho'olawe from its military use to the native Hawaiian land trust.

Vice Chair Whitehead asked if staff is working on the proposed language regarding Molokini. Staff is meeting with DAR at the department level and is currently in a working group with the Molokini managers. There is a Conservation Action Plan (CAP) session regarding Molokini scheduled a week after Makahiki (the week of November 13th). Staff needs to return to the sponsor of the bill (Senator Kalani English) to see if a full transfer is still a priority. There was a proposal during the legislative access to assess a statewide user fee for all recreational users of the state's environmental and natural resources. Molokini may become part of a broader endeavor.

Vice Chair Whitehead asked for a summary of what was decided regarding limited authorized commercial activity. The Commission decided to go out to the larger community in the form of public meetings at some point as part of a larger discussion about strategic planning post-2013 when the current strategic plan ends. Vice Chair Whitehead pointed out that the next meeting needs to be fairly soon to prepare for the next legislative session. The Commission decided to put the legislative proposals on the next agenda and vote on the KIRC positions on those 4 areas with the understanding that those proposals may change and that the task force (if there is one) may need to make changes.

A. Review of Task Forces

1. Budget & Finance Task Force

This task force was created to review and analyze the monthly budget and the fund development plan and report back to the full Commission. There are currently no Commissioners assigned to this task force. The Commission is currently receiving a full budget which includes the individual projects in their meeting packets. Vice Chair Whitehead commented that the task force is not needed to review the budget as the Commissioners review it, but the analysis of the fund development plan remains an important task. Commissioner Aila agreed that the fund development plan is important. However it may not need to be addressed until after the legislative session and the Commission has had the discussions regarding whether to authorize limited commercial activities. Chair McLean suggested terminating this task force at the next meeting as there is no current need for it and reestablishing the task force at some later date.

2. Capital Improvement Projects (CIP) Task Force

This task force was created to provide policy guidance and direction to the full Commission on KIRC planning and projects regarding the design and entitlements for the Kihei site and oversee improvements at Hakioawa, Kuheia and Honoakanai'a. Staff recommends this task force be kept open until the Hakioawa Hale project is completed in case there are unforeseen decisions to be made. Another option is to have a Commissioner as point of contact in case a decision needs to be made. Staff also suggested expanding its scope to include CIP legislation. Commissioners need to be appointed to it.

3. Hanakūpono Task Force

This task force was created 1) to codify the "reasonable and appropriate activities" conducted during stewardship accesses and 2) develop and promulgate the process for implementing sanctions and penalties for unauthorized activities within the Reserve. It needs to have Commissioners assigned to it. It could also be made into a working group of KIRC staff, PKO access coordinators and a commissioner. A decision needs to be made whether it should be a task force or working group. Vice Chair Whitehead stated she was interested in serving on the Hanakūpono Task Force or Working Group.

DAG Somerville clarified that a task force allows 3 commissioners to meet which would otherwise be prohibited. A working group can have 2 Commissioners as long as no commitment to vote is made or being sought individually amongst the Commissioners. A task force can also include people from outside the KIRC. The Commission decided to place the task forces on the next agenda as an action item and decide what action to take on each, including assigning Commissioners to them as well as assigning Commissioners to be a point of contact for each program.

B. Present and Approve Executive Director Performance Evaluation Plan

ED Nāho'opī'i waived his right to an executive session. Chair McLean explained that a few years ago the KIRC hired a human resources consultant to do a "360" evaluation. This process included the Commission establishing goals for the ED to achieve during an evaluation period. He was rated at the end of the evaluation period by the Commissioners, some of his subordinates and outside individuals. More recently, the same methodology was followed and the results were sent directly to DAG Somerville who tallied them and presented them to the Commission. Vice Chair Whitehead commented that she really liked this process but agreed that it was not an efficient use of DAG Somerville's time and asked if there was an alternative person who could process the results. DAG Somerville stated that she would be hesitant to have another staff person process the results due to its confidential nature. Vice Chair Whitehead pointed out that some staff remains even when the Commission goes into executive session and so is privy to this information. Staff affirmed that CC Gavagan remains present during the executive sessions. The other evaluation process presented was the use of the State of Hawai'i standard Employee Performance Appraisal form to be completed by the Commissioners (as the ED's supervisors) at the end of the evaluation period. This is the same process through which staff is evaluated. When

asked his preference, ED Nāho'opi'i stated that he did not really have one but felt that the previous process provided a broader review of his performance. The evaluation would need to be done by June 30, 2012 as the position has been extended until June 30, 2012. It would need to be done annually. ED Nāho'opi'i last had an evaluation in 2009. The current evaluation period would be from now until June 30, 2012 with the evaluation being completed after June 30, 2012.

The Commission decided to defer action and choose between the two evaluation processes as well as establish goals and expectations for the ED at the next Commission meeting. Vice Chair Whitehead requested that the ED start submitting e-mail reports on the 15th and at the end of each month as suggested in the memo from Chair McLean to the KIRC Commissioners. ED Nāho'opi'i will start doing this November 15th. He commented that most of the information maybe repeated in the Commissioners' packets. Vice Chair Whitehead stated that she is most concerned about e-mail reports when there is a long period between Commission meetings. She also suggested at the next meeting the Commissioners should perhaps take action to set a minimum timeframe between meetings, i.e. quarterly.

The Commission decided to hear the program status updates since KIRC staff was in attendance before resolving into Executive Session regarding **ITEM VI.D. Discussion of Fey vs. State of Hawaii, et. al. and Island Insurance Company vs. State of Hawaii.**

VII. PROGRAM STATUS UPDATES

1. Restoration Program

Restoration Program Manager Paul Higashino reported that two Americorps interns have requested a 3 month extension (Pono and Poema) and a new MEO/Americorps intern Ronald Ramos will be interning with the KIRC for a year. The Americorps interns have been extremely helpful to all of the programs. The restoration program has been catching up with equipment maintenance. KIRC staff Jamie Bruch is continuing to work with Island Conservation to finalize the operational plan for small animal control on island. He has been catching a lot of cats on island. The Restoration Program has also been preparing for the arrival of the canoes this week. The chipper is now on island and a water buffalo has been sent to Lana'i.

2. Ocean Program

Ocean Resources Program Manager Dean Tokishi reported that a grant application has been submitted to the Hawaii Community Foundation-NOAA Community-based Restoration Grant Program. Copies of the application and budget have been included in the FYI section of the Commission packets. The proposal is to remove invasive marine species such as roi and taape from Reserve waters. It is a 24 month grant proposal with a budget of \$80,000. The grant would allow for community workshops on how to conduct surveys and proper invasive fish removal. The removed species would be sent to the University of Hawai'i for ciguatera testing. Ocean staff is currently conducting clean up of Kanapou with 10 volunteers and 4 KIRC staff. The Ocean Program has also conducted its first aerial survey with Windward Helicopters and the experience was excellent as the pilots are very familiar with the area.

3. Culture Program

KIRC Culture Resource Project Coordinator Kahale Saito reported that staff is preparing for the arrival of the *wa'as* (canoes). There will be 3 PKO members to receive them on island. There will also be a ceremony at Kealahakiki. The canoe party is staying at the beach and will have 2 access guides with them. They will also have access to water and part of the kitchen at Base Camp as well as the Clivuses on the beach.

Vice Chair Whitehead expressed her mahalo for those who participated in the Rain and Planting Ceremonies on island and Pu'u Mahoe. Commissioner Baker commented that the students who were on the trip were happy that they were able to participate in the preparation for the Kane ceremony (digging of holes).

MOTION: At 12:20 pm Commissioner Aila moved to enter into Executive Session pursuant to HRS Chapter 92-5-(a) (2) and (4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities, seconded by Vice Chair Whitehead.

ACTION: Motion approved by all Commissioners present.

Commissioners McLean, Whitehead, Aila, and Baker, ED Nāho'opi'i, DAG Somerville and CC Gavagan resolved into executive session.

At 1:05 pm Commissioner Aila rose to report out of Executive Session, seconded by Commissioner Baker.

IX. ADJOURNMENT

There were no announcements from the Commissioners. It was decided that the Commissioners could review the FYI documents on their own. The next KIRC meeting will to be held in November or December in Honolulu. Staff will determine the next meeting date by polling the individual Commissioners.

MOTION: Commissioner Aila moved to adjourn the meeting. Vice Chair Whitehead seconded the motion.

ACTION: Motion was approved by all Commissioners present.

The meeting adjourned at 1:15 pm.

Statement of Davianna Pōmaika'i McGregor To the Kaho'olawe Island Reserve Commission (KIRC) Meeting of October 27, 2011, Wailuku, Maui

Aloha Kakou.

I would like to address two agenda items under VI. Action Items: (1) VI. A. 3 Hanakūpono Task Force; and (2) VI. C. Preliminary Discussion for 2012 Legislative Session

(1) VI. A. 3 Hanakūpono Task Force

I had proposed the establishment of this task force in the last meeting in which I served as the Protect Kaho'olawe 'Ohana ('Ohana) representative on the KIRC on February 28, 2011. The purpose of the task force is to (1) codify the "reasonable and appropriate activities" conducted during stewardship organization accesses; and (2) develop and promulgate a process for implementing sanctions and penalties for unauthorized activities within the Reserve.

I had 2 reasons for making this proposal. First, the HAR lists prohibited activities and provides an exception for those authorized by the commission to be in the Reserve. At the time that the HAR was drafted, there was an understanding that activities conducted during an authorized 'Ohana access/huaka'i were excepted. The institutional memory of what those activities are needs to be memorialized so that the KIRC staff and the 'Ohana members and access/huaka'i participants are clear about what is allowed and what is prohibited.

Second, during the 2011 session, legislators accused the 'Ohana of violations of appropriate conduct without providing any evidence, witnesses or documentation. This was inappropriate and unfair to the 'Ohana. An administrative process to codify reasonable and appropriate activities and to develop a process to provide sanctions and penalties for unauthorized activities will hopefully clarify for all concerned what is allowed and what is not allowed and provide a process to appropriately document, but more importantly prevent violations.

Going forward, I respectfully ask the Commission chair and Commission staff process concerns about the 'Ohana and our huaka'i participants through the Hanakūpono task force and to please refrain from incorrect and unfair accusations of misconduct by the 'Ohana. I further ask, respectfully, that such concerns be handled by this administrative process and not be escalated to the level of legislative action.

(2) VI. C. Preliminary Discussion for 2012 Legislative Session

While not posted on the public posted agenda, Commissioners were informed in their packets that the preliminary discussion for the 2012 legislative session would include a discussion of "authorize limited commercial activities permitted by the Commission and limited commercial ocean use."

I am concerned about this on many levels.

First, such an authorization would constitute a major policy change of great concern to the 'Ohana, to other stakeholders, and to the Native Hawaiian and general community at large. Therefore, such a discussion should have been posted to on the public agenda in fulfillment of the intent of the "sunshine law." The inclusion of this discussion on the agenda by the Chair of the KIRC, without having it posted is, in my humble opinion, not only unethical but lacking in aloha for all of us who love and cherish Kanaloa Kaho'olawe.

Second, the Chair of the KIRC should realize that such a major change in policy would need to have full discussion by all stakeholders and the Native Hawaiian and general community. It is not a policy that should be placed on an agenda on October 27, 2011 for introduction at the legislature in January 2012. The lives of our 'Ohana and families on Moloka'i and Maui were given for Kanaloa Kaho'olawe to be a pu'uhonua for Native Hawaiian culture. Careers and relationships were put on the line for Kanaloa Kaho'olawe to be free of abuse of any kind. The KIRC is managing the island as a trust for the Hawaiian Nation. The Native Hawaiian people are the beneficiaries of this trust. All of us need to be consulted if commercial activities are to be permitted on the island or in the reserve.

Third, which of the purposes of the Reserve would authorization of commercial activities fulfill? Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual and subsistence purposes? NO. Preservation and protection of its archaeological, historical, and environmental resources? NO. Rehabilitation, revegetation, habitat restoration and preservation? NO. Education? NO. As a reminder, recreation is not one of the purposes of the Reserve. The authorization of commercial activities ultimately lead to alteration of the purposes of the Reserve. This would involve an additional major policy change that should not be undertaken lightly, quickly or without full consultation with all of the stakeholders and beneficiaries of the trust. What additional changes to HRS 6K would be made or are being contemplated?

Fourth, authorization of limited commercial activities at this time, without any guiding principles and standards will unravel the purpose and the mission of the KIRC. It will be the puka, the gateway to the degradation of Kanaloa Kaho'olawe. The official policy and slogan of the KIRC is Kukulū Ke Ea A Kanaloa - the elevation of the life and essence of Kanaloa. I respectfully ask the commissioners to uphold the enlightened vision of restoring Kanaloa Kaho'olawe as a sacred cultural center for the Hawaiian nation.

Fifth, I support the KIRC exploring diverse sources of generating revenue to support the operations and infrastructure of the island in fulfillment of the purposes of the Reserve. This would involve thoughtful, careful and serious examination and exploration of sources which would not deplete the resources of the island or desecrate the status of the island as a sacred cultural trust. The evaluation of appropriate sources of generating revenue should be guided by a set of principles and standards that would support the purposes and uses of the island for which it has been "reserved in perpetuity." A plan for this would need to be discussed with the all of the stakeholders and beneficiaries, the

Native Hawaiian and general community. The proposal by the KIRC Chair to introduce legislation in the 2012 legislative session to authorize limited commercial activities and limited commercial ocean use is ill-conceived, disrespectful, short-sighted and inappropriate.

I thank you for this opportunity to share my mana'o. Aloha . . . Aloha 'Āina

- If you want to learn more about the Request for Proposals (RFP) ordered by the Public Utility Commission (PUC) , the docket no is 2011-0225.
- Run an internet search for Hawaii PUC DMS, or go directly to <http://dms.puc.hawaii.gov/dms/>
- Enter 2011-0225 in the “Docket Quick Link”, then click on the tab for “Documents”

The utility filed its **Draft RFP on October 14, 2011**. They announced they were seeking 600-800 gigawatt hours of electricity made with renewable energy . All of the power is designed to to be used on Oahu. If the power is all made in Maui County, we **would expect \$60-100 million annually to transfer from Oahu to power producers in Maui County.**

If we assume half the power comes from Lanai, the amount from other island(s) in Maui Nui would be at least 300 gigawatt hours. The price proposed for the power from Lanai is in the range of 11 cents per kilowatt hour (kwh).

At 11 cents/kWh the project would be expected to produce at least \$ 33 million in annual sales of electricity **The annual revenues would be at least \$ 30 million at a price of 10 cents/kwh.**

How much space is required? If the power is made with solar photovolatiac (pv) panels we would be talking about 2,000 acres of panels.

With wind this amount of power could be made with 40 of the largest 5 MW turbines or approximately 70 of the 3 MW turbines. 3MW turbines are approximately 430 feet high.

Utility scale wind turbines would not be feasible using existing harbor facilities

Utility scale wind requires substantial footings (50 or 60 feet wide is not uncommon) and the construction of roads between the towers.

It is unclear what a fair royalty would be. An argument could be made for anything from 2% of annual revenues (\$60,000 annually) to 10% of revenues (\$ 3 million annually). **Using 5% the figure would be \$ 1.5 million annually.**

Ocean Energy, Environmental Restoration, and Desalination

The NELHA facility on the Big Island shows the potential for use of deep ocean water.

Ocean Thermal Energy Conversion (OTEC) uses the temperature difference between warm surface water and deep water to create a steam cycle that supplies energy.

The facility on the Big island pumps water from a 2,000 foot depth.

The written literature suggests a 35 degree temperature difference is enough, but the people from NELHA tell me 45 degrees may be needed.

Desalination:

Traditional methods:

Reverse Osmosis (RO)

flash pans or other methods that apply heat to the salt water and condense the steam

New Method: electrochemical seawater desalination-The Singapore approach

Instead of using reverse osmosis, which requires high-pressure pumps to force water through semi-permeable membranes, the Siemens process relies on electrochemical desalination. The process combines electrodialysis (ED) and continuous electrodeionization (CEDI), both applying an electric field to draw sodium and chloride ions across ion exchange membranes and out of the water. As the water itself does not have to pass through the membranes, the process can be run at low pressure, and hence low power consumption.

Doug McLeod can be contacted at doug.mcleod@mauicounty.gov

National Energy Laboratory of Hawaii Authority

Kailua-Kona, Hawaii

Pristine cold deep seawater (6°C) is brought to shore from 2,000-foot depths through a 1.2 miles long, 40-inch (1 meter) diameter pipeline made of high density polyethylene (HDPE).

The second pipe is 55 in, goes to 3000 feet, at 4°C, and is 1.9 miles long.

Uses developed for deep ocean water at this research facility include:

- Salt Water Air Conditioning (SWAC)
- Cold Water Agriculture
- Aquaculture
- Ocean Thermal Energy Conversion
- Fresh Water Generation



