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KŪKULU KE EA A KANALOA
KAHO'OLAWÉ ISLAND RESERVE COMMISSION

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Michael K. Nāho'opi'i
Executive Director

MEETING MINUTES
Thursday, December 15, 2011
9:00 am
Kalanimoku Building
1151 Punchbowl St, Room 322B
Honolulu, Hawaii

COMMISSION MEMBERS

PRESENT: Michele McLean, Chairperson; A. Nāmaka Whitehead, Vice Chair; C. Kaliko Baker; Ka'ūlani Murphy

EXCUSED: William Aila, Jr.; Colette Y. Machado

KIRC STAFF: Michael Nāho'opi'i, Executive Director (ED); Ka'ōnohi Lee, Administrative Officer (AO); Rowena Somerville, Deputy Attorney General (DAG); Terri Gavagan, Commissioner Coordinator (CC)

GUESTS: Davianna McGregor (Protect Kaho'olawe 'Ōhana [PKO]); Donne Dawson (Protect Kaho'olawe 'Ōhana & Hawai'i Film Specialists); Joshua Kaakua (Protect Kaho'olawe 'Ōhana); Kim Ku'ulei Birnie (Protect Kaho'olawe 'Ōhana); Keoni Lee ('Ōiwi TV); Kylee Mar (Protect Kaho'olawe 'Ōhana)

I. CALL TO ORDER

Chair McLean called the meeting to order at 9:10 am. A quorum was established with four Commissioners present.

II. APPROVAL OF MINUTES

Minutes of October 27, 2011 public meeting—corrections or clarifications were made about decisions relating to PKO participation in the legislative access, and about how Maoris and Hawaiians may have differing views on commercialization.

MOTION: Vice Chair Whitehead moved to approve the minutes of October 27, 2011's public meeting as amended with further clarification.
Commissioner Baker seconded the motion.

ACTION: The motion was approved by all Commissioners present.

Minutes of October 27, 2011 executive session—Commissioner Baker requested a grammatical correction.

MOTION: Vice Chair Whitehead moved to approve the minutes of October 27, 2011's executive session as edited. Commissioner Baker seconded the motion.

ACTION: The motion was approved by all Commissioners present.

III. COMMUNITY AND PUBLIC COMMENTS

Dr. Davianna McGregor (PKO) stressed that any further discussion of commercialization within the Kaho'olawe Island Reserve (KIR) needs to be placed on the agenda since it is a major policy issue.

She also requested that the Hanakūpono Task Force be kept intact. It was created in response to the accusations against the 'Ohana's conduct on the island and there was no due process for the 'Ohana to challenge the accusations and ask for evidence to be presented. If the staff observes violations taking place on the island, there needs to be a mechanism for them to report it. When the Hawaii Administrative Rules were being written, there were exemptions which were suppose to apply to stewardship organizations, particularly the 'Ohana. These need to be documented.

She also stated that the 'Ohana fully supports the KIRC being fully funded for its intended purpose which is to manage the Reserve as a trust for the Native Hawaiian people until the sovereign governing entity is established. She believes this must be the framework for any legislation this upcoming session. Commissioner Baker asked Dr. McGregor what should be the framework for composing legislation. Dr. McGregor responded that the PKO legislative team has worked on a draft for the conveyance bill that states the purpose of the funding in its preface. It contains a review of how the island was originally set up as a trust for the sovereign Hawaiian entity and that the funding is a commitment to the sovereign governing entity. A copy of the draft could be provided to the Commission.

IV. ADMINISTRATIVE BUSINESS

A. Executive Director's Report

1. Status Update on Budget, Finance and Funding

There was a budget variance of 2% in Reserve Operations' nonpersonnel cost for this period, mostly due to the generator rental and repair costs that were higher than expected. The 128Kw generator failed earlier this year which required another be rented while attempting repairs. It was decided to purchase a new generator after repair attempts were unsuccessful. The purchasing process took a very long time. There were no bidders in the first round of bidding requiring the proposal be rewritten. Once the generator was purchased, there was a delay in transporting the new generator to island because KIRC's helicopter contract had lapsed due to the vendor's non-compliance with state regulations. These delays resulted in having to use the rental generator for a longer period than anticipated thus increasing the cost of the rental.

The budget variance is also due to the preloading of additional fuel on the island in anticipation of the winter months so that fuel runs are unnecessary during winter's high surf. The fuel budget will be brought into line as less fuel will need to be purchased in the future.

There is an anticipated overrun in the Ocean Program's nonpersonnel costs which will be presented in greater detail at the next meeting. In this year's budget only \$30,000 was budgeted for helicopter costs because the other \$30,000 was anticipated to have been spent in the previous year. Staff expended the helicopter funding this month to meet the grant deadline so that the costs could be recovered from the NOAA grant, causing an overage. Staff will be looking to see if there are surpluses in other programs which can offset this overage. ED Nāho'opi'i will need to come before the Commission for approval to transfer money from one program to another. The total amount was not exceeded; it was split between the two fiscal years.

The communication contract with Harmer Communications was extended from January 2012 through June 2012 (end of the fiscal year).

The heavy lift helicopter contract has been awarded to CDF Engineering, effective from December 1, 2011 through November 30, 2012.

A procurement violation occurred with the on-island generator. The estimated cost of the generator was below the threshold for the HEPS System (Hawaii Electronic Procurement System) which is \$2500. However, the actual cost was greater than the threshold. An application for sole source should have been submitted to Procurement when it was determined that there was only one rental company on Maui. The violation will be submitted to DLNR which will have to sign off on the violation.

2. Status Update on Plans, Policies and Procedures

A stewardship meeting with Kohemalamalama o Kanaloa (KOK)/Protect Kaho'olawe Fund (PKF) has been scheduled for 1:30 pm today. The purpose of the meeting is: to review and evaluate the activities and accomplishments under the stewardship agreement; fulfill outstanding requests for information and documents; and review joint projects for Commission approval.

3. Status Update on Administration, Staffing and Personnel

The term for two commissioner seats will expire on June 30, 2012. Commissioners Whitehead and Murphy are eligible for a second, four-year term. Letters of inquiry were sent to them regarding their interest in seeking a second term. Boards and Commissions will start the re-nomination process if either Commissioner is interested in serving a second term. Commissioner Murphy has indicated that she will not seek a second term. Therefore, there will be an opening for the Native Hawaiian Organization (NHO) seat. Staff will issue a public notification announcing that the NHO seat will be open to any interested NHO member and they may apply on-line at the Boards and Commissions' website.

Commission Baker asked how Native Hawaiian Organization is defined. Staff stated it is self-defining. Vice Chair Whitehead asked for clarification of the process after a candidate applies on-line. Staff explained that Boards and Commissions staff handles the entire process and then KIRC staff is notified of the decision via a Governor's message. Vice Chair Whitehead asked if there is any opportunity during the process for individuals to submit letters of support. Staff explained that letters can be submitted at the time the person applies. The Boards and Commissions staff has confirmed that they will schedule a Senate confirmation hearing for Commissioner Baker during the upcoming session.

Dr. McGregor stated that she had just been informed that N. Emmett Aluli, M.D. is to be appointed by the Governor to serve as an interim KIRC Commissioner in the vacant PKO seat.

A new AmeriCorps (through Maui Economic Opportunity) intern, Roland Ramos, has begun working with the Restoration Program. His internship is for one year. Current interns, Pono Cordero-Ho'opai and Poema Pescaia have extended their internship for another three months, ending in February 2012.

Staff will begin the recruitment process to fill the Public Information Specialist position left vacant by Scott Broadbent's resignation at the start of the new year. Cultural Resource Project Coordinator Kahale Saito will also resign. An action item will be placed on the next agenda for the Commission to decide whether to fill this position.

4. Status Update on Public Information, Outreach and Government Relations

A winter newsletter that also contains the holiday charitable gifting drive insert was recently mailed out and posted on-line. There has been a positive response. A check for \$1,000 has been received from the Pedro family. Vice Chair Whitehead suggested that staff explore the possibility of establishing a program in which individuals could buy plants for the island and also pay for the care of the plant. Staff stated that the KIRC has already established a similar arrangement with the Four Seasons Wailea in which the Four Seasons paid for the plants procured by the KIRC as well as providing volunteers to help plant them on island. It is part of their corporate program *10 Million Trees* to help commemorate their 50th anniversary. There is a possibility it will become a yearly activity. A similar program could also be established for the Ocean Program in which the donor is closely connected with the result such as protecting a seal.

The Hawaii Air National Guard (HIANG) has shown interest in supporting the KIRC with helicopter heavy-lift support. However, they will not be ready to help the KIRC until March. The KIRC would be requesting their help with the Kanapou Beach cleanups and transporting heavy items to and from the island. Their helicopters can lift up to 15 tons.

5. Status Update on Capital Improvements, Reserve Operations and Logistics

DLNR Engineering has awarded the contract (up to \$50,000) to convert architectural drawings for the Hakioawa Hale Project into a construction/bid packet for solicitation to Kober Hanssen Mitchell Architects. DLNR Engineering will manage the Capital Improvement Project money (\$400,000) and solicitation. The contract needs to be awarded by the end of this fiscal year (FY2012). The funding is for Hakioawa Hale and alternative energy.

Two unexploded ordnances were recently found at the beaches at Kanapou and Hakioawa within recent months. Both were unexpended new marine flares usually used by the US Coast Guard. They contained white-phosphorous and are very dangerous because once they are opened they can burn through anything and water will not put them out. Both were retrieved by the KIRC Safety Officer and moved to safe storage for off-island destruction. Vice Chair Whitehead suggested that staff follow up with the Coast Guard to notify them that these items are appearing within the Reserve. Staff will notify the Coast Guard, but are still unsure of the source of the flares. Vice Chair Whitehead asked staff to investigate the source.

Commissioners requested the password for the secured website containing the KIRC planning schedule. Staff will forward the password to the Commission.

V. ACTION ITEMS

A. Evaluate Executive Director for FY11 and Approve Executive Director Performance Evaluation Plan for FY12

ED Nāho‘opi‘i waived his right to have an executive session regarding his evaluation. The Commission decided to use the evaluation plan which contained the seven proposed actions the Commission had directed the ED to take during FY11 and conduct an evaluation based on these proposed actions.

- 1) Develop a standardized weekly ED report by September 2010: This has evolved to a bi-monthly report because of the time involved in compiling the weekly ED report. Vice Chair Whitehead stated that she felt the ED met this goal in FY11. However she was not pleased that there was a period of approximately a month in which no ED reports were received. She recommends keeping the new format for the bi-monthly reports. Chair McLean agreed with Vice Chair Whitehead and commented that the ED needs to focus on the timing of the reports and that the reports need to contain basic information.
- 2) Include completion of Strategic Plan Action Items in the weekly ED Report by September 2010: ED Nāho‘opi‘i observed that the current strategic plan is based on a budget of \$5 million and needs to be revisited based on the current economic downturn and a broader review is needed. Vice Chair Whitehead observed that the action plans need to be updated based on the current budget indicating what has been accomplished and what is possible with the current budget. ED Nāho‘opi‘i is to provide this

update at the next Commission meeting. Chair McLean stated that in her opinion the ED did complete the requested task and just needs to provide updates at the Commission meetings. ED Nāho‘opi‘i stated that he could integrate the updates into the budget proposal for FY13. Vice Chair Whitehead suggested that also there be a check at the midpoint of the fiscal year to measure progress towards meeting the targets.

- 3) Improve working relationship with senior management staff, including scheduling, increased ED interaction, developing management skills, improving communication and performance by December 2010: ED Nāho‘opi‘i explained that there are now regular managers’ meetings and that the senior management have become more responsible for their staff which is indicated by the completion of staff evaluations and more comprehensive tracking of their staff; UXO & Safety Specialist Bart Maybee took over the Reserve Operations Program in January 2011. Chair McLean pointed out that these changes did not occur while she was at the KIRC (until December 31, 2010). The program managers contributed to the FY12 budget proposal. They are learning that they need to make decisions at the program level. Chair McLean emphasized the ED needs to share his set of skills and experience with senior management so that they can succeed in their additional tasks and it is important that the ED meet with senior management monthly. Commissioner Baker agreed that empowering staff on island is important.
- 4) Evaluate senior management and determine whether the evaluation system is effective by October 2010: evaluations of the senior management were completed. Chair McLean stressed the importance of the ED meeting with senior staff at least yearly to evaluate their performance. ED Nāho‘opi‘i stated that there are monthly managers’ meetings during which personnel management issues are addressed.
- 5) Identify staff training needs and develop a staff safety training schedule by November 2010: all island staff and interns have completed the safety training programs including the access guide program and the boat staff have been conducting their own training; staff has been allowed to go to additional training if they can get outside funding to attend the training as there is very little training offered on Maui. Chair McLean agreed that the safety training is well covered.
- 6) Develop Commission Program Advisors, where each program has a Commissioner to serve as its advisor and advocate by August 2010. This can grow into the creation of Program Advisory Groups, including outside experts, by January 2011. This plan has been implemented in which the programs keep their program advisors updated. ED Nāho‘opi‘i is to follow up on Restoration Program’s updating procedure for their program advisor (Vice-Chair Whitehead). The Commission decided on the following Commission advisory assignments due to Commissioner turnover:
 - ❖ Culture Program-Commissioner Baker
 - ❖ Ocean Program-Commissioner Murphy
 - ❖ Restoration Program-Vice Chair Whitehead

- 7) Conduct staff “brainstorming” sessions for projects, programs, cost-reduction or funding opportunities by January 2011: ED Nāho‘opi‘i reported this has been incorporated into staff meetings which are now mandatory.

The following the goals and expectations were suggested for the ED during FY12:

- ❖ Reports to the Commission—ED to provide the Commission with bi-monthly reports due on the 15th and last day of each month; reports are to be e-mailed to the Commissioners with summaries of volunteer accesses for that period and ED’s activities and accomplishments for that period; the end of the month report shall also include program updates
- ❖ Proof-reading—ED shall endeavor to eliminate typographical, grammatical and formatting errors from all written communications. Chair McLean was not happy she did not have the opportunity to edit the last newsletter which contained some mistakes. She is willing to edit written communications until a Public Information Specialist is hired.
- ❖ Communication and morale—ED shall meet no less than quarterly with the supervisor and staff of each program.

Vice Chair Whitehead suggested additional goals and projects for the ED during FY12:

- ❖ Developing a new framework for the strategic planning process
- ❖ Revising the action plans to reflect more reasonable targets based on the current budget
- ❖ Instituting biannual progress checks

Commissioner Baker observed that Hawaiian cultural components should permeate throughout all of the aspects of the KIRC and that it should not lie within one person’s kuleana (i.e. the Cultural Coordinator). He suggested having managers articulate how they incorporate Hawaiian culture in their programs or have the Cultural Coordinator work with them to discuss the aspects of their projects that are Hawaiian. He believes that they would be surprised that they are already meeting that goal without realizing it. Management then can look at how this can be improved. These are very significant Hawaiian questions. Staff suggested that the cultural conscientiousness of the programs be developed and that the people who manage the programs have an understanding and appreciation of the cultural background that lays the foundation.

ED Nāho‘opi‘i also would like to work on leadership development of managers. Commissioner Baker pointed out that evaluating the ED’s performance in this area would be difficult as perhaps the senior staff in the program areas may not be the best leaders. Chair McLean observed that part of meeting this goal would be to identify the best person to lead a field project as the project leader.

Vice Chair Whitehead supported the “360” process utilizing the longer form previously used. The forms should be completed by the Commissioners, senior staff and a stewardship organization representative. The point of contact for the

stewardship organization is to determine who will participate in the evaluation process on their behalf. Commissioners Baker and Murphy agreed. The Commission is to examine who will manage the evaluation process at a later date.

MOTION: Vice Chair Whitehead moved to use comments for FY11's 7 goals to constitute the baseline for ED Nāho'opi'i's evaluation for FY11; to include the six goals and projects identified above as the baseline for FY12 and to utilize the long form and the "360" process in ED Nāho'opi'i's evaluation for FY12 to include input from Commissioners, senior staff, and the 'Ohana. Commissioner Baker seconded the motion.

ACTION: The motion was approved by all Commissioners present.

- B. Task Force Re-Assignments or Dissolution: Budget and Finance Task Force, Capital Improvement Projects (CIP) Task Force and Hanakūpono Task Force**
Staff suggests dissolving the Budget and Finance Task Force, Capital Improvement Task Force and Hanakūpono Task Force and creating a Capital Improvement Working Group and Hanakūpono Working Group.

The Budget and Finance Task Force is no longer necessary as the Commission receives a budget variance report and expenditure reports regularly.

The Capital Improvement Projects Task Force is no longer needed as its scope has been completed: the conceptual designs for the Kihei Operations/Education Center and the final design drawings for the Hakioawa Hale Project have been completed as well as the development of a no-development policy for Kuheia Bay. A working group is recommended to review the remaining phases of the Hakioawa Hale project and to provide construction oversight.

Staff recommends the Hanakūpono Working Group replace the Hanakūpono Task Force since the majority work will consist of KIRC staff working directly with the stewardship organization representatives to codify the "reasonable and appropriate" activities and the list will be submitted directly to the full Commission for approval. A working group can have up to two Commissioners in it and can introduce the document into the agenda for approval right away, as opposed to a task force which would have to report out to the Commission first and then the issue would have to be taken up at the next Commission meeting.

Vice Chair Whitehead was in agreement to dissolve the Budget and Finance Task Force and CIP Task Force. Vice Chair Whitehead asked for any comment from the public regarding the replacing of the Hanakūpono Task Force with the Hanakūpono Working Group. Ms. McGregor commented that the working group seems to be a more efficient way of completing the task. Commissioners Baker and Murphy were in agreement to dissolve all three task forces. Commissioner Baker volunteered to be in

the CIP Working Group. Vice Chair Whitehead requested to be in the Hanakūpono Working Group.

MOTION: Vice Chair Whitehead moved to dissolve the Budget and Finance Task Force, the Capital Improvement Projects Task Force and the Hanakūpono Task Force and to create the Capital Improvement Projects Working Group with Commissioner Baker and the Hanakūpono Working Group with Vice Chair Whitehead. Commissioner Baker seconded the motion.

ACTION: The motion was approved by all Commissioners present.

C. Authorize Executive Director to solicit Base Camp Management contract for FY13

Staff is recommending the solicitation for FY13 Base Camp Management Services begin now in order to establish the Base Camp Management budget obligation in FY13 Budget. There have been some changes made to the scope of work content to reflect how the island is currently being managed: 1) transportation is provided by ocean vessel as opposed to helicopter, 2) the open and dark week operation schedules, and 3) deletion of procurement requirement. This is a best value contract which is different from a low-bid contract. It contains award criteria which are: reasonableness of price (50%); experience in providing facilities management and support services (25%); and methodology, approach, and technical capabilities for completing the scope of work and deliverables (25%).

Chair McLean noted that there were some minor corrections that need to be made in the Request for Proposals (RFP) and will e-mail them along with the updated general terms and conditions to AO Lee.

MOTION: Vice Chair Whitehead moved to authorize ED Nāho‘opi‘i to solicit Base Camp Management contract for the period July 1, 2012 to June 30, 2013 with the minor corrections cited by Chair McLean. Commissioner Murphy seconded the motion.

ACTION: The motion was approved by all Commissioners present.

D. Authorize Executive Director to extend Communications Services Contract with Harmer Communications for FY13

Staff is requesting the Commission to authorize ED Nāho‘opi‘i to extend the Communications Services Contract with Harmer Communications from July 1, 2012 to June 20, 2013. The extension is being requested now so that the estimated costs can be put into the budget for the next fiscal year. Staff is waiting for Harmer Communications’ estimate for the next year. The Commission can establish an amount that cannot be exceeded at this time. Staff looked at the current billing the vendor has for the current 6 month contract and are projecting the next contract not to exceed \$70,000.

Chair McLean stated that in the current budget, \$53,000 is being budgeted for communications. \$70,000 is a large increase. She asked if there was a large one-time expense. Staff explained that there was a module sent back for repair and there is another one being repaired right now. Chair McLean asked if contingency money was included in the contract as in the past. Staff stated yes. Staff explained that the budget was approved before the new contract was received. Chair McLean clarified that the vendor had been on a calendar year cycle but that the KIRC did a 6 month extension to get them onto a fiscal year cycle. Staff stated the vendor is on a new contract starting in January 2012. The estimated cost is based on their current billing. Chair McLean stated that she would be okay with a “not to exceed” amount if it was a pretty conservative number. ED Nāho‘opi‘i stated that for budgeting purposes only the current contract projections could be inserted for FY13. Chair McLean stated she would be okay with a “not to exceed” amount of \$55,000 or \$60,000 but not higher.

The Commission deferred action until the next meeting when a proposal can be submitted.

A request was made to move **Item V.F. Review “Early Warriors” Documentary: Discuss and Approve Plan for Dissemination** before **Item V.E. Approve Legislative Plan of Action** since there were representatives of Matt Yamashita and ‘Ōiwi TV present relating to Item V.F. There was no objection.

F. Review “Early Warriors” Documentary: Discuss and Approve Plan for Dissemination

QuasiFilms Media was contracted in June 2006 to design and script a documentary covering the “E Ola Mau Ke Ea A Kanaloa” (Early Warrior Gathering) from film footage previously shot on October 14, 2004. The contract was for \$23,000. Contract services included: 1) design and script, 2) post production and completion of the video documentary and 3) post production and completion of a resource DVD. Design and script services were completed and one copy of a resource three-disc set was submitted but a final product with high resolution photos and music copyrights is still outstanding. Donne Dawson of Hawai‘i Film Specialists appeared on behalf of her company and Matt Yamashita, filmmaker of *Mai Ka Piko Mai a Ho‘i, Return of Kanaloa*. She distributed the latest copy of the documentary to the Commission and reviewed the information contained in a letter from Hawai‘i Film Specialists to the KIRC.

Chair McLean wanted to know why the KIRC needs to authorize this request now since the documentary seems to have been pretty widely shown already. Ms. Dawson responded that the film was rushed to be finished in a viewable form to coincide with 20th anniversary (of the stopping of the bombing of Kaho‘olawe). Chair McLean stated that she has never seen the final version of the documentary either as a member of KIRC senior staff or as a Commissioner. The Commission that paid for it has never seen it to the best of her knowledge. Vice Chair Whitehead stated she remembers viewing the documentary after a Commission meeting at the Cameron Center on Maui with the rest of the Commission. Staff clarified that it was not the final cut of the documentary. Chair McLean wanted to know how it was shown publicly without

formal Commission approval and Commission input. Dr. McGregor commented that she had reviewed it while she was on the Commission as had Commissioner Machado who initiated it. Ms. Dawson stated that she has been in communication with ED Nāho‘opi‘i throughout the entire process. Chair McLean pointed out that the DVDs should have been delivered to the KIRC first and the Commission should be distributing them rather than the other way around. Ms. Dawson explained that Mr. Yamashita thought he had shipped the box of copies in DVD cases quite some time ago to the KIRC but realized yesterday he had not based on a phone call with ED Nāho‘opi‘i. Most of these things occurred before Ms. Dawson’s involvement in the project. She apologized for the manner in which this matter has come before the Commission.

DAG Somerville asked who is currently making and distributing the copies. Ms. Dawson stated that Mr. Yamashita has made the copies and when he realized that the shipment did not get to the KIRC, ‘Oīwi TV assisted and made the copies distributed to the Commission today. Mr. Yamashita has given two copies to other individuals. She also stated that the clearances had to be done and it would cost money that they (she and Mr. Yamashita) would not be able to get through the KIRC. Chair McLean pointed out that the KIRC was not given the opportunity to offer funding and that ED Nāho‘opi‘i could have updated the Commissioners about the screenings. She directed ED Nāho‘opi‘i to initiate a meeting with Mr. Yamashita about all outstanding issues regarding the DVDs.

DAG Somerville stated that the contract with Mr. Yamashita needs to be examined before the Commission can make a decision. Staff stated that there was not a contract but a purchase order (PO). There was one sentence on the purchase order along with an attached description similar to the content of the memorandum from ED Nāho‘opi‘i to the KIRC Commissioners. DAG Somerville stated that since there is a PO only, the KIRC should have possession of the DVDs. There needs to be an agreement in the form of a Memorandum of Understanding (MOU) or a Memorandum of Agreement (MOA) between the KIRC and Matt Yamashita specifying who has copies, who gets to distribute them, etc. Commissioner Baker agreed but also pointed out it should also address the use of the resource DVD set of edited interviews.

Vice Chair Whitehead stated that she would like to see the DVDs distributed far and wide. Commissioner Murphy agreed. Chair McLean asked Mr. Lee to explain his distribution plan. He felt that Mr. Yamashita went beyond the product requested in the KIRC PO and that the film is of film festival quality. The KIRC has had little legal liability up to this point because Mr. Yamashita obtained the clearances for screening. He felt it was in the KIRC’s best interest to apply for an educational license in perpetuity. An educational license is needed for the documentary to be aired on ‘Oīwi TV. Mr. Lee also suggested that ‘Oīwi TV might be included in the MOU as distributors of the DVD. His organization is also willing to take KIRC’s official request to lawyers to get the educational clearance necessary to air it on their channel and to distribute it throughout the schools, etc. He also suggested that the DVD could be used as a vehicle for fund raising and as a link to the KIRC website.

DAG Somerville requested clarification from the Commissioners of the parameters of the MOU. The Commissioners specified that the MOU should: 1) allow the greatest distribution; 2) state that the Commission has no interest in making production copies-that 'Ōiwi TV should be responsible for making the copies, 3) request that 'Ōiwi TV obtain the educational clearance on behalf of the KIRC and 4) contain the Commission's view about festival screenings. Chair McLean stated it is her opinion that until the MOU is approved by the Commission the request for screenings should be directed to ED Nāho'opi'i and he should make decisions regarding the DVD's screening and inform the Commissioners of the requests and approvals in the following ED report. Also, there should be no charge for viewing. Mr. Lee clarified that his company is willing to distribute copies of the DVD to individuals upon request but that the company would have to charge for the material and time needed to produce the copy.

MOTION: Vice Chair Whitehead moved to have ED Nāho'opi'i and DAG Somerville draft a MOU between the KIRC and Matt Yamashita regarding *Mai Ka Piko Mai a Ho'i, Return to Kanaloa* (Early Warriors) for Commission approval at the next KIRC meeting; authorize ED Nāho'opi'i to approve screenings and distribution pending the MOU's approval by the Commission, and that he inform the Commission of screenings and DVD distribution. Commissioner Murphy seconded the motion.

ACTION: The motion was approved by all Commissioners present.

There was a recess between 12:25 pm and 12: 45 pm. DAG Somerville was excused. The meeting was recovered at 12:45 pm.

E. Approve Legislative Plan of Action

Staff recommends that the following positions be approved by the Commission on the following legislative items and that ED Nāho'opi'i be authorized to draft testimony reflecting these positions.

1. Conveyance Tax Legislation

Suggested position: The KIRC supports a portion of the conveyance tax being transferred to the Kaho'olawe Rehabilitation Trust Fund.

Vice Chair Whitehead expressed concern that in SD816 SD1 there are many references to the Department of Land and Resources (DLNR). She asked if it is possible that the KIRC position not reflect that language. Staff responded that the KIRC could go back to the original bill requesting a portion of the conveyance tax be diverted to the KIRC for the rehabilitation and maintenance of the KIR. Vice Chair Whitehead's suggestion is that the KIRC position should call for no change to the language in HRS 6-K. Vice Chair Whitehead and Commissioner Baker do not support DLNR oversight of the KIRC or full integration of the KIRC into DLNR.

Although Chair McLean does not interpret the proposal to mean the integration of the KIRC into DLNR, she would like the focus of the KIRC testimony to remain on the conveyance tax portion of the proposal. Vice Chair Whitehead responded that it was exactly the language in 6K that the Legislature edited in the bill regarding the composition of the Commission. Vice Chair Whitehead stated that she and Commissioner Baker did not want to limit the KIRC testimony to just the conveyance tax but also to include that the KIRC does not support the oversight of DLNR in controlling the island reserve or full integration of the KIRC into DLNR. She suggested that the KIRC position could be that the KIRC does not support any changes in the language of 6K so that all of those things are covered. Commissioner Baker agreed. Chair McLean stated that she could not support such a blanket statement because there could be positive changes to 6K but she could agree to specific language regarding DLNR oversight or integration. ED Nāho‘opi‘i stated that there would be changes to 6K because this proposed legislation would add a subparagraph directing a portion of the conveyance tax go into the trust fund.

Vice Chair Whitehead suggested that the Commission’s position regarding the conveyance tax could be that it does support the authorization of a portion of the conveyance tax revenue be used to replenish the Kaho‘olawe Rehabilitation Trust Fund, but it does not support the elimination of KIRC oversight of DLNR and other departments and agencies of the state with regard to the control and management of the island reserve, and does not support DLNR oversight of the Commission with regard to the control and management of the island reserve.

2. Asset Forfeiture Legislation

There was confusion in the public between asset forfeiture and the inclusion of Molokini into the KIR during the last legislative session. There is a good chance that this legislation will pass if the two issues can be kept separate. Also, it should be made clear to the public that the KIRC does not benefit from any asset forfeiture as any proceeds are distributed between the enforcement agencies involved (e.g. DoCARE, Prosecuting Attorney’s Office, etc.)

Chair McLean is uncomfortable making it a requirement to seize assets. She is in agreement with allowing asset forfeiture, depending on the circumstances. Staff can look at the language of the proposal and clarified that it would be the prosecutor’s office which would make the final determination of whether to pursue asset forfeiture.

The Commission’s position regarding asset forfeiture is to provide for asset forfeiture (House version of the bill).

3. State Procurement Exemption Legislation

Suggested position: The KIRC supports the elimination of the repeal provisions of Act 159 Session Laws of Hawaii 2009, thereby extending the amendment to

HRS 6K and 103D-102 granting the KIRC a procurement exemption for food and fuel.

Chair McLean asked if the KIRC wanted to ask for a procurement exemption for everything. Vice Chair Whitehead asked what the difference would be. Chair McLean explained there would not have been a procurement violation regarding the generator if the KIRC had a procurement exemption for all things. Staff currently follows all the rules and process in procuring food and fuel, but are not required to get 3 quotes or go off of a vendor list where bulk purchases would be required and result in some food spoilage. Staff can purchase food from wherever there is a sale or where the prices are the cheapest with the procurement exemption. Chair McLean stated she was okay with just requesting the procurement exemption for food and fuel and if the procurement exemption is extended permanently then the Commission can look at adding to that procurement exemption.

4. State General Fund Request

Suggested position: The KIRC supports seeking general funds within the Department of Land and Natural Resources' budget.

This would need to be submitted through Chair Aila. ED Nāho‘opi‘i will speak with him about this issue. Staff acknowledged that general funding requires many reporting requirements that the KIRC currently is not required to do. Commissioner Baker pointed out it was important that there be no strings attached to receiving general funds through the DLNR budget; specifically not incorporating or transferring KIRC into the DLNR. Staff explained that DLNR manages the fiscal and personnel issues of the KIRC and the KIRC provides oversight to DLNR on Kaho‘olawe related issues.

MOTION: Vice Chair Whitehead moved to accept the positions presented with the modifications suggested. Commissioner Baker seconded the motion.

ACTION: The motion was approved by all Commissioners present.

The Commission agreed that the following topics should be placed on the next agenda for discussion and adoption of a position:

- ❖ Composition of the Commission—the Chair did not think that the Commission should take a position on this. She feels that it is awkward for sitting Commissioners to talk about their status. Individual Commissioners can submit their own testimony. She stated that it can be put on the agenda for discussion. Vice Chair Whitehead stated she understood the Chair's point but she is not thinking about herself. She is thinking about the composition of the Commission. She definitely thinks it needs to be discussed.
- ❖ Commercial use of the island
- ❖ The inclusion of Molokini into the KIR

- ❖ Possible changes in the composition of the burial council—a potential change is relocating unprovenanced ‘iwi to Kaho‘olawe; Commissioner Baker suggested that the mo‘olono be consulted as they are the ones that actually handle the remains
- ❖ Statewide user fee for recreational use of environmental resources

VI. Program Status Updates

ED Nāho‘opi‘i spoke about the highlights for each program.

A. Status Update on current and planned Restoration Program Projects: NRCS Wetland Restoration and Faunal Restoration

A Memorandum of Understanding (MOU) regarding Ka Palupalu o Kanaloa will be presented at the next KIRC meeting for Commission approval. This document provides the KIRC with rights to plants and plant materials and ensures there will be no commercial activity from the propagation of *Kanaloa kahoolawensis*. Vice Chair Whitehead asked if some kind of notification requirement can be included in the agreement. She pointed out that the KIRC was unaware that all of the Kanaloa plants sent to Kaua‘i had died until she went over there. Staff will check the MOU. Chair McLean asked how the one on island is doing. Staff responded that it is still alive even though it was a dry summer. The ones on Maui are doing very well. Vice Chair Whitehead noted that the ones on Kaua‘i were also doing well and the next year they were dead.

Staff is currently finalizing a feral cat management plan. Once a final draft is completed the Commission can be provided a copy so that they can provide comments. Funding can be sought once it is finalized.

B. Status Update on current Ocean Program Projects: Aerial Surveys, Kanapou Beach Cleanup, Conservation Action Planning Workshops and Vessel Registration for 2012

Ocean Program staff and volunteers have removed 30 tons of debris (double the NOAA grant requirement) from Kanapou which is currently clean. Vice Chair Whitehead asked if there were before and after photos. Staff informed the Commission that the Ocean Program is putting together a video.

Staff has been participating in Conservation Action Planning (CAP) Workshops with other teams representing Kahekili (Commissioner Murphy identified the error in the Ocean Program update document) and Molokini. Commissioner Murphy has attended two workshops. She stated that she and the Ocean Program staff are learning a lot from the whole process. The next set of workshops will be held on Kaho‘olawe from January 24-26. Staff will present a report to the Commission regarding these workshops.

The permitted trolling schedule for 2012 has been published.

C. Status Update on current and planned Cultural Program Projects: Aia i hea ka Wai a Kane (Rain and Planting Ceremony), Observance of the 20th Anniversary of the Stopping of the Bombing of Kaho‘olawe, Opening Makahiki Ceremony, Conservation Action Planning Workshop

Commissioner Murphy mahaloed all the KIRC staff and PKO members who hosted the Faafaite, the Polynesian voyaging canoe from Tahiti which departed from Kealahahiki. She thought it was really important for the voyagers to return home from there.

VII. FYI/ANNOUNCEMENTS

ED Nāho‘opi‘i reviewed the Delegation of Authority letter to the ED from the (DLNR) Department Chair for procurement; the letter to the PKF requesting the meeting scheduled for later today, copies of letters to the Commissioners whose terms will end in 2012 and a letter to the editor of the Maui News suggesting that a nuclear power plant be built on Kaho‘olawe. A handout, “Duties of the Chair,” is also included in the Commission packet.

There were no announcements from the Commissioners.

VIII. ADJOURNMENT

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

ACTION: The motion was approved by all Commissioners present.

The meeting was adjourned at 1:37 p.m.