

December 4, 2025

Item IV.B

MEMO TO: KIRC Commissioners

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

SUBJECT: Protect Kaho‘olawe ‘Ohana Hakioawa Clivus Replacement Project

RECOMMENDED MOTION:

- (1) To declare that the Protect Kaho‘olawe ‘Ohana (PKO) Hakioawa Clivus Replacement Project is exempt from the preparation of an Environmental Assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR.
- (2) To require the following additional procedures:
 - a. Any additional excavations by the PKO beyond one-foot below the existing surface will require the PKO provide additional UXO clearance and avoidance.
 - b. Any excavation into undisturbed soil will require the appropriate archeological monitoring and mitigation, as necessary.

BACKGROUND & SUMMARY:

The KIRC and PKO are parties to a Stewardship Agreement, which provides that both will coordinate the design, construction, maintenance and use of structures and infrastructure, among many other important covenants. There are currently four composting toilets that are used by the PKO, volunteers, and others authorized to visit Kaho‘olawe. These toilets were installed during the U.S. Navy, Model Unexploded Ordnance (UXO) Cleanup Project in 1995. As these toilets are approximately 30 years old, the PKO has proposed replacing the toilets.

The PKO was awarded funding by the Office of Native Hawaiian Relations, Kapapahuliau Program to replace the existing four Clivus composting toilets located in Hakioawa with new, upgraded solar power Clivus composting toilets (Hakioawa Project). The project includes:

- 1) Dismantling the existing composting toilet building and disconnecting any electrical connections. Empty any existing waste from the subterranean collection tank into super sacks. The super sacks will be airlifted by helicopter to Luamakika to an area designated by the KIRC for disposal.
- 2) The old toilets will be staged for airlifting by helicopter to the Pu‘unene Raceway for later disposal. New toilets will also be airlifted from the Raceway and dropped into Hakioawa for installation.
- 3) New tanks will be placed into the existing hole. The new tanks are larger by 11.5” which will require excavating the existing hole to make it larger.
- 4) Once the new tank has been fitted in place, the building and toilet will be installed and connected to the solar battery system.

MEMORANDUM: KIRC Commissioners

December 4, 2025

Page Two

Because the Hakioawa Projects involves the use state and conservation lands, the use state funds, and there are nearby historic features, it “triggers” the requirement for the preparation of an environmental assessment pursuant to HRS Chapter 343. However, a declaration can be made that the project also falls within statutory exemption criteria. Similarly, while the project is located in the state Conservation District, which would typically involve a permitting process, the same exemption applies to the requirement for a Conservation District Use Permit.

EXEMPTIONS:

Environmental Assessment. Chapter 343, Hawaii Revised Statutes (HRS), requires the preparation of an environmental assessment (EA) if a proposed action hits one or more of the "triggers" listed in the statute. The Hakioawa project hits three of these triggers: it involves the use of state lands, the use of lands in the Conservation District, and a use within a Historic District. See HRS § 343-5(a)(1), (2), and (4).

However, Chapter 343, HRS, and its accompanying Chapter 11-200.1, Hawaii Administrative Rules (HAR), also provide for exemptions from EA requirements for actions that will likely have minimal or no significant environmental effects. The agency with permitting power over a project (in this case, the KIRC) can declare that the proposed action is exempt from environmental review requirements.

As the KIRC is administratively attached to the DLNR, the KIRC relies upon the DLNR’s Exemption List. The DLNR’s Exemption List was reviewed and approved by the Environmental Council on March 3, 2020. DLNR’s General Exemption Type 2, Part 1, #1: *Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced, 1. Replacement or reconstruction of existing structures and facilities.* DLNR’s Exemption List is available at: https://files.hawaii.gov/dbedt/erp/Agency_Exemption_Lists/State-Department-of-Land-and-Natural-Resources-Exemption-List-2020-11-10.pdf.

The new composting toilets will be located in the same place and will have the same purposes, capacity, density, height, and dimensions as the current composting toilets. The PKO has provided assurances that they will handle the old toilets and any associated waste in accordance with best management practices. Therefore, the KIRC can conclude that the Hakioawa Project will probably have minimal or no significant effect on the environment and can issue an exemption for this Project.

Coastal Zone Management Program.

The shoreline areas of Kaho‘olawe are situated in the coastal zone management area, governed by Chapter 205A, HRS. The State’s Office of Planning and Sustainable Development (OPSD) is the lead agency in the statute's administration and delegates the authority to administer the Special Management Area (SMA) to the counties, HRS § 205A-1. The SMA is defined as “the land extending inland from the shoreline as delineated on the maps filed with the authority as of June 8, 1977, or as amended pursuant to section 205A-23.” HRS § 205A-22.

MEMORANDUM: KIRC Commissioners

December 4, 2025

Page Three

Chapter 6K, HRS, gives the Commission, rather than the County of Maui, the authority to administer Chapter 205A, HRS, but does not give the Commission the authority of the Office of Planning and Sustainable Development. KIRC staff had previously consulted with the DLNR's Office of Conservation and Coastal Lands and the County of Maui Department of Planning to determine what type of SMA process should be followed for the previous Hakioawa Hale project. It was then determined that SMA maps and rules for Kaho'olawe were never adopted, thus there are no areas of Kaho'olawe that are situated in the SMA. Therefore, no SMA permits or review are required from OPSD.

For the Hakioawa Hale Project, the KIRC staff consulted with OPSD's Coastal Zone Management (CZM) Program to determine whether any other requirements of Chapter 205A, HRS, applied to that project. The CZM Program staff concurred with the County of Maui Department of Planning that SMA provisions do not apply to Kaho'olawe.

ADDITIONAL REQUIREMENTS FOR THE PROJECT:

Based upon the specifications provided by the PKO, the replacement Clivus composting toilets require an excavated hole 11.5" larger than the current space occupied by the existing toilet. The ground under and around the existing Hakioawa toilets were cleared to a depth of four-feet, which allows excavations up to one-foot below the existing surface without additional UXO clearance. Any additional excavations beyond one-foot below the existing surface will require additional UXO clearance and avoidance.

Additionally, the Hakioawa valley floor has a high concentration of archaeological sites and a high potential for subsurface archaeological finds. Any exaction into undisturbed soil will require the appropriate archeological monitoring and mitigation, as needed.

RECOMMENDATION:

The staff recommendation for this motion is "to declare that the Hakioawa Clivus Replacement Project is exempt from the preparation of an Environmental Assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR".

Additionally, staff recommends any additional excavations beyond one-foot below the existing surface will require additional UXO clearance and avoidance and any excavation into undisturbed soil will require the appropriate archeological monitoring and mitigation, as necessary.