

**COUNTY OF KAUAI
PUBLIC ACCESS, OPEN SPACE & NATURAL RESOURCES
PRESERVATION FUND COMMISSION**

**2009 REPORT
TO THE KAUAI COUNTY COUNCIL AND
MAYOR BERNARD CARVALHO, JR.**

**INCLUDING RECOMMENDATIONS FOR PRIORITY PROJECTS TO BE
CONSIDERED FOR FUNDING**



January 14, 2010

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PUBLIC ACCESS, OPEN SPACE & NATURAL RESOURCES
PRESERVATION FUND COMMISSION

2009 REPORT
TO THE KAUAI COUNTY COUNCIL AND
MAYOR BERNARD CARVALHO, JR.

January 14, 2010

Prepared by:
County of Kauai
Public Access, Open Space & Natural Resources
Preservation Fund Commission

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Executive Summary

Program Background

The Public Access, Open Space, and Natural Resources Preservation Fund (the Fund), was established in 2002 by County Charter Amendment. The fund receives a minimum of one half of one percent (0.5%) of Kauai's annual certified real property taxes. The fund accumulates, cannot lapse nor be utilized for other purposes. No more than five percent of the fund may be used for administrative purposes. Purposes for which the fund can be used are outlined in the Charter Amendment, a copy of which can be found in the Appendix.

Status of the Fund. The fund's balance as of Fiscal Year 2009-2010 is \$761,000.

Accomplishments and Progress

In 2009, the County Council allocated \$1.850 million from the Open Space Fund for the acquisition of a beachfront parcel for the expansion of Black Pot Beach Park on Hanalei Bay. This is the first acquisition that the County Council has authorized since 2003, when the Fund was created.

The Planning Department has filled the vacant Open Space Specialist position, which among other duties, supports the Open Space Commission.

Significant progress has been made in the area of research and relationships with legal counsel. After a multi-year delay, the Planning Department has started work on researching certain public access to mauka and makai areas, with the intention of providing results and recommendations for the Commission's 2010 report to the County Council and Administration. Since the appointment of the current County Attorney and his staff, there has been significant improvement in the working relationship with the Commission.

Commission Recommendations

The Commission has proposed four sites for acquisition, using the Open Space Fund:

1. Black Pot Beach Park Expansion (Hanalei District)
2. Salt Pond Beach Park Expansion and Buffer Area for Protection of Hanapepe Salt Pans (Waimea District)
3. Kaneiolouma Heiau Complex—Nukumoi [sic] Surf Shop Property (Koloa District)
4. CGB/Evslin Property (Waimea District)

Acquisition of the following sites may be achieved without necessitating the use of the fund:

- Hoban access (Koloa District)
- Kauapea Beach East access (Hanalei District)
- Kaakaaniu Beach (Larsen's Beach) access (Hanalei District)

- Papaa Bay access (Kawaihau District)
- Waita Reservoir access (Koloa District)
- Alexander Dam access (Koloa District)

Partnerships are encouraged for acquiring:

- Haena Point Properties (e.g., Brescia Property, Hanalei District)
- Coco Palms Property (Kawaihau District)
- Alekoko Fish Pond (Lihue District)
- Mahaulepu (Koloa District)

2009 Public Input Process

In order to achieve its mandate of soliciting public input, the Commission conducted regular meetings, advertised and made available a public survey for 6 weeks during the summer of 2009, and conducted a north shore field trip from Hanalei to Haena.

One hundred twelve responses were obtained from the public survey. Forty-two places on Kauai were suggested for acquisition.

1. Program Background

1-A. 2002 Charter Amendment and the Open Space Fund

On November 5, 2002, Kauai voters passed an amendment to the Kauai County Charter creating the Public Access, Open Space, and Natural Resources Preservation Fund (the Fund). The amendment specified that the Fund would receive a minimum of one half of one percent (0.5%) of Kauai's certified real property taxes each year for purchasing or otherwise acquiring lands or property entitlements in the County of Kauai. The charter amendment also stipulated that any balance remaining in the Fund at the end of the fiscal year "shall not lapse, but shall remain in the fund, accumulating from year to year." The amendment also directed the County Council to "by ordinance establish procedures for the Administration and priorities for the expenditure of moneys" in the Fund.

Purposes for which the fund can be used, as well as the full scope of the fund, are outlined in the Charter Amendment, a copy of which can be found in the Appendix.

Status of the Fund. The fund's balance as of Fiscal Year 2009-2010 is \$761,000.

1-B. Ordinance 812 and the Open Space Commission

On December 8, 2003, the Kauai County Council fulfilled its obligation under the Charter to define the procedures for administering and spending moneys in the Fund by passing Ordinance 812.¹ This ordinance established a "fund advisory commission" known as the Public Access, Open Space, and Natural Resources Preservation Fund Commission (the Commission) to solicit public input and work with the Planning Department to develop an annual list of priority projects to be considered for funding.

The Commission, more commonly known as the "Open Space Commission," was officially formed in September, 2004. It is made up of four Mayor-appointed members, four Council-appointed members, and one member appointed by the eight commissioners. Five of the nine commissioners represent specific geographic areas of Kauai (Waimea-Kekaha, Hanapepe-Eleele, Koloa-Poipu-Kalaheo, Lihue-Hanamaulu, Kapaa-Wailua, and Anahola-Haena), and four serve "at large."

1-C. Historical Perspective

The recommendations of the Commission that were previously formulated and

¹ Ordinance 812 was signed into law by Mayor Bryan J. Baptiste on December 15, 2003.

submitted to the County Council & Mayor for years 2005, 2006, and 2007 & 2008 resulted from many hours of meetings, regional field trips, discussions with members of the public, analysis of data collected from public surveys, study of a wide range of topics relevant to open space preservation and public access protection, and the efforts and cooperation of commissioners, program staff, other Administration officials, and members of the Kauai County Council. Considerable focus was put on creating a new program and equipping commissioners and staff to implement the requirements of Ordinance 812, creating and conducting an annual public process for recommending priority projects for funding consideration.

The Commission's recommendations presented in this 2009 report build upon and add to these prior efforts. Each year, the Commission is privileged to hear from more members of the public. We learn about more places of interest, new concerns, and issues related to protecting natural and cultural resources and expanding public access and open space. These valuable interactions allow commissioners to incorporate a broader range of public opinion into the recommendations forwarded to Council and the Administration.

2. Accomplishments and Progress

\$1.850 Million Approved for Expansion of Black Pot Beach Park Expansion.

The Kauai County Council, on June 25, 2009, approved the allocation of \$1.850 million from the Open Space Fund toward the expansion of the County's Black Pot Beach Park. This represents the first Open Space Fund allocation for property acquisition.

The purchase price of the primary property (known as the Hodge property) at Hanalei Bay exceeds the amount available from any one source, necessitating an acquisition strategy that involves funds from multiple sources. The Kauai Public Land Trust prepared and submitted a Legacy Lands Grant application to the State of Hawaii in 2009 for the purchase of the Hodge property. That application was prioritized number four by the State of Hawaii Legacy Lands Commission and approved by the Speaker of the House and President of the Senate, as required by law. However, the State administration allocated the funds to other projects.

The Kauai Public Land Trust has resubmitted the Black Pot Park expansion application in the current round of Legacy Lands Grants, asking for \$800,000 toward acquisition of the Hodge property. As of December 8, 2009, the Legacy Lands Commission approved this request and prioritized it fourth among the fourteen applications.

Research. Progress has been made in addressing long-standing County Council and commission concerns about researching certain public access to mauka and makai areas. During the preparation of the 2005 Public Access, Open Space and Natural Resources Preservation Fund Commission report, public input brought to light the access concerns of the public that have yet to be researched. The Planning Department has specifically taken on this task as part of the responsibility of the newly-hired Open Space Specialist. As of August 2009, the staff has begun to research, as time permits, the properties on the Commission's list of unresolved accesses with the intent of providing an update and possible resolutions by our 2010 annual report to the County Council and Mayor.

Open Space Specialist Hired. In August 2009, the vacant Open Space Specialist position was ably filled.

Improved Relationship with Office of the County Attorney. The new dialogue with and advice from the new Deputy County Attorneys assigned to the Open Space Commission have been both clarifying and encouraging.

3. Commission Recommendations

Consult the property abstracts in the Appendix for diagrams/photos of the properties identified in this Chapter.

3-A. Recommendations for Acquisition Using the Open Space Fund

In order of priority, the Open Space Commission recommends the acquisition of the fee or other property entitlements, utilizing the Open Space Fund:

1. Black Pot Beach Park Expansion (Hanalei District)

The Open Space Commission remains committed to the expansion of Black Pot Beach Park as the top priority and continue to support the application for Legacy Lands grants and other land acquisition grants to supplement the County's Open Space Funds already allocated. In addition to the Hodge property, there are other lands adjacent to or near the beach park that provide park expansion opportunities.

2. Salt Pond Beach Park Expansion and Buffer Area for Protection of Hanapepe Salt Pans (Waimea District)

The culturally significant Hanapepe salt pans continue to be threatened by agricultural runoff and contamination. In addition, as the only major public beach park between Poipu and Polihale, Salt Pond Beach Park is heavily used and needs to be expanded westward and mauka. The termination of Gay and Robinson sugar operations provides an opportunity to affect G & R's lease of State-owned lands westward and mauka of the salt pans and beach park for public recreational and cultural preservation purposes. The Open Space Funds provide options for obtaining a State lease or executive order for the lands westward and mauka of the salt pans and beach park.

3. Kaneiolouma Heiau Complex—Nukumoi [sic] Surf Shop property (Koloa District)

This privately-owned parcel is adjacent to County-owned land and is part of the culturally significant Kaneiolouma Heiau Complex of Poipu. The land lease for the parcel on which the Nukumoi [sic] Surf Shop is situated is reportedly up for renewal. The Open Space Funds can be used to acquire the land lease or purchase the fee to expand efforts to restore, interpret, and protect this important cultural place.

4. CGB/Evslin property (Waimea District)

Acquisition of this coastal Kekaha property would protect coastal open space and cultural remains, as well as allow continued shoreline access for fishing, windsurfing and other informal recreational uses.

Abstracts for each site (including aerial images, tax parcel information and other details) can be found in the Appendix, along with an island map indicating the location.

3-B. Other Commission Recommendations

In consideration of the size of the Open Space Fund, the Commission believes that the objectives of the Open Space Fund can still be achieved without necessitating the use of the fund. The Commission encourages the County to undertake the following:

- (A) Acquire a pedestrian shoreline access over an existing drainage easement on the former Hoban property (Koloa District), utilizing the funds provided by conditions of Ordinance PM-2004-370 relating to Zoning Designation at Kukuiula, Kauai, Section 2.15e(2)

- (B) Acquire access through the use of real property tax incentives or other methods:
 - Kauapea Beach East – Secret Beach 3 access (Hanalei District)
 - Kaakaaniu Beach – Larsen’s Beach access (Hanalei District)
 - Papaa Bay access (Kawaihau District)
 - Waita Reservoir access (Koloa District)
 - Alexander Dam access (Koloa District)

- (C) For particularly large and expensive parcels, for which the Open Space Fund is drastically insufficient, the Commission encourages that the County pursue partnerships for acquiring:
 - Haena Point properties (e.g., Brescia property, Hanalei District)
 - Coco Palms (Kawaihau District)
 - Alekoko Fish Pond (Lihue District)
 - Mahaulepu (Koloa District)

4. 2009 Public Input Process

4-A. Public Input Opportunities

The following opportunities for public input occurred in 2009 and helped in the Commission's deliberations in putting forth its recommendations:

Regular commission meetings. With notable exceptions, the Commission met twice monthly on the 2nd and 4th Thursdays of the month at the County's facilities in Lihue

2009 Public Survey. Annually, the Commission tries to increase public input. Each input process is evaluated. There were slightly fewer attendees at the 2008 meetings and the Commission suspects that this may be partially attributed to the program not yet having had successful projects. This year the Commission chose not to conduct regional meetings, primarily due to lack of staff.

The 2009 public input survey was developed by the commission and available online on the County's web site (www.Kauai.gov/OpenSpace) and in paper form (See Appendix). It was publicized in newspaper articles and on local radio stations. The County's Information and Technology Department was helpful with preparation and administration of the online survey.

Furthermore, the Commission hoped that special newspaper coverage in the *Kauai People* news magazine, which is free and distributed island wide, would stimulate interest and inform the public about the 2009 input process. Just before the survey was launched, Commission Chair Roger Caires was featured in an engaging cover story of *Kauai People*.

The survey period, initially planned for June 1 through July 1, was extended until July 15, 2009, with newspaper announcements.

North Shore (Hanalei to Haena) Field Trip. The Commission conducted a field trip encompassing Hanalei through Haena in June 2009. No one from the public attended the field trip at advertised stopping points. While the opportunity for public testimony was available at Commission meetings prior to and after the field trips, no member of the public participated. The Commission completed a field trip report of its observations, identified issues, and suggestions for resolution. (See Appendix for field trip report).

4-B. Summary of Public Input from 2009 Survey

The total number of public input surveys received was 112. Sixty-seven responses were received via the online survey. Forty-five paper surveys were submitted via mail or dropped off at the Planning Department. Overall, the level of participation through the surveys was disappointing, in spite of unprecedented media coverage.

Forty-two places on Kauai were suggested for acquisition. The most frequently suggested sites were: Secret Beach Three (Kauapea Beach East), Mahaulepu, Black Pot Beach Park, Coco Palms Resort, Alekoko-Menehune Fish Pond, and Nukumoi [sic] Surf Shop.

5. Conclusions

2009 has proven to be a watershed year for this program, with the allocation of funds the expansion of Black Pot Beach Park, the filling of the Open Space Specialist position, the Planning Department's start on the research for the unresolved accesses, and the productive relationship with the County Attorney's Office. The commission remains hopeful that the public and others will view its work as worthwhile.

The availability of less than \$1 million dollars in the Open Space Fund has tempered the Commission's acquisition list while emphasizing the need for seeking alternative methods to support acquisition of property entitlements.

Similar to other County commissions, two commissioners have resigned due to issues of disclosures and interpretations of conflicts of interest. Filling commission vacancies has been protracted. There are currently three vacancies on the Commission, one of which cannot be filled until the other eight commissioners are seated. Problems with insufficient quorum have been problematic for the Commission since summer 2009.

The Commission expects to resume working with a facilitator and others to formulate specific amendment proposals for Ordinance No. 812 and other measures. The Commission looks forward to discussing any possible changes with the County Council and administration in 2010.

Appendix A

Charter Amendment

OFFICE OF THE COUNTY CLERK

2002 AMENDMENT The Charter of the County of Kauai

"Section 19.15. Fund Administration.

A. Deposit of Funds. Money received by officers and employees shall be deposited promptly to the county's account in depositories authorized by law.

B. Creation of Funds. In addition to the funds established by this charter, the mayor, with the approval of the council, may establish other funds when necessary and when no appropriate class of funds exists. Nothing in this section shall preclude the council from introducing and adopting other funds by ordinance.

C. Public Access, Open Space, Natural Resources Preservation Fund.

(1) In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the certified real property tax revenues to a fund known as the public access, open space, natural resources preservation fund. The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Kauai for the following purposes: public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; preserving forests, beaches, coastal areas and agricultural lands; protecting watershed lands to preserve water quality and water supply; conserving land in order to reduce erosion, floods, landslides, and runoff; improving disabled and public access to, and enjoyment of, public land, and open space; acquiring disabled and public access to public land, and open space.

(2) The moneys in this fund may also be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to Sections 3.13, 3.14, or 3.15, Charter, in whole or in part – for the purposes enumerated in paragraph (1) of this section and for the payment of costs associated with the purchase, redemption or refunding of such bonds.

(3) At any given time, no more than five percent (5%) of this fund shall be used for administrative expenses

(4) Any balance remaining in this fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in this fund shall not be used for any purpose except those listed in this section.

(5) The Council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund."

"Section 19.08. Administration and Enforcement of the Annual Budget Ordinance.

A. The enactment of the annual budget ordinance shall constitute an appropriation of the sums specified therein for the purposes and from the funds indicated. Such appropriation shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse at the end of the fiscal year, except that appropriations to the fund established by paragraph C of section 19.15 shall not lapse, but shall remain in the fund, accumulating from year-to-year. Agencies authorized to make expenditures under the annual budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available and as allotted.

B. Immediately following the enactment of the annual budget ordinance, the heads of all agencies shall submit to the director of finance schedules showing the expenditures anticipated for each quarter of the fiscal year.

C. The approval of an expenditure schedule by the mayor shall constitute a budgetary allotment which shall, unless a revision thereof is approved by the mayor, be binding upon such agencies and the director of finance shall approve or issue no requisition, purchase order, voucher or warrant that is not in accordance with such allotment.

D. The allotment herein provided may be altered at any time by the mayor. The mayor shall direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.

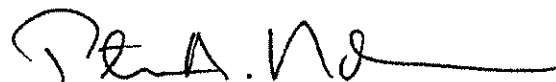
E. Any part of an allotment which is not expended or encumbered shall be deemed re-allotted for the next allotment period.

F. The mayor may at any time transfer an unencumbered appropriation balance or portion thereof within a division or between divisions in the same department. Transfers between departments, boards or commissions shall be made only by the council by ordinance adopted pursuant to Section 19.07B, upon the recommendations of the mayor."

"Section 19.12. Lapse of Appropriations. Every appropriation shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered, except appropriations to the fund established by paragraph C of section 19.15 and appropriations for capital budget items where any portion of said appropriation has been expended."

These Amendments to Sections 19.15, 19.08, and 19.12 of The Charter of the County of Kauai were duly adopted by the voters at the November 2002 General Election.

Lihue, Hawaii
November 26, 2002



Peter A. Nakamura
County Clerk, County of Kauai

Appendix B

Ordinance 812

**A BILL FOR AN ORDINANCE TO ADMINISTER THE PUBLIC ACCESS,
OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. A new Article 14, entitled "Public Access, Open Space and Natural Resources Preservation Fund" is hereby added to Title III, Chapter 6, of the Kaua'i County Code 1987, as amended, to read as follows:

"TITLE III.

TAXATION AND FINANCIAL ADMINISTRATION

CHAPTER

6 GENERAL PROVISIONS RELATING TO FINANCE

(The purpose of this Chapter is to accommodate those non-tax ordinances that deal with the subject of county fiscal administration.)

Article 14	Public Access, Open Space, and Natural Resources Preservation Fund.
Sec. 6-14.1	Purpose.
Sec. 6-14.2	Administration.
Sec. 6-14.3	Appropriation of Funds.

**ARTICLE 14. PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES
PRESERVATION FUND**

Sec. 6-14.1 Purpose.

(a) In adopting each fiscal year's budget and capital program, the Council shall appropriate a minimum of one-half of one percent (0.5%) of the certified real property tax revenues to a fund known as the Public Access, Open Space, and Natural Resources Preservation Fund ("Fund"). The moneys in this Fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the County of Kaua'i for the following purposes:

- (1) Public outdoor recreation and education, including access to beaches and mountains;
- (2) Preservation of historic or culturally important land areas and sites;
- (3) Protection of significant habitats or ecosystems, including buffer zones;
- (4) Preserving forests, beaches, coastal areas and agricultural lands;
- (5) Protecting watershed lands to preserve water quality and water supply;
- (6) Conserving land in order to reduce erosion, floods, landslides, and runoff;
- (7) Improving disabled and public access to, and enjoyment of, public land and open space;
- (8) Acquiring disabled and public access to public land, and open space.

(b) The moneys in this Fund may also be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to Sections 3.13, 3.14, or 3.15, Charter, in whole or in part – for the purposes enumerated

in paragraph (a) of this section and for the payment of costs associated with the purchase, redemption or refunding of such bonds.

(c) Any balance remaining in this Fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in this Fund shall not be used for any purpose except those listed in this section.

“Sec. 6-14.2 Administration.

(a) A community-based process that incorporates countywide community input for the purposes of establishing annual recommended priorities of lands or other property entitlements to be acquired for those land conservation purposes described in Section 6-14.1(a) of this article and paragraph C of Section 19.15 of the Charter shall be utilized by the County.

To meet this intent, a fund advisory commission (‘Commission’) shall be established consisting of [~~seven (7)~~] nine (9) appointees. [~~The Mayor shall appoint three (3) members, the Council shall appoint three (3) members, and the seventh member shall be appointed by the appointed six (6).~~ If there is no agreement on the selection of the seventh member within forty-five (45) days of the appointment of the sixth member, the seventh member shall be appointed by the Mayor and confirmed by the Council. The appointing authorities shall consider representation from each of the following six (6) development plan areas when making appointments to the Commission:

- (1) Waimea – Kekaha;
- (2) Hanapēpē – ‘Ele‘ele;
- (3) Kōloa – Po‘ipū – Kalāheo
- (4) Līhu‘e – Hanamā‘ulu;
- (5) Kapa‘a – Wailua; and
- (6) North Shore (Anahola to Hā‘ena)]

(1) The Mayor shall select four (4) appointees, with at least one (1) from each of the following development plan areas and one (1) at-large:

- (A) Waimea – Kekaha;
- (B) Līhu‘e – Hanamā‘ulu; and
- (C) Kapa‘a – Wailua.

(2) The Council shall select four (4) appointees, with at least one (1) from each of the following development plan areas and one (1) at-large:

- (A) Hanapēpē – ‘Ele‘ele,
- (B) Kōloa – Po‘ipū – Kalāheo; and
- (C) North Shore (Anahola to Hā‘ena)

(3) One (1) island wide, at-large appointee shall be selected by the appointed eight (8). If there is no agreement on the selection of the one (1) additional member within forty-five (45) days of the appointment of the eight member, the one (1) additional member shall be appointed by the Mayor and confirmed by the Council.

(4) Initial terms of appointment shall be as follows:

- (A) All at-large appointees shall serve initial terms of one (1) year.
- (B) Two (2) Mayoral district appointees shall serve three-year terms.
- (C) One (1) Mayoral district appointee shall serve an initial one-year term.
- (D) Two Council district appointees shall serve initial terms of two (2) years.
- (E) One Council district appointee shall serve a three-year term.

- Pursuant to Charter Section 23.02(B), all subsequent appointments shall serve for staggered terms of three (3) years and until their successors are appointed. However, no holdover term shall extend beyond ninety (90) days.

- (5) The role of the Commission shall be to:

- (A) Work with the Planning Department to develop an annual list of priority projects to be considered for funding; and

- (B) Solicit public input on development of the annual list of priority projects to be considered for funding.

(b) The Commission shall establish annual recommended priorities of lands or property entitlements to be acquired, or for the funding of projects directly related to the purposes of this article.

(c) For administrative purposes, this Commission shall be attached to the Planning Department.

(d) At any given time, no more than five percent (5%) of this fund shall be used for administrative expenses.

(e) Meetings of this Commission shall comply with requirements of Chapter 92, Hawai'i Revised Statutes (the 'Sunshine Law').

(f) The Commission shall adopt administrative rules of procedure pursuant to Chapter 91, Hawai'i Revised Statutes (the 'Hawai'i Administrative Procedures Act') within one hundred and eighty (180) days of the full appointment of the Commission's membership.

Sec. 6-14.3 Appropriation of Funds.

(a) Appropriations for expenditure from this fund shall be made by ordinance.

(b) The Commission shall transmit annual recommendations to the Council for priorities of lands or other property entitlements to be acquired, or for the funding of projects directly related to the purposes of this article."

SECTION 2. Severability. If any provision of this ordinance, or the application thereof to any person or property or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3. Effective Date. This ordinance shall take effect upon its enactment.

INTRODUCED BY: /s/ BILL "KAIPO" ASING

DATE OF INTRODUCTION:

July 17, 2003

Lihu'e, Kaua'i, Hawai'i

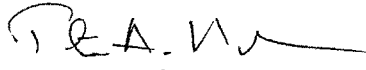
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CERTIFICATE OF THE COUNTY CLERK

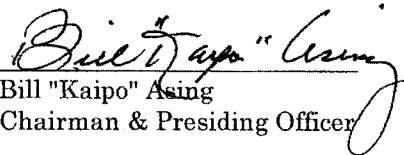
I hereby certify that heretofore attached is a true and correct copy of Bill No. 2078, Draft 1, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on December 8, 2003, by the following vote:

FOR ADOPTION: Furfaro, Munechika, Rapozo, Tokioka, Yukimura, Asing	TOTAL - 6,
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: Kaneshiro	TOTAL - 1.

Lihue, Hawaii
December 9, 2003


Peter A. Nakamura
County Clerk, County of Kauai

ATTEST:

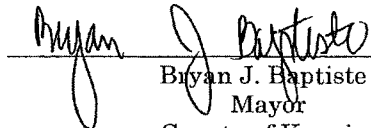

Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 9, 2003

Approved this 15th day of

December, 2003.


Bryan J. Baptiste
Mayor
County of Kauai

Appendix C

Abstracts: Acquisition Recommendations

Black Pot Park Expansion (Hanalei District)



Owners	TMK	Address	Acres	Assessment
Ohana Hanalei LLC	(4)5-5-001:005	Weke Rd	0.500	\$2,255,900
John C. Hodge	(4)5-5-001:011	4896 Weke Rd	0.738	\$4,662,200
Michael G. Sheehan	(4)5-5-001:033	Weke Rd	0.879	\$2,731,600
Michael G. Sheehan	(4)5-5-001:034	Off Weke Rd	1.357	\$2,977,800
Kevin J. Horgan; Monica T. Horgan	(4)5-5-001:040	4895 Weke Rd	0.280	\$1,687,900
Michael G. Sheehan	(4)5-5-001:049	Weke Rd	0.291	\$1,707,100
Michael G. Sheehan	(4)5-5-001:050	Weke Rd	0.087	\$676,000
			4.132	\$16,698,500

Recommendation:

- Acquisition would be for park expansion purposes, improvement to coastal and river access, preservation of open space and natural drainage capacity.
- In addition to the Hodge property that the County Council approved in 2009, there are other lands adjacent to or near the public beach park that provide park expansion opportunities.
- Support efforts by Kauai Public Land Trust to complete acquisition of the Hodge property.

Salt Pond Beach Park Expansion and Buffer Area for Protection of Hanapepe Salt Pans (Waimea District)



Owners	TMK	Address	Acres	Assessment
State of Hawaii (Gay & Robinson Inc, Lessee)	(4)1-8-008:020	Kaunualii Hwy	379.060	\$606,300
Robinson Family Partners	(4)1-8-008:021	Kaunualii Hwy	.900	\$231,600
State of Hawaii (County of Kauai, Lessee)	(4)1-8-008:044	Off Lokokai Rd	1.906	\$291,300
			381.866	\$1,129,200

Recommendation:

- Acquire lands mauka and westward for protection and buffering of the culturally unique and significant salt pans.
- Purchase, encumber or otherwise transfer state lands encompassing portions of TMK (4) 1-8-008:020 immediately west of Salt Pond and mauka of Lokokai Road, along with possible purchase of TMK (4)1-8-008:021.
- The current roadway and parking area are on TMK (4)1-8-008:044, owned by the State of Hawaii and leased by the County of Kauai.

Nukumoi [sic] Surf Shop (Koloa District)



Owner	TMK	Address	Acres	Assessment
Kaha Kai Condominium	(4)2-8-017:016	2080 Hoone Rd	1.202	\$6,755,400
Kaha Kai LLC	(4)2-8-017:016	Hoone Rd	.21	\$0
Kaha Kai LLC	(4)2-8-017:016	Hoone Rd	.484	\$0
Kaha Kai LLC	(4)2-8-017:016	Hoone Rd	.484	\$0
			1.202	\$6,755,400

Recommendation:

- This parcel is adjacent to County owned land and is part of the culturally significant Kaneiolouma Heiau Complex of Poipu.
- The parcel's zoning is Open Special Treatment – Cultural (ST-C) and Open Special Treatment – Public (ST-P).
- Acquire the land lease or other encumbrances, or purchase the fee to expand efforts to restore, interpret and protect this important cultural place.

CGB / Evslin (Waimea District)



Owners	TMK	Address	Acres	Assessment
CGB Partners	(4)1-3-005:040	Kaumualii Hwy	4.647	\$2,294,100
Lee A. Evslin Trust; Monica C. Evslin Trust	(4)1-3-005:053	8808 Kaumualii Hwy	1.681	\$1,404,300
Lee A. Evslin Trust; Monica C. Evslin Trust	(4)1-3-005:054	8809 Kaumualii Hwy	0.002	\$100
State of Hawaii	(4)1-3-005:061	Kaumualii Hwy	0.055	\$161,900
			6.385	\$3,860,400

Recommendation:

- Purchase of privately held parcels, along with transfer or lease of state owned parcel, for public shoreline access, cultural site protection and preservation of open space.

Appendix D

Abstracts: Other Recommendations

Access to Kukuiula Bay thru the former Hoban property (Koloa District)



Owner	TMK	Address	Acres	Assessment
2001 Leight Family Trust	(4)2-6-003:017	4432 Lawai Beach Rd	0.2842	\$3,178,600
			0.2842	\$3,178,600

Recommendation:

- Purchase of pedestrian easement from Lawai Beach Road to shoreline along southwest property line.
- Existing County of Kauai drainage easement at this location was traditionally used by local residents to access the shoreline, but property owner now prohibits access.
- Additional funding for the creation of a pedestrian easement for beach access may be available through Conditions of Ordinance PM-2004-370 relating to Zoning Designation at Kukuiula, Kauai, Section 2.15e(2), in consultation with the Koloa Community Association.

*Parcel boundaries appearing in aerial images are approximate

Access to Kauapea Beach East access – Secret Beach 3 (Hanalei District)



Owner	TMK	Address	Acres	Assessment
Moku Ae Ae Land Condominium/etal	(4)5-2-004:071	n/a		

*Parcel boundaries appearing in aerial images are approximate

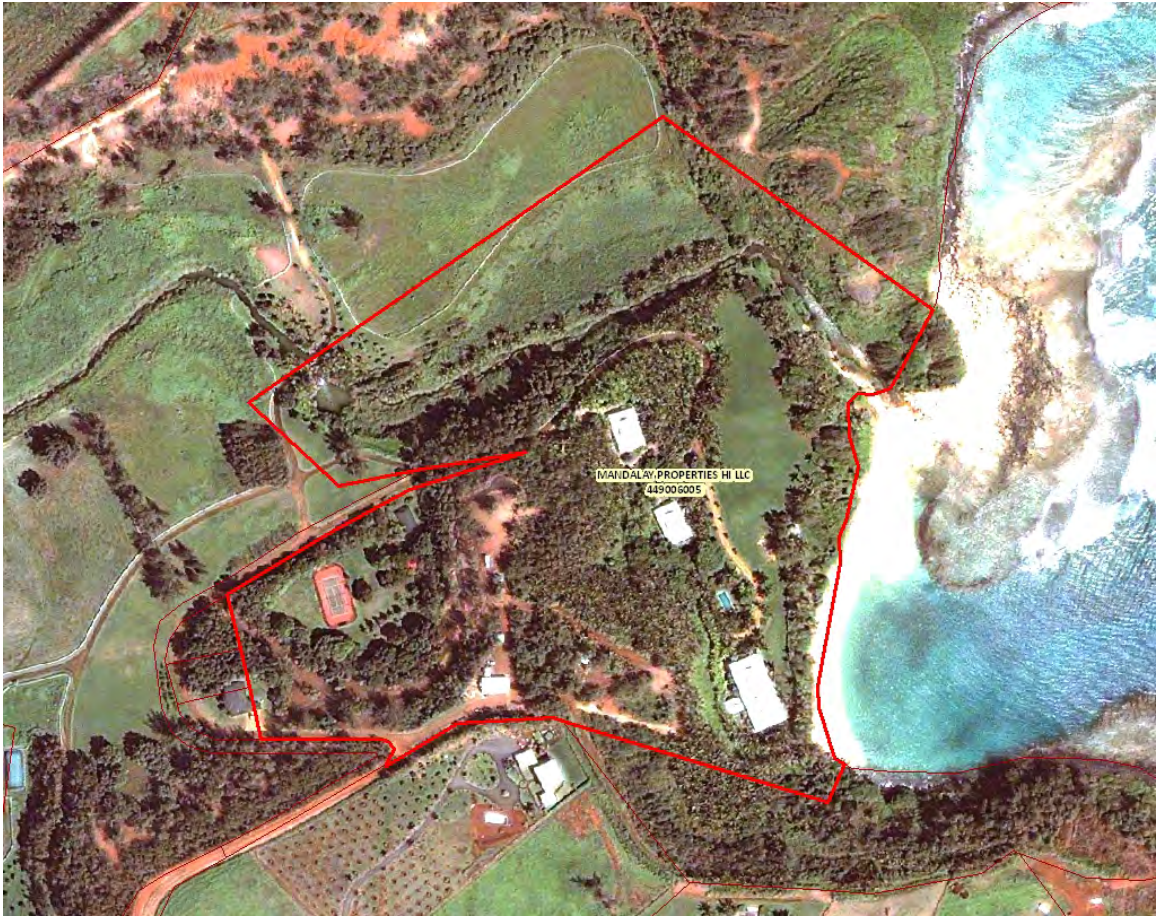
Access to Kaakaaniu Beach access – Larsen’s Beach (Hanalei District)



Owner	TMK	Address	Acres	Assessment
County of Kauai	(4)5-1-003:021	n/a		

*Parcel boundaries appearing in aerial images are approximate

Access to Papaa Bay (Hanalei District)



Owner	TMK	Address	Acres	Assessment
Mandalay Properties HI LLC	(4)4-9-006:005	n/a		

*Parcel boundaries appearing in aerial images are approximate

Access to Waita Reservoir (Koloa District)



Owner	TMK	Address	Acres	Assessment
Visionary LLC	(4)2-8-001:001	n/a		
Visionary LLC	(4)2-8-002:001	n/a		
Grove Farm Co.	(4)2-9-001:001	n/a		

*Parcel boundaries appearing in aerial images are approximate

Access to Alexander Dam (Koloa District)



Owner	TMK	Address	Acres	Assessment
McBryde Sugar Co. LTD.	(4)2-4-009:001	n/a		

*Parcel boundaries appearing in aerial images are approximate

Haena Point – Brescia (Hanalei District)



Owner	TMK	Address	Acres	Assessment
Jodie A. Brescia; Joseph A. Brescia	(4)5-8-009:045	7342A Alealea	0.415	\$1,443,200
			0.415	\$1,443,200

Recommendation:

- Purchase of this Haena Point parcel.
- Acquisition would be to protect cultural resources currently threatened by ongoing construction.
- Support north shore community-based efforts underway to raise funds through Kauai Public Land Trust and Malama Kauai to assist with this purchase.

*Parcel boundaries appearing in aerial images are approximate

Coco Palms (Kawaihau District)



Owners	TMK	Address	Acres	Assessment
Coco Palms Ventures LLC	(4)4-1-003:004	n/a	18.880	\$1,800
State of Hawaii (Coco Palms Ventures LLC Lessee)	(4)4-1-003:005	Kuamoo Rd	14.834	\$0
Coco Palms Resort; Coco Palms Ventures LLC	(4)4-1-003:007	241 Kuhio Hwy	12.630	\$24,160,600
State of Hawaii	(4)4-1-003:011	Drainage	0.496	\$200
State of Hawaii (Coco Palms Ventures LLC Lessee)	(4)4-1-003:017	Kuamoo Rd	0.855	\$0
State of Hawaii (Wailua Associates Lessee of one condo)	(4)4-1-003:039	Kuhio Hwy	0.492	\$236,600
			48.187	\$24,398,900

Recommendation:

- Purchase of privately held parcels, along with transfer or lease of state owned parcels, to protect the cultural resources, preserve open space, and prevent resort development at this site.

*Parcel boundaries appearing in aerial images are approximate

Alekoko Fishpond (Lihue District)



Owners	TMK	Address	Acres	Assessment
Okada Trucking Co Ltd	(4)3-2-001:001	n/a	55.408	\$554,100
Okada Trucking Co Ltd	(4)3-1-001:012	n/a	46.641	\$18,700
			102.049	\$572,800

Recommendation:

- Acquisition of these parcels for protection and restoration of the fishpond and to prevent residential development on TMK (4)3-2-001:001, which may impact the historical integrity of this important cultural site.
- Restoration and preservation of the fishpond might best be accomplished through partnering with local non-profit organizations interested in the cultural, research, and educational potential of the site.

*Parcel boundaries appearing in aerial images are approximate

Mahaulepu & Gillin's – including CJM & Haula (Koloa District)



Owners	TMK	Address	Acres	Assessment
Visionary LLC	(4)2-9-001:001	n/a	1076.073	\$5,328,700
Grove Farm Co. Ltd.	(4)2-9-003:001	n/a	1417.750	\$2,288,300
Gillin Beach House, LLC	(4)2-9-003:003	n/a	0.697	\$1,358,100
Grove Farm Co. Inc.; Gabriel I; Christine V. Kali; Minnie Kong; Violet A. Lumabao	(4)2-9-003:004	n/a	153.000	\$803,200
Grove Farm Co. Ltd.	(4)2-9-003:005	n/a	360.303	\$345,500
Grove Farm Co. Ltd.	(4)2-9-003:006	n/a	766.250	\$1,908,900
			3774.073	\$12,032,700

Recommendation:

- Acquisition of all or any of these parcels or portions thereof to protect historic, cultural, and natural resources of the area and to improve access to the shoreline.

*Parcel boundaries appearing in aerial images are approximate

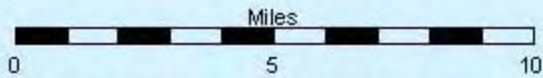
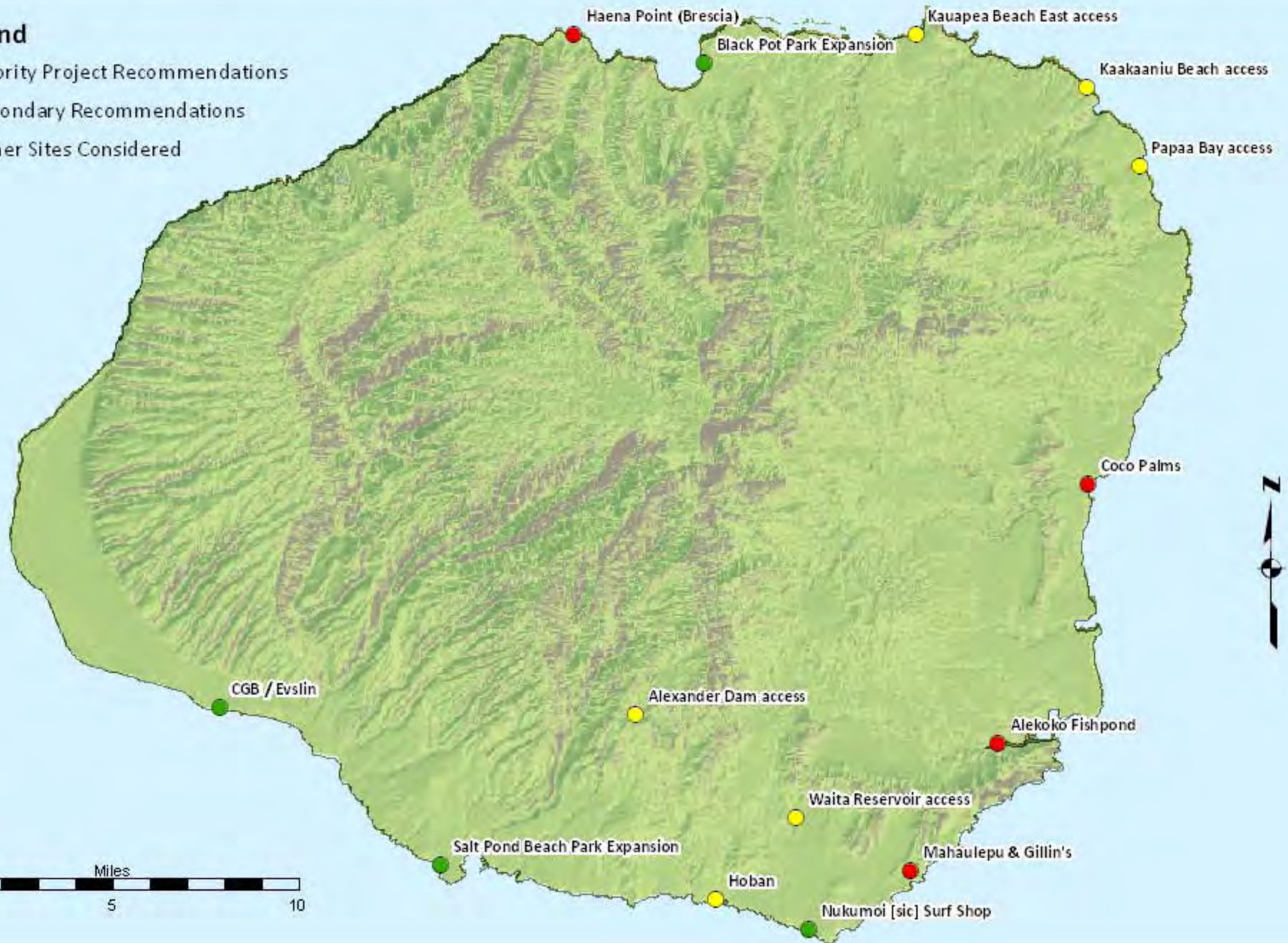
Appendix E

Island Map of All Recommendations

Public Access, Open Space and Natural Resources Preservation Fund Commission: 2009 Recommendations

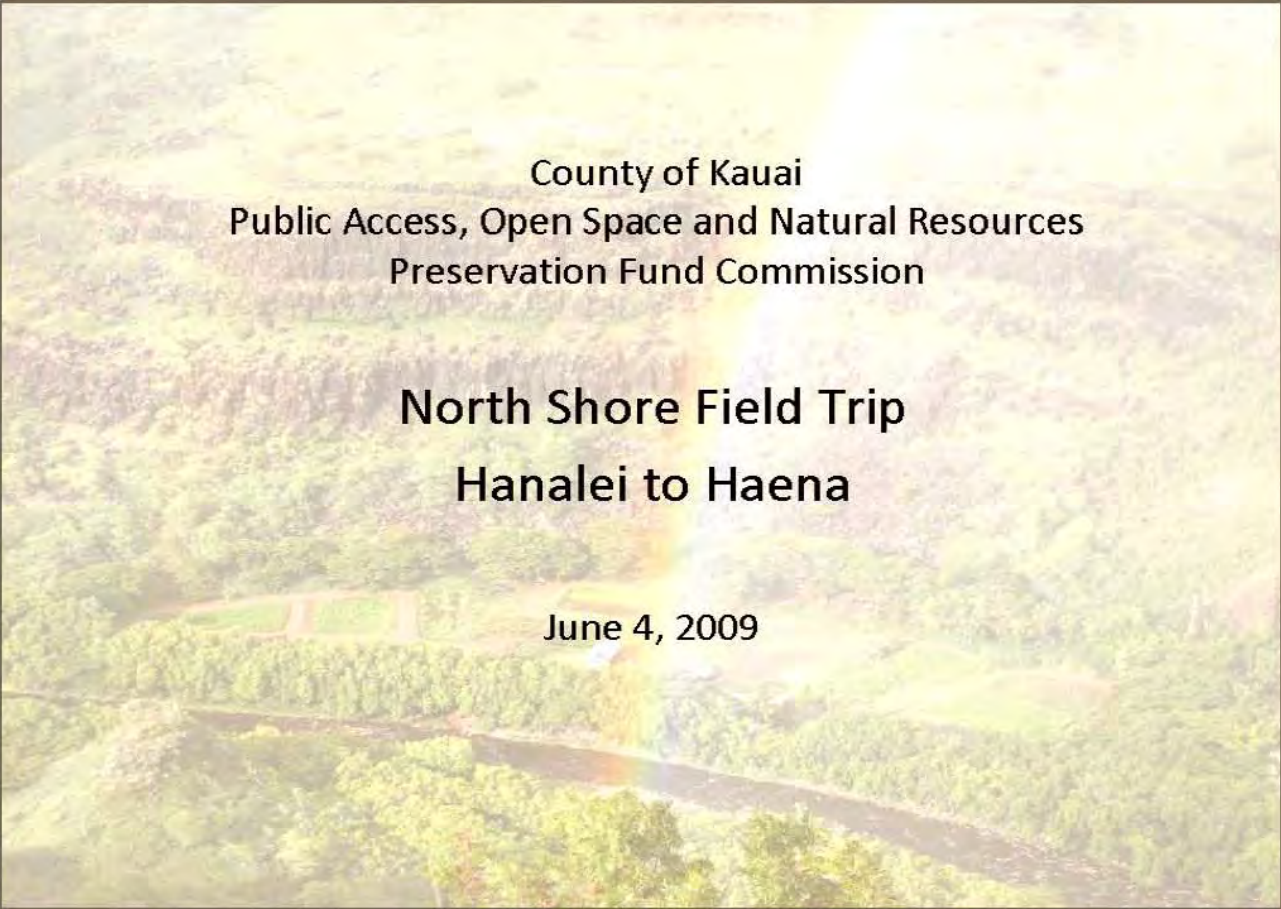
Legend

- Priority Project Recommendations
- Secondary Recommendations
- Other Sites Considered



Appendix F


North Shore Field Trip Report



County of Kauai
Public Access, Open Space and Natural Resources
Preservation Fund Commission

North Shore Field Trip Hanalei to Haena

June 4, 2009



North Shore Field Trip: Sites Visited

- Black Pot Beach Park and surrounding properties, Hanalei Bay
- Wainiha properties/beachfront
- Burnt Trees, Kepuhi properties/beachfront
- Oneone Street properties/beachfront
- Alamoo Road properties/beachfront
- Haena Point properties/beachfront
- Makua, Tunnels properties
- Haena Beach Park and nearby properties



Hanalei Bay.
Hodge property proposed for expansion of Black Pot Beach Park



Hanalei Bay.
Beach fronting Black Pot Beach Park is used as a parking lot.





Wainiha.
Unpermitted private structures
on shoreline



Burnt Trees.
Public access overgrown by
vegetation



Burnt Trees.

Public use of private property for shoreline access

Kepuhi.

Question about unpermitted residential expansion.
Private landscaping on public shoreline.





Oneone.
Planted vegetation encroaching the shoreline and public beach



Kepuhi.
Private landscaping along shoreline





Oneone Street.

Vegetation from adjacent property encroaching on public access

Alamoo Road.

Public access parking area used for private driveway





Haena.
Deteriorated private
revetments on public beach



Haena.
Shoreline erosion at one
of several areas used by
public for shoreline access.
Parking problems.

OPEN SPACE COMMISSION NORTH SHORE (HANALEI TO HAENA) FIELD TRIP
Observations

SITUATIONS/ISSUES	POSSIBLE ACTIONS
1. ACCESSES	
1.A Blocked, encroached, overgrown	Clear vegetative encroachment (Burnt Trees, Oneone)
1.B No signage, deteriorated signage, no property markings	Establish iconic signage and markings (Burnt Trees, Path G)
1.C. Public use of private property	Discuss with private landowner about continued public use of property (Burnt Trees)
1.D. Lack of implementation	Establish accesses (Kepuhi to Burnt Trees)
2. COASTAL ENCROACHMENT ONTO PUBLIC SPACES	
2.A Private landscaping along shoreline	Restoration to its natural condition (Wainiha shoreline setback, Kepuhi to Burnt Trees, Haena Point properties)
2.B Unpermitted structures	Removal at Waihiha, some Haena Point properties
2.C Private revetments on public beach	Removal at Haena (Chuns)
3. VULNERABILITY OF EXISTING STRUCTURES	
3.A Flooding	Relocation/exchange or change in land use designation, no issuance of permit to rebuild if damaged, research post-diaster policies regarding rebuild in inundated areas (Burnt Trees, Kepuhi)
3.B Erosion	Relocation/exchange or change in land use designation, no issuance of permit to rebuild if damaged, research post-diaster policies regarding rebuild in inundated areas (Haena, Kepuhi, Oneone)
4. ENFORCEMENT	
4.A Question about unpermitted residential expansion	Investigation and enforcement (Kepuhi)
4.B Need for more enforcement action	Support more enforcement
4.C Jurisdictional ambiguity	Clarification and coordination by agencies

4.D Removal of natural shoreline vegetation (shade canopy) in public beach area by adjacent private landowner	Educate private landowner leading to discontinuation of practice
5. PRIVATE ENCROACHMENT ONTO PUBLIC PROPERTIES	
5.A Private driveway in public access parking area	Removal of private driveway (Alamoo Road)
5.B Private fences restricting public access within 40 feet of the certified shoreline	Removal of fences (Road E at Chuns)
6. PUBLIC RECREATIONAL USES AT SITES NOT SUITABLE OR VULNERABILITY/ENVIRONMENTALLY SENSITIVE	
6.A Insufficient public facilities	Need more restrooms, public parking, disable access
6.B Insufficient planning/management to protect resources and accommodate public use	Support planning/management; support education of ocean hazards and ocean etiquette
7. AMBIGUITY OF PUBLIC/PRIVATE PROPERTY BOUNDARIES AND AREAS OF USE	
7.A Need for definitions and examples	Clarification of structure within 40 feet of the certified shoreline
	Commission and public education (lectures and workshops)

Appendix G

Survey Questionnaire

County of Kauai
Public Access, Open Space, and Natural
Resources Preservation Fund Commission



Annual Survey
*Suggest Land or Public Access
to be Acquired for Public Benefit*
Please kokua
Input needed by June 30, 2009

Survey also available online at:
www.kauai.gov/OpenSpaceSurvey

For more information, call 241-4050

IMPORTANT: Return survey by 6/30/09

Completed survey forms can be mailed
to the address below or faxed to: 241-6699

Survey also available online at:

www.kauai.gov/OpenSpaceSurvey

County of Kauai Open Space
Commission
4444 Rice Street, Suite #473
Lihue, HI 96766

2009 Suggestions for Land or Access to Protect

The County of Kauai's Public Access, Open Space & Natural Resources Preservation Fund Commission is asking the public to make suggestions for lands or property entitlements (like access ways) that the County should consider for purchase or to otherwise acquire as part of the County's Open Space Program (pursuant to Chapter 6, Article 14 of the County of Kauai Charter).

Please use this form to tell the Open Space Commission about a place or access you would like to see protected or acquired. Forms are also available at public libraries and County of Kauai recreation centers.

Survey also available online at: www.kauai.gov/OpenSpaceSurvey

Use one (1) Survey Form for EACH Site Suggestion.

1. Address, place name and/or common name of site:

2. Other helpful information like owner's name, tax map key (TMK #):

3. What type of protection do you suggest for this place? (one)

acquire property acquire easement

other (specify): _____

4. Why do you suggest this place? What's the opportunity / problem?

Survey available online: www.kauai.gov/OpenSpaceSurvey

Purposes for Use of the Open Space Fund

5. To qualify for purchase or acquisition using Open Space funds, sites must meet at least one of the following purposes.

Please check any that you feel apply:

- Outdoor recreation/education, including access to beaches and mountains.
- Preservation of historically or culturally important lands and sites.
- Protection of significant habitats or ecosystems, including buffer zones.
- Preserving forests, beaches, coastal areas and agricultural lands.
- Protecting watershed lands to preserve water quality and water supply.
- Conserving land in order to reduce erosion, floods, landslides, and runoff.
- Improving disabled and public access to, and enjoyment of, public land.
- Acquiring disabled and public access to public land and open space.

You may include photos and other documentation relating to the site with this form, but please do NOT send originals as they will NOT be returned.

6. (Optional) You may include your name and phone/email in case the commission has a question about your suggestion: _____

SUGGESTIONS DUE NO LATER THAN 6/30/09

fax to: **241-6699**

or mail to:

County of Kauai Open Space Commission
4444 Rice Street, Suite 473
Lihue, HI 96766

Survey also available online at:

www.kauai.gov/OpenSpaceSurvey

For more information about the
Open Space Program, visit:

www.kauai.gov/openspace