



**PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES
PRESERVATION FUND COMMISSION**

JODI HIGUCHI SAYEGUSA, CLERK OF COMMISSION

RECEIVED

24 MAR -7 P2:16

JONATHAN LUCAS, CHAIR
ROBIN PRATT, VICE CHAIR
TARYN DIZON, MEMBER
NANCY KANNA, MEMBER
WILLIAM KINNEY, MEMBER
MARK ONO, MEMBER
MAI SHINTANI, MEMBER

- **The Public Access, Open Space, and Natural Resources Preservation Fund Commission meeting will be at:**

**Līhu'e Civic Center, Moikeha Building
Meeting Room 2A-2B
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i**

- **Written testimony** indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item in writing to planningdepartment@kauai.gov or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be posted as testimony to the Commission's website prior to the meeting (<https://www.kauai.gov/OpenSpace>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.
- **Oral testimony** will be taken on specific agenda items, at the public meeting location indicated on the meeting agenda.
- **IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ADAVIS@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.**

**PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND
COMMISSION
MEETING NOTICE AND AGENDA**

**Thursday, March 14, 2024
1:00 p.m. or shortly thereafter**

RECEIVED

24 MAR -7 P2:16

CLERK OF
THE COUNTY CLERK
COUNTY OF KAUAI

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting(s) of the Commission

1. January 11, 2024

E. RECEIPT OF ITEMS FOR THE RECORD

F. GENERAL BUSINESS

1. Review and discussion on the final draft of the Biennial Report.
 - a. Final draft Biennial Report dated March 2024
2. Discussion and recommendations to fill the vacant at-large position on the Commission.
3. Discussion on Vision and Strategies for Community Outreach.
4. Recodification and adoption of the Rules of Practice and Procedure of the County of Kaua'i Public Access, Open Space, and Natural Resource Preservation Fund Commission.

G. COMMUNICATIONS

H. UNFINISHED BUSINESS (For Action)

1. Update on the proposal to acquire a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 065 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).
2. Update on the proposal to acquire a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 071 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).

I. NEW BUSINESS (For Action)

J. EXECUTIVE SESSION

EXECUTIVE SESSION: Pursuant to Hawai'i Revised Statutes 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the following matters:

1. Review and discussion on the initial draft of the Biennial Report.
 - b. Final draft Biennial Report dated March 2024
2. Discussion and recommendations to fill the vacant at-large position on the Commission.
3. Discussion on Vision and Strategies for Community Outreach.
4. Recodification and adoption of the Rules of Practice and Procedure of the County of Kaua'i Public Access, Open Space, and Natural Resources Preservation Fund Commission.
5. Update on the proposal to acquire a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 065 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).
6. Update on the proposal to acquire a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 065 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).

K. ANNOUNCEMENTS

1. Topics for Future Meetings.
2. The following regularly scheduled Open Space Commission meeting will be held at 1:00 p.m., or shortly thereafter, on April 11, 2024. The Open Space Commission anticipates this meeting to be held in-person at the Līhu'e Civic Center, Moikeha Building 2A/2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

L. ADJOURNMENT

COUNTY OF KAUA'I
Minutes of Meeting
OPEN SESSION

DRAFT To Be Approved

Board/Commission:	Public Access, Open Space and Natural Resources Preservation Fund Commission	Meeting Date	January 11, 2004
Location	Moikeha Meeting Room 2A/2B	Start of Meeting: 1:02 p.m.	End of Meeting: 2:37 p.m.
Present	Chair Nancy Kanna. Vice Chair Jonathan Lucas. Commissioners: Taryn Dizon (<i>arrived at 1:18 p.m.</i>), William Kinney, Mark Ono, and Robin Pratt. Deputy County Attorney Kimberly Torigoe. Planning Department Staff: Deputy Director Jodi Higuchi-Sayegusa (<i>left at 2:09 p.m. and rejoined at 2:22 p.m.</i>), Planner Shelea Koga (<i>left at 2:09 p.m. and rejoined at 2:22 p.m.</i>), Staff Services Assistant Kristen Romuar-Cabico (<i>left at 2:09 p.m.</i>), and Planner Myles Hironaka (<i>left at 1:13 p.m.</i>). Office of Boards and Commissions: Administrator Ellen Ching (<i>left at 2:09 p.m. and rejoined at 2:33 p.m.</i>) and Commission Support Clerk Sandra Muragin.		
Excused	Commissioner Mai Shintani.		
Absent			
SUBJECT			
	DISCUSSION	ACTION	
	Prior to the meeting being called to order, Administrative Assistant to the County Clerk Eddie Topenio administered the Oath of Office to Anahola/Ha'ena Council Appointee Commissioner William Kinney serving a first term ending December 31, 2026.		
A. Call To Order	Chair Kanna called the meeting to order at 1:02 p.m.		
B. Roll Call	Deputy Director Jodi Higuchi Sayegusa verified attendance by roll call; Commissioner Dizon was arriving late. Commissioner Kinney replied present. Commissioner Ono replied present. Commissioner Pratt replied present. Commissioner Shintani was excused. Vice Chair Lucas replied present. Chair Kanna replied present.	Quorum was established with five commissioners present.	
C. Election of Chair and Vice Chair	Chair Kanna opened the floor to receive chair nominations. Ms. Pratt nominated Jonathan Lucas to serve as chair.	Ms. Pratt moved to open nominations for the election of Chair. Mr. Ono seconded the motion. Motioned carried 5:0.	

D.1.
MAR 14 2024



SUBJECT	DISCUSSION	ACTION
	<p>Chair Kanna requested the commission vote on the nomination of Vice Chair Jonathan Lucas to serve as chair for calendar year 2024. The commission unanimously voted for the nomination of Vice Chair Lucas to serve as chair for calendar year 2024.</p> <p>Vice Chair Lucas moved seating position and immediately assumed chair duties.</p> <p>Chair Lucas opened the floor to receive vice chair nominations.</p> <p>Mr. Ono nominated Robin Pratt to serve as vice chair.</p> <p>Ms. Pratt assumed vice chair duties.</p>	<p>Mr. Ono moved to close nominations for chair. Mr. Kinney seconded the motion. Motion carried 5:0.</p> <p>Ms. Kanna moved to open nominations for vice chair. Mr. Kinney seconded the motion.</p> <p>Ms. Kanna moved to close nominations for vice chair. Mr. Ono seconded the motion. Motion carried 5:0.</p> <p>Ms. Kanna moved to appoint Robin Pratt as vice chair for calendar year 2024. Mr. Ono seconded the motion. Motion carried 5:0.</p>
<p>D. Approval of Agenda</p>		<p>Ms. Kanna moved to approve the agenda, as circulated. Vice Chair Pratt seconded the motion. Motion carried 5:0.</p>
<p>E. Minutes of the Meeting(s) of the Commission</p>	<p>1. January 12, 2023 2. February 9, 2023 3. March 9, 2023 4. April 13, 2023</p>	<p>Ms. Kanna moved to accept the minutes of January 12, 2023; February 9, 2023; March 9, 2023; April 13, 2023 and</p>

SUBJECT	DISCUSSION	ACTION
	5. November 9, 2023	November 9, 2023, as circulated. Mr. Kinney seconded the motion. Motion carried 5:0.
F. Receipt of Items For The Record	No receipt of items for the record.	
G. General Business	<p><u>G.1. Update on the proposed charter amendment to Section 19.15 to allow up to 5% of the Public Access, Open Space, and Natural Resources Preservation Fund to be used for the maintenance of entitlements acquired by the fund.</u></p> <p>Ms. Higuchi Sayegusa said Planner Shalea Koga and herself attended a Charter Commission meeting on December 5, 2023, to explain the proposed charter amendment that was submitted by this commission to allow 5% of the existing funds be used for maintenance. The commission would be kept updated. Administrator Ellen Ching added that amendments were finalized and sent to the clerk's office in June.</p> <p>Ms. Kanna expressed concern that some acquired properties may absorb more of the 5% maintenance budget than others and wanted to make sure there were enough funds to meet the maintenance needs of all properties. Ms. Higuchi Sayegusa responded that should this proposal be approved; the commission would take the next steps to fine tune and amend its rules and create a process and criteria on how to allocate the 5% annually.</p>	
	<p><u>G.2. Review and discussion on the initial draft of the Biennial Report.</u> <u>a. Draft Biennial Report dated January 2024</u></p> <p>A 15-page draft of the biennial report was handed out prior to the start of the meeting.</p> <p>Ms. Higuchi Sayegusa pointed out that they were working on a coversheet, and it would probably include a picture of Halulu Fishpond and Kaumumene/Hideaways Coastal Access. She also needed to verify the fund balance and update the summary of proposals. She asked the commissioners if anything else needed to be added to the report.</p>	

SUBJECT	DISCUSSION	ACTION
	<p><i>Commissioner Taryn Dizon arrived at 1:18 p.m.</i></p> <ol style="list-style-type: none"> 1. Vice Chair Pratt asked if the fund balance would be as of December 31st. Ms. Higuchi Sayegusa replied that the latest fund balance would be from July. 2. Mr. Ono asked when the report would become accessible to the public. Ms. Higuchi Sayegusa replied once the commission approved the final draft and it's transmitted to county council it becomes a public record. 	
	<p><u>G.3.</u> <u>Update on the Open Space public input process and website.</u></p> <p>Planner Shalea Koga showed an overview of how the website was set up and went through the Open Space Survey that was updated and could now be filled and submitted online.</p> <ol style="list-style-type: none"> 1. Mr. Ono asked if Ms. Koga managed the website. Ms. Koga replied yes, once the user submits the survey online, she receives a notification and uses the information provided to draft a proposal on the directors' report for the commission to review. The user also receives notification that it was submitted successfully and it's optional for the user to provide name and contact information or not. She said the public could also submit surveys by email or call the staff. 2. Mr. Ono asked if they could include in the survey that proposals could also be presented in person at a scheduled meeting. Ms. Koga replied she would include that information at the end of the survey. <p>Ms. Higuchi Sayegusa explained that all meetings were open to the public and proposals could be presented in person; however, open space rules required that a preliminary report on the proposal include the tax map key, zoning, owner, and if the acquisition would be friendly or not. These were basic information that was presented in the directors' report which gave the commission additional information to base their decision on.</p>	
	<p><u>G.4.</u> <u>Discussion on Vision and Strategies for Community Outreach.</u></p> <p>Ms. Higuchi Sayegusa said in the past the commission attended community meetings and fairs to</p>	

SUBJECT	DISCUSSION	ACTION
	<p>interact with the public and hand out surveys to receive community suggestions on properties to acquire. She asked the commission on their thoughts moving forward.</p> <ol style="list-style-type: none"> 1. Vice Chair Pratt liked the past suggestions and asked if the county’s social media platform could include an informational post about open space. Ms. Higuchi Sayegusa replied yes, it could be done. <p>Ms. Kanna commented that times have changed and was unsure if community meetings were as popular as in the past so social media should be added as another way to interact with the public. Ms. Higuchi Sayegusa added that they would not want proposals posted on a social media platform and would advise the user to complete the survey on the website. Chair Lucas remarked that adding social media was a great idea.</p> <p>Ms. Koga remarked that they would investigate either using planning departments or open a separate new social media account for open space.</p> <p>Ms. Dizon suggested that the social media space should include updated information and pictures of all the acquired properties, stewardship agreements and maintenance. She recommended it be easy to read, understand, navigate, and include a 10-15 second video might also help to educate the public on what open space was all about.</p> <p>Mr. Ono suggested a “greatest hit” and Vice Chair Pratt suggested a series of “did you know” to highlight the years of accomplishments on the social media post.</p> <ol style="list-style-type: none"> 2. Mr. Kinney asked if permission was needed to attend community meetings. Ms. Higuchi Sayegusa replied it would be fine if quorum was not met, and they follow the guidance of HRS §92-2.5. She said they could provide a list of talking points. 3. Vice Chair Pratt asked if the stewardship information could be placed in the biennial report. Ms. Higuchi Sayegusa agreed. <p>Ms. Higuchi Sayegusa said at the March meeting they could report back with a list of talking</p>	

SUBJECT	DISCUSSION	ACTION
	points, list of community associations, initial work on establishing a social media account and possible flyer.	
H. Communications	No communications.	
I. Unfinished Business (For Action)	<p><u>I.1.</u> Review and discussion of possible recommendation for condemnation on a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:065 (Kaua‘i Petroleum Co. Ltd) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).</p> <p><u>I.2.</u> Review and discussion of possible recommendation for condemnation on a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:071 (Kaua‘i Petroleum Co. Ltd) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).</p> <p>Ms. Higuchi Sayegusa said since the last meeting Kaua‘i Petroleum was open to a lease but not interested in selling one or both parcels.</p> <p>Deputy County Attorney Kimberly Torigoe stated that if the commission wanted to take the property by condemnation, they would first need to make a recommendation to the county council. The county council would then have to make a resolution to approve the process and the county attorney’s office would file a suit with circuit court by complaint and summons and it would be served to Kaua‘i Petroleum to answer. She said they have a six year open condemnation case. DCA Torigoe said it costs hundreds of thousands of dollars for these types of litigation. DCA Torigoe said that if the judge granted the condemnation the court would ask for a fair market value of the property and the county would have 30 days to pay or accrue interest at 5% per year. If payment was not completed in two years the county would forfeit the claim to the property and it would go back to Kaua‘i Petroleum. She cautioned the commission that should they want to proceed with condemnation they would have to stick it out until the very end because there were hefty penalties should the commission decide to back out after a while.</p> <p>Ms. Kanna requested further discussion in executive session.</p>	

SUBJECT	DISCUSSION	ACTION
K. Executive Session	<p>Ms. Higuchi Sayegusa read the Hawai‘i Revised Statutes to move the meeting into Executive Session.</p> <p>Pursuant to Hawaii Revised Statutes §92-4 and §92-5(a)(4), the purpose of this executive session is to consult with County’s legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the commission and the county as they relate to:</p> <ul style="list-style-type: none">5. Review and discussion of possible recommendation for condemnation on a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:065.6. Review and discussion of possible recommendation for condemnation on a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:071.	<p>Ms. Kanna moved to enter Executive Session. Vice Chair Pratt seconded the motion.</p> <p>Roll Call Vote: Ms. Dizon – Aye Ms. Kanna – Aye Mr. Kinney – Aye Mr. Ono – Aye Vice Chair Pratt – Aye Chair Lucas - Aye Motion carried 6:0.</p> <p>Open Session ended at 2:09 p.m.</p>
Call To Order in Open Session	Chair Lucas called the Open Session meeting back to order at 2:33 p.m.	Quorum was established with six commissioners present.
I. Unfinished Business (For Action)	<u>I.1. Review and discussion of possible recommendation for condemnation on a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:065 (Kaua‘i Petroleum Co. Ltd) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).</u>	

SUBJECT	DISCUSSION	ACTION
	<p><u>I.2. Review and discussion of possible recommendation for condemnation on a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:071 (Kaua‘i Petroleum Co. Ltd) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019).</u></p> <p>Ms. Higuchi Sayegusa said the commission requested a letter be drafted and sent to the Board of Directors of Kaua‘i Petroleum.</p>	<p>Ms. Kanna moved to defer review and discussion of a possible recommendation for condemnation on a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:065 and Review and discussion of a possible recommendation for condemnation on a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:071 until the March 2024 meeting. Vice Chair Pratt seconded the motion. Motion carried 6:0.</p>
J. New Business (For Action)	No new business.	
L. Announcements	<p><u>L.1. Topics for future meetings.</u></p> <ol style="list-style-type: none"> 1. Update on a 0.2764-acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008:065. 2. Update on a 0.2867-acre parcel located in Hanapēpē, Kona Moku, further identified as 	

SUBJECT	DISCUSSION	ACTION
	<p>Tax Map Key (4)1-8-008:071.</p> <ol style="list-style-type: none"> 3. Vision and Strategies for Community Outreach 4. Social Media campaign update 5. Talking Points List 6. List of Community Association Meetings 7. Biennial Report 8. At-Large Position <p><u>L.2.</u> The following regularly scheduled Open Space Commission meeting will be held at 1:00 p.m. or shortly thereafter, on or about March 14, 2024. The Open Space Commission anticipates this meeting to be held in-person at the Līhu‘e Civic Center, Mo‘ikeha Building 2A-2B, 4444 Rice Street, Līhu‘e, Hawai‘i, 96766. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.</p>	
<p>M. Adjournment</p>		<p>Ms. Kanna moved to adjourn the open session meeting. Vice Chair Pratt seconded the motion. Motion carried 6:0.</p> <p>Chair Lucas adjourned the meeting at 2:37pm.</p>

Submitted by: _____
 Sandra M. Muragin, Commission Support Clerk

Reviewed and Approved by: _____
 Jonathan Lucas, Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.

Public Access, Open
Space & Natural
Resources
Preservation Fund



2022-2023 Biennial Report

F1a

Halulu Fishpond (Waipa), Hanalei Hawaii

MAR 14 2024



Kaumumēne (Hideaways), Princeville Hawaii

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

**2022-2023 BIENNIAL REPORT
TO THE KAUAI COUNTY COUNCIL
AND MAYOR DEREK S.K. KAWAKAMI**

March 2024

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

**Jon Lucas, Chair
Robin Pratt, Vice Chair
Taryn Dizon
Nancy Kanna
Mark Ono
Mai Shintani
William Kinney**

**Administrative Support:
Planning Department Staff**

PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES PRESERVATION FUND COMMISSION REPORT 2022-2023

Table of Contents

I.	Executive Summary.....	1
	A. Program Background	
	B. Status of the Fund	
	C. Other Updates	
	D. Brief Updates on Commission Processes	
	E. Key Highlights	
II.	Proposals that were Recommended, “On-Hold”, or Declined.....	5
	A. Completed Proposals	
	B. Recommended Proposals “On Hold”	
	C. Declined Proposals	
III.	Program Background.....	14
	A. Progression of Enabling Legislation	
	B. Commissioner Positions	
IV.	Public Input Process.....	17
V.	Commission’s Vision & Goals.....	18
	A. Supporting the 2018 General Plan Policies	
	B. Tackling Challenges	
VI.	Increase the Public Access, Open Space, and Natural Resources Preservation Fund.....	20

Appendices

- A. 2002 Charter Amendment
- B. Ordinance No. 812
- C. Ordinance No. 925
- D. Ordinance No. 936
- E. Ordinance No. 986
- F. Ordinance 1048 and 2018 Charter Amendment
- G. Rules of Practice and Procedure of the County of Kaua’i Public Access, Open Space, and Natural Resources Preservation Fund Commission, as Amended
- H. Abstracts for All Proposals Considered by the Commission
- I. Current and Previous Recommendations by Biennial Reporting Periods

Executive Summary

A. Program Background

The Public Access, Open Space, and Natural Resources Preservation Fund (Fund) was established in 2002 by an amendment to the Charter of the County of Kaua'i. The Fund receives a minimum of one-half of one percent (0.5%) of Kauai's annual certified real property taxes. Ordinance No. 936, enacted in 2012, sets aside one point five percent (1.5%) of the certified real property taxes. In 2015, Ordinance No. 986 decreased the amount set aside back to the minimum one-half of one percent (0.5%), which is where it remains currently. The Fund accumulates and can neither lapse nor be utilized for other purposes. Additionally, no more than five percent (5%) of the Fund may be used for administrative purposes. Purposes for which the Fund can be used are outlined in the County of Kaua'i Charter Section 19.15 and Kaua'i County Code Chapter 6, Article 14, which are attached in the Appendices.

B. Status of the Fund

The Fund's balance for Fiscal Year 2023-2024 is **\$2,918,919.92**.

C. Other Updates

The RAIN18 and COVID19 emergency events in 2018 and 2019 severely impacted the Planning Department's operations and required a year-long hiatus in 2020 from holding Commission meetings. In 2021, however, the Commission resumed its meetings every other month. In 2023, a new Open Space Planner began supporting the Commission and has hit the ground running. She will continue to build momentum with advancing the objectives and mission of the Commission in the upcoming years.

D. Brief Updates on Commission Processes

The Public Access, Open Space, and Natural Resources Preservation Fund Commission (Commission) continues to implement its amended Rules of Practice and Procedures. Chapter V clarified the processes and respective roles of the Commission and the Department and the Department continues to provide its reports and recommendations for any request it receives. The report provides a preliminary analysis based on criteria for acquisition and the existence of any prohibitive factors including extremely dangerous attributes at the property that poses serious risks of injury or death. After consideration of this preliminary report, the Commission may request that the Department provide a final evaluation and recommendation, which the Commission may consider in deciding whether to ultimately recommend or not recommend an acquisition.

All recommendations and actions including recommendations to acquire certain properties or improve accesses are memorialized in the Commission's biennial reports that are

transmitted to the County Council after every odd year. However, if a proposal requires speedy action (e.g., property listings on the open market), the Rules prescribe a dossier process to enable the Commission to respond to opportunities and timely communicate its recommendations to the County Council. Thus, these recommendations to acquire properties do not have to wait for a biennial report and can be transmitted to the County Council once minimum research and analysis are completed.

In 2018, Article XIX, Section 19.15(C) of the Charter of the County of Kaua'i and Kaua'i County Code Chapter 6, Article 14 was amended the Fund to allow funding of improvements associated with acquisitions and coastal accesses. Since then, the Commission has successfully funded and completed improvements to the Kaumumene Coastal Access, known as Hideaways. The Commission continues to shape the process for issuing recommendations for the funding of improvements and will consider formalizing those procedures in its Rules in the next biennial period.

Finally, the Commission has proposed a draft Charter Amendment, which is currently awaiting review by the Kaua'i Charter Commission. The proposal aims to attract and support stewards who will take on maintenance responsibilities for properties or improvements that were acquired using the Fund. In particular, the proposal seeks to distribute a limited amount of money each year to stewards to support their maintenance activities and any supplies and equipment that they may need. This proposal may begin to attract stewards to aid the County with maintaining the Fund's acquisitions and accesses, and facilitate additional proposals using the Fund where maintenance would otherwise work against their consideration.

E. Key Highlights

1. Acquisitions Using the Fund

a) Halulu Fishpond and Access, TMK Nos. (4) 5-6-004: 017 (Hanalei District, HALELE`A MOKU (Originally recommended in 2015))

Brief Description:

The Halulu Fishpond and access is a 0.25 acre property at TMK (4) 5-6-004:017 that is stewarded by Waipā Foundation. The Halulu Fishpond and Access includes the community path to Halulu Fishpond, and part of the fishpond itself. Each year, thousands of students, and attendees of Waipā Foundation's Music and Mango Festival, and Kalo Festival, walk through Halulu Fishpond Access property to learn and enjoy Hawaiian cultural elements at Halulu Fishpond.

Commission Action:

The Commission unanimously voted to support the acquisition of the property through the dossier process, recommending it to the County Council. On January 25, 2023, the County Council ratified Ordinance B-2023-890, allowing the Commission to proceed with the acquisition. An amount of \$850,000 from the Fund was utilized in conjunction with funds from the State Legacy

Land Conservation Program and State Capital Improvement Project to acquire the property. Waipā Foundation acquired the property on December 11, 2023.

As a condition of receiving County funding, Waipā Foundation granted and conveyed a conservation easement to the County of Kaua'i, which was executed on November 29, 2023. The Conservation Easement was the first executed and received by the County of Kaua'i. The Conservation Easement ensures that the property will be perpetually restricted from development, aside from structures related to the educational mission of the Foundation.



2. Improvements Using the Fund

a) Kaumumene Coastal Access, TMK Nos. (4) 5-4-011: 004 & (4) 5-4-012: 011 (Hanalei District, HALELE`A MOKU)



Brief Description:

The beach, which is now known as Hideaways Beach, was formerly named Kaumumene or Kenomene. This beach is located at the bottom of the cliff and was previously used as a “holding area” for Hawaiians who were diagnosed with symptoms of leprosy as they waited for a boat to pick them up for their journey to Kalaupapa, Moloka‘i. Today, the coastal access and beach is heavily used by experienced fishermen and surfers to access the shoreline and its resources.

Commission Action:

At the meeting on January 13, 2022, based on the recommendation of the Office of County Attorney, the Commission supported the acceptance of the easement grant. Additionally, they recommended seeking approval to allocate a maximum of \$1.5 million from the Fund for enhancements related to coastal access improvements. On April 20, 2022, the County Council approved Ordinance B-2022-884 and Ordinance B-2022-885, which approved an amount of up to \$1.5 million from the Fund for the improvement project.

Following the approval of the easement to Kaumumene, the County of Kaua‘i Department of Public Works (DPW) worked through several options under procurement to undertake the design and implementation of trail improvements. However, inspections revealed alarming hazards at the trail from previous trail improvements including protruding rebar and anchor points that held up wooden slats for stairs that no longer exist, sharp and rusted rods and metal pipes, loose metal T-bar and pipe anchors, and steep and slippery sections of the trail. As a result, DPW immediately responded and took on the permitting, design, and construction of emergency repairs from May 2023 to September 2023. The emergency repairs were completed as of September 2023. The repairs have drastically improved the safety and utility of the trail improvements. The Commission continues to work with community members to initiate a long-term stewardship plan for this access. The County of Kaua‘i plans to reserve some of the \$1.5 million initially pegged for the improvement project to allow installation of additional improvements within 5 years; however, will restore a majority of that monies to the Fund.

3. Summary of Proposals Considered During the 2022-2023 Biennial Report Year:

PROPERTY NAME:	TAX MAP KEY:	STATUS:
'Aliomanu Vacant Lot	(4)4-9-004:013	Updated Prelim Report Approved; Working on Management/Stewardship Plan
Hanapēpē Vacant Lot	(4)1-8-008:071	Updated Prelim Report Approved; Possible acquisition being negotiated
Hanapēpē Vacant Lot	(4)1-8-008:065	Updated Prelim Report Approved; Possible acquisition being negotiated
Halulu Fishpond (Waipā Foundation)	(4)5-6-004:017	Waipā Foundation acquired the property and Conservation Easement dedicated to the County of Kaua'i
Kaumumene/Hideaways Coastal Access Easement	(4)5-4-011:004 & (4)5-4-012:011	Easement Accepted & Conveyed; Trail Improvements Complete; Commission working on long-term and formal stewardship
Kauapea Beach Access	(4)5-2-004-071	In Litigation
Kīlauea Mauka Access	(4) 5-1-005:036/ (4)5-1-005:125	Planning Department enforcement action initiated
Po'ipū Beach Access (formerly known as Hoban or Leight Access)	(4)2-6-003:017	In Litigation
Wainiha Vacant Lot at 7322 'Āle'ale'a Road (Dirk P. & Kathleen Lange Living Trust)	(4) 5-8-009: 049	Report Received
Vacant Lot in Wainiha at 5-6910 Kūhiō Highway (3]1S, LLC.)	(4)5-8-012: 002	Report Received

II. Proposals that were Recommended, "On-Hold", or Declined

A major responsibility of the Commission is to present a biennial list of priority projects to the County Council and the Mayor's Office. The following section summarizes the properties that the Commission either: (A) completed the acquisition or improvement; (B) recommended for acquisition but is currently "on-hold" during the 2022 through 2023 reporting periods because the Department is conducting further research and communicating with the landowner; or (C) declined to acquire. Appendix H contains property abstracts with additional diagrams and photos of all properties that the Commission has considered to acquire or fund improving since 2017, including properties that were ultimately not recommended.

A. Completed Proposals

As noted in *E. Key Highlights*, during the 2022-2023 Biennial Report period, one property acquisition was fully completed and executed, and one coastal improvements project was completed using the Fund. Namely, the Fund significantly contributed to Waipā Foundation's ability to acquire the Halulu Fishpond Access and the Commission's acquisition of a conservation easement restricting development at that property. In addition, the Kaumumene Coastal Access was improved using the Fund.

B. Recommended Proposals "On-Hold"

1. 'Aliomanu Beach Living Trust, TMK (4)4-9-004: 013 (Kawaihau District, KO'OLAU MOKU)



Brief Description:

The subject lot of record is approximately 1.393 acres in size and is in 'Aliomanu, Kaua'i. The subject lot ends at 'Aliomanu Road nearing 'Aliomanu stream where there was once a bridge that connected to the other side of the neighborhood referenced as the Old Belt Road Loop. The bridge was destroyed when it washed

out during a tsunami in the mid 60's and was never rebuilt.

The lot of record along with the northeastern boundary closest to the shoreline has a 1-bedroom 1-bath cottage with 646 square feet of living area and is approximately 37 feet from the approximate shoreline. Fronting the cottage is another rectangular structure identified as a garage that is approximately 137 feet from the vegetation of the shoreline.

Commission Action:

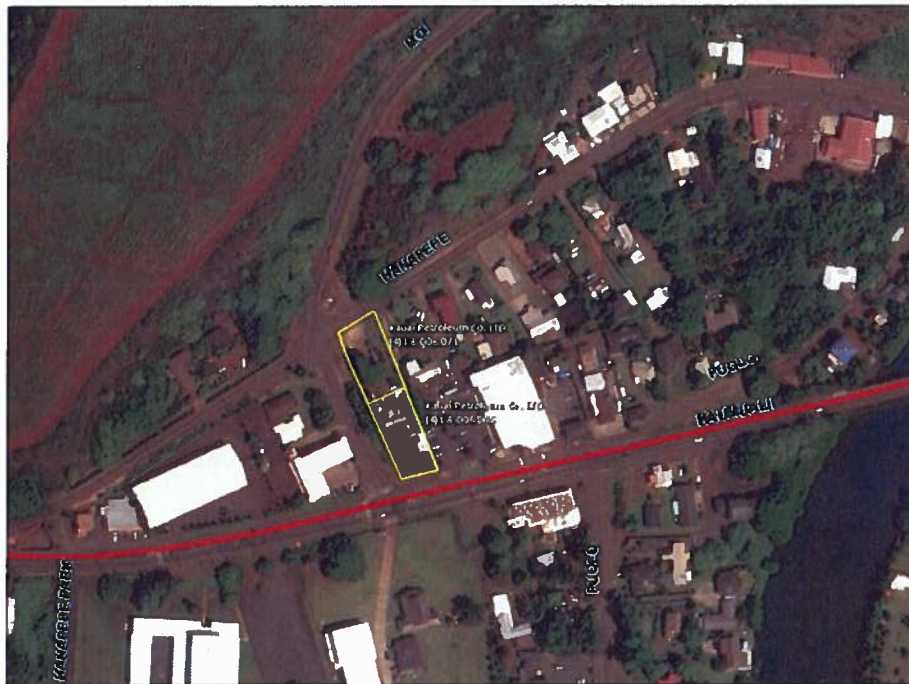
On June 8, 2017, the Commission received the preliminary report of the Planning Department. In addition, the Commission voted to explore whether the acquisition of the property could potentially be supported under the Commission's criteria to support acquisitions where the structure(s) and site be of historic or cultural importance. On February 15, 2018, the Kaua'i Historic Preservation Review Commission (KHPRC) reviewed the property and concluded that the structures retain no architectural historical significance.

The Department had concerns with acquiring the property because it contains an existing dwelling structure. Given the presence of the dwelling, the subject property would qualify

as improved real property and not vacant land. Under Hawaii Revised Statutes 343-5, an Environmental Assessment would be required for the use of County funds to acquire improved real property. Additionally, should acquisition occur, the maintenance of not only the site but the existing structures would present additional costs and potential liability to the County.

On May 31, 2022, the Commission accepted an updated preliminary report. Instead of acquiring the lot, the Commission switched gears to consider acquiring an access easement adjacent to the stream on the eastern border of the subject lot. The Planning Department has engaged in discussions with the property owner to explore the option of creating an easement instead of proceeding with an acquisition. The owners remain open to conveying an easement, provided there is a permanent commitment to maintain the designated easement and “policing” the easement to make sure it does not lead to unintended dangers to the community. Currently, the Planning Department is actively identifying a party for a stewardship agreement to ensure the continuous upkeep of the easement.

2. Hanapēpē Vacant Lots/Kaua’i Petroleum Co., LTD, TMK Nos. (4) 1-8-008:071 and (4) 1-8-008:065 (Waimea District, KONA MOKU)



Brief Description:

TMK No. (4) 1-8-008:065 is a 0.2764 acre lot (“Lot 65”) and TMK (4) 1-8-008:071 is a 0.2867 acre lot (“Lot 71”) that are both in the Hanapēpē ahupua’a, Kona Moku, Kaua’i Island, Hawai’i. Both lots are within the County of Kaua’i’s West Kaua’i Form Based Code.

Lot 71 (the mauka lot) is in the T4 Village Neighborhood Flex (T4VNF) transect, which is

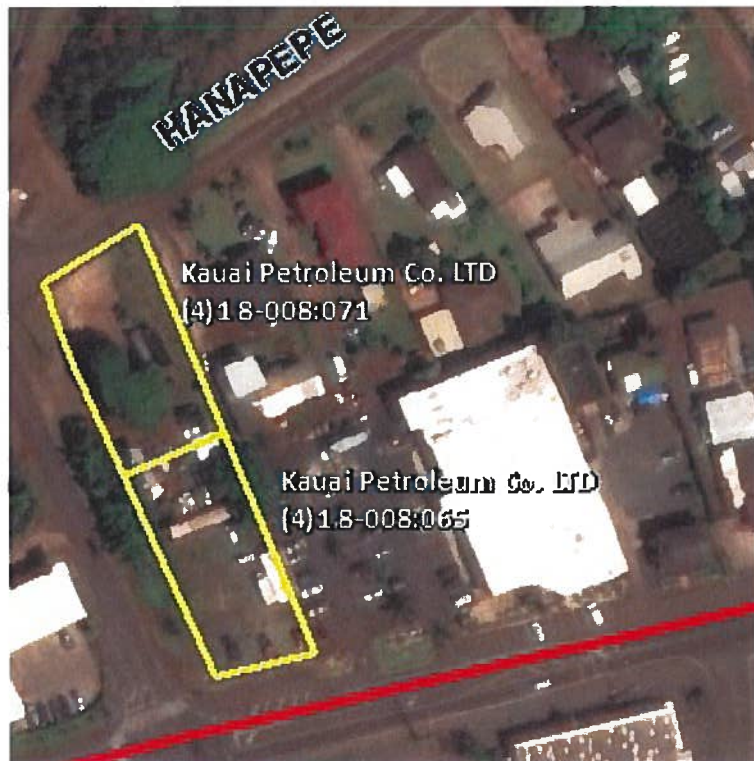
somewhat akin to the County Commercial General (CG) Zoning District. Lot 71 is bordered by Hanapēpē Road, Moi Road, and residential properties currently in residential use to the east and south.

Lot 65 (the makai lot that is adjacent to Kaumuali'i Highway) is in the T4 Village Center Flex (T4VCF) transect, which is also akin to the County Commercial General (CG) Zoning District. Lot 65 is bordered by Kaumuali'i Highway, Moi Road, and residential properties currently in residential use to the north and east.

The Commission considered both Lot 71 and 65 for acquisition for its historical and cultural significance to the Hanapēpē community, Filipino community, and the descendants of those involved in what is known as the historic Hanapēpē Massacre or the Battle of Hanapēpē of the 1920's. On September 9, 1924, at the height of the Filipino sugar plantation strike in Kaua'i, sixteen (16) Filipino plantation workers of Visayan ancestry and four (4) policemen died during this violent confrontation along Hanapēpē Road. The area is thought to be the staging area for the striking Filipino laborers, and an area where the fighting began. Lot 71 is of particular importance for its proximity to the staging and fighting area and its view to the bluff where policemen stationed themselves. If the Commission were asked to prioritize between Lot 71 and 65, Lot 71 would be prioritized for acquisition.

Additional Background

Several other developments have heightened the Open Space Commission's and communities' particular interest in acquiring one or both lots. Several news articles have detailed the Hanapēpē Massacre event, including the Garden Island Newspaper's September 9, 2019 article titled, "Hanapēpē War" and a more recent article on September 27, 2019 titled, "The Hanapēpē Massacre Mystery" that discussed the event. Those articles initiated the research of an Emmy Award winning documentary filmmaker and the Kaua'i Chapter of the Filipino American National Historical Society to produce



a documentary regarding the event. In addition, 2024 will mark the centennial anniversary of Hanapēpē Massacre event. A book detailing the Hanapēpē Massacre and events that led

to that event may be published in the upcoming year. Also, the State of Hawai'i Department of Accounting and General Services has received funding approval from the Hawai'i State Legislature to expend funds for a placard that will acknowledge the existence of the unmarked graves of 14 laborers and one deputy that were buried at the Filipino Cemetery in Hanapēpē.

Commission Action:

During its meeting on January 11, 2018, the Open Space Commission requested that the Planning Department conduct research on the acquisition including initiating contact with the landowner to determine their interest in selling the property. At that time, the Department held a meeting with the landowner and an appraisal was completed. Negotiations for the sale, however, stalled in late 2018.

In 2021-2022, the Commission reinstated its interest to acquire one or both properties. Thus, the Commission and Planning Department procured and completed updated appraisals for both lots, dated June 20, 2023.

Currently, the Department is actively negotiating a possible "friendly" acquisition of both parcels. In the absence of any progress, condemnation may be recommended and sought to acquire at least one of the lots.

**3. Kīlauea Mauka Access, TMK Nos. (4)5-1-002:036 (Tallman/Flores)
(Kīlauea District, Ko'olau MOKU)**

Brief Description:

The lot of record is identified as TMK No. (4)5-1-002:036 and is approximately 10.001 acres in size and is located in Kīlauea, Ko'olau Moku, Kaua'i Island, Hawai'i. The property is located within the County of Kaua'i's Open Zoning District, State Land Use District (SLUD) Agricultural and its General Plan Designation is Agricultural.

The lot of record contains two structures, including a residential dwelling, and is surrounded by SLUD Agricultural and County Agricultural and Open zoned properties. The lot of record is accessible through the mauka end of Waiakalua Street. The lot is adjacent to State of Hawai'i property that is managed by the Department of Land and Natural Resources but is currently being leased by Jurassic Kahili Ranch, LLC.



The Commission wishes to acquire a portion of the subject lot of record for an access easement that ultimately accesses State of Hawai'i lands for hunting and recreational purposes. Preliminary discussions with the State has indicated it would be amenable to allow access to hunting grounds once access is achieved through the subject property.

As an alternative to access through the subject parcel known as TMK No. (4)5-1-002:036, the Commission considered access through the adjacent parcel identified as TMK No. (4)5-1-005:125, which is a part of an adjacent subdivision that is accessible from Wailapa Road and is also owned by the same owner as TMK No. (4)5-1-002:036. Also, the Planning Department presented

alternatives to the Commission to reach State lands from Wailapa Road through three additional properties based on previous subdivision approvals. These easements would be limited to pedestrian or equestrian access.

Commission Action:

On June 9, 2022, the Commission accepted the preliminary report of the Planning Department. On November 22, 2022, the Department conducted a site visit of the subject property to secure the access easement based on previous subdivision approvals. In addition, the Planning Department continues to seek the conveyances and settlement of access easement off of Wailapa Road based on previous subdivision approvals from the three additional property owners. If compliance is achieved, use of the Fund will not be necessary to establish pedestrian access.

4. Kauapea Beach Access, TMK No. (4)5-2-004:065 (Hanalei District, HALELE'A MOKU)



Brief Description:

The Commission was concerned about the lack of public access to Kauapea Beach from the east end. This access is one of many that the Commission had identified from the onset of the Commission's existence. The lack of public access at Kauapea from the east end has been exacerbated over the intervening years by private landowner actions. The safety of the public during winter ocean swells associated with using the existing west shoreline access continues to be one of several concerns about this access. There continues to be high levels of public interest and frustration about lost and unfulfilled promises of public access. The Commission also remains hopeful that the landowners' legal teams evaluate options to address parking and trail location to this access.

Commission Action:

The Commission wishes to resolve access to this area and has continued to ask for updates from the Office of the County Attorney regarding the ongoing litigation to enforce conditions of the subdivision's approval, which required an easement at this property be established and maintained.

C. Declined Proposals

1. Vacant Lot in Wainiha at 5-6910 Kūhiō Highway, TMK (4)5-8-012:002 (3J1S, LLC.) (Hanalei District, HALELE'A MOKU)



Brief Description:

The lot of record is approximately 0.3709 acres in size and is located in Hanalei, Wainiha Ahupua'a, Halelea Moku, Kaua'i Island, Hawai'i. The property is located within the County of Kaua'i's Open Zoning District, State Land Use Urban District and its General Plan Designation is Natural. The lot is bordered to the west of Kūhiō Highway. The property is bordered to the north and south by residential properties that are currently in residential use. The property is bordered to the east by the shoreline.

When the request was initially lodged by a community member, the property was listed for sale on the open market. Between the time that the request was lodged and the soonest Open Space meeting, the Planning Department discovered that the subject lot of record was in escrow and about to close. Also, the Planning Department determined that there are at least three (3) designated beach accesses that are near the subject lot of record.

Commission Action:

During the Commission meeting on November 9, 2023, the Commission received the preliminary report and, in the end, voted against approval. The decision was based on the existence of multiple beach accesses nearby and the consideration that the cost was not proportionate to the public interest served.

2. Vacant Lot in Wainiha at 7322 'Ale'ale'a Road (Dirk P. & Kathleen Lange Living Trust), TMK (4)5-8-09: 049 (Hanalei District, HALELE'A MOKU)



TMK 5-8-009: 049 Lot 10

Wainiha Subdivision II aerial 10/26/21

Brief Description:

The subject lot of record is approximately 0.4006 acres in size and is located in Naue, Hā'ena, Halele'a Moku, Kaua'i Island, Hawai'i. The property is located within the County of Kaua'i's Residential Zoning District, State Land Use Urban District and its General Plan Designation is Residential Community.

The lot of record is bordered to the north by the Wainiha shoreline. The property is bordered to the west and east by residential properties that are currently in residential use. The property is bordered to the south by 'Ale'ale'a Road.

The community member who requested consideration of this acquisition emphasized that this was a "good opportunity for this Commission to buy back the beach." The lot is one of several rare remaining vacant lots located on this portion of the shoreline. In addition, the lot would "make a great Open Space, Natural Resources Preservation addition and because the owner desires to sell the land, it is a great time to acquire." However, Planning Department research has indicated that there are at least three (3) designated beach accesses that are near the subject lot of record. In addition, the subject lot of record is no longer for sale on the open market and the Department has confirmed the owner's unwillingness to sell the property.

Commission Action:

During the Commission meeting on January 12, 2023, the Open Space Commission received the preliminary report and voted against approval. The decision was based on the existence of the three beach accesses nearby and the consideration that the cost was not proportionate to the public interest served especially since the owners are not willing to sell the property to the County.

III. Program Background

A. Progression of Enabling Legislation

The following provisions are all included in the Appendices.

1. 2002 Charter Amendment

On November 5, 2002, Kaua'i's voters passed an amendment to the Kaua'i County Charter that created the Public Access, Open Space, Natural Resources Preservation Fund and established the purposes and parameters for using the Fund. The amendment specified that the Fund would receive a minimum of one-half of one percent (0.5%) of Kaua'i's certified real property taxes each year for purchasing or otherwise acquiring lands or property entitlements in the County of Kaua'i. The Charter Amendment also required 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 that the "County Council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund."

2. Ordinance No. 812

Ordinance No. 812 was signed into law on December 15, 2003, and it further defined the parameters and procedures for administering and spending monies in the Fund. Namely, the Ordinance established a "fund advisory commission" known as the Public Access, Open Space, and Natural Resources Preservation Fund Commission who was instructed 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 was officially formed in September 2004. The Commission is made up of four Mayor-appointed members, four County Council-appointed members, and one member appointed by the eight commissioners. Six of the nine commissioners represent specific geographic areas of Kaua'i (Waimea-Kekaha, Hanapēpē-'Ele'ele, Kōloa-Po'ipū-Kalāheo, Līhu'e-Hanamā'ulu, Kapa'a-Wailua and Anahola-Hā'ena, and three serve "at large."

3. Ordinance No. 925

On April 5, 2012, Ordinance No. 925 was signed into law. The Kaua'i County Council expanded and further clarified the scope of duties of the Commission to align them with the expectations and needs of the people of Kaua'i. The Commission saw this as an opportunity or their "Call to Action." Specifically, Ordinance No. 925 expanded the role and authority of the Commission to engage in the following additional duties:

- Prepare an annual report to the Mayor
- Prepare a biennial report to the Council and Administration

- Advocate and be a resource for public access, open space, and natural resource preservation planning
- Provide feedback to the Planning Department on priority recommendations
- Serve as a forum to receive public input and resolve issues related to the nine conservation purposes for the use of the Fund

In addition, Ordinance No. 925 prescribed additional parameters for the use of the Fund including the following:

- Fund monies may be appropriated to other government entity, non-profit organization, or private owner for entitlements that benefit the public and are protected in perpetuity
- The lands or property entitlements secured with the Fund may be held or owned by the County of Kaua‘i, a government entity, or non-profit organization if the entitlement benefits the public and is protected in perpetuity
- The lands or property entitlements secured with the Fund may be managed by the County of Kaua‘i, a government entity, or non-profit organization if the entitlement benefits the public and is protected in perpetuity

Finally, Ordinance No. 925 added a ninth Fund purpose for “[c]onserving land for open space and scenic values.”

4. Ordinance No. 936 and Ordinance No. 986

Under Charter Section 19.15, “council shall appropriate a minimum of one-half of one percent (0.5%) of the certified real property revenues . . . [to] be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes.” On October 10, 2013, Ordinance No. 936 established a one and one-half of one percent (1.5%) set-aside of certified real property revenues for the Fund. However, on May 7, 2015, the set-aside was restored to one-half of one percent (0.5%) of certified real property revenues for the Fund where it remains today.

5. Chapter V., Report Process, Rules of Practice and Procedure of the County of Kaua‘i Public Access, Open Space and Natural Resources Preservation Fund Commission (Open Space Rules)

Between 2005 through 2015, the Commission’s recommendations were originally formulated and submitted annually to the County Council and Mayor’s Office. These recommendations resulted from:

- Commission Meetings
- Input and discussions with members of the public
- Analysis of data collected from public surveys and public meetings
- Study of a wide range of topics relevant to open space preservation and public access protection; and

- Efforts and cooperation of Commissioners, program staff, and other Administration officials

On April 4, 2016, the Commission's rules were amended when Chapter V, Report Process of its Rules of Practice and Procedures was adopted. Chapter V added a report-processing component to its recommendation and selection process. Under Chapter V, the Planning Department will draft a preliminary report for any request or recommendation that is received by the Commission. The report will provide a preliminary analysis based on criteria for acquisition and the existence of any prohibitive factors including extremely dangerous attributes that poses serious risks of injury or death. After consideration of this preliminary report, the Commission may request that the Department provide an additional research and analysis, and eventually a final evaluation and recommendation, which the Commission may consider in deciding on whether to ultimately recommend or not recommend an acquisition. Thus, Chapter V clarified that the Commission has two means to issue recommendations to the County Council based on an evaluation of criteria for acquisition and the existence of any prohibitive factors: (1) through its dossier recommendation process; and (2) through its Biennial Report.

Chapter V allowed greater flexibility in the public input process by requiring the Planning Department to review and analyze proposals year-round by applying the criteria for acquisition.

6. 2018 Charter Amendment and Ordinance 1048

After the adoption of Chapter V of the Commission Rules, in 2018, a majority of votes cast in the General Election created Article XIX, Section 19.15(C) of the Charter of the County of Kaua'i and Ordinance 1048, which amended the Fund to include the funding of improvements associated with acquisitions and coastal accesses.

Specifically, Section 19.15C.(1) of the Charter now specifies that:

The monies in this [Public access, open space, natural resources preservation fund] shall be utilized for purchasing or otherwise acquiring lands or property entitlements and any corresponding improvement of those lands or property entitlements for land conservation purposes . . .

Also, Charter Section 19.15C.(3) now states that:

The money in this fund may also be used to improve public pedestrian access to coastal areas.

In addition, Kaua'i County Code (KCC) §6-14.1 was subsequently amended to specify the following:

. . . The monies in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements and any corresponding

improvement of those lands or property entitlements for land conservation purposes . . .

(c) The moneys in this fund may also be used to improve public pedestrian access to coastal areas.

Currently, the Commission has begun discussing possible further procedures, priorities, and possible rules for analyzing and recommended the use of the Fund for improvements associated with acquisitions or coastal accesses. In addition, the NOAA Coastal Zone Management (CZM) program funded project to update a Kaua'i Beach Access list and facilitate the creation of a geodatabase may lead to future projects for coastal access improvements in the future. Any recommendations for improvements using the Fund will be presented to the County Council in subsequent biennial reports or by other means.

B. Commissioner Positions

Of the commission's 9 available positions, 7 positions are currently filled with the following appointee vacancies:

- Hanapēpē-'Ele'ele (Council appointed)
- At-Large (Mayor appointed)

IV. Public Input Process

Public input was welcomed throughout the 2022 through 2023 period and was essential to the Commission's deliberations and recommendations. All year long, the public was invited to submit proposals or inquiries to the Commission, Planning Department, or through the County's website. In addition to this open line of communication afforded to the public, the Commission met once every other month on the 2nd Thursday of the month at duly noticed public meetings in publicly-accessible meeting rooms in the County's Civic Center Complex in Līhu'e. The public was allowed to participate during Commission meetings with each agenda item and during the announcements segment.

The newly initiated Open Space Planner reorganized the Commission's website page (located at: <https://www.kauai.gov/Government/Boards-and-Commissions/Public-Access-Open-Space-Commission/Open-Space-Survey>) and streamlined the process for the public to submit requests and proposals. Individuals can use their phone or computer to provide information about a location or access that they would like to see preserved or acquired. In addition, the interface allows requesters to provide background information on the importance of their requests based on the policies, objectives, and rules of Charter Section 19.15, Kaua'i County Code Chapter 6, Article 14, and Open Space Rules.

V. Commission's Vision & Goals

A. Supporting the 2018 General Plan Policies

1. Heritage Resources

Under Sector VII, entitled, "Heritage Resources," the 2018 General Plan emphasized the importance of protecting Kaua'i's archaeological, cultural, historic, and scenic resources. Preservation of Kaua'i's heritage resources was recognized as paramount to "symbolize Kaua'i's history, showcase Kaua'i's diversity, and perpetuate a unique sense of place." Several objectives and action recommendations were enumerated in this sector to support the preservation of Kaua'i's heritage resources, including the objectives to:

- Preserve and enhance historic buildings, structures, and places
- Recognize and protect the resources and places important to Kaua'i's history and people like *wahi pana*, cultural sites, and resources
- Preserve important landmarks and protect scenic resources

The Commission's purposes, priorities, and past actions have supported these objectives. Specifically, the Commission's recommendations have prioritized projects that preserve scenic resources and culturally important *wahi pana*. In addition, the Commission actively seeks input and partnerships with community groups and other government entities to enhance its ability to preserve cultural sites and scenic resources. For instance, the Commission supported the protection of cultural sites and resources, such as the recently acquired Halulu Fishpond at Hanalei, with the additional protective measure of obtaining a conservation easement that will protect the property from development in perpetuity. Also, the Commission remains supportive of the acquisition of the property associated with the culturally important Hanapēpē Massacre event. The Commission will continue to implement the policies and objectives prioritized in Sector VII of the 2018 General Plan and all its recommendations.

2. Shared Spaces

Under Sector V, "Shared Spaces," the General Plan prioritized fostering the community's connection to place by enhancing the public realm, shared spaces, or "civic spaces" for everyday community activities. The Commission's purposes, priorities, and past actions have supported these objectives. Particularly, nearly all the proposals the Commission considers have the potential to add to the public realm including parks and recreational facilities, as well as improve access to Kaua'i's shared use paths, trails, and beaches. Another example of an endeavor that would create a shared space and advance the community's connection to place is the Commission's priority to acquire property connected to the Battle of Hanapēpē or Hanapēpē Massacre of 1924. Acquisition of that property will create a space for the community to gather to remember that historic event in the area of where the battle began.

The Commission will continue to implement the “Shared Spaces” General Plan policies in every recommendation it considers.

B. Tackling Challenges

1. Open Space Rules

The Commission has come a long way from its inception and first report in 2005 to the present. However, the Commission faces many challenges to successfully balance the competing needs for the Fund and accomplish acquisitions that are consistent with its priority recommendations.

To date, the Commission has succeeded in acquiring or assisted in acquiring three recommendations for the Fund and improved one coastal access. The three acquisitions were: (1) the Black Pot Beach Park Expansion – aka the Hodge Property (Hanalei District, HALELE’A MOKU) in 2009 (prior to this reporting period); (2) the KVH Waimea Beachfront LLC (Waimea District, KONA MOKU) in 2018; and (3) Halulu Fishpond for Waipā Foundation in 2023 (Hanalei District, HALELE’A MOKU). The one coastal access improvement was the Kaumumene Coastal Access that was significantly repaired and improved using the Fund. The Sheehan Property adjacent to Black Pot Beach Pot and the Hanalei River (Hanalei District, HALELE’A MOKU) was also acquired using the Fund in 2018 without the Commission’s input.

To achieve greater success, the Commission will continue to implement the procedures instituted under Chapter V of its amended Rules of Practices and Procedures. The criteria for acquisition have also allowed the Commission to prioritize its recommendations among the many proposals it receives from the public throughout the year. Also, the procedures have provided clearer and more streamlined communication between the Planning Department, County Departments, County Council, and Mayor’s Office. Thus, the procedures have eased some of the delays in getting speedy recommendations to the County Council, especially when it must timely react to key opportunities that appear on the open market.

Going forward, the Commission will further shape the process for issuing recommendations to fund improvements. The Commission has already accomplished the coastal improvements at Kaumumene Coastal Access using the Fund. The Commission will consider formalizing procedures in an additional amendment to its Rules with that first “learning experience” under its belt.

2. Facilitating Long-Term Stewardship

As the Commission analyzes proposals for acquisitions, a key consideration is whether there is a long-term plan for maintenance. In most instances, the County of Kaua'i Parks Department is not able to take on the maintenance for additional properties and lands since they are already stretched thin to manage the County's current facilities. In the Commission's recent history, possible stewards have ultimately declined to formalize a stewardship relationship because they are not able to meet the County's minimum stewardship requirements, despite their best intentions to take on that role. For instance, possible stewards are often non-profit entities, community groups, or individual community members who may not have the resources to properly weed whack and mow the properties and ensure that a minimum of four (or more) maintenance events take place each year. Thus, planning for the long-term maintenance of any given acquisition and setting up stewards to take on that role remains an ongoing challenge.

As mentioned in the Executive Summary, the Commission has proposed a draft Charter Amendment, which is currently awaiting review by the Kaua'i Charter Commission. The proposal aims to attract and at least initially support stewards for properties or improvements made possible with the Fund. In particular, the proposal seeks to distribute a limited amount of money each year to stewards that maintain properties acquired using the Fund or improvements constructed using the Fund. This proposal may begin to bridge the gap by providing a start for stewards to take on maintenance of these sites.

3. Revisioning Public Outreach

The Commission has begun to discuss initiatives that will reinvigorate its interaction with the public and attract new participation with the Commission. In the past, Commission members have attended various community meetings and various fairs throughout the island to conduct outreach about the Commission's mission and explain how to submit proposals for its consideration. In addition to reinstating that effort, the Commission wishes to create a social media account for the Open Space Commission to educate the public, including young social media consumers, on the Commission's missions, accomplishments, and methods for the public to get involved. The Commission aims to roll this out within the next year.

VI. Increase the Public Access, Open Space, and Natural Resources Preservation Fund

The Commission strongly supports increasing the current minimum one-half of one percent (0.5) of the annual certified real property taxes to one point five percent (1.5%). The resulting addition of annual funds received would allow the Commission to continue its mission and goals for Kaua'i's community.

APPENDIX A

2002 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

Līhu'e, Kaua'i, Hawai'i

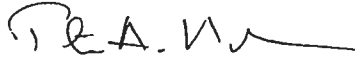
D:\My Documents\BILLS\2078 d1.doc\JFT:ao

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:

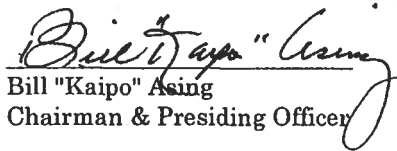
FOR ADOPTION: Furfaro, Munechika, Rapozo, Tokioka, Yukimura, Asing	TOTAL - 6,
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: Kaneshiro	TOTAL - 1.

Lihue, Hawaii
December 9, 2003



Peter A. Nakamura
County Clerk, County of Kauai

ATTEST:



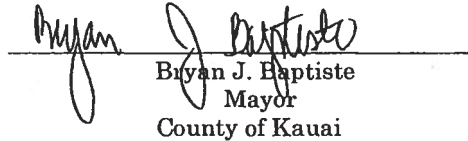
Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 9, 2003

Approved this 15th day of

December, 2003.



Bryan J. Baptiste
Mayor
County of Kauai

APPENDIX C

ORDINANCE 925

A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14,
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE PUBLIC
ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE
OF HAWAII:

SECTION 1. Findings and purpose. The Council of the County of
Kauai finds that to better manage the Public Access and Open Space on Kauai, the
Council should expand the scope of duties of this Commission.

The Council finds that it needs to improve the Commission's operational
efficiencies and bring the scope of the Commission's duties in alignment with the
expectations and needs of the people of the County of Kauai.

SECTION 2. Chapter 6, Article 14 of the Kauai County Code 1987, as
amended, is hereby amended to read as follows:

"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 Kauai 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.
- (9) Conserving land for open space and scenic values.

(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] biennial 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 nine (9) appointees.

(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)] seated members. If there is no agreement on the selection of the one (1) additional member within [forty-five (45)] seventy-five (75) days of the [appointment of the eight member] vacancy, [the one (1) additional member shall be appointed by] the power to fill that vacancy shall fall to 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.]

(4) 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 a [annual] biennial list of priority projects to be considered for funding; and

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

(C) Prepare an annual report for the Mayor and Council's review. This report should include, but not be limited to, a list of:

(i) Accomplishments;

(ii) Challenges;

(iii) Future goals and objectives; and

(iv) Recommendations.

(6) The Commission is also authorized to:

(A) Advocate and be a resource for public access, open space, and natural resources preservation planning for the County of Kauai;

(B) Provide feedback on Department's implementation of priority recommendations;

(C) Serve as a forum to receive public input on issues relating to the nine land conservation purposes outlined in Section 6-14.1 (a) (1) through (9);

(D) Assist with the resolution of issues relating to the nine land conservation purposes outlined in Section 6-14.1 (a) (1) through (9); and

(E) Biennially report the balance and review the sufficiency of the Public Access, Open Space and Natural Resources Preservation Fund to the Council and the Administration.

(b) The Commission shall establish [annual] biennial 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] biennial 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.

(c) Funds may be appropriated to another government entity, private owner, or nonprofit organization and used to acquire an interest in property with the requirement that lands or entitlements benefit the public and are protected in perpetuity.

(d) Lands or other property entitlements to be acquired may be owned or held by the County of Kaua'i, other government entity, or nonprofit organization with the requirement that lands or entitlements benefit the public and are protected in perpetuity.

(e) Lands or other property entitlements to be acquired may be managed by the County of Kaua'i, other government entity, private owner, or nonprofit organization with the requirement that lands or entitlements benefit the public and are protected in perpetuity."

SECTION 3. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code, 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This ordinance shall take effect upon approval.

INTRODUCED BY:

/s/ NADINE K. NAKAMURA
(By Request)

DATE OF INTRODUCTION:

December 1, 2011

Līhu'e, Kaua'i, Hawai'i

(V:\CS OFFICE FILES\BILLS\2010-2012 term\Public Access Open Space Natural Resources Preservation Fund Bill 2423, D1(SS)_ds.doc)

APPENDIX D

Ordinance 936

A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE PUBLIC
ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND

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

SECTION 1. Findings and purpose. The Council of the County of
Kaua'i finds that areas of Public Access and Open Space are of immense importance
to the community of Kaua'i.

The Council finds that, in order to provide the community of Kaua'i with
adequate areas of Public Access and Open Space, the annual allocation made to the
Public Access, Open Space, and Natural Resources Preservation Fund should be
increased from a minimum of one-half of one percent (0.5%) to one and one-half of
one percent (1.5%) of the County's certified real property tax revenue.

SECTION 2. Chapter 6, Article 14 of the Kaua'i County Code 1987, as
amended, is hereby amended to read as follows:

"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%)]
one and one-half of one percent (1.5%) 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 public access to, and enjoyment of, public land and open space;
- (8) Acquiring public access to public land, and open space.
- (9) Conserving land for open space and scenic values.

(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 biennial 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 nine (9) appointees.

(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 seated members. If there is no agreement on the selection of the one (1) additional member within seventy-five (75) days of the vacancy, the power to fill that vacancy shall fall to the Mayor and confirmed by the Council.

(4) 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 a biennial list of priority projects to be considered for funding; and

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

(C) Prepare an annual report for the Mayor's and Council's review. This report should include, but not be limited to, a list of:

- (i) Accomplishments;
- (ii) Challenges;
- (iii) Future goals and objectives; and
- (iv) Recommendations.

(6) The Commission is also authorized to:

(A) Advocate and be a resource for public access, open space, and natural resources preservation planning for the County of Kaua'i;

(B) Provide feedback on Department's implementation of priority recommendations;

(C) Serve as a forum to receive public input on issues relating to the nine land conservation purposes outlined in Section 6-14.1 (a) (1) through (9);

(D) Assist with the resolution of issues relating to the nine land conservation purposes outlined in Section 6-14.1 (a) (1) through (9); and

(E) Biennially report the balance and review the sufficiency of the Public Access, Open Space and Natural Resources Preservation Fund to the Council and the Administration.

(b) The Commission shall establish biennial 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 biennial 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.

(c) Funds may be appropriated to another government entity, private owner, or nonprofit organization and used to acquire an interest in property with the requirement that lands or entitlements benefit the public and are protected in perpetuity.

(d) Lands or other property entitlements to be acquired may be owned or held by the County of Kaua'i, other government entity, or nonprofit organization with the requirement that lands or entitlements benefit the public and are protected in perpetuity.

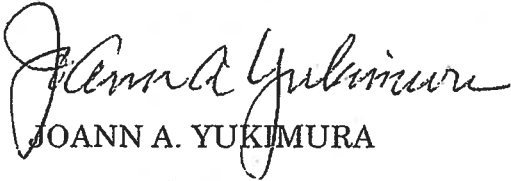
(e) Lands or other property entitlements to be acquired may be managed by the County of Kaua'i, other government entity, private owner, or nonprofit organization with the requirement that lands or entitlements benefit the public and are protected in perpetuity."

SECTION 3. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code, 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This ordinance shall take effect on July 1, 2013.

INTRODUCED BY:


JOANN A. YUKIMURA


TIM BYNUM

DATE OF INTRODUCTION:

October 10, 2012

Līhu'e, Kaua'i, Hawai'i

V\Bills\Open Space preservation fund/2010-2012 term\JY-TB/GG_lc

APPENDIX E

Ordinance 986

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14,
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE
PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES
PRESERVATION FUND**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and purpose. The Council of the County of Kauai finds that areas of Public Access and Open Space are of immense importance to the community of Kauai County. The Council of Kauai also finds that fiscal responsibility and appropriate budget practices are essential for an efficient government.

The Council finds that, in order to balance its duty to provide the community of Kauai County with adequate areas of Public Access and Open Space and to practice fiscally responsible management, the annual allocation made to the Public Access, Open Space, Natural Resources Preservation Fund should be set at a minimum of one-half of one percent (0.5%) of the County's certified real property tax revenue.

SECTION 2. Chapter 6, Article 14 of the Kauai County Code 1987, as amended is hereby amended by amending its title to read as follows:

"Article 14. Public Access, Open Space, [and] Natural Resources Preservation Fund"

SECTION 3. Section 6-14.1 of the Kauai County Code 1987, as amended is hereby amended by amending subsection (a) to read as follows:

"(a) In adopting each fiscal year's budget and capital program, the Council shall appropriate a minimum of [one and one-half percent (1.5%)] 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 Kauai 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 public access to, and enjoyment of, public land, and open space;

(8) Acquiring public access to public land, and open space[.];

(9) Conserving land for open space and scenic values.”

SECTION 4. Section 6-14.2 of the Kaua‘i County Code 1987, as amended is hereby amended by amending subsection (a)(6) to read as follows:

“(6) The Commission is also authorized to:

(A) Advocate and be a resource for public access, open space, and natural resources preservation planning for the County of Kaua‘i;

(B) Provide feedback on the Department’s implementation of priority recommendations;

(C) Serve as a forum to receive public input on issues relating to the nine (9) land conservation purposes outlined in Sec. 6-14.1(a)(1) through (9);

(D) Assist with the resolution of issues relating to the nine (9) land conservation purposes outlined in Sec. 6-14.1(a)(1) through (9); and

(E) Biennially report the balance and review the sufficiency of the public access, open space, [and] natural resources preservation fund to the Council and the Administration.”

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance 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 6. Material to be deleted is bracketed. New material is underscored. When revising, compiling, or printing this Ordinance, the brackets, bracketed material, and underscoring need not be included.

SECTION 7. This Ordinance shall take effect upon its approval.

Introduced by:



MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

March 25, 2015

Līhu'e, Kaua'i, Hawai'i

V:\BILLS\2014-2016 TERM\Bill Amend Open Space Fund 2015 JA:aa

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2585, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on March 25, 2015, by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL - 7*,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Hooser and Councilmember Yukimura were noted as voting silent, but shall be recorded as an affirmative for the motion.

Lihu'e, Hawai'i
March 27, 2015



Jade K. Fountain-Tanigawa
Deputy County Clerk, County of Kaua'i

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2585, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on May 6, 2015, by the following vote:

FOR ADOPTION:	Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL - 4,
AGAINST ADOPTION:	Chock, Hooser, Yukimura	TOTAL - 3,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i
May 7, 2015



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

ATTEST:



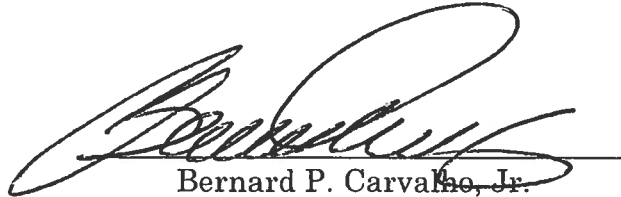
Mel Rapozo
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

May 7, 2015

Approved this 13th day of

May _____, 2015.



Bernard P. Carvalho, Jr.
Mayor
County of Kaua'i

APPENDIX F

Ordinance 1048 and 2018 Charter Amendment

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14,
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE
PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES
PRESERVATION FUND**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and purpose. It is the Public Access, Open Space, Natural Resources Preservation Fund Commission's duty to provide biennial recommendations to the County Council regarding lands or entitlements proposed for acquisition. Currently the Public Access, Open Space, Natural Resources Preservation Fund may only be used for the acquisition of land or property entitlements for conservation purposes. This amendment would expand the permissible uses of the fund to include paying for improvements to: (1) lands or entitlements acquired by the fund that are corresponding to the acquisition and completed at the time of or shortly after acquisition; (2) newly-acquired public pedestrian accesses to coastal areas, whether or not acquired using fund moneys; and (3) existing public pedestrian accesses to coastal areas, whether or not originally acquired using fund moneys.

Because the acquisition of land or public easements often requires expenditures to improve the acquired land or easement, review of potential acquisition sites have been discontinued because no additional funding could be found for the necessary and accompanying improvements.

On November 6, 2018, by a majority of votes cast in the General Election, Article XIX, Section 19.15(C) of the Charter of the County of Kauai was amended to permit the Public Access, Open Space, Natural Preservation Fund to include improvements.

SECTION 2. Section 6-14.1 of the Kauai County Code 1987, as amended is hereby amended to read as follows:

"(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, natural resources preservation fund ("fund"). The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements and any corresponding improvement of those lands or property entitlements for land conservation purposes in the County of Kauai 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 public access to, and enjoyment of, public land, and open space;

(8) Acquiring public access to public land, and open space;

(9) Conserving land for open space and scenic values.

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

(c) The moneys in this fund may also be used to improve public pedestrian access to coastal areas.

[(c)] (d) 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.”

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance 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 4. Material to be deleted is bracketed. New material is underscored. When revising, compiling, or printing this Ordinance, the brackets, bracketed material, and underscoring need not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by: /s/ MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

April 24, 2019

Lihu'e, Kaua'i, Hawai'i
V:\BILLS\2018-2020 TERM\Bill 2747, Draft 1 JA_ks.docx

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2747, Draft 1 which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on June 13, 2019 by the following vote:

FOR ADOPTION:	Brun, Cowden, Evslin, Kagawa, Kaneshiro	TOTAL - 5,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Chock, Kualii	TOTAL - 2,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i
June 13, 2019


Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

ATTEST:



Arryl Kaneshiro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

June 13, 2019

Approved this 14 day of

June, 2019.



Derek S.K. Kawakami,
Mayor
County of Kaua'i

JADE K. FOUNTAIN-TANIGAWA
County Clerk

Telephone: (808) 241-4800
TTY: (808) 241-5116



SCOTT K. SATO
Deputy County Clerk

Facsimile: (808) 241-6207
E-mail: elections@kauai.gov

**ELECTIONS DIVISION
OFFICE OF THE COUNTY CLERK
4386 RICE STREET, SUITE 101
LIHU'E, KAUA'I, HAWAII 96766**

November 27, 2018

The Honorable Scott T. Nago
Chief Election Officer
State of Hawai'i, Office of Elections
802 Lehua Avenue
Pearl City, Hawai'i 96782

Dear Mr. Nago:

**RE: CERTIFICATE OF RESULTS, 2018 CHARTER AMENDMENTS,
COUNTY OF KAUA'I**

Enclosed is the Certificate of Results for the 2018 Charter Amendments that were duly adopted by a majority of votes cast in the General Election held on Tuesday, November 6, 2018, in the County of Kaua'i.

Should you have any questions, please feel free to contact the Office of the County Clerk, Elections Division at (808) 241-4800. Thank you for your attention to this matter.

Sincerely,

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kaua'i

SS:dmc

Enclosure

cc: Office of the County Clerk, Elections Division
County of Kaua'i, Office of Boards and Commissions

**CERTIFICATE OF RESULTS
2018 CHARTER AMENDMENTS
COUNTY OF KAUA'I**

I, Jade K. Fountain-Tanigawa, County Clerk of the County of Kaua'i, do hereby certify that the following Charter Amendments were duly adopted by a majority of votes cast on the questions at the General Election held on Tuesday, November 6, 2018, in the County of Kaua'i:

RELATING TO THE PUBLIC DEFENDER

"Shall the Charter be amended by repealing Article IX, Public Defender, as this function is already provided by the State?"

Article IX of The Charter of the County of Kaua'i is amended to read as follows:

Note: Charter material to be repealed is bracketed and stricken.

YES 10,002
NO 9,875

**~~{ARTICLE IX
PUBLIC DEFENDER}~~**

~~{Section 9.01. Counsel for Defense. Any person accused of any felony or misdemeanor under the laws of the state or the county shall be entitled to representation or assistance by counsel. The council may by ordinance establish a system to provide counsel for the defense of any person accused of any crime who is financially unable to afford counsel.}~~

RELATING TO THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND

"Shall Article XIX, Financial Procedures, Section 19.15(C) be amended to permit the Public Access, Open Space, Natural Resources Preservation Fund to include improvements?"

Article XIX, Section 19.15(C) of The Charter of the County of Kaua'i is amended to read as follows:

Note: Charter material to be repealed is bracketed and stricken. New charter material is underscored.

YES 14,261
NO 6,883

**ARTICLE XIX
FINANCIAL PROCEDURES**

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 and any corresponding improvement of those lands or property entitlements for land conservation purposes in the County of Kaua'i 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 of the 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) The moneys in this fund may also be used to improve public pedestrian access to coastal areas.

~~[(3)]~~ (4) At any given time, no more than 5 percent of this fund shall be used for administrative expenses.

~~[(4)]~~ (5) 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 money in this fund shall not be used for any purpose except those listed in this section.

~~[(5)]~~ (6) The council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund. Such ordinances shall include the following provisions:

(a) Utilizing 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 paragraph C of section 19.15 of the charter. (Amended 1992, 2002)

In witness whereof, I have hereunto set my hand and caused the Seal of the County of Kaua'i, State of Hawai'i, to be affixed on this 27th day of November 2018.



JADE R. FOUNTAIN-TANIGAWA
County Clerk, County of Kaua'i

APPENDIX G

Rules of Practice and Procedure of the County of Kaua'i Public Access, Open Space, and Natural Resources Preservation Fund Commission, as Amended

RULES OF PRACTICE AND PROCEDURE OF

THE COUNTY OF KAUAI

**PUBLIC ACCESS, OPEN SPACE, AND NATURAL
RESOURCES PRESERVATION FUND COMMISSION**



ADOPTED AUGUST 10, 2005

TABLE OF CONTENTS

TITLE I

RULES OF PRACTICE AND PROCEDURE OF THE COUNTY OF KAUAI PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND COMMISSION

CHAPTER I. GENERAL PROVISIONS

- 1-1-1 Purpose
- 1-1-2 Definitions

CHAPTER II ORGANIZATION AND PARLIMENTARY RULES

- 1-2-1 Organization
- 1-2-2 Meetings
- 1-2-3 Adjournment
- 1-2-4 Quorum and Number of Votes Necessary for a Decision
- 1-2-5 Continuation of Decision Making
- 1-2-6 Effective Date of Commission Decision
- 1-2-7 Minutes and Transcripts
- 1-2-8 Officers and Their Duties
- 1-2-9 Committees
- 1-2-10 Committee Organization
- 1-2-11 Standing Committees
- 1-2-12 Select Committees
- 1-2-13 Committee Reports
- 1-2-14 Voting
- 1-2-15 Standards of Conduct
- 1-2-16 Petitions and Submittal to the Commission
- 1-2-17 Motions and Amendments
- 1-2-18 Motions and Priorities
- 1-2-19 Reconsideration
- 1-2-20 Order and Decorum
- 1-2-21 Order of Business
- 1-2-22 Question of Order
- 1-2-23 Computation of Time
- 1-2-24 Attendance
- 1-2-25 News Reporters
- 1-2-26 New Rules and Amendments
- 1-2-27 When Rules Are Silent
- 1-2-28 Severability

CHAPTER III PUBLIC RECORDS, INSPECTION AND AVAILABILITY

- 1-3-1 Inspection of Public Records

- 1-3-2 Where Available
- 1-3-3 Copies of Public Records
- 1-3-4 Denial of Inspection

CHAPTER IV. RULE ADOPTION, AMENDMENT, OR REPEAL PROCEDURES

- 1-4-1 Initiation of Rule-Making Proceedings
- 1-4-2 Form and Contents
- 1-4-3 Action on Petition
- 1-4-4 Notice of Public Hearing to Discuss Rule Adoption, Amendment, or Repeal
- 1-4-5 Commission Action
- 1-4-6 Effective Date
- 1-4-7 Emergency Rule Making

**[PROPOSED] RULES OF PRACTICE AND PROCEDURE
OF THE KAUAI COUNTY PUBLIC ACCESS, OPEN SPACE AND NATURAL
RESOURCES PRESERVATION FUND COMMISSION**

Chapter I. General Provisions

1-1-1 Purpose. The intent and purpose of the Rules of Practice and Procedure of the Kauai County Public Access, Open Space, and Natural Resources Preservation Fund Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open, productive, and orderly manner.

1-1-2 Definitions. As used in these Rules, except as otherwise required by context:

- (1) "Agency" means the Planning Department of the County of Kauai or its authorized representative.
- (2) "Commission," "Chairperson" and the "Commissioner" means the Public Access, Open Space and Natural Resources Preservation Fund Commission of the County of Kauai, State of Hawaii, its Chairperson, and a member thereof, respectively.
- (3) "Director" means the Planning Director of the County of Kauai.
- (4) "Ex parte communication" means private communications or arguments with members of the Commission or its hearing officer as to the merits of a proceeding with a view towards influencing the outcome of a proceeding.
- (5) "HRS" means Hawaii Revised Statutes.
- (6) "Meetings" means the convening of the Commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Commission has advisory power.
- (7) "Person" means when appropriate to the context, not only individuals, but corporations, firms, associations, societies, and federal, state and county departments or agencies.
- (8) "Presiding Officer" means and shall include any member of the Commission or a hearing officer duly designated as such. Unless otherwise designated, the Chairperson shall be the presiding officer.
- (9) "Proceeding" means any matter that is brought before the Commission in which it has advisory authority.

- (10) **"Public Record"** means the same as defined in Chapter 92, HRS, and shall include maps, rules and regulations, written statements of policy or interpretation formulated, adopted or used by the Commission in its functions, all decisions, orders, minutes of the Commission meetings and records of any docket on file with the Commission but shall not include records which invades the right of privacy of an individual.
- (11) **"Rules"** means the Rules of Practice and Procedure before the Commission.
-

Chapter II. Organization & Parliamentary Rules

1-2-1 Organization. At the regular September meeting of each year, the Commission shall elect a Chairperson and Vice-Chairperson from among its members. They shall serve for a term of one year or until their successors are duly elected. No member shall succeed himself or herself as chairperson. In the event the Commission is not able to elect a regular Chairperson or Vice-Chairperson from among its members at its first September meeting, the incumbent chair may serve on a hold-over basis for a term not to exceed ninety (90) days.

1-2-2 Meetings.

- (a) Regular meetings of the Commission shall be held every first Wednesday or on such day as the Commission may designate. The place of meeting shall be the Lihue Civic Center, or such other place as may be designated by the Commission.
- (b) Subject to the conditions prescribed by these rules, special meetings may be called at any time by the chairperson, the director, or a majority of the Commission, who shall state the subject thereof, and the acts and business of the Commission at such special meeting shall be confined to such matters.
- (c) Each member shall be given oral or written notice at least five (5) working days prior to a special meeting, unless waived by such member.
- (d) The Commission shall prepare and post an agenda for all meetings of the Commission and its committees identifying the date, time, place, and subjects to be considered in compliance with the provisions of Chapter 91 and 92, HRS.

1-2-3 Adjournment. Meetings may be adjourned at any time by vote, and unless otherwise specified in the motion, every adjournment shall be deemed to be the next meeting of the Commission.

1-2-4 Quorum and Number of Votes Necessary for a Decision. Unless otherwise provided by law, a majority of all the members to which the Commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the Commission is entitled five (5) shall be necessary to make a Commission decision valid, failing which there shall have been no valid action taken.

1-2-5 Continuation of Decision Making. Any matter which fails to be validated by a majority concurrence of the Commission may be continued to any subsequent regular meeting.

1-2-6 Effective Date of Commission Decision. Unless a specific effective date is set forth, the effective date of a decision rendered by the Commission shall be the date of the meeting at which such valid decision was made.

1-2-7 Minutes and Transcripts.

- (a) **Meetings.** In accordance to HRS 92-9, the Commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members.
- (b) **Copies of Recordings.** In cases where copies of prerecorded tapes are requested, a fee of \$5.00 per hour (rounded off to the nearest half hour) of recording time shall be assessed in addition to the costs of the tapes used (rounded off to the nearest \$.50). Charges may be waived or modified when the requesting person provides the recording equipment, tapes, and performs the recording subject to conditions and supervision by the Planning Department.

1-2-8 Officers and Their Duties.

- (a) **Presiding Officer.** The Chairperson shall be the presiding officer of the Commission and the Vice-Chairperson shall be the presiding officer in the absence of the Chairperson.
The presiding officer shall:
 - (1) Open all meeting of the Commission at the appointed hour by taking the chair and calling the meeting to order;
 - (2) Call for the approval of the minutes of any preceding meetings when a quorum is present;
 - (3) Maintain order and proper decorum;
 - (4) Announce the business before the Commission in the order prescribed by these rules;
 - (5) Review all matters properly brought before the Commission, call for votes upon the same and announce the results;
 - (6) Appoint all committees unless otherwise ordered by the Commission;

- (7) Authenticate by signature all acts of the Commission as may be required by law, unless delegated to the Planning Director;
 - (8) Do and perform such other duties as may be required by law, or such as may be properly appertain to such office;
 - (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the Commission;
 - (10) Take into consideration such matters as shall not be within the scope of the duties or powers of any standing committee of the Commission; or as may be referred by the Commission, and to report thereon, together with such recommendations relative thereto as deemed advisable; and
 - (11) Represent the Commission in all functions, not otherwise directed by the Commission as the titular head of the Commission.
- (b) Clerk. The Planning Director shall serve as Clerk of the Commission and shall be directly responsible, or through staff members, to provide the following services;
- (1) To receive, submit, and coordinate all matters properly brought before the Commission in consultation with the chairperson;
 - (2) To provide the agenda support materials for all meetings;
 - (3) To read bills, resolutions, and other matters to the Commission, if so required;
 - (4) To forward at once to the proper parties all communications and other matters, either directly or through a committee, as the case may be;
 - (5) To deliver immediately to the chairperson of the appropriate committee all petitions, resolutions, bills or other matters as may be duly referred to such committee;
 - (6) To serve in all matters as ex-officio clerk of the Commission and to do and perform all clerical duties and services pertaining to such position as the Commission shall from time to time direct, and such as shall by law or the rules, or rules hereafter

adopted, be assigned or such as properly pertain to such position;

(7) To have charge of all records of the Commission and be responsible for the same.

1-2-9 Committees. There shall be two kinds of committee:

1. Standing Committees, which shall not exceed five (5) members each.
2. Select Committees, which shall not exceed five (5) members each.

1-2-10 Committee Organization.

- (a) All committees of the Commission, contemplated under these rules, shall be appointed by the Chairperson subject to confirmation by a majority vote of the members of the Commission.
- (b) The first person named on a committee shall be the chairperson unless otherwise designated. The Committee Chairperson shall call and preside over committee meetings and may designate temporary alternate members in order to achieve a quorum and to take action in cases where members are absent.
- (c) No member shall serve as chairperson of more than one Standing Committee of the Commission.
- (d) No committee shall meet while the Commission is in session.
- (e) Committees shall be under the control and subject to the orders and appropriate rules of the Commission, and shall faithfully carry out such orders.
- (f) Vacancies on the standing committees shall be filled by the Chairperson of the Commission unless otherwise designated in subsection (b) above and no member of the standing committee shall resign therefrom without the consent and approval of the Commission.
- (g) A majority of the entire membership to which the committee is entitled shall constitute a quorum and the majority vote of the membership present shall be necessary to take any action.

1-2-11 Standing Committees. The Commission may establish the necessary standing committees to further the responsibilities and functions of the Public Access, Open Space, and Natural Resources Preservation Fund Commission.

1-2-12 Select Committees. A Select Committee shall consist of up to five (5) members, unless otherwise ordered by the Commission and shall be appointed from time to time as the occasion requires, serving until discharged after finally reporting on the special matter referred to it.

1-2-13 Committee Reports.

- (a) Every committee shall be responsible for writing and submitting a meeting summary to include a list of attendees, topics covered, decisions and/or recommendations to the Commission as a whole.
- (b) Committee chairpersons or other committee members shall report to the whole Commission at its meetings about the Committee's work on matters referred to them.
- (c) Select Committees shall report as required by the Commission upon all matters referred to them, unless further time is allowed by vote of the Commission.
- (d) Whenever any matter is referred to a committee, it shall be the duty of such committee to make diligent inquiry into all of the facts and circumstances connected with such matter. If necessary, the County Attorney may be consulted, documents and records searched, and everything done to bring all facts pertaining to such matter before the Commission.
- (e) The report of the committee on any matter shall provide an evaluation and recommendation as to the disposal of such matter.

1-2-14 Voting.

- (a) There shall be three methods of ascertaining the decision of the Commission upon any matter:
 - 1st, by call of the roll of the members and a record made by the Clerk of the vote of each member;
 - 2nd, by viva voca vote;
 - 3rd, by unanimous consent.

- (b) Whenever the Commission is ready to vote on any question, the Chairperson, after stating the question, shall put such question to a vote, then announce the result of the vote to the Commission. Upon the request if any member of the Commission, the Clerk shall call the role. Unless a member is excused from voting, his silence shall be recorded as an affirmative vote.
- (c) No member shall refrain from voting unless excused by the Commission.
- (d) Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote; and after the announcement of the result, no one shall be permitted to vote or to change his vote.

1-2-15 Standards of Conduct.

- (a) **Disclosure of Interest.** Whenever a possible direct personal financial interest on any matter pending before the Commission or any of its committees becomes apparent, the affected member shall promptly make a disclosure to the Commission. When a member has made a disclosure of interest and is deemed by the Commission to have as conflict of interest, such conflict shall apply to all subsequent actions relating to said matter. A member with conflict of interest shall refrain from voting except where the member's vote is required to constitute a quorum to act in which event he shall be permitted to vote.
- (b) **Code of Ethics.** All Commission members and officers and employees of the Agency shall be subject and comply with the provisions of Chapter 3, Article I, of the Kauai County Code, as amended.

1-2-16 Petitions and Submittals to the Commission. Any person may petition the Commission. Petitions and other submittals shall be in writing, signed by the petitioners or persons presenting them.

1-2-17 Motions and Amendments. Motions and amendments may be verbal, but shall be reduced to writing if requested by the Chair, and shall be read from the Clerk's desk, if so desired.

1-2-18 Motions and Priorities.

- (a) No motion shall be received and considered by the Commission until the same has been seconded.

- (b) After a motion is stated or read by the Chair, it shall be deemed in the possession of, and shall be disposed of by vote of the Commission. However, it may be withdrawn by the mover with the consent of the second at any time before a vote or amendment.
- (c) Whenever any question shall be under discussion, the motions in order relative thereto prior to a vote shall be: first, to table; second, to previous question; third, to modify debate; fourth, to postpone definitely; fifth, to commit or recommit; and sixth, to amend; which motions shall have precedence in the order named. The first four (4) motions shall be decided without debate, and shall be put as soon as made.
- (d) When any of said motions shall be decided in the negative, the same shall not be revived at the same meeting relative to the main question under discussion. If all are negative as aforementioned, the only remaining question shall be as to the passage or adoption of the application or any other main question.
- (e) No member shall speak longer than five (5) minutes, nor more than twice on the same question without leave of the Commission, unless the member is the mover of the question pending, in which case the member shall be permitted to speak in reply, but not until every member choosing to speak shall have had the opportunity to speak.

1-2-19 Reconsideration. When a motion has been once made and carried in the affirmative or negative, only a member who voted with the prevailing side may move, at the same meeting, or at the next meeting, to reconsider it, and such motion shall take precedence over all other questions except a motion to adjourn.

1-2-20 Order and Decorum.

- (a) No person shall sit at the desk of the presiding officer or clerk, except by permission of the Chairperson, or at the desk of any commissioner, except by permission of that commissioner.
- (b) While the Chair is putting any question or addressing the Commission, no one shall walk out of the meeting room or across the floor; nor shall anyone entertain a private discourse, or pass between the member and Chair while the member is speaking.
- (c) When members are about to speak, they shall address themselves to the Chair, and shall confine their comments to the question under discussion, avoiding personalities.

- (d) If any member, in speaking or otherwise, transgresses these rules of procedure, the Chair, or any member, may call him to order, and when so called to order, he shall immediately quiet down. The Chair shall then decide the question or order without debate, subject to an appeal to the Commission. In addition, the Chair may call for the sense of the Commission on any question of order.
- (e) Whenever any person shall be called to order while speaking, the member shall be deemed to be in possession of the floor when the question of order is decided, and may proceed with the matter under discussion within the ruling made on the question of order.
- (f) No unauthorized person shall enter the floor of Commission except by permission of the presiding officer. The term "floor of Commission" shall mean that portion of the meeting room generally occupied by the Commission and as may be specifically designated by the presiding officer. The presiding officer shall determine, with concurrence of Commissioners, when members of the public may speak on topics being discussed and whether any time limitation per speaker will be set.
- (g) Any person or persons who willfully disrupt a meeting or hearing to prevent and compromise the conduct of the meeting may be removed from the room.

1-2-21 Order of Business.

- (a) After roll-call and the approval of the agenda and minutes, the Presiding Officer shall call for business in the following order:
 - 1. General business matters before the Commission and announcements
 - 2. Communications
 - 3. Committee Reports
 - 4. Unfinished Business or Old Business
 - 5. New Business
- (b) The Commission may, by previous motion, direct that any matter be made a special order of business, which shall take precedence as indicated in the order.

- (c) The unfinished business or old business in which the Commission was engaged at the time of the last adjournment shall have the preference in the order of the day except for general business and announcements, communications, and committee reports, and invited speakers, and no other business shall be received until such unfinished business is disposed of, unless by special leave of the Commission.
- (d) All questions relating to priority of business to be acted upon by the Commission shall be decided without debate.

1-2-22 Question of Order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for. Such question shall be decided by the Chair, without debate, subject to an appeal to the Commission.

1-2-23 Computation of Time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the close of the business of the next day which is not a Saturday, Sunday, or holiday.

1-2-24 Attendance. No member shall be absent from the service of the Commission, unless the member has so advised the Chair prior to the meeting or be sick and unable to attend.

1-2-25 News Reporters. News reporters wishing to take notes of the business of the Commission may be assigned such places by the Chair without interfering with the convenience of the Commission.

1-2-26 New Rules and Amendments. No rule of the Commission shall be altered or rescinded, nor shall any new rules be adopted without the affirmative vote of at least five (5) members of the Commission.

1-2-27 When Rules Are Silent. For good cause, the Commission may vote to suspend the rules.

1-2-28 Severability. If any provision of these Rules of Practice and Procedures or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules of Practice and Procedures which can be given effect without the invalid provision or application, and to this end the provisions of these Rules of Practice and Procedures are severable.

Chapter III. Public Records, Inspection and Availability

1-3-1 Inspection of Public Records. All public records shall be available for inspection and copying by any person during established office hours and within reasonable timelines unless public inspection of such records is in violation of any other state or federal law.

1-3-2 Where Available.

- (a) The public may obtain information on matters within the jurisdiction of the Planning Department and Commission for the County of Kauai, by inquiring at the principle place of business of the Planning Department. All rules, orders or opinions of the agency are on file and available for public inspection at this office during business 4444 Rice Street, Suite A473, Lihue, Kauai 96766-1326.
- (b) Inquiry may be made in person at the agency during business hours or by submitting a request for information in writing to the Planning Director, Planning Department, Kapule Building, 4444 Rice Street, Suite A473, Lihue, Hawaii 96766-1326.

1-3-3 Copies of Public Records. Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the applicable fees or costs for publication, research, and postage are paid.

1-3-4 Denial of Inspection. Any person aggrieved by the denial by the officer having custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may seek enforcement action pursuant to HRS Chapter 92.

Chapter IV. Rule Adoption, Amendment, or Repeal Procedures

1-4-1 Initiation of Rule-Making Proceedings.

- (a) **Motion by Commission.** The Commission may, at time on its own motion, initiate proceeding for the adoption, amendment, or repeal of any rule or regulation of the Commission.
- (b) **Petition by Person or Agency.** Any interested person may petition the Commission for the adoption, amendment, or repeal of any rule or regulation of the Commission. Petitions for rule making filed with the Commission will become matters of public record.

1-4-2 Form and Contents. Petitions for rule making shall contain the name, address, and telephone number of each petitioner; the signature of each petitioner; a draft of the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter, a statement of the reasons in support of the proposed rule, amendment, or repeal and shall deposit with the County funds sufficient to cover appropriate meeting publication costs.

1-4-3 Action on Petition. The Commission shall, within thirty (30) days after the filing of a petition for rule making, either deny the petition in writing, stating its reasons for denial or initiate proceedings in accordance with Section 91-3 HRS.

- (a) **Denial of Petition.** Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of public rule-making proceedings will not be considered by the Commission. The Commission shall notify the petitioner in writing of such denial, stating the reasons thereto. Denial of a petition shall not operate to prevent the Commission from acting, on its own motion, on any matter disclosed in the petition.
- (b) **Acceptance of Petition.** If the Commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rule making to justify the institution of rule-making proceedings, the following procedure set forth and applicable statutes and law shall apply.

1-4-4 Notice of Public Hearing to Discuss Rule Adoption, Amendment, or Repeal.

- (a) **Publication and Mailing.** When, pursuant to a petition therefore or upon its own motion, the Commission proposes to adopt, amend, or repeal a rule or regulation, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation which is

published and issued within the County of Kauai; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the Commission's rulemaking proceedings at their last recorded address. The notices shall be published at least thirty (30) days prior to the date set for public hearing.

- (b) **Form.** A notice of the proposed adoption, amendment, or repeal of a rule or regulation shall include the requirements set forth in HRS Chapter 91-3.

1-4-5 Commission Action. The Commission shall consider all relevant testimony and documents of record before taking final action in a rule-making proceeding. Final action should be taken within forty-five (45) days after the end of period for submission of written comments or recommendations.

1-4-6 Effective Date. All rules shall be filed and take effect pursuant to HRS 91-4.

1-4-7 Emergency Rule Making. Notwithstanding the foregoing rules, the Commission may adopt emergency rules in accordance to the provisions of HRS 91-3 and 4 if the Commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule or regulation upon less than thirty (30) days notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than one hundred twenty (120) days without renewal. The emergency rule shall become effective upon filing with the County Clerk.

Chapter V. Report Process

1-5-1 Authority. This rule governs the procedures of the Public Access, Open Space and Natural Resources Preservation Fund Commission pursuant to the authority conferred under Chapter 6, Article 14, Kauai County Code 1987 as amended (KCC).

1-5-2 Public Input

- (a) The Commission shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to discussion during Commission meetings, community outreach to various groups, and participation in community events.
- (b) The Department shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to community outreach to various groups and participation in community events.
- (c) The Department shall maintain a website to inform the public of the Commission's purposes and provide a mechanism for the public to provide input on proposals.

1-5-3 Department Review and Recommendation

- (a) Within 45 days of receiving a proposal(s), the Department shall transmit a preliminary report on the public proposal(s) to the Commission. In the report, the Department shall provide a preliminary evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.
- (b) At least 90 days prior to the first Commission meeting in January of odd calendar years, the Department shall provide a final evaluation and recommendation for the proposal(s) received subsequent to the adoption of the last preceding biennial report. The recommendation shall be based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.
- (c) After further research, should the Department determine that a preliminarily approved recommendation for acquisition does not meet the criteria of Section 1-5-4 or has a prohibitive factor, the Department shall transmit an additional report to the Commission providing an amended evaluation and recommendation.

1-5-4 Criteria for Acquisition. In the event that a proposal does not meet one or more of the following criteria, the proposed acquisition shall not be recommended. The Department shall submit a recommendation for acquisition only if all criteria established in subsections (a) through (d) of this section are met:

- (a) The proposal fulfills at least one of the Commission's purposes to provide:

- (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;
 - (9) Conserving land open space and scenic values.
- (b) The cost for the acquisition is commensurate to the public interest served. The cost may be shared by other parties.
- (c) The process for the acquisition is commensurate to the public interest served. Factors may include, but are not limited to:
- (1) The type of property interest that is proposed for acquisition (for example, an easement versus fee simple ownership);
 - (2) Whether or not the acquisition will be an adversarial process.
- (d) The lack of any maintenance requirements; or in the event there are maintenance requirements, the maintenance requirements have cost implications that are commensurate to the public interest served.

Prohibitive Factor. Any proposed acquisition that contains extremely dangerous attributes in the land or that poses a risk of serious injury or death shall not be recommended.

1-5-6 Biennial Report

- (a) The Commission shall adopt a biennial report that:
- (1) Reports the balance and reviews the sufficiency of the fund;

- (2) Prioritizes land or property entitlements or proposals that were recommended for acquisition and are directly related to the purpose of Chapter 6 Article 14 of the KCC;
- (3) Provides an acquisition plan for each proposal that is recommended for acquisition.
- (b) The biennial report shall be adopted by a majority vote of the Commission on the first meeting held in January of odd calendar years. In the event that no action is taken (for example, due to a lack of a majority vote), review and action on the biennial report shall be scheduled at each subsequent Commission meeting until action is taken.
- (c) The Commission shall attempt to prioritize the recommended projects, and the biennial report shall reflect the adopted prioritization of projects. In the event that no consensus is achieved on the prioritization of projects, the report shall reflect as such.
- (d) The biennial report shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.
- (e) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of the biennial report. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.

1-5-7 Dossier Recommendation Process

- (a) A Commission recommendation for acquisition outside of the biennial report (“dossier recommendation”) may be adopted and transmitted to Council and Mayor only when the Commission determines all of the following:
 - (1) The proposal meets the criteria for acquisition established under Section 1-5-4 of these rules;
 - (2) The proposal does not have a prohibitive factor under Section 1-5-5 of these rules;
 - (3) There is a demonstrable urgency concerning the timing of acquisition where delaying action to the upcoming biennial report will result in significantly more expense, an adversarial acquisition process, or both.
- (b) The dossier recommendation shall provide an acquisition plan for the proposal.
- (c) Prior to the Commission taking action on a dossier recommendation, the Department shall provide the Commission with an evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.

- (d) The dossier recommendation shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.
- (e) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of a dossier recommendation. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.

APPENDIX H

Abstracts for All Proposals Considered by the Commission

'Aliomanu Beach Living Trust (Kawaihau District, KONA MOKU)



Owner	TMK	Address	Acres	Assessment
'Aliomanu Beach Living Trust	(4)4-9-004:013	5032 'Aliomanu Road	1.393	\$1,362,200

Summary:

- Given the subject lot's proximity to the shoreline, the acquisition of the property could fulfill the Commission's purposes to provide public outdoor recreation and education, including access to beaches and mountains.
- The subject lot is not for sale.
- Under HRS 343-5, if County funds are used for its acquisition, the presence of the dwelling on the property would require the acquisition to first undergo an environmental assessment.
- The Commission accepted an updated preliminary report, which recommended acquiring an access easement adjacent to the stream on the eastern border of the subject lot instead of acquiring the lot.
- The Planning Department engaged with the property owner to discuss creating an easement. The owners expressed openness to providing an easement as long as there is a formalized commitment to maintain, manage, and "police" the easement.
- Currently, the Planning Department is actively identifying a party for a stewardship agreement to ensure the continuous upkeep of the easement.

*Parcel boundaries appearing in aerial images are approximate.

'Aleko Fish Ponds (Līhu'e District, PUNA MOKU)



Owner	TMK	Address	Acres	Assessment
Okada Trucking Co. Ltd.	(4)3-1-001:012	n/a	46.641	\$87,500
Okada Trucking Co. Ltd.	(4)3-2-001:001	n/a	55.4080	\$1,553,800

Summary:

- During its February 11, 2021 Special Meeting, the Commission voted unanimously to support a recommendation to acquire the subject property using the Fund.
- In November 2021, however, the County was informed that the Trust for Public Lands purchased the property and turned it over to Mālama Hulē'ia for its continuing restoration.

*Parcel boundaries appearing in aerial images are approximate.

Hanapēpē Vacant Lot/Kaua‘i Petroleum Co., LTD Hanapēpē (Waimea District, KONA MOKU)



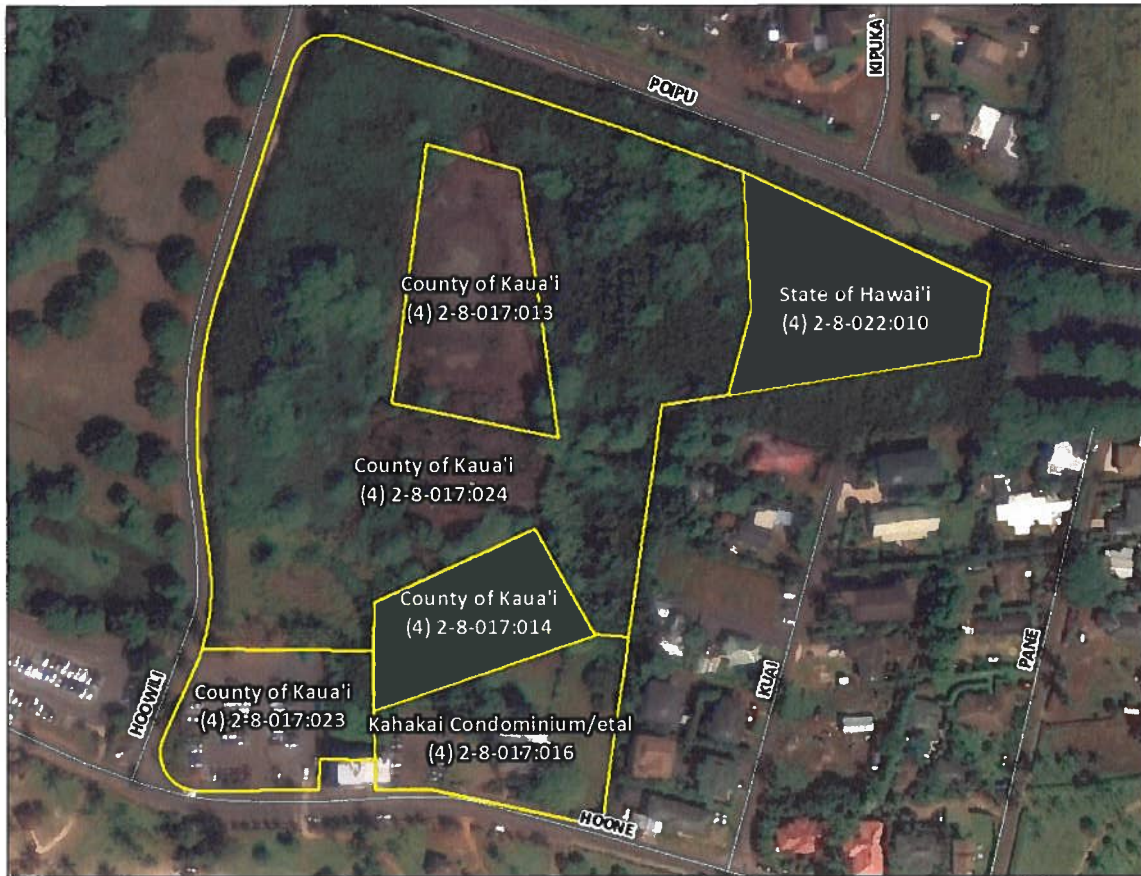
Owner	TMK	Address	Acres	Assessment
Kaua‘i Petroleum Co., LTD	(4)1-8-008:065	Moi Road	0.2764	\$602,000
Kaua‘i Petroleum Co., LTD	(4)1-8-008:071	Moi Road	0.3709	\$624,500

Summary:

- Acquisition of this subject lot of record fulfills the Commissions criteria of preservation of historic or culturally important land areas.
- The Hanapēpē Massacre played a pivotal role in Kaua‘i’s history and Philippine history by recognizing the labor struggles in the State of Hawai‘i. During the massacre, and at the height of the Filipino sugar plantation strike, 16 Filipino workers and 4 policemen were killed.
- In 2021-2022 the Commission renewed its interest to acquiring one or both of the properties. An appraisal was completed in 2023.
- The Planning Department and the landowner are actively negotiating terms that could lead to a “friendly” acquisition of both parcels.

*Parcel boundaries appearing in aerial images are approximate.

Kahua o Kāneiolouma Preservation Area Expansion (originally listed as Kāneiolouma Heiau Complex Preservation Area Expansion (South) also known as Nukumoi [sic] Surf Shop Property (Kōloa District, KONA MOKU)



Owner	TMK	Address	Acres	Assessment
Kaha Kai Condominium	(4)2-8-017:016	2080 Hoone Rd	(1.202)	\$0
Kaha Kai LLC	(4)2-8-017:016;0001	Hoone Rd	.21	\$622,300
Kaha Kai LLC	(4)2-8-017:016;0002	Hoone Rd	.484	\$1,010,200
Kaha Kai LLC	(4)2-8-017:016;0003	Hoone Rd	.484	\$1,866,100
			1.202	\$3,498,600

Summary:

- This parcel is adjacent to County owned land and is part of the culturally significant Kaneiolouma Heiau Complex of Po'ipū.
- The proposal sought funds for Hui Mālama o Kāneiolouma to acquire the land lease or other encumbrances, or purchase the fee to expand efforts to restore, interpret, and protect this important cultural place.
- Hui Mālama o Kāneiolouma continues to steward this expansion project and look into access to the heiau complex through alternate means. The Hui provides periodic updates of any progress on the possible land acquisition. Until that time, this project will remain "on-hold"; but, the Commission is willing to re-evaluate the situation when necessary.

*Parcel boundaries appearing in aerial images are approximate.

Kalihiwai Vacant Lot/Winston Six LLC (Kalihiwai, HALELEA MOKU)



Owner	TMK	Address	Acres	Assessment
WINSTON SIX LLC	(4) 5-3-006:015	Anini Road	14.431	\$5,665,100

Summary:

- This 14.431 acre parcel in Kalihiwai was brought to the attention of the Commission due to many community complaints of illegal dumping and homelessness in the area.
- On February 2, 2018, the Commission received the preliminary report.
- The landowner had no plans to sell the property or build upon the property at that time.
- The Commission has expressed interest in re-analyzing this proposal.

*Parcel boundaries appearing in aerial images are approximate.

Kalihiwai Vacant Lot/Winston Six LLC (Kalihiwai, HALELEA MOKU)



Owner	TMK	Address	Acres	Assessment
WINSTON SIX LLC	(4) 5-3-006:020	Anini Road	0.2500	\$521,300

Summary:

- This 0.25 acre parcel in Kalihiwai was brought to the attention of the Commission due to many community complaints of illegal dumping and homelessness in the area.
- On February 2, 2018, the Commission received the preliminary report.
- The landowner had no plans to sell the property or build upon the property at that time.
- The Commission has expressed interest in re-analyzing this proposal.

*Parcel boundaries appearing in aerial images are approximate.

Kalihiwai Vacant Lot/State of Hawai'i (Kalihiwai, HALELEA MOKU)



Owner	TMK	Address	Acres	Assessment
State of Hawai'i	(4) 5-3-003:029	3471 KALIHIWAI RD	1.00	\$1,300,000

Summary:

- This 1-acre parcel in Kalihiwai is owned by the State of Hawai'i.
- On August 9, 2018, the Commission received the measure and requested the Planning Department to draft a letter requesting an Executive Order be issued to the County of Kaua'i.

*Parcel boundaries appearing in aerial images are approximate.

Kalihiwai Vacant Lot/Princeville Development LLC (Kalihiwai, HALELEA MOKU)



Owner	TMK	Address	Acres	Assessment
Princeville Development LLC	(4) 5-3-003:068	n/a	1.1500	\$337,200

Summary:

- This 1.15 acre parcel abuts the Kalihiwai river and the size of the land changes with the seasons. This beach area is a very popular beach frequently used by residents and visitors alike. Restrictions on camping by the landowner on the subject property peaked the interest of community members for a possible acquisition.
- The asking price was between \$2,700,000.00 and \$3,000,000.00; however, in 2019, the County of Kaua'i Real Property Assessment Division has assessed the property to have a current assessed value of \$345,000.00.
- The adjacent property location to the west of the subject property is owned by the State of Hawai'i, which currently grants access to this area.
- On January 10, 2019, the Commission deferred the matter.

*Parcel boundaries appearing in aerial images are approximate.

Kaluanono and Halulu Fishpond Access – Waipā (Hanalei District, HALALEA MOKU)



Owners	TMK	Address	Acres	Total Market Value
Waioli Corporation	(4)5-6-004:010	n/a	1.8	\$1,080,000
Waioli Corporation	(4)5-6-004:017	n/a	.25	\$1,012,000
			2.5	\$2,092,000

Summary:

- Kaluanono is a 1.8 acre property along Waipā Stream that was traditionally planted in wetland kalo. Halulu Fishpond access is a 0.25 acre property that includes the community path to Halulu Fishpond and serves as an educational area during Waipā Foundation’s Music and Mango Festival and Kalo Festival.
- The Trust for Public Lands and Waipā Foundation sought to purchase the two kuleana properties to fortify Waipā Foundation’s ability to achieve its goal of restoring the entire ahupua`a to feed the community both physically and culturally.
- In 2022, the Commission endorsed the acquisition of Halulu Fishpond through the dossier process and submitted a recommendation to the County Council. On January 25, 2023 the County Council ratified Ordinance B-2023-890, granting approval for the Commission to proceed with the acquisition.
- \$850,000 from the Open Space fund was utilized in conjunction with funds from the State Legacy Land Conservation Program and State Capital Improvement project to acquire the 0.25-acre parcel.
- A Conservation Easement to the County of Kaua‘i was executed on November 29, 2023.
- Waipa Foundation acquired the property on December 11, 2023.

*Parcel boundaries appearing in aerial images are approximate.

Kauapea Beach Access (Hanalei District, HALALEA MOKU)



Owner	TMK	Address	Acres	Assessment
KAPHA North Shore LLC	(4)5-2-004:071	Kauapea Road	21.12	\$1,211,500

Summary:

- The lack of public access at Kauapea from the east end has been exacerbated over the intervening years by private landowner actions. The safety of the public during winter ocean swells (associated with using the existing west shoreline access) continues to be one of several concerns about this access. The Commission remains hopeful a resolution will be achieved regarding options to address parking and trail location to this access.
- Since at least 2018, this matter has been in litigation and being handled by the County Attorney's Office.

*Parcel boundaries appearing in aerial images are approximate.

Kaumumene Coastal Access Improvements (Hideaways) (Hanalei District, HALALEA MOKU)



Owner	TMK	Address	Acres	Assessment
SOF-XI KAUAI PV HOTEL LP	(4)5-4-011:004	5520 Ka Haku Road		
SOF-XI KAUAI PV HOTEL LP	(4)5-4-012:011 (por)	5454 Ka Haku Road		

Summary:

- On January 13, 2022, the Commission voted unanimously to 1) recommend the County Council accept the Grant of Easement; and 2) request approval of up to \$1.5 million of the Fund for improvements related to the coastal access easement that accesses Kaumumene or Hideaways Beach. This was recommended by the Office of County Attorney to settle a personal injury lawsuit between a private individual, Puu Po'a Homeowners Association and the County of Kaua'i.
- On February 23, 2022, Council approved the County Attorney's recommendation and Ordinance B-2022-884 and Ordinance B-2022-885, which approved up to \$1.5 million to fund the improvement project.
- The Department of Public Works Roads Division was temporarily assigned to immediately address alarming safety hazards along the access due to ongoing erosion and damage to the existing improvements. The result of their efforts led to much safer conditions along the access and significant cost savings to the county. A majority of the funding originally slated for the improvement project will be returned to the Fund; however, a portion will be kept for installation of replacement improvements within 5 years.

*Parcel boundaries appearing in aerial images are approximate.

**Kekaha Vacant Lot & Park Hook Tong Cemetery/KVM Waimea Beachfront LLC
(Waimea District, KONA MOKU)**



Owner	TMK	Address	Acres	Assessment
KVM Waimea Beachfront LLC	(4)1-2-013:041	Kaumuali'i Highway	1.256	

Summary:

- Acquisition of the subject property fulfilled at least one of the Commission's purposes for public access, open space, and natural resources preservation.
- The subject lot of record was for sale on the open market.
- The adjacent historical Chinese cemetery was not included in the current real estate listing of the subject property; however, the landowner was willing to include the historical Chinese cemetery in the acquisition at no additional cost.
- Acquisition to include the historical Chinese Cemetery fulfilled the Commission's purpose to preserve historical or culturally important land areas and sites.
- In 2018, the Property was acquired using the Fund.
- The Parks Department is currently negotiating and drafting a Stewardship Agreement from a Kekaha organization who will care for the Chinese Cemetery.

*Parcel boundaries appearing in aerial images are approximate.

Kepuhi Beach Access / 3J1S LLC (Hanalei District, HALALEA MOKU)



Owner	TMK	Address	Acres	Assessment
3J1S LLC	(4)5-8-012:002	5-6910 Kūhiō Highway	0.3709	\$761,600

Summary:

- The Commission received its preliminary report on this recommendation in December of 2016. Subsequently, the property was listed on the open market for sale; thus a supplemental report was also received in January 2017.
- In April 2017, the Commission unanimously voted to recommend acquisition to County Council via its dossier process.
- Prior to Council receiving the dossier packet, the Commission was informed at its meeting of June 8, 2017, that the property sold.
- The property reappeared on the market in 2023 but swiftly entered escrow.
- As a result, the Commission declined the proposal to acquire the property.

*Parcel boundaries appearing in aerial images are approximate.

Kukui'ula Bay Access through the former Hoban or Leight property (Kōloa District, KONA MOKU)



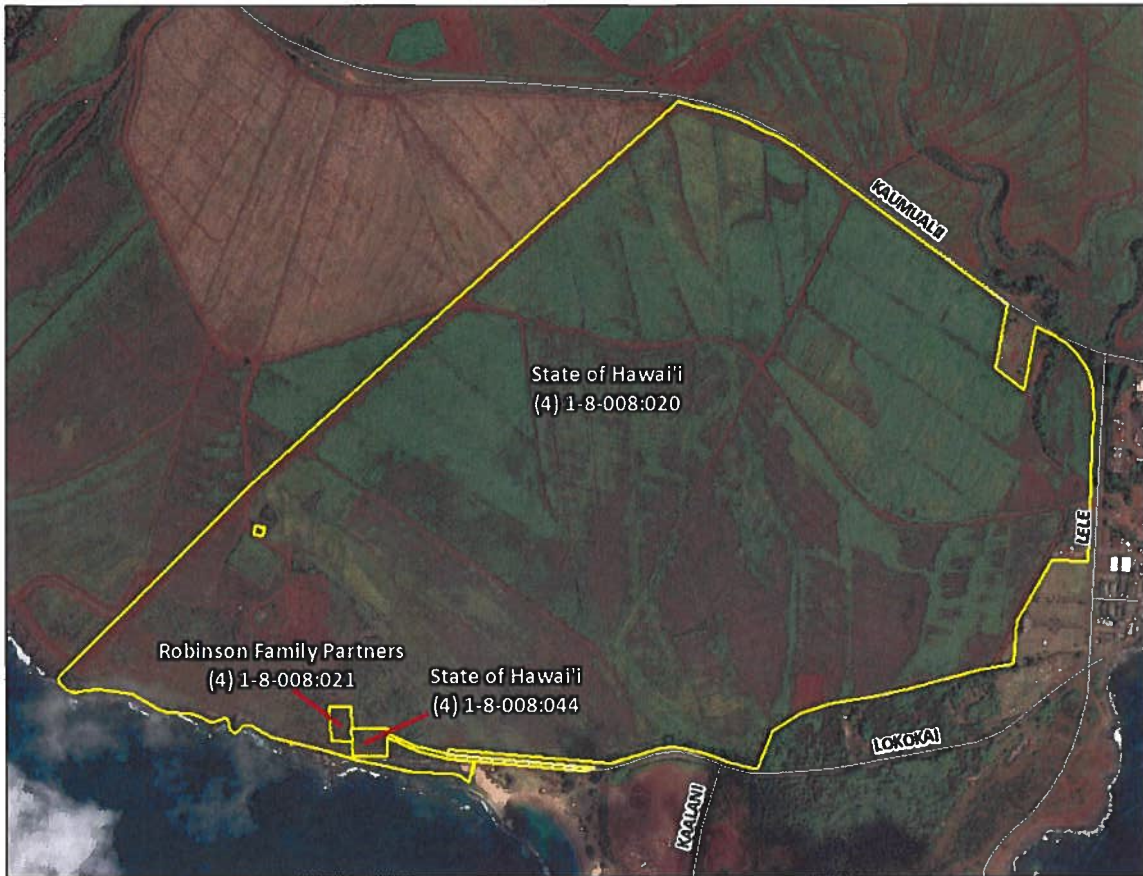
Owner	TMK	Address	Acres	Assessment
2001 Leight Family Trust	(4)2-6-003:017	4432 Lāwa'i Beach Rd	0.2842	\$4,191,100

Summary:

- The proposal involved acquiring a pedestrian easement from Lāwa'i Beach Road to shoreline along southwest property line.
- There is an existing County of Kaua'i drainage easement at this location, which was traditionally used by local residents to access the shoreline. The property owner now prohibits access.
- Additional funding for the creation of a pedestrian easement for beach access through Conditions of Ordinance PM-2004-370 relating to Zoning Designation at Kukui'ula, Kaua'i, Section 2.15e(2) was researched. However, those funds have since been provided to the County's Parks and Recreation Department for expansion of Po'ipū Beach Park.
- During its meeting on August 9, 2017, County Council voted unanimously in support of the Resolution that authorized the acquisition of a public pedestrian beach access easement for public through Eminent Domain.
- Since at least 2018, this matter has been in litigation and being handled by the County Attorney's Office. The County Attorney's is in discussions with opposing counsel to discuss potential options, including sale of on easement, that would not entail litigation.

*Parcel boundaries appearing in aerial images are approximate.

Salt Pond Beach Park Buffer Area for Protection of Hanapēpē Salt Pans (Waimea District, KONA MOKU)



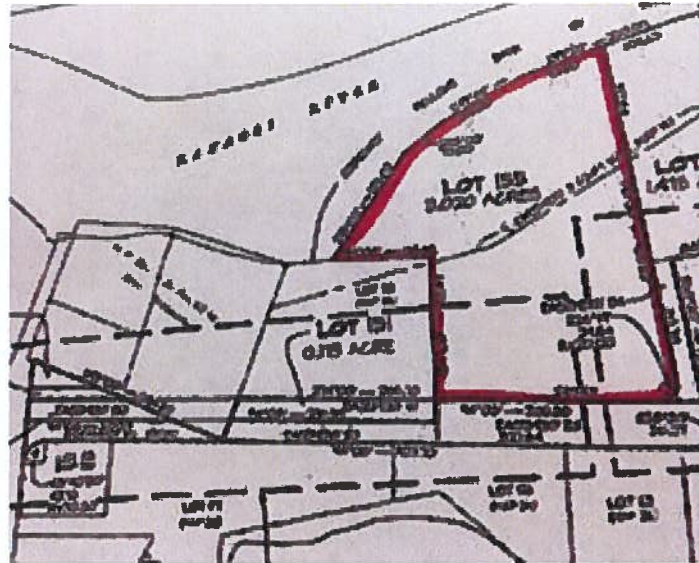
Owners	TMK	Address	Acres	Assessment
State of Hawai'i(Gay & Robinson Inc, Lessee)	(4)1-8-008:020	Kaumuali'i Hwy	373.060	\$2,537,600
Robinson Family Partners	(4)1-8-008:021	Kaumuali'i Hwy	.900	\$231,600
State of Hawai'i(County of Kaua'i, Lessee)	(4)1-8-008:044	Off Lokokai Rd	1.906	\$291,300
			375.866	\$3,060,500

Summary:

- The culturally significant Hanapēpē Salt Pans continue to be threatened by agricultural runoff and potential contamination. In addition, as the only major public beach park between Po'ipū and Polihale, Salt Pond Beach Park is heavily used. A park expansion both westward and mauka of the current park boundaries could serve the public vastly.
- Creating a clear buffer zone between the park and the salt pans along with park would allow improved protection and establishment of buffers to protect the salt pans.
- The Commission formerly supported acquisition of this area; however, acquisition must be negotiated and granted via Executive Order from the State.

*Parcel boundaries appearing in aerial images are approximate.

Sheehan Properties (Hanalei District, KONA MOKU)



Owners	TMK	Address	Acres	Assessment
Sheehan Properties	(4)5-5-001:002	Weke Road	3.020	

Summary:

- After years of litigation, the County Council was presented with a proposal for acquisition.
- \$5.6M from the Fund was spent to acquire the 3.020-acre coastal property adjacent to Black Pot Beach Park and the Hanalei River.

*Parcel boundaries appearing in aerial images are approximate.

Vacant Lot in Wainiha at 7322 Alealea Road (4)5-8-009:049 (Hanalei District, HALALEA MOKU).



Owner	TMK	Address	Acres	Assessment
Dirk P. & Kathleen Lange Living Trust	(4)5-8-009:049	7322 Alealea Road	0.4006	

Summary:

- The property was originally for sale on the open market but later withdrawn from the market.
- In July 2022, the Commission received its preliminary report on this property.
- By November 2022, the Commission heard from the property owners' representative, clarifying their intention to develop a house rather than sell.
- At the January 2023 meeting, the commission received a supplemental preliminary report and voted against acquisition due to the owners' reluctance to sell and the presence of several nearby beach accesses.

*Parcel boundaries appearing in aerial images are approximate.

Wahi Pana at Kiahuna (Kōloa District, KONA MOKU)



Owners	TMK	Address	Acres	Assessment
Laubsch, Angelina C K Rev Trust	(4)2-8-031:199	Halalu Street	4.86	\$500

Summary:

- The 4.86-acre archeological designated parcel is located in the Kiahuna area. The historic name of this area is known as Wahi Pana 'Ehā. This parcel made up a portion of the Kōloa field system and features many wahi pana (sacred or celebrated places). The field system was a thriving agricultural enterprise for over 500 years. One unique feature is that 100 miles of an 'auwai that irrigated lo'i kalo and other crops and to irrigate the entire 750 acres of the Kōloa hema. This stretched from Lāwa'i Valley to the Kōloa/Weliweli boundary and north up to Waikomo Road. 'Auwai ran on ground level, through lava tubes underground and on aqueducts.
- The proposal involved the purchase or establishment of a conservation easement through partnerships with non-profit organizations to restore this archeological designated parcel.
- At its meeting of April 13, 2017, the commission voted no further action as the landowner expressed no interest in selling and requested the commission leave this area untouched.

*Parcel boundaries appearing in aerial images are approximate.

APPENDIX I

Current and Previous Recommendations by Biennial Reporting Periods

Current and Previous Recommendations by Biennial Reporting Periods

Year 2023

- **Properties Recommended (acquired using Fund or otherwise)**
 - Halulu Fishpond (4)5-6-004:017 (Hanalei District, HALELE`A MOKU)
- **Properties Improved (using Fund)**
 - Kaumumene/Hideaways Coastal Access Easement (4)5-4-011:004 & (4)5-4-012:011
- **Current Properties previously discussed but “ON HOLD”**
 - ‘Aliomanu Beach Living Trust (4)4-9-004:013 (Kawaihau District, KOOLAU MOKU)
 - Hanapēpē Vacant Lot (4)-1-8-008:065 (Waimea District, KONA MOKU)
 - Hanapēpē Vacant Lot (4)-1-8-008:071 (Waimea District, KONA MOKU)
 - Kauapea Beach Access (4)5-2-004:071 (Hanalei District, HALELE`A MOKU)
 - Kīlauea Mauka Access (4)5-1-005:036/(4)5-1-005:125 (Kīlauea District, KO`OLAU MOKU)
 - Po‘ipū Beach Access (formerly known as Hoban or Leight Access) (4)2-6-003:017 (Kōloa District, KONA MOKU)
- **Current Properties previously discussed and “DENIED”**
 - 3J1S, LLC Kepuhi Beach Access (4)5-8-012:002 (Hanalei District, HALALEA MOKU)
 - Vacant Lot in Wainiha at 7322 Alealea Road (4)5-8-009:049 (Hanalei District, HALALEA MOKU)

Year 2021

- **Properties Recommended (acquired using Fund or otherwise)**
 - ‘Alekoko Fish Ponds (Originally recommended in 2015, Līhu‘e District, PUNA MOKU)
 - Kekaha Vacant Lot & Park Hook Tong/KVH Waimea Beachfront LLC (Waimea District, KONA MOKU)

Year 2019

- **Current Properties in the Dossier Process:**
 - Kukui‘ula Bay Access (Kōloa District, KONA MOKU)
 - Kekaha Vacant Lot & Park Hook Tong/KVH Waimea Beachfront LLC (Waimea District, KONA MOKU)
- **Current Properties previously discussed but “ON HOLD”**
 - ‘Aliomanu Beach Living Trust (Kawaihau District, KOOLAU MOKU)
 - Kalihiwai Vacant Lot (4)5-3-003:068 (Kalihiwai, HALALEA MOKU)
 - Kalihiwai Vacant Lot, (4)5-3-006:015 (Kalihiwai, HALALEA MOKU)
 - Kalihiwai Vacant Lot (4)5-3-006:020 (Kalihiwai, HALALEA MOKU)
- **Current Properties previously discussed but “NO LONGER ACTIVE”**
 - Evslin Property (Waimea District, KONA MOKU) (Previously listed as CGB/Evslin Property)

- Wahi Pana at Kiahuna (Kōloa District, KONA MOKU)
- Nava, Joseph/Elizabeth Trust (aka Kepuhi Beach Access) (Hanalei District, HALALEA MOKU)
- Nihi Kai Associates (Kōloa District, KONA MOKU)

Year 2017

- **Current Properties in the Dossier Process:**
 - Kukui'ula Bay Access (Kōloa District, KONA MOKU)
 - Kekaha Vacant Lot & Park Hook Tong/KVH Waimea Beachfront LLC (Waimea District, KONA MOKU)
- **Current properties up for Commission action:**
 - 'Aliomanu Beach Living Trust (Kawaihau District, KOOLAU MOKU)
- **Current Properties previously discussed by "ON HOLD"**
 - Kauapea Beach Access (Hanalei District, HALALEA MOKU)
 - Salt Pond Beach Park Buffer Area for Protection of Hanapēpē Salt Pans (Waimea District, KONA MOKU)
 - Kahua o Kaneiolouma Preservation Area Expansion (South) (Originally called Kaneiolouma Heiau Complex Preservation Area Expansion (Kōloa District, KONA MOKU)
 - Restoration and Expansion of Shoreline Access, Lāwa'i Kai to Port Allen (Kōloa District, KONA MOKU)
 - Kaluanono & Halulu Fishpond Access (Hanalei District, HALALEA MOKU)
 - Alekoko Fish Ponds (Līhu'e District, PUNA MOKU)
- **Current Properties previously discussed but "NO LONGER ACTIVE"**
 - Evslin Property (Waimea District, KONA MOKU) (Previously listed as CGB/Evslin Property)
 - Wahi Pana at Kiahuna (Kōloa District, KONA MOKU)
 - Nava, Joseph/Elizabeth Trust (aka Kepuhi Beach Access) (Hanalei District, HALALEA MOKU)
 - Nihi Kai Associates (Kōloa District, KONA MOKU)

Year 2015

- **Current Properties in the Dossier Process:**
 - Access to Kukui'ula Bay (Kōloa District)
- **Current Properties previously discussed but "ON HOLD"**
 - Kauapea Beach Access (Hanalei District)
 - Pāpa'a Bay Beach Access (Kawaihau District)
 - Salt Pond Beach Park Buffer Area for Protection of Hanapēpē Salt Pans (Waimea District)
 - Kahoa o Kaneiolouma Preservation Area Expansion (South) (Originally called Kaneiolouma Heiau Complex Preservation Area Expansion (Kōloa District)

- Restoration and Expansion of Shoreline Access, Lāwa'i Kai to Port Allen (Kōloa District)
- Kaluanono & Halulu Fishpond Access (Hanalei District)
- Wahi Pana at Kiahuna (Kōloa District)
- Alekoko (Menehune) Fishpond (Līhu'e District)
- **Current Properties previously discussed but "NO LONGER ACTIVE"**
 - Kaakaaniu Beach Access (Hanalei District)
 - Proposed Piwai (Ōma'o) Recreation Area (Kōloa District)

Year 2013

- **Current Properties in the Dossier Process:**
 - Access to Kukui'ula Bay (Kōloa District)
 - Kauapea Beach Access (Hanalei District)
 - Pāpa'a Bay Beach Access (Kawaihau District)
 - Kaakaaniu Beach Access (Hanalei District)
- **Current Properties previously discussed but "ON HOLD"**
 - Restoration and Expansion of Shoreline Access, Lāwa'i Kai to Port Allen (Kōloa District)
 - Proposed Piwai (Ōma'o) Recreation Area (Kōloa District)
 - Kaneiolouma Heiau Complex Preservation Area Expansion (South), also known as Nukumoi [sic] Surf Shop Property (Kōloa District)
 - Salt Pond Beach Park Expansion (Mauka and West) (Waimea District)

Year 2011

- **Acquisition:**
 - Salt Pond Beach Park Expansion (Mauka and West) and Buffer Area for Protection of Hanapēpē Salt Pans (Waimea District)
 - Proposed Piwai (Ōma'o) Recreation Area (Kōloa District)
 - Kaneiolouma Heiau Complex Preservation Area Expansion (South) (Kōloa District)
- **Other Recommendations:**
 - Access to Kukui'ula Bay through the Former Hoban Property (Kōloa District)
 - Restoration and Expansion of Shoreline Access, Lāwa'i Kai to Port Allen (Kōloa District)

Year 2010

- **Acquisition:**
 - Kaneiolouma Heiau Complex Preservation Area Expansion (South), also known as Nukumoi [sic] Surf Shop Property (Kōloa District)
 - Po'ipū Beach Park Expansion (West) at 2179 Hoone Road (Kōloa District)
 - Access to Kukui'ula Bay through Former Hoban Property (Kōloa District)

- Proposed Piwai (Ōma'o) Recreation Area (Kōloa District)
- Restoration and Expansion of Shoreline Access, Lāwa'i Kai to Port Allen (Kōloa District)
- Salt Pond Beach Park Expansion (Mauka and West) and Buffer Area for Protection of Hanapēpē Salt Pans (Waimea District)

Year 2009

- **Acquisition:**
 - Black Pot Beach Park Expansion (Hanalei District)
 - Salt Pond Beach Park Expansion and Buffer area for Protection of Hanapēpē Salt Pans (Waimea District)
 - Kaneiolouma Heiau Complex-Nukumoi [sic] Surf Shop Property (Kōloa District)
 - CGB/Evslin Property (Waimea District)

- **Acquisition without necessitating fund:**
 - Hoban access (Kōloa District)
 - Kauapea Beach East access (Hanalei District)
 - Kaakaaniu Beach (Larsen's Beach) access (Hanalei District)
 - Pāpa'a Bay access (Kawaihau District)
 - Waita Reservoir access (Kōloa District)
 - Alexander Dam access (Kōloa District)

- **Partnerships for acquiring:**
 - Hā'ena Point Properties (e.g., Brescia Property, Hanalei District)
 - Coco Palms Property (Kawaihau District)
 - Alekoko Fish Pond (Līhu'e District)
 - Mahaulepu (Kōloa District)

YEAR 2007-2008

- **Priority Recommendation:**
 - Black Pot Park Expansion (Hanalei District)
 - Salt Pond Park Expansion (Waimea District)
 - Haena Point (Brescia) (Hanalei District)
 - North Kapaa Coastal Lands (Kawaihau District)
 - CGB/Evslin (Waimea District)
 - Haena Beach Park Lateral Access (Hanalei District)

- **Secondary Recommendation:**
 - Hoban (Kōloa District)
 - Nokumoi Surf Shop (Kōloa District)
 - Mahaulepu & Gillin's (including CJM and Haula (Kōloa District)
 - Alekoko Fishpond (Līhu'e District)
 - Coco Palms (Kawaihau District)
 - Pāpa'a Bay Easement (Kawaihau District)

YEAR 2006

- **Priority Acquisition:**
 - Black Pot Park Expansion (Hanalei District)
 - Hoban (Kōloa District)
 - Pāpa'a Bay (Kawaihau District)
 - Kauapea Beach (Hanalei District)

- **Places/Parcels of Interest**
 - Nounou Trail Connector (Kawaihau District)
 - Kealiakealanani (Hanalei District)
 - North Kapa'a Coastal Lands (Kawaihau District)
 - Alexander Reservoir Road (Kōloa District)
 - Moelepe Trail Link (Kawaihau District)
 - Kaneiolouma Heiau Expansion (Kōloa District)
 - Hapa Road (Kōloa District)
 - Nukoli'i Beach Park Expansion (Līhu'e District)
 - Puolo Point (Waimea District)
 - Moloa'a Trail and Coastal Lands (Hanalei District)

YEAR 2005

- **Acquisition:**
 - Hoban (Kōloa District)
 - McCalla (Kōloa District)
 - Knudsen – Po'ipū (Kōloa District)
 - Expansion of Po'ipū Beach Park (Kōloa District)
 - Mahaulepu (Kōloa District)
 - Pāpa'a Bay/Beach (Kawaihau District)
 - Pīla'a (Hanalei District)
 - Kauapea / Secret Beach 2 (Hanalei District)
 - Expansion of Black Pot Park (Hanalei District)
 - Canela – Makai (Hanalei District)

RULES OF PRACTICE AND PROCEDURE OF THE
COUNTY OF KAUAI
PUBLIC ACCESS, OPEN SPACE, AND NATURAL
RESOURCES PRESERVATION FUND COMMISSION



ADOPTED AUGUST 10, 2005
AMENDED APRIL 14, 2016
RECODIFIED , 2024

F.4.
MAR 14 2024

TABLE OF CONTENTS

RULES OF PRACTICE AND PROCEDURE OF THE COUNTY OF KAUAI PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND COMMISSION

CHAPTER I.	GENERAL PROVISIONS
1-1-1	Purpose
1-1-2	Definitions
CHAPTER II.	ORGANIZATION AND PARLIMENTARY RULES
1-2-1	Organization
1-2-2	Meetings
1-2-3	Adjournment
1-2-4	Quorum and Number of Votes Necessary for a Decision
1-2-5	Continuation of Decision Making
1-2-6	Effective Date of Commission Decision
1-2-7	Minutes and Transcripts
1-2-8	Officers and Their Duties
1-2-9	Committees
1-2-10	Committee Organization
1-2-11	Standing Committee
1-2-12	Select Committees
1-2-13	Committee Reports
1-2-14	Voting
1-2-15	Standards of Conduct
1-2-16	Petitions and Submittal to the Commission
1-2-17	Motions and Amendments
1-2-18	Motions and Priorities
1-2-19	Reconsideration
1-2-20	Order and Decorum
1-2-21	Order of Business
1-2-22	Question of Order
1-2-23	Computation of Time
1-2-24	Attendance
1-2-25	News Reporters
1-2-26	New Rules and Amendments
1-2-27	When Rules Are Silent
1-2-28	Severability
CHAPTER III.	PUBLIC RECORDS, INSPECTION AND AVAILABILITY
1-3-1	Inspection of Public Records
1-3-2	Where Available
1-3-3	Copies of Public Records
1-3-4	Denial of Inspection
CHAPTER IV.	RULE ADOPTION, AMENDMENT, OR REPEAL PROCEDURES
1-4-1	Initiation of Rule-Making Proceedings
1-4-2	Form and Contents
1-4-3	Action on Petition
1-4-4	Notice of Public Hearing to Discuss Rule Adoption, Amendment, or Repeal

- 1-4-5 Commission Action
- 1-4-6 Effective Date
- 1-4-7 Emergency Rule Making

CHAPTER V.

REPORT PROCESS

- 1-5-1 Authority
- 1-5-2 Public Input
- 1-5-3 Department Review and Recommendation
- 1-5-4 Criteria for Acquisition
- 1-5-5 Prohibitive Factor
- 1-5-6 Biennial Report
- 1-5-7 Dossier Recommendation Process

**[PROPOSED] RULES OF PRACTICE AND PROCEDURE
OF THE KAUAI COUNTY PUBLIC ACCESS, OPEN SPACE AND NATURAL
RESOURCES PRESERVATION FUND COMMISSION**

Chapter I. General Provisions

1-1-1 Purpose. The intent and purpose of the Rules of Practice and Procedure of the Kauai County Public Access, Open Space, and Natural Resources Preservation Fund Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open, productive, and orderly manner.

1-1-2 Definitions. As used in these Rules, except as otherwise required by context:

- (a) "Agency" means the Planning Department of the County of Kauai or its authorized representative.
- (b) "Commission," "Chairperson" and the "Commissioner" means the Public Access, Open Space and Natural Resources Preservation Fund Commission of the County of Kaua'i, State of Hawaii, its Chairperson, and a member thereof, respectively.
- (c) "Director" means the Planning Director of the County of Kauai.
- (d) "Ex parte communication" means private communications or arguments with members of the Commission or its hearing officer as to the merits of a proceeding with a view towards influencing the outcome of a proceeding.
- (e) "HRS" means Hawaii Revised Statutes.
- (f) "Meetings" means the convening of the Commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Commission has advisory power.
- (g) "Person" means when appropriate to the context, not only individuals, but corporations, firms, associations, societies, and federal, state and county departments or agencies.
- (h) "Presiding Officer" means and shall include any member of the Commission or a hearing officer duly designated as such. Unless otherwise designated, the Chairperson shall be the presiding officer.
- (i) "Proceeding" means any matter that is brought before the Commission in which it has advisory authority.
- (j) "Public Record" means the same as defined in Chapter 92, HRS, and shall include maps, rules and regulations, written statements of policy or interpretation formulated, adopted or used by the Commission in its functions, all decisions, orders, minutes of the Commission meetings and records of any docket on file with the Commission but shall not include records which invades the right of privacy of an individual.
- (k) "Rules" means the Rules of Practice and Procedure before the Commission.

Chapter II. Organization & Parliamentary Rules

1-1-3 Organization. At the regular September meeting of each year, the Commission shall elect a Chairperson and Vice-Chairperson from among its members. They shall serve for a term of one year or until their successors are duly elected. No member shall succeed himself or herself as chairperson. In the event the Commission is not able to elect a regular Chairperson or Vice-Chairperson from among its members at its first September meeting, the incumbent chair may serve on a hold-over basis for a term not to exceed ninety (90) days.

1-2-2 Meetings.

- (a) Regular meetings of the Commission shall be held every first Wednesday or on such day as the Commission may designate. The place of meeting shall be the Lihue Civic Center, or such other place as may be designated by the Commission.
- (b) Subject to the conditions prescribed by these rules, special meetings may be called at any time by the chairperson, the director, or a majority of the Commission, who shall state the subject thereof, and the acts and business of the Commission at such special meeting shall be confined to such matters.
- (c) Each member shall be given oral or written notice at least five (5) working days prior to a special meeting, unless waived by such member.
- (d) The Commission shall prepare and post an agenda for all meetings of the Commission and its committees identifying the date, time, place, and subjects to be considered in compliance with the provisions of Chapter 91 and 92, HRS.

1-2-3 Adjournment. Meetings may be adjourned at any time by vote, and unless otherwise specified in the motion, every adjournment shall be deemed to be the next meeting of the Commission.

1-2-4 Quorum and Number of Votes Necessary for a Decision. Unless otherwise provided by law, a majority of all the members to which the Commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the Commission is entitled five (5) shall be necessary to make a Commission decision valid, failing which there shall have been no valid action taken.

1-2-5 Continuation of Decision Making. Any matter which fails to be validated by a majority concurrence of the Commission may be continued to any subsequent regular meeting.

1-2-6 Effective Date of Commission Decision. Unless a specific effective date is set forth, the effective date of a decision rendered by the Commission shall be the date of the meeting at which such valid decision was made.

1-2-7 Minutes and Transcripts.

- (a) Meetings. In accordance to HRS 92-9, the Commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members.
- (b) Copies of Recordings. In cases where copies of prerecorded tapes are requested, a

fee of \$5.00 per hour (rounded off to the nearest half hour) of recording time shall be assessed in addition to the costs of the tapes used (rounded off to the nearest \$.50). Charges may be waived or modified when the requesting person provides the recording equipment, tapes, and performs the recording subject to conditions and supervision by the Planning Department.

1-2-8 Officers and Their Duties.

- (a) Presiding Officer. The Chairperson shall be the presiding officer of the Commission and the Vice-Chairperson shall be the presiding officer in the absence of the Chairperson.

The presiding officer shall:

- (1) Open all meetings of the Commission at the appointed hour by taking the chair and calling the meeting to order;
 - (2) Call for the approval of the minutes of any preceding meetings when a quorum is present;
 - (3) Maintain order and proper decorum;
 - (4) Announce the business before the Commission in the order prescribed by these rules;
 - (5) Review all matters properly brought before the Commission, call for votes upon the same and announce the results;
 - (6) Appoint all committees unless otherwise ordered by the Commission;
 - (7) Authenticate by signature all acts of the Commission as may be required by law, unless delegated to the Planning Director;
 - (8) Do and perform such other duties as may be required by law, or such as may be properly appertain to such office;
 - (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the Commission;
 - (10) Take into consideration such matters as shall not be within the scope of the duties or powers of any standing committee of the Commission; or as may be referred by the Commission, and to report thereon, together with such recommendations relative thereto as deemed advisable; and
 - (11) Represent the Commission in all functions, not otherwise directed by the Commission as the titular head of the Commission.
- (b) Clerk. The Planning Director shall serve as Clerk of the Commission and shall be directly responsible, or through staff members, to provide the following services;

- (1) To receive, submit, and coordinate all matters properly brought before the Commission in consultation with the chairperson;
- (2) To provide the agenda support materials for all meetings;
- (3) To read bills, resolutions, and other matters to the Commission, if so required;
- (4) To forward at once to the proper parties all communications and other matters, either directly or through a committee, as the case may be;
- (5) To deliver immediately to the chairperson of the appropriate committee all petitions, resolutions, bills or other matters as may be duly referred to such committee;
- (6) To serve in all matters as ex-officio clerk of the Commission and to do and perform all clerical duties and services pertaining to such position as the Commission shall from time to time direct, and such as shall by law or the rules, or rules hereafter adopted, be assigned or such as properly pertain to such position;
- (7) To have charge of all records of the Commission and be responsible for the same.

1-2-9 Committees. There shall be two kinds of committee:

- (a) Standing Committees, which shall not exceed five (5) members each.
- (b) Select Committees, which shall not exceed five (5) members each.

1-2-10 Committee Organization.

- (a) All committees of the Commission, contemplated under these rules, shall be appointed by the Chairperson subject to confirmation by a majority vote of the members of the Commission.
- (b) The first person named on a committee shall be the chairperson unless otherwise designated. The Committee Chairperson shall call and preside over committee meetings and may designate temporary alternate members in order to achieve a quorum and to take action in cases where members are absent.
- (c) No member shall serve as chairperson of more than one Standing Committee of the Commission.
- (d) No committee shall meet while the Commission is in session.
- (e) Committees shall be under the control and subject to the orders and appropriate rules of the Commission, and shall faithfully carry out such orders.
- (f) Vacancies on the standing committees shall be filled by the Chairperson of the Commission unless otherwise designated in subsection (b) above and no member of the standing committee shall resign therefrom without the consent and approval of the Commission.

- (g) A majority of the entire membership to which the committee is entitled shall constitute a quorum and the majority vote of the membership present shall be necessary to take any action.

1-2-11 Standing Committees. The Commission may establish the necessary standing committees to further the responsibilities and functions of the Public Access, Open Space, and Natural Resources Preservation Fund Commission.

1-2-12 Select Committees. A Select Committee shall consist of up to five (5) members, unless otherwise ordered by the Commission and shall be appointed from time to time as the occasion requires, serving until discharged after finally reporting on the special matter referred to it.

1-2-13 Committee Reports.

- (a) Every committee shall be responsible for writing and submitting a meeting summary to include a list of attendees, topics covered, decisions and/or recommendations to the Commission as a whole.
- (b) Committee chairpersons or other committee members shall report to the whole Commission at its meetings about the Committee's work on matters referred to them.
- (c) Select Committees shall report as required by the Commission upon all matters referred to them, unless further time is allowed by vote of the Commission.
- (d) Whenever any matter is referred to a committee, it shall be the duty of such committee to make diligent inquiry into all of the facts and circumstances connected with such matter. If necessary, the County Attorney may be consulted, documents and records searched, and everything done to bring all facts pertaining to such matter before the Commission.
- (e) The report of the committee on any matter shall provide an evaluation and recommendation as to the disposal of such matter.

1-2-14 Voting.

- (a) There shall be three methods of ascertaining the decision of the Commission upon any matter;
 - 1st, by call of the roll of the members and a record made by the Clerk of the vote of each member;
 - 2nd, by viva voca vote;
 - 3rd, by unanimous consent.
- (b) Whenever the Commission is ready to vote on any question, the Chairperson, after stating the question, shall put such question to a vote, then announce the result of the vote to the Commission. Upon the request if any member of the Commission, the Clerk shall call the role. Unless a member is excused from voting, his silence shall be recorded as an affirmative vote.
- (c) No member shall refrain from voting unless excused by the Commission.

- (d) Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote; and after the announcement of the result, no one shall be permitted to vote or to change his vote.

1-2-15 Standards of Conduct.

- (a) Disclosure of Interest. Whenever a possible direct personal financial interest on any matter pending before the Commission or any of its committees becomes apparent, the affected member shall promptly make a disclosure to the Commission. When a member has made a disclosure of interest and is deemed by the Commission to have as conflict of interest, such conflict shall apply to all subsequent actions relating to said matter. A member with conflict of interest shall refrain from voting except where the member's vote is required to constitute a quorum to act in which event he shall be permitted to vote.
- (b) Code of Ethics. All Commission members and officers and employees of the Agency shall be subject and comply with the provisions of Chapter 3, Article I, of the Kauai County Code, as amended.

1-2-16 Petitions and Submittals to the Commission. Any person may petition the Commission. Petitions and other submittals shall be in writing, signed by the petitioners or persons presenting them.

1-2-17 Motions and Amendments. Motions and amendments may be verbal, but shall be reduced to writing if requested by the Chair, and shall be read from the Clerk's desk, if so desired.

1-2-18 Motions and Priorities.

- (a) No motion shall be received and considered by the Commission until the same has been seconded.
- (b) After a motion is stated or read by the Chair, it shall be deemed in the possession of, and shall be disposed of by vote of the Commission. However, it may be withdrawn by the mover with the consent of the second at any time before a vote or amendment.
- (c) Whenever any question shall be under discussion, the motions in order relative thereto prior to a vote shall be: first, to table; second, to previous question; third, to modify debate; fourth, to postpone definitely; fifth, to commit or recommit; and sixth, to amend; which motions shall have precedence in the order named. The first four (4) motions shall be decided without debate, and shall be put as soon as made.
- (d) When any of said motions shall be decided in the negative, the same shall not be revived at the same meeting relative to the main question under discussion. If all are negative as aforementioned, the only remaining question shall be as to the passage or adoption of the application or any other main question.
- (e) No member shall speak longer than five (5) minutes, nor more than twice on the same question without leave of the Commission, unless the member is the mover of the question pending, in which case the member shall be permitted to speak in reply, but not until every member choosing to speak shall have had the opportunity to speak.

1-2-19 Reconsideration. When a motion has been once made and carried in the affirmative or negative, only a member who voted with the prevailing side may move, at the same meeting, or at the next meeting, to reconsider it, and such motion shall take precedence over all other questions except a motion

to adjourn.

1-2-20 Order and Decorum.

- (a) No person shall sit at the desk of the presiding officer or clerk, except by permission of the Chairperson, or at the desk of any commissioner, except by permission of that commissioner.
- (b) While the Chair is putting any question or addressing the Commission, no one shall walk out of the meeting room or across the floor; nor shall anyone entertain a private discourse, or pass between the member and Chair while the member is speaking.
- (c) When members are about to speak, they shall address themselves to the Chair, and shall confine their comments to the question under discussion, avoiding personalities.
- (d) If any member, in speaking or otherwise, transgresses these rules of procedure, the Chair or any member, may call him to order, and when so called to order, he shall immediately quiet down. The Chair shall then decide the question or order without debate, subject to an appeal to the Commission. In addition, the chair may call for the sense of the Commission on any question of order.
- (e) Whenever any person shall be called to order while speaking, the member shall be deemed to be in possession of the floor when the question of order is decided, and may proceed with the matter under discussion within the ruling made on the question of order.
- (f) No unauthorized person shall enter the floor of Commission except by permission of the presiding officer. The term "floor of Commission" shall mean that portion of the meeting room generally occupied by the Commission and as may be specifically designated by the presiding officer. The presiding officer shall determine, with concurrence of Commissioners, when members of the public may speak on topics being discussed and whether any time limitation per speaker will be set.
- (g) Any person or persons who willfully disrupt a meeting or hearing to prevent and compromise the conduct of the meeting may be removed from the room.

1-2-21 Order of Business.

- (a) After roll-call and the approval of the agenda and minutes, the Presiding Officer shall call for business in the following order:
 - (1) General business matters before the Commission and announcements
 - (2) Communications
 - (3) Committee Reports
 - (4) Unfinished Business or Old Business
 - (5) New Business
- (b) The Commission may, by previous motion, direct that any matter be made a special order of business, which shall take precedence as indicated in the order.

- (c) The unfinished business or old business in which the Commission was engaged at the time of the last adjournment shall have the preference in the order of the day except for general business and announcements, communications, and committee reports, and invited speakers, and no other business shall be received until such unfinished business is disposed of, unless by special leave of the Commission.
- (d) All questions relating to priority of business to be acted upon by the Commission shall be decided without debate.

1-2-22 Question of Order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for. Such question shall be decided by the Chair, without debate, subject to an appeal to the Commission.

1-2-23 Computation of Time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the close of the business of the next day which is not a Saturday, Sunday, or holiday.

1-2-24 Attendance. No member shall be absent from the service of the Commission, unless the member has so advised the Chair prior to the meeting or be sick and unable to attend.

1-2-25 News Reporters. News reporters wishing to take notes of the business of the Commission may be assigned such places by the Chair without interfering with the convenience of the Commission.

1-2-26 New Rules and Amendments. No rule of the Commission shall be altered or rescinded, nor shall any new rules be adopted without the affirmative vote of at least five (5) members of the Commission.

1-2-27 When Rules are Silent. For good cause, the Commission may vote to suspend the rules.

1-2-28 Severability. If any provision of these Rules of Practice and Procedures or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules of Practice and Procedures which can be given effect without the invalid provision or application, and to this end the provisions of these Rules of Practice and Procedures are severable.

Chapter III. Public Records, Inspection and Availability

1-3-1 Inspection of Public Records. All public records shall be available for inspection and copying by any person during established office hours and within reasonable timelines unless public inspection of such records is in violation of any other state or federal law.

1-3-2 Where Available.

- (a) The public may obtain information on matters within the jurisdiction of the Planning Department and Commission for the County of Kauai, by inquiring at the principle place of business of the Planning Department. All rules, orders or opinions of the agency are on file and available for public inspection at this office during business 4444 Rice Street, Suite A473, Lihue, Kauai 96766-1326.
- (b) Inquiry may be made in person at the agency during business hours or by submitting a request for information in writing to the Planning Director, Planning Department, Kapule Building, 4444 Rice Street, Suite A473, Lihue, Hawaii 96766-1326.

1-3-3 Copies of Public Records. Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the applicable fees or costs for publication, research, and postage are paid.

1-3-4 Denial of Inspection. Any person aggrieved by the denial by the officer having custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may seek enforcement action pursuant to HRS Chapter 92.

Chapter IV. Public Records, Inspection and Availability

1-4-1 Initiation of Rule-Making Proceedings.

- (a) Motion by Commission. The Commission may, at time on its own motion, initiate proceeding for the adoption, amendment, or repeal of any rule or regulation of the Commission.
- (b) Petition by Person or Agency. Any interested person may petition the Commission for the adoption, amendment, or repeal of any rule or regulation of the Commission. Petitions for rule making filed with the Commission will become matters of public record.

1-4-2 **Form and Contents.** Petitions for rule making shall contain the name, address, and telephone number of each petitioner; the signature of each petitioner; a draft of the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter; a statement of the reasons in support of the proposed rule, amendment, or repeal and shall deposit with the County funds sufficient to cover appropriate meeting publication costs.

1-4-3 **Action on Petition.** The Commission shall, within thirty (30) days after the filing of a petition for rule making, either deny the petition in writing, stating its reasons for denial or initiate proceedings in accordance with Section 91-3 HR.S.

- (a) Denial of Petition. Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of public rule-making proceedings will not be considered by the Commission. The Commission shall notify the petitioner in writing of such denial, stating the reasons thereto. Denial of a petition shall not operate to prevent the Commission from acting, on its own motion, on any matter disclosed in the petition.
- (b) Acceptance of Petition. If the Commission determines that the petition is in order and that it disclosed sufficient reasons in support of the proposed rule making to justify the institution of rule-making proceedings, the following procedure set forth and applicable statutes and law shall apply.

1-4-4 Notice of Public Hearing to Discuss Rule Adoption, Amendment, or Repeal.

- (a) Publication and Mailing. When, pursuant to a petition therefore or upon its own motion, the Commission proposes to adopt, amend, or repeal a rule or regulation, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation which is published and issued within the County of Kaua'i; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the Commission's rulemaking proceedings at their last recorded address. The notices shall be published at least thirty (30) days prior to the date set for public hearing.
- (b) Form. A notice of the proposed adoption, amendment, or repeal of a rule or regulation shall include the requirements set forth in HRS Chapter 91-3

1-4-5 **Commission Action.** The Commission shall consider all relevant testimony and documents of record before taking final action in a rule-making proceeding. Final action should be taken

within forty-five (45) days after the end of period for submission of written comments or recommendations.

1-4-6 Effective Date. All rules shall be filed and take effect pursuant to HRS 91-4.

1-4-7 Emergency Rule Making. Notwithstanding the foregoing rules, the Commission may adopt emergency rules in accordance to the provisions of HRS 91-3 and 4 if the Commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule or regulation upon less than thirty (30) days notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than one hundred twenty (120) days without renewal. The emergency rule shall become effective upon filing with the County Clerk.

Chapter V. Report Process

1-5-1 Authority. This rule governs the procedures of the Public Access, Open Space and Natural Resources Preservation Fund Commission pursuant to the authority conferred under Chapter 6, Article 14, Kauai County Code 1987 as amended (KCC).

1-5-2 Public Input.

- (a) The Commission shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to discussion during Commission meetings, community outreach to various groups, and participation in community events.
- (b) The Department shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to community outreach to various groups and participation in community events.
- (c) The Department shall maintain a website to inform the public of the Commission's purposes and provide a mechanism for the public to provide input on proposals.

1-5-3 Department Review and Recommendation.

- (a) Within 45 days of receiving a proposal(s), the Department shall transmit a preliminary report on the public proposal(s) to the Commission. In the report, the Department shall provide a preliminary evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.
- (b) At least 90 days prior to the first Commission meeting in January of odd calendar years, the Department shall provide a final evaluation and recommendation for the proposal(s) received subsequent to the adoption of the last preceding biennial report. The recommendation shall be based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.
- (c) After further research, should the Department determine that a preliminarily approved recommendation for acquisition does not meet the criteria of Section 1-5-4 or has a prohibitive factor, the Department shall transmit an additional report to the Commission providing an amended evaluation and recommendation.

1-5-4 Criteria for Acquisition. In the event that a proposal does not meet one or more of the following criteria, the proposed acquisition shall not be recommended. The Department shall submit a recommendation for acquisition only if all criteria established in subsections (a) through (d) of this section are met:

- (a) The proposal fulfills at least one of the Commission's purposes to provide:
 - (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;
 - (9) Conserving land open space and scenic values.
- (b) The cost for the acquisition is commensurate to the public interest served. The cost may be shared by other parties.
- (c) The process for the acquisition is commensurate to the public interest served. Factors may include, but are not limited to:
- (1) The type of property interest that is proposed for acquisition (for example, an easement versus fee simple ownership);
 - (2) Whether or not the acquisition will be an adversarial process.
- (d) The lack of any maintenance requirements; or in the event there are maintenance requirements, the maintenance requirements have cost implications that are commensurate to the public interest served.

1-5-5 Prohibitive Factor. Any proposed acquisition that contains extremely dangerous attributes in the land or that poses a risk of serious injury or death shall not be recommended.

1-5-6 Biennial Report.

- (a) The Commission shall adopt a biennial report that:
- (1) Reports the balance and reviews the sufficiency of the fund;
 - (2) Prioritizes land or property entitlements or proposals that were recommended for acquisition and are directly related to the purpose of Chapter 6 Article 14 of the KCC;
 - (3) Provides an acquisition plan for each proposal that is recommended for acquisition.
- (b) The biennial report shall be adopted by a majority vote of the Commission on the first meeting held in January of odd calendar years. In the event that no action is taken (for example, due to a lack of a majority vote), review and action on the biennial report shall be scheduled at each subsequent Commission meeting until action is taken.

- (c) The Commission shall attempt to prioritize the recommended projects, and the biennial report shall reflect the adopted prioritization of projects. In the event that no consensus is achieved on the prioritization of projects, the report shall reflect as such.
- (d) The biennial report shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.
- (e) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of the biennial report. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.

1-5-7 Dossier Recommendation Process.

- (a) A Commission recommendation for acquisition outside of the biennial report (“dossier recommendation”) may be adopted and transmitted to Council and Mayor only when the Commission determines all of the following:
 - (1) The proposal meets the criteria for acquisition established under Section 1-5-4 of these rules;
 - (2) The proposal does not have a prohibitive factor under Section 1-5-5 of these rules;
 - (3) There is a demonstrable urgency concerning the timing of acquisition where delaying action to the upcoming biennial report will result in significantly more expense, an adversarial acquisition process, or both.
- (b) The dossier recommendation shall provide an acquisition plan for the proposal.
- (c) Prior to the Commission taking action on a dossier recommendation, the Department shall provide the Commission with an evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.
- (d) The dossier recommendation shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.
- (e) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of a dossier recommendation. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.