Carol Suzawa
Chair

Jan TenBruggencate
Vice Chair

Members:
Marissa Sandblom
Galen Nakamura
Virginia Kapali
Ricky Watanabe

COUNTY OF KAUA'I CHARTER REVIEW COMMISSION
NOTICE OF MEETING AND AGENDA
Monday, April 23, 2018
3:00 p.m. or shortly thereafter
Mo'ikeha Building, Meeting Room 2 A/B
4444 Rice Street, Līhu'e, HI 96766

CALL TO ORDER

COMMUNICATIONS

APPROVAL OF MINUTES

Open Session Minutes of March 19, 2018

EXECUTIVE SESSION

ES-007 Pursuant to Hawaii Revised Statutes Sections 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 CRC 2017-08, a proposed Charter Amendment to Amend Article XIX, Financial Procedures, Section 19.15(C), relating to the Public Access, Open Space, and Natural Resources Preservation Fund, expanding the permissible uses of the fund to include the improvement and maintenance of acquired lands or property entitlements, and existing public beach accesses. *(deferred 11/27/17, 12/18/17, 1/22/18, 2/26/18, 3/19/18)*

ES-008 Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session meeting minutes of March 19, 2018, and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item

RETURN TO OPEN SESSION

Ratify Commission actions taken in Executive Session for items: ES-007 and ES-008

BUSINESS

CRC 2017-08 Proposed Charter Amendment to Amend Article XIX, Financial Procedures, Section 19.15(C), relating to the Public Access, Open Space, and Natural Resources Preservation Fund, expanding the permissible uses of the fund to include the improvement and maintenance of acquired lands or property entitlements, and existing public beach accesses. *(deferred 11/27/17, 12/18/17, 1/22/18, 2/26/18, 3/19/18)*

CRC 2017-13 Proposed Charter Amendment allowing the Salary Commission complete authority to establish the salaries of all elected and appointed officials *(deferred 1/22/18, 2/26/18, 3/19/18)*

CRC 2017-14 Proposed Charter Amendment to Amend Article VII, Subsection 7.06 by giving the Administrator of the Office of Boards and Commission the authority to appoint or procure a hearings officer for the County of Kaua'i *(deferred 3/19/19)*

ANNOUNCEMENTS

Next Meeting: Next Scheduled meeting is May 21, 2018, 3:00 p.m., in the Mo'ikeha Building, Meeting Room 2A/2B

ADJOURNMENT

Cc: Deputy County Attorney Adam Roversi

PUBLIC COMMENTS and TESTIMONY

Persons wishing to offer comments are encouraged to submit written testimony at least 24-hours prior to the meeting indicating:

1. Your name and if applicable, your position/title and organization you are representing;
2. The agenda item that you are providing comments on; and
3. Whether you will be testifying in person or submitting written comments only; and
4. If you are unable to submit your testimony at least 24 hours prior to the meeting, please provide 10 copies of your written testimony at the meeting clearly indicating the name of the testifier; and
5. If testimony is based on a proposed Charter amendment, list the applicable Charter provision.

While every effort will be made to copy, organize, and collate all testimony received, materials received on the day of the meeting or improperly identified may be distributed to the members after the meeting is concluded.

The Charter Review Commission rules limit the length of time allocated to persons wishing to present verbal testimony to five (5) minutes. A speaker's time may be limited to three (3) minutes if, in the discretion of the chairperson or presiding member, such limitation is necessary to accommodate all persons desiring to address the Commission at the meeting.

Send written testimony to:
Charter Review Commission
Attn: Lani Agoot
Office of Boards and Commissions
4444 Rice Street, Suite 150
Līhu'e, HI 96766
E-mail: lagoot@kauai.gov
Phone: (808) 241-4917 Fax: (808) 241-5127

SPECIAL ASSISTANCE

If you need an alternate format or an auxiliary aid to participate, please contact the Boards and Commissions Support Clerk at (808) 241-4917 at least five (5) working days prior to the meeting.

to be Approved

COUNTY OF KAUA'I
Minutes of Meeting
OPEN SESSION

Board/Commission:	**CHARTER REVIEW COMMISSION**	Meeting Date	**March 19, 2018**
Location	Mo'ikeha Building, Meeting Room 2A/2B	Start of Meeting: 3:11 p.m.	End of Meeting: 4:48 p.m.
Present	Vice Chair Jan TenBruggencate; Members: Virginia Kapali, Galen Nakamura *(entered at 3:17 p.m.)*, Ricky Watanabe, and Marissa Sandblom Also: Deputy County Attorney Adam Roversi; Boards & Commissions Office Staff: Administrative Specialist Lani Agoot and Administrator Nicholas R. Courson		
Excused	Chair Carol Suzawa		
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Vice Chair TenBruggencate called the meeting to order at 3:11 p.m. with four Commissioners present.
Communications	There were no Communications.	
Approval of Minutes	Meeting Minutes of February 26, 2018	Ms. Kapali moved to approve the meeting minutes of February 26, 2018, as circulated. Ms. Sandblom seconded the motion. Motion carried 4:0.
Business	CRC 2017-05 Proposed Charter Amendment to Remove the Zoning Board of Appeals, Article XIV Subsection 14.12 – 14.14 *(deferred 10/23/17, 11/27/17, 12/18/17, 1/22/18, 2/26/18)* Vice Chair TenBruggencate called for public testimony of which there was none.	

SUBJECT	DISCUSSION	ACTION
	Vice Chair TenBruggencate briefed the Commission on the proposed Charter Amendment, saying that the original proposal was to remove the Zoning Board of Appeals (ZBA) and replace it with a proposed Charter amendment relating to a hearings officer. He said the Commission's attorney recommended separating the two proposed amendments, and that there was no downside if one amendment gets approved and the other one does not. Vice Chair TenBruggencate suggested that the Commission approve the proposed Charter Amendment for placement on the 2018 ballot.	Mr. Watanabe moved to approve CRC 2017-05 for placement on the 2018 ballot. Ms. Kapali seconded the motion. Motion carried 4:0.
	CRC 2017-14 Proposed Charter Amendment to Amend Article VII, Subsection 7.06 by giving the Administrator of the Office of Boards and Commissions the authority to appoint or procure a hearings officer for the County of Kaua'i Vice Chair TenBruggencate stated that the language for the proposed Charter Amendment was in the Commissioner's Executive Session packet and asked the Commission's attorney for guidance. Deputy County Attorney Adam Roversi stated that the proposed Charter Amendment was referred to the County Attorney's Office to address the issues raised at the Commission's last meeting. He said he was fine with having the discussion in Open Session; however, if the Commission preferred, they could take the matter up in Executive Session first, and then return to Open Session for further discussion and possible decision-making. Vice Chair TenBruggencate suggested the item be taken up after the Executive Session.	
	CRC 2017-08 Proposed Charter Amendment to Amend Article XIX, Financial Procedures, Section 19.15(C) by adding language to include corresponding improvement and maintenance of those lands or property entitlements *(deferred 11/27/17, 12/18/17, 1/22/18, 2/26/18)* *Mr. Nakamura entered the meeting at 3:17 p.m.*	

SUBJECT	DISCUSSION	ACTION
	Ms. Kapali stated that she had a concern regarding Section 19.15C(3) of the proposed language: *"The monies in this fund may also be used to improve or maintain public pedestrian access to coastal areas."* She said at the last meeting there was concern that the language was a bit broad because the Administration could decide to use the fund for *any* public access, not just the ones purchased with the Open Space Fund. Mr. Roversi clarified that the language, as written, does permit the use of the money for *any* coastal access, not just properties that were procured using the Open Space Fund. As a point of information, he said the Open Space Fund has only procured one property since 2009, which was the Hodge parcel for the expansion of Black Pot Beach Park, and that there is currently a purchase pending for the acquisition of a Chinese Cemetery in Kekaha. Mr. Roversi stated that although the Open Space Commission has recommended the acquisition of many parcels, the County Council has never approved any of them. He said there are just under 100 access trails and easements around the entire island. Ms. Kapali said she recalled Mr. Nakamura saying at the last meeting that even if the Open Space Commission wanted to make improvements to a public access, they had to have prior approval from the County Council. She said there was also discussion regarding putting a cap on the funds for improvements and maintenance. Planning Director Michael Dahilig stated that apart from the 5 percent of the fund that is set aside for administrative expenses, the rest of the fund is subject to appropriations. The proposed Charter amendment would empower the legislative branch to support improvements and maintenance should they choose to do so. Vice Chair TenBruggencate stated that according to the newspaper, there is pending legal action with regard to reopening an existing public access that has been closed for many years. If the County wins the case and reopens the access, it would probably take some money to improve and/or maintain the public access. He said he is more supportive of the proposed Charter Amendment than he was before as a result of this type of situation. Ms. Sandblom said she remembered the Commission's discussion regarding putting a cap on the funds for improvements and maintenance at the last meeting, and that the Planning Department mentioned they were not opposed to setting a cap; however, they had some concerns about a cap	

SUBJECT	DISCUSSION	ACTION
	prohibiting the Open Space Commission from prioritizing projects. Mr. Dahilig stated that ultimately, how the money is used in any given year is a reflection of the fiscal demands on the County at any given time. He said the current fund balance is six million dollars and if a recommendation for an appropriation of six million dollars for improvement and maintenance costs was presented to the County Council, he felt there would be an issue with that. However, adding language to the proposed amendment from a limitation standpoint regarding what the legislative branch can or can't do would be the Commission's purview. Vice Chair TenBruggencate stated that his understanding was that the County Council couldn't spend the Open Space Fund monies without a recommendation from the Open Space Commission. Mr. Roversi clarified that the County Council could spend the money with a recommendation from the Open Space Commission, provided they were within the allowable categories of use. Ms. Kapali asked for clarification of the Open Space Commission's budgetary process with the County Council to which Mr. Dahilig explained that the only thing presented to the County Council was the 5 percent used for administrative purposes as part of the Planning Department's annual budget; appropriation requests were in the form of money bills. Vice Chair TenBruggencate questioned whether it was clear that the County Council's appropriation of funds was necessary to take money out of the Open Space Fund and spend it. Mr. Nakamura clarified that every expenditure has to be appropriated through a legislative body. Mr. Roversi provided that it was his understanding that the Open Space Commission only has the authority to recommend acquisitions; they have no authority to use the funds. He added that the County Council can accept, reject, or come up with their own ideas regarding the use of the funds. As a matter of housekeeping, Ms. Sandblom said the numbering on page 2 had to be corrected because there were two number 3s.	Ms. Kapali moved to approve CRC 2017-08 with the correction of

SUBJECT	DISCUSSION	ACTION
		the numbering. Ms. Sandblom seconded the motion.
	For the purpose of discussion, Mr. Nakamura suggested amending Section 19.15C(3) as follows: "*The monies in this fund may also be used to improve or maintain public pedestrian accesses to coastal areas, as recommended by the Open Space Commission.*" He said his intent is to give the Open Space Commission some authority.	Mr. Watanabe moved to amend the main motion by adding, "*[A]s recommended by the Open Space Commission.*"
	Mr. Dahilig stated that the Open Space Commission was created by ordinance and by adding the suggested language, the Open Space Commission would become a Chartered Commission.	
	Vice Chair TenBruggencate asked Mr. Dahilig if his recommendation was to not add the language to which Mr. Dahilig stated that ultimately, the decision was the will and authority of the Charter Review Commission as to the expenditure of the fund by legislation, or by community board. Based on the Commission's concerns, he suggested the Commission may want to have further discussions with regard to whether or not the Open Space Commission should be a permanent commission, and what the balance should be between the Open Space Commission and the legislative branch with regard to appropriation authority.	Mr. Watanabe withdrew his motion to amend the main motion.
	Mr. Nakamura asked if the administrative expenses portion was created by ordinance to which Mr. Dahilig replied no, it was created by a Charter Amendment.	
	With no further discussion, Vice Chair TenBruggencate called for the vote.	Motion carried 5:0.
	Mr. Roversi stated that the approved language should be sent to the County Attorney's Office for	

SUBJECT	DISCUSSION	ACTION
	review and comment at the next meeting.	
Executive Session	Vice Chair TenBruggencate called for public testimony to which there was none.	Mr. Watanabe moved to go into Executive Session at 3:40 p.m. Mr. Nakamura seconded the motion. Motion carried 5:0.
Return to Open Session	Ratify Commission actions taken in Executive Session for items: ES-005 and ES-006.	Mr. Nakamura moved to ratify the Commission's actions taken for ES-005 and ES-006. Ms. Sandblom seconded the motion. Motion carried 5:0.
Announcements	Next Meeting: Monday, April 23, 2018, 3:00 p.m., in the Mo'ikeha Building, Meeting Room 2 A/B	
Adjournment		Vice Chair TenBruggencate adjourned the meeting at 4:48 p.m.

Submitted by: _____
Lani Agoot, Administrative Specialist

Reviewed and Approved by: _____
Carol Suzawa, Chair

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

EXHIBIT 1

* Note that language to be deleted is bracketed and stricken through, proposed new language is underlined.

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 1 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 and maintenance 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 or maintain 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.

CRC 2017-08

The moneys 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)

CRC 2017-13 PROPOSED CHARTER AMENDMENT ALLOWING THE SALARY COMMISSION COMPLETE AUTHORITY TO ESTABLISH THE MAXIMUM SALARIES OF ALL ELECTED AND APPOINTED OFFICIALS.

As requested by the Charter Review Commission at its January 22, 2018, meeting, the following proposed language amending Article XXIX was developed by Commissioner Galen Nakamura, in consultation with the County Attorney's Office, for consideration at the Commission's next meeting,

*Note: Language to be deleted is bracketed and stricken through. New language is underlined.

ARTICLE XXIX
SALARY COMMISSION

Section 29.01. Organization. [~~There shall be a salary commission composed of seven members to establish the maximum salaries of all elected and appointed officers as defined in section 23.01 D of this charter.~~] The maximum salaries of all elected and appointed officers as defined in section 23.01D of this charter shall be established by a salary commission consisting of seven members. The director of human resources and the finance director shall serve as ex-officio, non-voting members of the commission, in an advisory capacity.

Section 29.02. Policies. The commission shall adopt and, when it deems necessary, may change the policies governing its salary-setting decisions.

Section 29.03. Resolution. The commission's salary findings shall be adopted by resolution of the commission and forwarded to the mayor and the council on or before March 15 of [~~any~~] each calendar year. [~~The resolution shall take effect without the mayor's and council's concurrence sixty days after its adoption by the commission unless rejected by a vote of not less than five members of the council. The council may reject either the entire resolution or any part of it.~~] The resolution shall take effect on July 1 of the same calendar year. The respective appointing authority may set the salary of an appointee at a figure lower than the maximum figure established by the salary commission for the position [~~, provided that~~]. Elected officers may voluntarily accept a salary lower than the maximum figure established by the salary commission for their position, or forego accepting a salary.

Section 29.04. Rules. The commission shall establish its rules of procedures and adopt rules and regulations pursuant to law.

Section 29.05. Changes in Salary. No change in the salary of councilmembers shall be effective during the term in which a change is enacted or for twenty-four months after a change is enacted, whichever is less.

CRC2017-13

Section 29.06. Administration and Operation. The mayor and council shall provide an annual appropriation sufficient to enable the commission to secure clerical or technical assistance and pay other operational costs in the performance of its duties.

CRC 2017-14; PROPOSED LANGUAGE FOR A CHARTER AMENDMENT AMENDING ARTICLE VII, SECTION 7.06 OF THE KAUAI COUNTY CHARTER RELATING TO THE BOARDS AND COMMISSIONS ADMINISTRATOR

* Language to be deleted is in [brackets]. Language to be added is underlined.

Section 7.06. Boards and Commissions Administrator.

A. There shall be a boards and commissions administrator and any necessary staff. The administrator shall have such training, education, or experience as shall qualify the administrator to perform the duties described in this section. The administrator shall be appointed and may be removed by the mayor.

B. The administrator shall assist in providing administrative and operational support to the various county boards and commissions. Such support shall include, but not be limited to:

(1) assisting in the recruitment, orientation, education, and training of board or commission members regarding their powers, duties, functions, and responsibilities under the charter, especially as such powers, duties, functions, and responsibilities may relate to the particular board or commission to which they have been appointed;

(2) helping to educate such members about applicable state and county ethics laws and the State Sunshine Law; assisting the office of the mayor to fill any vacancies on any board or commission;

(3) being a resource to assist the various county boards or commissions in gathering such information, documents, and data as such boards or commissions may deem necessary to perform its functions;

(4) serving as a communications liaison between boards and commissions and the various county departments, offices, and agencies that such boards and commissions may interact with, to help ensure that various boards' and commissions' information needs are addressed in timely fashion[.];

(5) appointing administrative hearings officers to conduct contested case hearings pursuant to Hawai'i Revised Statutes Chapter 91 on behalf of any county board or commission that elects to delegate its authority to conduct such hearings;

(6) adopting administrative rules pursuant to Hawai'i Revised Statutes Chapter 91 for the conduct of contested case hearings overseen by administrative hearings officers appointed under this section.

C. The mayor and council shall provide an annual appropriation sufficient to provide the administrator with adequate personnel and administrative, operational, and clerical support to carry out the administrator's functions. (Amended 2006)

CRC 2017-14