

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) No more than 90 days after the Commission initiates a dossier recommendation process, 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. The Commission may extend the time line requirements to allow the Department additional time for further research.


- (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.

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

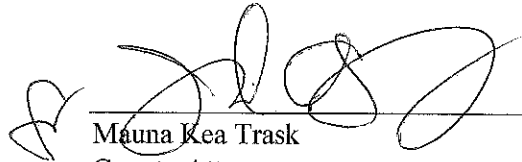
FOR	AGAINST	ABSTAIN/ABSENT
Figaroa, Ono, Blake, Hayashi, Kimura	None	Gegen, Blake, Jasper

The amendments shall become effective ten (10) days upon filing with the County Clerk of the County of Kauai.

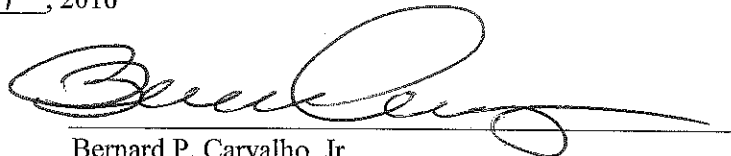
BY ORDER OF THE COUNTY OF KAUAI PUBLIC ACCESS, OPEN SPACE, AND  
NATURAL RESOURCES PRESERVATION FUND COMMISSION.

  
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Joseph Figaroa, Chair

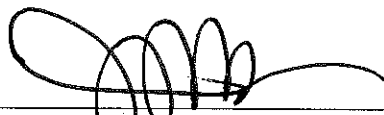
APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Mauna Kea Trask  
County Attorney

APPROVED THIS 19<sup>th</sup> DAY OF Sept, 2016

  
\_\_\_\_\_  
Bernard P. Carvalho, Jr.  
Mayor of the County of Kauai

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE  
OFFICE OF THE COUNTY CLERK THIS 21<sup>st</sup> DAY OF September 2016

  
\_\_\_\_\_  
Jade K. Fountain-Fanigawa  
County Clerk

PUBLIC NOTICE: 2/5/16 (Posted with Office of County Clerk) 2/8/16 (Publication, Garden Island Newspaper)  
PUBLIC HEARING: 3/10/16; 4/14/16