

COUNCIL MEETING

MAY 16, 2018

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, May 16, 2018 at 9:50 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable Derek S.K. Kawakami
Honorable Mel Rapozo

Excused: Honorable Arthur Brun
 Honorable JoAnn A. Yukimura

APPROVAL OF AGENDA.

Councilmember Kaneshiro moved for approval of the agenda as circulated, seconded by Councilmember Chock.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve the agenda as circulated was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: Next item, please.

MINUTES of the following meetings of the Council:

April 11, 2018 Council Meeting

April 25, 2018 Council Meeting

April 25, 2018 Public Hearing re: Bill No. 2701, Bill No. 2702, and Bill No. 2703

Councilmember Kaneshiro moved to approve the Minutes as circulated, seconded by Councilmember Chock.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve the Minutes as circulated was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: Next item.

CONSENT CALENDAR:

C 2018-119 Communication (05/01/2018) from the Director of Human Resources, transmitting for Council information, the May 1, 2018 Vacancy Report, pursuant to Section 23 of Ordinance No. B-2017-821, relating to the Operating Budget of the County of Kaua'i for the Fiscal Year 2017-2018: Councilmember Kagawa moved to receive C 2018-119 for the record, seconded by Councilmember Chock.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2018-119 for the record was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: Next item, please.

COMMUNICATION:

C 2018-120 Communication (05/08/2018) from the Mayor, submitting his Supplemental Budget Communication for Fiscal Year 2018-2019 and Proposed Amendments to the Budget Bills, pursuant to Section 19.02A of the Kaua'i County Charter: Councilmember Kagawa moved to schedule public hearing for May 22, 2018 at 8:30 a.m., and referred to the May 30, 2018 Council Meeting, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to schedule public hearing for May 22, 2018 at 8:30 a.m., and referred to the May 30, 2018 Council Meeting was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: Motion carried. Next item.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: We are on page 2, Legal Document.

LEGAL DOCUMENT:

C 2018-121 Communication (04/25/2018) from the Housing Director, requesting Council approval to write off the mortgage loan totaling \$80,534.04 inclusive of unpaid accrued interest and late fees for foreclosed property located at 2080 Manawalea Street, #604, Lihu'e, Kaua'i, Hawai'i, acquired via Commissioner's Deed dated December 4, 2017 and recorded in the State of Hawai'i Bureau of Conveyances on December 18, 2017, TMK: (4) 3-3-003-036-0032. The property will be sold to a household whose income is at or below 80% of the Kaua'i Median Household Income (KMHI).

- Commissioner's Deed

Councilmember Chock moved to approve C 2018-121, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2018-121 was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Ms. Fountain-Tanigawa: Next item are the Committee Reports.

COMMITTEE REPORTS:

PLANNING COMMITTEE:

A report (No. CR-PL 2018-05) submitted by the Planning Committee, recommending that the following be Received for the Record:

"PL 2018-02 Communication (03/28/2018) from Council Chair Rapozo, requesting the presence of the Public Access, Open Space, Natural Resources

Preservation Fund Commission, to provide a briefing on projects being considered for recommendation by the Commission,”

Councilmember Chock moved for approval of the report, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: Next item.

BUDGET & FINANCE COMMITTEE:

A report (No. CR-BF 2018-16) submitted by the Budget & Finance Committee, recommending that the following be Approved on seconded and final reading:

“Bill No. 2701 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2017-821, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2017 THROUGH JUNE 30, 2018, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND (*Hanalei Coastal Property Acquisition (Operating Budget) – \$5,600,000.00*),”

A report (No. CR-BF 2018-17) submitted by the Budget & Finance Committee, recommending that the following be Approved on seconded and final reading:

“Bill No. 2702 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2017-822, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2017 THROUGH JUNE 30, 2018, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND – CIP (*Hanalei Coastal Property Acquisition (CIP Budget) – \$5,600,000.00*),”

Councilmember Chock moved for approval of the reports, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Is there any discussion or public testimony?
With that, I will suspend the rules.

There being no objections, the rules were suspended to take public testimony.

MATTHEW BERNABE: Is this related to the Open Space item?

Council Chair Rapozo: It is.

Councilmember Kaneshiro: The actual item will be coming up next.

Council Chair Rapozo: The Open Space item will be coming up for final reading in a couple of minutes.

Mr. Bernabe: Okay, perfect.

Council Chair Rapozo: With that, I will call the meeting back to order.

The motion for approval of the reports was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: Next item.

PUBLIC SAFETY & TRANSPORTATION COMMITTEE:

A report (No. CR-PST 2018-02) submitted by the Public Safety & Transportation Committee, recommending that the following be Received for the Record:

“PST 2018-01 Communication (03/27/2018) from Council Vice Chair Kagawa, requesting the presence of the American Red Cross, Hawai'i State Chapter, Kaua'i County Director Padraic Gallagher, to provide a presentation on the programs offered by the American Red Cross on Kaua'i,”

Councilmember Kagawa moved for approval of the report, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: Motion carried. Next item.

BILLS FOR SECOND READING:

Bill No. 2701 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2017-821, AS AMENDED, RELATING TO THE OPERATING

BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2017 THROUGH JUNE 30, 2018, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND (*Hanalei Coastal Property Acquisition (Operating Budget)* – \$5,600,000.00): Councilmember Kaneshiro moved to approve Bill No. 2701, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Kawakami.

Council Chair Rapozo: Bill No. 2701 and Bill No. 2702 are companion bills, so I will take all testimonies now. I will suspend the rules. Is there any public testimony?

There being no objections, the rules were suspended to take public testimony.

Mr. Bernabe: Good morning, everybody. For the record, Matt Bernabe. I am all for open space acquisition, especially coastal. My only curiosity is that this location has just gone through such a dramatic move and the future plan was to go forth with this major development. Even though we are still acquiring the property and I support that, my question to the Council is and I am not sure where it is going, and that is why I showed up today is, what are the plans on moving forward with this current Administration plans on building up that area as it was projected to do before the floods? I know it is a complex question. I hope I am asking it the right way. I do not want to see it developed, if that was the original plan. I was for it at first, but now that this has occurred, I think we need to really take a step back and examine what is best for us. I am supporting the acquisition. I just hope this is not an acquisition to build up that area once again to an unsustainable development. I hope I worded that correctly. Thank you very much.

Councilmember Chock: Matt, good to see you. I have a clarifying question. When you are talking about development for these particular properties, what are you referring to?

Mr. Bernabe: I am referring to the post-flood plans of this Administration and all that encompasses what that was. I was not quite sure exactly. I know there were plans for a boat ramp and other facilities, but in lieu of what has occurred, I do not think... what I am trying to say is, I am still for the land acquisition, I just hope that it is not for the original purposes pre-flood and that we really have public meetings and go through the processes of discussing this not just with emotions, but with science and culture. This is dramatic. I have seen it with my eyes. To see it in photos versus your eyes and I am sure you all have seen it, I am not accusing you of not, but some people have not.

Councilmember Chock: Thank you.

Mr. Bernabe: That is my public opinion. Thank you.

Council Chair Rapozo: Thank you. Anyone else? Seeing none.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Just to ease Mr. Bernabe's mind, in all honesty, I do not envision this Administration completing the plan for that area. I think right now what is going on in the North Shore with the post-flood, they are going to be busy for quite a while. The understanding and expectation of this Council is that there will be a community-driven process to determine what the ultimate use of that park will be. I believe that is what is going to happen and I would encourage that to happen. That is where it is at right now and I do not envision any Administration shoving the future use of that park down the community's throat. I hope that answers your question. Any other discussion before we vote?
Councilmember Kagawa.

Councilmember Kagawa: I will be supporting this. Obviously, I have been working with the Administration, the Mayor, Mauna Kea, Managing Director, and yourself, Council Chair Rapozo. We have worked long and hard on trying to resolve some of the issues with the Sheehans and this is the conclusion. This settles a lot of the lawsuits of the past, some of which are problematic for the County, I can say that. At the end of the day, fighting legal battles in court with government money is a waste of money. If it were people's personal money, they would not carry out lawsuits. They would take the advice of the attorney and make the next move. In this case, I believe this is the right move. I think we have a fair proposal. The numbers have been showed by Mauna Kea and has been validated by some of the presentations done by Council Chair last week in Committee that we are getting a good, decent value for this property that we are buying, and then we are selling everything else that was still hanging over us. I think this is a good plan. This Administration has put in a lot of hours in planning as far as what we are going to do due to complaints about parking on the beach and what is our solution to that. Now, we have a restroom that is falling down, so I think everything, including this new property, needs to be put back into a bag and whether it be this Administration or the next Administration, certainly we have to consider all that has happened in planning our next restroom. We knew that the old restroom was not sufficient. There were women waiting, there were not enough stalls, and for the men, not too bad. We want to plan the park so we do not have to have men using the restroom in the trees or what have you. There are a lot of things that need to be decided and hopefully the local community there will have the best and most say as far as where we want parking to be, and where we want the restroom to be, what kind of restroom we want, but like what Chair said, first things first, we need to fix the road. We need to make sure that the reservoir does not breach as it did and create new rivers. There are a lot of things that we need to do first because the rain came and it will come again and if you do not learn from your past mistakes, you are just being foolish and ignorant. We have to do it right and take our time, work with the community, and see if there are chances to acquire more property. Maybe that is what is needed. We will do our fixing and planning. It may not be the Carvalho Administration, it might go on to the next Administration, whomever the next Mayor is, but certainly with the disaster, there are a lot of new windows of opportunity that this County can seek to gain for the public and make sure that the public and the future has it instead of private landowners. I will be in support. I would like to thank Mauna Kea, Council Chair Rapozo, and the Mayor.

The time we put into this is going to be appreciated by the future generations. Thank you.

Council Chair Rapozo:

Councilmember Chock.

Councilmember Chock: I also want to acknowledge the introducers and all those involved in this acquisition. I know it is a big chunk of our Open Space funds. I also want to thank in particular, Mauna Kea's presentation at last week's meeting as it outlined the status of this particular property and the fact that it was not damage, but was under water. It causes two (2) things for us to think about and one is, as some of the testimony has shown, that we need to look at it holistically in terms of how it is we rebuild along our watersheds and low-line areas. This is a small piece of that. I have been reading a lot of different speculations about what happened, how the river was one hundred (100) years ago, five hundred (500) years ago, what the path was, about rock pilings, and all kinds of things. That is what we are trying to say, "Let us take the time to actually look at the whole area because it needs to be readdressed." This is the opportunity amongst this crisis that we have experienced to take that time to redo it. I am not an engineer, but what the presentation showed last week was that it overflowed on the local *iā* and that is why we experienced some of what we saw on Weke Road and that is why the land in question was not affected as we had imagined it might have been. The other concern that we hear is the cost. According to the calculations that we were given from the Administration, the cost of eminent domain would be much higher, not "much" higher, but higher than what it is we are paying for it now and so that is one of the reasons why this is the right choice and move in this direction. I just want to encourage, as the testimony encouraged, us to take this time to step back, to look at what it is that we need to do to not only look at this area because it was not the Hanalei River watershed that was affected, but just about all of our watershed areas on the North Shore and even east in Kōloa. This could serve as a model for us as a County to say, "This is how we grow and rebuild in these areas," so I will be supporting this and thanks again to Council Chair and Vice Chair.

Council Chair Rapozo: Is there further discussion? I will be supporting this. This closes a chapter in this County's history that was long ongoing of what I will say was a legal battle. A lot of the legal battle was not seen by the public and it was a very expensive battle and it would have been much more expensive. I want to thank Councilmember Kagawa. I remember a couple years ago, we went down to look at the place and met with the owners and at that point it seemed almost impossible that we would ever get this done just because of the discussions. It was not really moving forward. Councilmember Kagawa and I really saw the importance of acquiring this property and called Mauna Kea. Mauna Kea came down and it was very refreshing when you have a County Attorney who is supportive, number one, and full of ideas of how we can make it happen versus a bunch of reasons why we cannot. That is what we got out of Mauna Kea. After that, I saw a glimmer of hope that maybe we can get this done. We are very far apart on the number and the conditions, I will be honest, but with the Mayor's blessing and a couple of meetings down on the river with the Mayor, Mauna Kea, and the owner, the gap started to shrink. Finally, an offer was made that the Council agreed. I really want to thank this Council for their support. I had some doubt that we would get the support of this

Council. I was hoping we would get majority, but I was very happy that we got unanimous support of this transaction. Really, what this does is it acquires a property that would otherwise end up in a private landowners' hands and who knows what they would have used this land for. This just opens up a whole new set of options for the community out there and for the entire island because we all use that place. I am thankful to everyone that had a hand in this, especially to the Mayor who really without his blessing, it would not work, to Mauna Kea for all the negotiations, and of course all of the Councilmembers that will vote on this today. With that, is there any other discussion? Seeing none, the motion is to approve. Roll call.

The motion to approve Bill No. 2701, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Five (5) ayes.

Council Chair Rapozo: Can we have Bill No. 2702, please?

Bill No. 2702 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2017-822, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2017 THROUGH JUNE 30, 2018, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND – CIP (*Hanalei Coastal Property Acquisition (CIP Budget) – \$5,600,000.00*): Councilmember Kaneshiro moved to approve Bill No. 2702, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Chock.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve Bill No. 2702, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun, Yukimura	TOTAL – 2,

RECUSED & NOT VOTING: None

TOTAL – 0.

Ms. Fountain-Tanigawa: Five (5) ayes.

Council Chair Rapozo: Can you read us into Executive Session?

EXECUTIVE SESSION:

ES-945 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council, to provide the Council with an additional briefing update and request for authority to settle the case of Klaus H. Burmeister, et al. v. County of Kaua'i, CV 16-00402 LEK-KJM (United States District Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-949 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing, discussion, and consultation regarding the Quarterly Report on Pending and Denied Claims. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Council Chair Rapozo: Before we take a motion, Mr. Bracken from the Office of the County Attorney has informed us, through Mauna Kea, that this matter is on the agenda in anticipation of a ruling by the Court, which has not occurred yet. He is requesting a deferral. If there is no objection, can someone make that motion, but I will ask for public testimony before we make that motion?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Would this be for ES-945?

Council Chair Rapozo: Only for ES-945. Can I get a motion to defer ES-945?

Councilmember Chock moved to defer ES-945, seconded by Councilmember Kaneshiro, and carried by a vote of 5:0:2 (*Councilmembers Brun and Yukimura were excused*).

Council Chair Rapozo: I need a motion to go into Executive Session for ES-949.

Councilmember Chock moved to convene into Executive Session for ES-949, seconded by Councilmember Kagawa.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to convene into Executive Session for ES-949 was then put, and carried by the following vote:

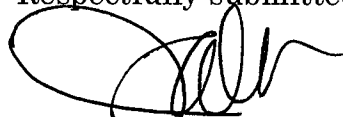
FOR EXECUTIVE SESSION:	Chock, Kagawa, Kaneshiro, Kawakami, Rapozo	TOTAL – 5,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: That ends the formal agenda. We do have a public hearing at 1:30 p.m. This meeting is adjourned.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 10:11 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:dmc