

COUNCIL MEETING

JUNE 13, 2019

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Arryl Kaneshiro at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Thursday, June 13, 2019 at 8:37 a.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun (*present at 8:38 a.m.*)
Honorable Felicia Cowden
Honorable Luke A. Evslin
Honorable Ross Kagawa
Honorable Arryl Kaneshiro

Excused: Honorable Mason K. Chock
 Honorable KipuKai Kualii

APPROVAL OF AGENDA.

Councilmember Evslin moved for approval of the agenda, as circulated, seconded by Councilmember Kagawa.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on the agenda?

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:

Council Chair Kaneshiro: Seeing none. Is there any discussion from the members?

The motion for approval of the agenda, as circulated, was then put, and carried by a vote of 4:0:3 (*Councilmembers Brun, Chock, and Kualii were excused*).

Council Chair Kaneshiro: The motion is carried.

(Councilmember Brun was noted as present.)

MINUTES of the following meetings of the Council:

Minutes of the April 24, 2019 Council Meeting
Minutes of the May 1, 2019 Special Council Meeting
Minutes of the May 8, 2019 Council Meeting
Minutes of the May 14, 2019 Special Council Meeting
Minutes of the May 22, 2019 Public Hearing re: C 2019-110
Minutes of the May 29, 2019 Public Hearing re: Bill No. 2746, Bill No. 2747,
and Bill No. 2748

Councilmember Kagawa moved to approve the Minutes, as circulated, seconded by Councilmember Brun.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on the Minutes?

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:

Council Chair Kaneshiro: Seeing none, is there any discussion from the members?

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

Council Chair Kaneshiro: Motion carried. Next item, please.

CONSENT CALENDAR:

C 2019-127 Communication (05/14/2019) from the Mayor, transmitting for Council consideration and confirmation, the following Mayoral appointments to the various Boards and Commissions for the County of Kaua'i:

- a. Civil Service Commission
 - Ricky R. Watanabe – Term ending 12/31/2021
- b. Charter Review Commission
 - Reid R. Kawane – Term ending 12/31/2021

C 2019-128 Communication (05/23/2019) from Councilmember Evslin, providing written disclosure of a possible conflict of interest and recusal relating to Agenda item C 2019-116 and Proposed Draft Bill (No. 2752), regarding Zoning Amendment ZA-2019-2 (*Island School, Applicant*), as his sister is a member of the

Board of Directors for Island School and his brother is serving as the Dean of Students for Island School.

Councilmember Kagawa moved to receive C 2019-127 and C 2019-128 for the record, seconded by Councilmember Brun.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on the Consent Calendar?

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 2019-127 and C 2019-128 for the record was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried. Next item, please.

COMMUNICATIONS:

C 2019-129 Communication (03/20/2019) from the Deputy Fire Chief, requesting Council approval, to accept a donation from the Friends of Kaua'i Fire Department, of a 100 foot Short-Haul Line and two (2) 338 Heli-Ops Harnesses, valued at \$3,250.00, for the County of Kaua'i Fire Department: Councilmember Kagawa moved to approve C 2019-129 with thank-you letter to follow, seconded by Councilmember Brun.

Council Chair Kaneshiro: Do we have any questions for the Administration? I do not see them here.

Councilmember Cowden: I do not see them here.

Council Chair Kaneshiro: We will move the item. Councilmember Kagawa.

Councilmember Kagawa: I just want to say they are still putting out a major fire in the Po'ipū area, so I want to grant them an excuse and hope we can lay off the questions for today, so they can focus on that fire.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I wanted to verbally acknowledge that I am happy we have "Friends of Kaua'i Fire Department" and so much of our community comes together. I just wanted to verbally say, thank you on that, that is all.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this item?

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:

Council Chair Kaneshiro: Seeing none. Is there any final discussion?

The motion to approve C 2019-129 with thank-you letter to follow was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried. Next item.

C 2019-130 Communication (05/06/2019) from Bryson Ponce, Assistant Chief of Police, Investigative Services Bureau, requesting Council approval to receive and expend Federal funds, in the amount of \$41,613.00, from the Edward J. Byrne Memorial Justice Assistance Grant (JAG) Project No. 17-DJ-03, which will be used for drug-related investigations, training, K9 supplies, eradication projects, and travel to other islands for joint operations with other law enforcement agencies. Approval to indemnify the State of Hawai'i Department of the Attorney General for the term commencing March 1, 2019 to December 31, 2019 is also requested: Councilmember Kagawa moved to approve C 2019-130, seconded by Councilmember Brun.

Council Chair Kaneshiro: Are there any questions for Police on this item?

Councilmember Cowden: I have more gratitude. I was hoping he could come up and sit since we have four (4) items for him, but we do not have to.

Council Chair Kaneshiro: If there are no questions, he does not need to answer. Is there anyone in the audience wishing to testify on this item?

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:

Council Chair Kaneshiro: Seeing none. Are there any final discussion from the members? Councilmember Cowden, if you want to express your gratitude on this item.

Councilmember Cowden: I am just appreciative of all these grants that Assistant Chief of Police Bryson Ponce of the Investigative Services Bureau, put the effort out to get and that is really helpful. I am very thankful for the effort that comes out of the Police Department, so I support it.

Council Chair Kaneshiro: Is there anyone else?

The motion to approve C 2019-130 was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried. Next item.

C 2019-131 Communication (05/09/2019) from Bryson Ponce, Assistant Chief of Police, Investigative Services Bureau, requesting Council approval to receive and expend Federal funds, in the amount of \$92,652.00, from the Paul Coverdell Forensic Science Improvement Grants Program, for the Opioid Field Investigation Safety Project No. 18-CD-04, which will be used to purchase one (1) handheld combination Raman Fourier-transform infrared spectroscope, inclusive of the associated training, to address the growing opioid abuse epidemic on Kaua'i. Approval to indemnify the State of Hawai'i Department of the Attorney General for the term commencing January 1, 2019 to December 31, 2019 is also requested: Councilmember Kagawa moved to approve C 2019-131, seconded by Councilmember Brun.

Council Chair Kaneshiro: Mr. Ponce. Councilmember Kagawa.

Councilmember Kagawa: What type of devices this is? Are these handheld? Do we have the professional training in-house to use that. Obviously, we probably do, but in a nutshell...

There being no objections, the rules were suspended.

BRYSON PONCE, Assistant Chief of Police, Investigative Services Bureau: Good morning. Bryson Ponce, Assistant Chief of Police, Investigative Services Bureau, Kaua'i Police Department. Basically, it is a portable chemical analyzer. It identifies both known and potentially unknown hazardous materials at a scene. Primarily the information we are looking for identifying opioids and other drug chemicals, but it can also be used to identify explosives or pre-cursors to explosives. It allows for safer handling for our Crime Scene Specialists, our Officers, Detectives, the transport and storage of the evidence, and it gives us good investigative leads. Recently, we issued naran naloxone to all of our officers. Part of the reason is because of the heroine, fentanyl dangers, and exposures out there. This tool ties into identifying substances that our officers and employees deal with forensically and safely, where they do not need to open everything up, and get exposed to breathing it. Basically, officers use this handheld device to scan it.

Councilmember Kagawa: My second question is, did we have something like that before and is this a better one than we had previously?

Mr. Ponce: Yes, so we have what is called a TruNarc. A TruNarc is another platform to do drug analysis where you do not have to open everything up—this is more high-tech; better quality. We will continue to use both.

Councilmember Kagawa: Yes, good. I am happy when we have these opportunities to upgrade. Just like we keep getting better phones and I am sure it

applies to a lot of other things you folks use to try to keep the drugs and things off the streets. Thank you for all your work.

Mr. Ponce: Thank you.

Council Chair Kaneshiro: Are there any other questions from the members? Seeing none. Thank you. Is there anyone in the audience wishing to testify on this item?

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:

Council Chair Kaneshiro: Are there any final comments from the members?

The motion to approve C 2019-131 was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried. Next item, please.

C 2019-132 Communication (05/21/2019) from Bryson Ponce, Assistant Chief of Police, Investigative Services Bureau, requesting Council approval to accept equipment of a cardscan latent print system from the Office of the Attorney General, in the amount of \$7,837.50, which will replace the current cardscan system that is no longer supported with updates from Microsoft or the equipment vendor. The purchase of equipment will include a one-year warranty after which, the Kaua'i Police Department will be responsible for continued maintenance at a cost of \$1,200.00 per year plus tax: Councilmember Kagawa moved to approve C 2019-132, seconded by Councilmember Brun.

Council Chair Kaneshiro: Are there any questions from the members on this item? Councilmember Kagawa.

Councilmember Kagawa: I will just say, this explanation here, is really good and self-explanatory, so, I will support. Seems like Xerox machines and things...it purchases the warranty and maintenance because it is so technical. That it is not something where you can read the manual and do it yourself. For me, it looks like an upgrade that needs to be done. It is a small price. The other one, I was concerned because it was a large price, so I wanted a little explanation. Thanks.

Council Chair Kaneshiro: Councilmember Evslin, do you have a question?

Councilmember Evslin: No.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this item?

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:

Council Chair Kaneshiro: Seeing none. Councilmember Evslin, discussion.

Councilmember Evslin: I just want to say, I appreciate that it includes the continued maintenance cost. I think often we see things that do not include that, so it is helpful to see that. Thank you.

Council Chair Kaneshiro: Are there any other discussion from the members?

The motion to approve C 2019-132 was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried. Next item.

C 2019-133 Communication (05/21/2019) from Ka'āina S. Hull, Clerk of the Planning Commission, transmitting the Planning Commission's recommendation to amend Section 8-15.1(d) of the Kaua'i County Code 1987, as amended, relating to Additional Dwelling Unit on Other than Residentially Zoned Lots: Councilmember Brun moved to receive C 2019-133 for the record, seconded by Councilmember Kagawa.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify? Are there any questions from the members? If not, we can take the discussion at Bill for First Reading and ask Ka'āina the questions then. Do you need to leave? Actually, let us take this and the Bill. Let us vote on this and then we will take the Bill right after.

The motion to receive C 2019-133 for the record was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Page 4.

Council Chair Kaneshiro: Yes, Proposed Draft Bill (No. 2693).

Ms. Fountain-Tanigawa: On page 4, Chair. Bill for First Reading.

There being no objections, Proposed Draft Bill (No. 2693) was taken out of order.

BILL FOR FIRST READING:

Proposed Draft Bill (No. 2693) – A BILL FOR AN ORDINANCE AMENDING SUBSECTION 8-15.1(d), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO ADDITIONAL DWELLING UNIT ON OTHER THAN RESIDENTIALLY ZONED LOTS: Councilmember Kagawa moved for passage of Proposed Draft Bill (No. 2693) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 17, 2019, and referred to the Planning Committee, seconded by Councilmember Brun.

Council Chair Kaneshiro: I will suspend the rules. Do we have questions or Ka'āina, do you have anything you want to say upfront, a presentation or anything? Councilmember Evslin.

There being no objections, the rules were suspended.

KA'ĀINA S. HULL, Planning Director: Good morning.

Councilmember Evslin: I do have a couple questions, but I was wondering if you could give us a quick overview of what the Bill does.

Mr. Hull: Good morning, Chair and members of the Council. Ka'āina S. Hull on behalf of the Planning Department. The Bill, essentially, is looking at the potential for opening up or extending the deadline for those individuals who had Additional Dwelling Unit (ADU) clearance forms for non-residentially zoned lands, so Agriculture and Open zoned lands. Several years ago, there was, essentially, a closure to no longer allow ADU's to be developed by Agriculture and Open zoned lands. However, those who were able to get an ADU clearance form by a certain deadline...we were allowed to hold that entitlement up until 2015. Essentially, that is when it closed on them being able to build. The Bill extends that deadline to 2021. That number is relatively small. As far as those individuals that have those clearance forms that would qualify under the Bill, you are talking roughly thirty-five (35) to forty (40) individual property owners.

Councilmember Evslin: Just for my own clarity though, at the time...in order to get the entitlement, you had to submit a building permit along with the clearance form, right?

Mr. Hull: Correct, you had to submit both a clearance... essentially, there are two (2) deadlines. An ADU facilities clearance form needed to be submitted by June 2007. However, previous to that, you had to have submitted a building permit by November 2006. So, you needed both those deadlines in order to have held that entitlement, which closed in 2015. To act on the entitlement—this is saying, if you have the ADU clearance form—the proposal, right now, is to remove the building permit requirement, but just to say, as long as you have that clearance form, you can move forward until 2021 to construct those units.

Councilmember Evslin: To get the clearance form, you just need a plot plan, right? You do not actually need...

Mr. Hull: Correct.

Councilmember Evslin: Okay. Do you feel like this is in alignment with our General Plan?

Mr. Hull: The General Plan is quite clear in not allowing further expansion of development into non-urban lands, i.e. agriculture lands. The Bill does not reopen expansion into agriculture lands, it just allows for those who already have that entitlement, to keep that entitlement running. I would not say it runs counter to the General Plan, but a strict and hard interpretation of the General Plan would say, "Even these forty (40) units, we should foreclose upon." But the General Plan does not explicitly state that. It just says, "For no further expansion of development into it."

Councilmember Evslin: Do they actually have the entitlement to build right now, right, because they did not submit the building permit...so it would actually be retroactively giving them the entitlement or am I wrong?

Mr. Hull: Technically, because they have a clearance form, and the clearance form was done through the zoning, I mean, you are going to have a discussion with the County Attorney as to what specifically constitutes an entitlement. When you have this zoning ability to do it, generally you would say that is an entitlement right that they enjoy right now. Now, granted the ordinance says they have to act within a certain time period to recertify it to continue that entitlement in perpetuity, but arguably I would take the position that those thirty-five (35) to forty (40) units do, in fact, have the entitlement, but if they do not recertify, they will lose that entitlement.

Councilmember Evslin: Okay.

Mr. Hull: For strict legal interpretation of what constitutes an entitlement, refer to Adam, over there.

Councilmember Evslin: I guess, my only concern is on the practice of changing something retroactively to extend an entitlement to something that is not in alignment with the General Plan. I can totally see if it was in total alignment, then yes, if we are going to grandfather in ADUs in some fashion, yes. That is my concern and I have been struggling with it for a couple of weeks, but thank you.

Mr. Hull: Yes, Councilmember, from a Planners perspective, definitely having everything complete in conformance and aligned with the General Plan, and long-range documents' is what we strive for. I would just say because it is not a further expansion. The General Plan is kind of silent on the specific folks that already have that entitlement, it is debatable as to whether or not, it truly is in compliance, but I can definitely appreciate your position on attempting to hold the line. Ultimately, the Department and the Planning Commission made the analysis, which came down to a nominal number.

Councilmember Evslin: Okay, thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Regarding these Additional Dwelling Units, are most of these properties on agriculture land? Is that correct?

Mr. Hull: Yes, the Bill applies to Agriculture and Open zoned lands.

Councilmember Cowden: Agriculture and Open zoned lands...so we recently approved a property, maybe two (2), where we were allowing Agriculture to become Open or pulling it together. Are these largely on the eastside? Where are most of these properties? Are they all over the island?

Mr. Hull: As far as the forty (40) that have, I believe they are all over the island, but I can get that information for you in Committee.

Councilmember Cowden: I was just curious, if these are properties are ones where families are trying to include their grown children onto their land or if this is more to subdivide and sell. Do we have a sense or does none of this matter?

Mr. Hull: It is hard to say, at the end of the day, we can get the regional locations of these properties, but whether or not an individual property owner decides to exercise the right to sell off a unit or keep it within the family, it is hard to make that analysis, essentially.

Councilmember Cowden: Alright, just in some of these...

Mr. Hull: But we can get you a regional analysis of where these parcels are located.

Councilmember Cowden: Okay. So it looks like you are giving people another couple of years to...

Mr. Hull: Recertify.

Councilmember Cowden: Recertify. Okay, thank you.

Council Chair Kaneshiro: Are there any further questions from the members? If not, thank you.

Mr. Hull: Thank you.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this item? This is Proposed Draft Bill (No. 2693).

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:

Council Chair Kaneshiro: If not, I will call this meeting back to order.
Roll call vote.

The motion for passage of Proposed Draft Bill (No. 2693) on first reading, that is be ordered to print, that a public hearing thereon be scheduled for July 17, 2019, and referred to the Planning Committee was then put, and carried by the following vote:

FOR PASSAGE:	Brun, Cowden, Evslin, Kagawa, Kaneshiro	TOTAL – 5*
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Chock, Kualii	TOTAL – 2,
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 Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

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

Council Chair Kaneshiro: Motion passes. We will go back. Are we on claims now?

Ms. Fountain-Tanigawa: Yes. Chair, on page 3.

CLAIMS:

C 2019-134 Communication (05/21/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Steven and Yvonne Stoner, for damage to their property, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2019-135 Communication (05/24/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Leonie C. Dabancourt, for damages to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2019-136 Communication (05/24/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Progressive Advanced Insurance Company, as subrogee for Katharine Mesanko, for damages to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2019-137 Communication (05/24/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Dwight and Penny Matsushima, for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

(Councilmember Kagawa was noted as present).

C 2019-138 Communication (05/24/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Catana L. Padilla, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2019-139 Communication (05/28/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Patty-Ann Kalena Machado, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kagawa moved to refer C 2019-134, C 2019-135, C 2019-136, C 2019-137, C 2019-138, and C 2019-139 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Brun.

Council Chair Kaneshiro: Are there any questions from the members?

Councilmember Kagawa: Yes, I have a question.

Council Chair Kaneshiro: I will suspend the rules, Councilmember Kagawa.

There being no objections, the rules were suspended.

Councilmember Kagawa: Who is the one handling the initial claims? Did something happen because there are six (6) of them? Was that one instance or one area?

Council Chair Kaneshiro: I do not think the attorneys will know yet. This is just to get the claims to the Office of the County Attorney.

Councilmember Kagawa: Okay, but someone read it, right? Nobody? It is all in one location?

Council Chair Kaneshiro: No.

Councilmember Kagawa: Are they all different locations?

Council Chair Kaneshiro: These are all different instances.

Councilmember Kagawa: That is how bad our roads are then? Nah, just kidding. Like I said we gave our Mayor the opportunity ten (10) years, twenty-five million dollars (\$25,000,000), half percent (0.5%) to fix roads. He is choosing to a lot two-thirds to fix what I am talking about, one-third to bus, which is okay, but what I am saying is there is a lot of road problems. We are going to see a lot more of these, this is six (6). Every two (2) weeks we have a meeting. You go six (6) times two (2)

equals twelve (12) per month. I used to see one (1) or (2) maybe, on an agenda. So all these bad roads...

Council Chair Kaneshiro: I just want to say that some claims are related to accidents, where a rock from the mower hits a window. A few of them were accidents.

Councilmember Kagawa: Okay, but the roads are still bad. We have money, so I hope we can fix the ones that are bad, because I see some where you want to scratch your head and say, "Wow, this is pretty bad." People are paying property taxes and the roads are like this, like in Hanapēpē. That is all I have.

Council Chair Kaneshiro: I read the claim when we received the agenda packet. I do not have them memorized, but I know a few of them were accidents and I believe sometimes we have mowers throwing rocks and hits the window, type of things, also.

Councilmember Kagawa: Well, that County employee should pay for it.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I am looking at things like Councilmember Kagawa, too. I do not see...I have these pages here, but they just say there is a request. When I saw six (6) in at one time, I was curious if that was the road, if those were other cars hitting...

Council Chair Kaneshiro: Yes, again, this is to refer to the Office of the County Attorney. They are going to look at it, then they will put on the claim sheet that we look at on the agenda. We will see all the details on it when it actually gets put on the agenda at that time.

Councilmember Cowden: Okay.

Council Chair Kaneshiro: This is just to refer the claims to the Office of the County Attorney.

Councilmember Cowden: Okay, alright, because I am curious like Councilmember Kagawa, of why do we have so many of these? It seems pretty routine.

Council Chair Kaneshiro: We will see them, you know, that sheet we receive that have all the claims and what they are for. So these will end up in there. This is just the process, the claim comes in and we have to send it to the Office of the County Attorney. Adam folks have not even seen what they look like, yet.

Councilmember Cowden: I wish the public was able to know what it was as well. They will not get to see it, when we see it.

Council Chair Kaneshiro: They will get to see it when the claim sheet comes out.

Councilmember Cowden: Okay.

Council Chair Kaneshiro: We put all our claims on the agenda.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Councilmember Kagawa.

Councilmember Kagawa: Again, the main thing I see, once the claim is in, is that something happened, right? The County should have been better, right? What I want to see all the time, is that we addressed it. I will bring up a situation, when you are weed whacking your yard and it is near a road, you do not face the weed whacker to the road, you face your back to the road because the rocks tend to fly away from you, right? Hopefully, when we have those situations, management has a consultation from the attorney's, a claim came in, something was damaged, now, how was the person weed whacking? Okay, should we stop the motor when the cars are passing, and make sure we face the right way. I hope we have those types of follow-up. If it happens to individual owners who were sued and you have to pay the bill, I guarantee you will correct your action. I fear sometimes, that the County government, State government, or Federal government is not accountable, it is not their money...that is why I say we should take it out of their paychecks, if they do something without thinking, you know?

Council Chair Kaneshiro: Okay. Are there any other questions or comments? Did I take public testimony? Is there anyone in the audience wishing to testify on any of the claims?

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

Council Chair Kaneshiro: Is there any final discussion from the members?

The motion to refer C 2019-134, C 2019-135, C 2019-136, C 2019-137, C 2019-138, and C 2019-139 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried. Next item.

COMMITTEE REPORT:

PLANNING COMMITTEE:

A report (CR-PL 2019-04) submitted by the Planning Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2747 — 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,”

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

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this? Tessie, this will also come up during second and final reading, if you want to talk then. This is just the Committee Report.

There being no objections, the rules were suspended.

TESSIE KINNAMAN: Okay, so I can ask for some amendments?

Council Chair Kaneshiro: Yes, it is going to be on the Bill for Second Reading, it should come up in the next few minutes.

Ms. Kinnaman: I know, okay, thank you.

Council Chair Kaneshiro: Is there anyone else on the Committee Report? If not, is there any discussion from the members?

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

The motion to approve the report was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Kualii were excused*).

Council Chair Kaneshiro: Motion carried. Next item, please.

RESOLUTIONS:

Resolution No. 2019-38 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE CIVIL SERVICE COMMISSION (*Ricky R. Watanabe*): Councilmember Brun moved for adoption of Resolution No. 2019-38, seconded by Councilmember Evslin.

Council Chair Kaneshiro: Are there any questions from the members on this appointment? If not, is there anyone in the audience wishing to testify on this?

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:

Council Chair Kaneshiro: Seeing none. Is there any final discussion?
Councilmember Cowden.

Councilmember Cowden: I appreciate the depth of service that Ricky R. Watanabe has and he knows a tremendous amount about all this that will be covered in this Civil Service Commission. I am going to enthusiastically approve this.

Council Chair Kaneshiro: Councilmember Kagawa.

Councilmember Kagawa: Yes, thank you, Councilmember Cowden. Ricky R. Watanabe worked on the budgets for, I do not want to say, thirty (30) years, but he has leading the County budget team, as well as, managing as County Clerk for a long time. His knowledge is invaluable, so we are lucky he is giving back and providing his knowledge, because it definitely will help. As we try to address and control our personnel issues we have and the strain on the budget, so we can fix other things like roads. I am happy to support Ricky and I want to announce this second one, I will need to recuse. Please note that.

Council Chair Kaneshiro: Okay. Are there any other comments?
Councilmember Evslin.

Councilmember Evslin: I really appreciate anyone who is willing to serve, especially, when someone has already put in so many years of service. This could or should be a time for Ricky to enjoy his retirement and yet, he is coming back into public service. I deeply appreciate that.

Council Chair Kaneshiro: Councilmember Brun.

Councilmember Brun: Thank you, Ricky for putting the sixty-two (62) years in County. Thank you very much.

Council Chair Kaneshiro: He gets to collect County pension, so maybe we can say he is getting paid to do it...just kidding. He put in a lot of time at the County. Again, having that historical knowledge is very important, I think, when it comes to any of these boards, especially Civil Service. It is a good thing to have people who are willing to give back after spending so much time with the County. Are there any final comments? If not, roll call vote.

The motion for adoption of Resolution No. 2019-38 was then put, and carried 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.

Ms. Fountain-Tanigawa: Five (5) ayes, two (2) excused.

(Councilmember Kagawa was noted as recused from Resolution No. 2019-39).

Resolution No. 2019-39 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE CHARTER REVIEW COMMISSION (*Reid R. Kawane*): Councilmember Brun moved for adoption of Resolution No. 2019-39, seconded by Councilmember Evslin.

Council Chair Kaneshiro: Are there any questions from the members on this appointment?

Councilmember Cowden: Is Reid here today?

Council Chair Kaneshiro: No, but he was here last week.

Councilmember Cowden: Yes, I missed it. I will just lean on the knowledge of the rest of the committee. I have yet, to really meet him.

Council Chair Kaneshiro: Reid is a good guy, he had his resume in our packet last week and he is a Kauai High School 1998 graduate. One (1) year older than me.

Councilmember Brun: That might change your mind.

Council Chair Kaneshiro: He is a good candidate for it. Is there anyone in the audience wishing to testify on this? Seeing none. Is there any final discussion from the members?

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 adoption of Resolution No. 2019-39 was then put, and carried by the following vote:

FOR ADOPTION:	Brun, Cowden, Evslin, Kaneshiro	TOTAL – 4,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Chock, Kualii	TOTAL – 2,
RECUSED & NOT VOTING:	Kagawa	TOTAL – 1.

Ms. Fountain-Tanigawa: Four (4) ayes, two (2) excused, and one (1) recused.

Council Chair Kaneshiro: Okay, our last item.

BILL FOR SECOND READING:

Bill No. 2747, Draft 1 – 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: Councilmember Kagawa moved to approve Bill No. 2747, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Brun.

Council Chair Kaneshiro: Do we have any questions for the Administration on this? We may have after public testimony. I will suspend the rules. Is there anyone wishing to testify? Do we have anyone who signed up? Tessie.

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

Ms. Kinnaman: Good morning, Chair Kaneshiro and Councilmembers. I would like to request, if you are not going to do amendments on the floor. I had time to digest this from last week's meeting. On Section 1, number 3, I would really like to see that deleted. "The existing public pedestrian accesses to coastal areas, whether or not originally acquired and using fund moneys." I see that as being abuse for improvements. We really need a definition for improvements, I think that was kind of identified in Section 2(c) that was deleted at the last meeting. If there is an inclination to keep number 3 of Section 1 in, I would suggest that only accesses that are Bureau of Conveyance recorded. In my time on the commission, I understand Councilmember Evslin's frustration being on a commission for one (1) or two (2) years—I was on it for eight (8) years. Think about going around the Earth eight (8) times getting really dizzy, because a lot of these accesses that we did identify and those years I was there, they may have been on the County register, but they were not recorded with the Bureau of Conveyance. There were a lot of frustration on it where a staff planner was supposed to have done their homework and try to use part of the administrative fund to get the landowner—those accesses were umpteen years old, so it is hard to identify. It was part of the Planning Commission's frustration also, that they had other work to do, so they could not go through that, trying to identify small access for the public. There were a number of accesses on the north shore, so if possible, if you do plan to keep number 3, that you have that included, also, Section 2, part "c", to be recorded at the Bureau of Conveyances. Also, part "c", the improvements...

Council Chair Kaneshiro: Sorry, Tessie, that is your first three (3) minutes. Is there anyone else wishing to testify on this item? Okay, Tessie, you might as well stay there.

Ms. Kinnaman: Also, Section 2, part "c", that part that you deleted. I would really appreciate, if you would identify improvements because you

deleted it in the last meeting. Improvements to exist...let me read the whole thing. "The moneys in this fund may also be used to improve public pedestrian access to coastal areas and shall be limited to fencing, signage, demarcation, and parking." I think that would identify what the improvements could be for the public accesses. I hope I got my thoughts across. I am still wary about using the funds in that manner because it can be so easily abused. At the last meeting we talked a lot about newly acquired properties and we forgot about existing, kind of like on the west side. Although, eventually all the funding will need to be approved by you folks. So I think improvements do need to identify what type of improvements you are talking about. As on the side, Section 2(a), "the moneys in this fund shall be utilized for purchasing," and the one-half percent (0.5%) of the certified real property tax revenues to a fund, I would suggest to the Open Space Commission, they recommend in their biannual report an increase of two percent (2%) from the one-half percent (0.5%) to help with these improvements. *Mahalo.*

Council Chair Kaneshiro: Tessie, I think there may be some follow-up questions. Councilmember Cowden.

Councilmember Cowden: Thank you for your testimony. I want to acknowledge your background and your ability to be able to respond on this. When you were talking about Section 2, not liking item 3 that says, "Protection of significant habitats or ecosystems, including buffer zones." Okay, I was confused. What do you mean when you are talking about item three (3), in Section 2? Did I misunderstand?

Ms. Kinnaman: No, item 3 in Section 1.

Councilmember Cowden: Item 3 in Section 1. "Existing public pedestrian accesses to coastal areas, whether or not..."

Ms. Kinnaman: No, no, no.

Councilmember Cowden: Okay, please help me.

Council Chair Kaneshiro: Yes, that is the one you were talking about, originally.

Ms. Kinnaman: Yes, but I think she is...

Councilmember Cowden: Am I on the wrong page?

Council Chair Kaneshiro: "Whether or not originally acquired using fund moneys."

Ms. Kinnaman: Findings and purposes. Section 1.

Councilmember Cowden: Let me make sure I am looking at the right spot. So it says, "Existing public pedestrian accesses to coastal areas, whether or not originally acquired using fund moneys." Do you have trouble with that item?

Ms. Kinnaman: Yes. Only the ones that are recorded with the Bureau of Conveyances, because a lot of them are not recorded. They may be on County records, but when they dig in deeper into it, it is the Bureau of Conveyances...so, to get ahold of the property owner, they have problems because the property has been resold over and over; therefore, in the meantime, it has been lost along the way. A lot of the property owner's block off the property, so public access is not available anymore.

Councilmember Cowden: Do you have a change you want made right here. That saying only the ones that had been recorded.

Ms. Kinnaman: Yes. If you are going to keep number 3, if not, just delete it completely.

Councilmember Cowden: Is it too much trouble going after the other ones?

Ms. Kinnaman: It is going to take a lot of time.

Councilmember Cowden: Okay. The other part on "c," when you say, "Moneys in this fund may also be used to improve public pedestrian access to coastal areas and shall be limited to fencing, signage, and parking." Is there one other piece in there? Your worry is, we might take moneys and apply it to a bathroom or put in a pavilion and then that takes money away from another needed property for purchase, is that correct?

Ms. Kinnaman: Can you say that again?

Councilmember Cowden: I am trying to understand, when you are saying, you want to add—because I am willing to help you here—on item (c), it says, "The moneys in this fund may also be used to improve public pedestrian access to coastal areas." Then, you asked to, "...and shall be limited to fencing, signage, and parking." That means do not invest money and say, "Concrete stairs or a bathroom." That is what you are wanting, a limitation, because you are worried the word "improve" might mean taking one open space, turning it into, essentially, an open park, rather than being able to buy another one. I am just trying to understand where your concern is. Do I have that correct?

Ms. Kinnaman: Correct. Also, be Bureau of Conveyances recorded.

Councilmember Cowden: Maybe all these purchases should be Bureau of Conveyances recorded.

Ms. Kinnaman: It should be or else we cannot prove we own it, you know?

Council Chair Kaneshiro: Well, let me say this, in context to the money and how it is spent, the language, right now, is what was on the Charter Amendment.

That is what the voters voted on. Just throwing that out there. Councilmember Kagawa.

Councilmember Kagawa: Yes, I think the fear, Tessie, and I do not know if Marie can confirm that, but as far as Councilmember Chock—I think he worked with the staff a little bit on this. We kind of copied the Charter Amendment language, so if we make any significant amendments, we will have a conflict between our bills and the Charter Amendment. That could even lead to more problems because the Charter Amendment supersedes what we do here. Basically, with this Bill, we followed the language of the Charter Amendment to correct our laws in place now, because the Charter Amendment supersedes what we had on the books in the first place. I want to assure you though, Tessie, because I hear you, you do not want to see this Open Space Access Fund be abused by methods to improve things, perhaps, that may come from requests to the Mayor. We have strong checks and balances in place, as far as spending this fund. Whenever they need to do anything, whether it be, they want to fix something that you are not happy with, it will have to come before this Council on two (2) readings, because it will come through in a money bill; every dollar we spend and I hope I am correct. Maybe, Adam and Marie can correct that, but that will be the checks and balances. The Charter does not over our ability to say no to the funding. Even though it may be a use that they say, “Wow, the Charter Amendment allowed them to do that.” The Council can still say no because we approve of the moneys being spent. I wanted to make sure you know that, if something goes wrong it was because the Charter Amendment said they could do that, the Council still can say no because when the money comes before us to spend that project, we can deny that project and we will not be violating the Charter. I do not know if that helps.

Ms. Kinnaman: I am sorry.

Councilmember Kagawa: Is that right?

Council Chair Kaneshiro: Yes, that is correct. That is the conversation we had last week about the checks and balances. If any money is going to get spent out of the Open Space it will have to come in a form of a Bill. It will have a First Reading, public hearing, Committee, and full Council vote, so you will have the opportunity to speak on it four (4) times. It is not something that is going to get passed right away or not passed. If the community thinks that is something they do not want to spend the Open Space money on, then they will come in and say that is not how we want to be spending the Open Space money.

Ms. Kinnaman: I understand all that. The thing is this bracketed portion from the previous original, it said, “Improvements to existing public pedestrian...” Was that in the original Charter Amendment?

Council Chair Kaneshiro: I believe that was added.

Ms. Kinnaman: The commission added that on.

Council Chair Kaneshiro: Yes, the commission added that after.

Ms. Kinnaman: Okay.

Council Chair Kaneshiro: That is why this—right now, it is reflecting what the Charter Amendment was, but that was added and then it has been taken out. Again, to be more consistent with the Charter.

Ms. Kinnaman: But this is an amendment to the ordinance. Can you amend some of it though?

Council Chair Kaneshiro: Then we would be putting it back. So it came originally like this, then it was added on the commission side, and then it was removed.

Ms. Kinnaman: Okay, so there is no way to identify improvements?

Council Chair Kaneshiro: Again, I think the improvements are going to come through as a Bill here and we will get to see what the improvements are.

Ms. Kinnaman: Okay, *mahalo*.

Council Chair Kaneshiro: Thank you. Do you have further questions Councilmember Cowden?

Councilmember Cowden: Not for her.

Council Chair Kaneshiro: Okay. Bruce.

BRUCE HART: For the record, Bruce Hart. This is an opportunity to give a little discussion about access. Some of the beach accesses that I know of because I lived here a long time and are in really bad shape. Some of them, most of the public do not even know about and I have been asked questions many times. I think that it would be—I do not know if anyone is doing this, but with the technology we have today, it would be pretty easy to go around and reassess and have on record somewhere electronically, even with pictures and Global Positioning System (GPS), and whatever, where our accesses are. I have even thought about that with County easements. That is a different subject, but a lot of people do not even know, it seems that Public Works does not even know where some of the public easements are, so they do not get maintained. There is a beach access behind the Kapa'a Missionary Church, where you have the laundry place and apartments, there is actually, a parking lot behind there that is public and a beach access that is so overgrown. With a machete and three (3) folks, I would not be able to make it. Please, if Public Works hears this, they could clear that one. There is one (1) out in Moloa'a that I had to make a request a few years ago, in order for it to get cleared. It is on what used to be the old Papaya Hui. Many, many, years ago, when the Planning Department was over in some small building, the Mayor, then Tony, published a beach access guide, I still have a copy, and I wished I remembered to bring it. It was available to the public and showed all the beach accesses at that time, it showed them on the top of the maps, you know? Yes, it showed them all. It was very popular, they

published it for a while, then it went out of publishing, but I would like to encourage us to do that again. Update it and bring that up, so we all know where they are, even Public Works would know where they are. Okay, thank you.

Council Chair Kaneshiro: Thank you. Is there anyone else wishing to testify? Seeing none. I will call this meeting back to order.

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

Council Chair Kaneshiro: Do we have any further questions? From last week it is almost the same conversation on items we had last week. First, regarding improvements, Section 1, number 3, "existing public pedestrian access to coastal areas whether or not originally acquired using fund moneys," that is the findings and purpose. The other portion that Tessie was talking about is the actual amendment in the Charter. Basically, it does the same thing. It is saying the purpose is to spend money on "existing public pedestrian access to coastal areas whether or not originally acquired using funds" and then, the other section is where it actually allows them to do that. Again, I think the intent on this was that not all our accesses are purchased through Open Space. There are accesses that we have through entitlements; landowners along the coast want to do a development, we make them put in a public access, and this allows us to spend money on those types of accesses, if they have been forgotten or not recorded. That is just my comments on it before we start asking questions. I will suspend the rules, Marie, if you want to try and answer some questions. I know Ka'āina is the main one that was working on this, yes?

MARIE WILLIAMS, Long Range Planner: Marie Williams, Planning Department. I am here on behalf of Planning Director Ka'āina Hull. I will just start off by stating, that is correct, I do not have an in depth knowledge of this Bill, but I can attempt to answer any questions you may have.

Council Chair Kaneshiro: If you are not comfortable answering them, I will ask the members if it is a sticking point, then we may have to defer the item or if we are okay moving forward on it, then we will vote on it today. Councilmember Kagawa.

Councilmember Kagawa: I think, from what I am hearing from Tessie, I want to say I appreciate, Tessie. She has been volunteering watch dog for us and always well prepared and on point. I want to thank Tessie and Bruce. The fear coming from them is that this will open up the County to raid the fund and not fulfill its original intent. In my opinion, I agree with Tessie, if it is a regular access that has been overgrown, Public Works has a...it is not a road, but it is kind of like a road, it is a walking road, an access to the beach. So, why not Public Works and/or Parks use their maintenance funds, which they have, and do it. Instead of raid this fund that is set aside primarily to buy new things that we have opportunities to purchase. It is earmarked. I think, that is the fear. I do not know your feeling on that.

Ms. Williams: Yes, I think that is correct, that fear of abuse was definitely a big issue raised at both commission and here at Council when this

Bill was in Committee. There are several safeguards built in. For example, as Chair Kaneshiro explained, the major safeguard is, in fact, that the Open Space Commission would have to ultimately vote to recommend these improvements. Then of course, here at Council is where those improvements would be proposed and then ultimately voted on/decided on by this body, as well. There will be opportunity for public input and for the public to really see what the nature of these improvements would be.

Councilmember Kagawa: I think for the current members that just came on board, the sticking point was back a couple of years, we acquired the Black Pot property through the Open Space fund, which was not approved by the Open Space Committee. The Council did it because we had an opportunity to settle a lawsuit. We acquired that property when there were no other funds available elsewhere. Those types of fears, I think, were the ones, but the County basically, made a business decision at that time, I support it, and still do. I felt we were not in a good place with the lawsuit. Anyway, that is a fear and they do not want any other avenues in the language to allow the commission to not have a say. That is where it goes back, I think, I am partly to blame, but yet, again, if we did not use that money there, we could have probably lost more money elsewhere, so I do not know.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I appreciate what Tessie brought up about making sure our existing and new purchases are recorded with the Bureau of Conveyances. Is there anything in the process to make sure that does happen? Can we do any of that retroactively?

Ms. Williams: I am sorry, can you repeat your question?

Councilmember Cowden: Apparently, some of these places are not registered with the Bureau of Conveyances. All our new purchases, I would assume, are absolutely registered with the Bureau of Conveyances. Is that correct?

Ms. Williams: A purchase done acquired through the Open Space Commission, I would assume so, but I am sorry, I do not have the answer to that.

Councilmember Cowden: It sounds like that is a really important element. Then following up with what Councilmember Kagawa...

Council Chair Kaneshiro: Let me say this, and maybe Adam can follow-up on it, but I do not believe it is the purchases that were not recorded. I believe it is the entitlements. When we are entitled an access to a property, we never did record that entitlement. That is where we have all these accesses that have not been recorded.

Councilmember Cowden: Are we able to have him sit next to her?

Council Chair Kaneshiro: I am not aware of an Open Space property purchase that we did not record.

Councilmember Cowden: Okay, because that would seem amazing. Thank you. When we are looking at easements that happened in the past, is there largely a date prior that we...was there a cutting line from when they did get recorded with the Bureau of Conveyances versus not?

ADAM P. ROVERSI, Deputy County Attorney: Adam Roversi, Deputy County Attorney. I cannot speak to a specific date of when all began to be dropped for the recordation of those entitlements. I can just say there is a long history of the failure to do so. I am aware of an audit of County easements that was done in the late 1990's. At that time, there were approximately forty (40)—that is my memory, I would have to go back and look at it to get an exact number—easements that had been required as a condition of various zoning or subdivision authorizations that had not, for one reason or another, ever been recorded at the Bureau of Conveyances. I cannot say what Administration that was under, or what Council that was under, or even what year those various entitlements were supposed to have.

Councilmember Cowden: 'Aliomanu is a current area of contention and when you look at the maps, one side of the stream, it definitely was supposed to be an easement there. I see there is a hard wall that has been put all the way to the riverbank, which is not only a flood hazard, but where there is...have you looked at that one? Do you know anything about that?

Mr. Roversi: I do not have any direct knowledge of the easement that you are talking about.

Councilmember Cowden: Okay, 'Aliomanu Stream. I will send something to you later on that one. Who from the Office of the County Attorney is working on these easements? Is there someone in particular or just send it to Matthew M. Bracken?

Mr. Roversi: Just send it to the Office of the County Attorney, in general.

Councilmember Cowden: Following-up on what Ross...

Council Chair Kaneshiro: I also believe Planning is working on it on identifying those easements.

Ms. Williams: Yes, there is a project being proposed and it will go out to bid the next fiscal year where we will actually complete an inventory, which essentially will serve the purpose of identifying all the accesses and this state of whether or not they have been recorded, as well.

Council Chair Kaneshiro: Again, I want to clarify those easements were not a purchase from Open Space. We have only purchased a few properties with Open Space and I believe all of those are recorded. These easements were entitlements

that happened with subdivision or something and at that time, those easements were not recorded for some reason by the County.

Councilmember Cowden: Why I am bringing this up on this particular piece is that 'Aliomanu has been on the Open Space Commission for, I do not know, three (3) or four (4) years, maybe. We have not had the money to do it and I guess Councilmember Kagawa just mentioned five million dollars (\$5,000,000) was raided from the Open Space Commission where we have been trying to save that up. I was in there when there was the commitment to refund that. It was taken and a commitment was made to refund it. I brought it up a couple times privately in the budgeting process. There was not the political will to refund it. I get why there is concern and when we have people who have been on the Commission for eight (8) years or two (2) years and people who go regularly, we are not serious about what we are doing. So, when I am hearing your piece when it comes before the Council, relative to limiting fencing, signage, and parking, I share Tessie's concern about the lack of institutional knowledge. It is easy to forget when we have these two (2) years cycles of Council. So, I am inclined to want to defer this, actually. My inclination would be to do that because I feel like...

Council Chair Kaneshiro: You want to defer because you want to do an amendment?

Councilmember Cowden: Yes, or have a better understanding of what is the right piece. Am I a minority vote on that? I am definitely recognizing a very valid concern that is being raised. Especially, when we just did do a raid on the vast majority of the money and did not give it back.

Council Chair Kaneshiro: Okay, I think we have more questions.
Councilmember Kagawa.

Councilmember Kagawa: Mayor Carvalho made a commitment that, should funds be available, he would try to replenish—his term is up, he is gone. It was one option, you could float a money bill, you could sell that piece we bought to Mark Zuckerberg. I am sure we can get more. Is that what we want? Do we want that to happen? Do we not want that property? Then put a money bill, I will support it. If it is about money and replacing into the Open Access fund, do it. I thought people of Hanalei wanted that property, but we did not have the means, we did not have a willing seller at the time and that lawsuit opened up that opportunity to buy it. There are options out there. If you want to fix that fund and replenish it, I will be happy to support selling it to Mark Zuckerberg. I guarantee he will want it. He has offered the Sheehan's money before for that property. Let us do it, you want to do it, float the money bill, I will support it.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I am not criticizing that we bought that piece of property. I am just saying I understand the perspective of the people who were working hard and when we are looking at different beach accesses. Why is it hard to have confidence...our Council will be funding it the right way, I am recognizing that

that is the problem. I understand the best choice was made in the moment, but I also am recognizing that we did not stick with our commitment.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: Question for Marie and Adam, maybe. Marie you mentioned that the hope would be the Open Space Commission would make a recommendation that goes through a public input process and that we act on that, as far as you see the fund, but nothing in the Bill or Charter Amendment mandates that, am I correct? We could act on something without their input at all, is that right?

Ms. Williams: Yes. Also, if I may add, when the inventory project is complete, that will definitely serve the purpose of this Bill and will really help, not only the Open Space Commission, but the public and the Council see which improvements, easements, and accesses we might need to prioritize improvements for.

Council Chair Kaneshiro: If it is the Council that is moving on something or wanting an access improved, it will still have to go through the process here. Are there any other questions from the members? If not, thank you. Are there any discussion from the members? For me, I am comfortable with the Bill, I am willing to have it moved. I completely understand Tessie's concerns on how the money is going to be spent, but again, I think we need to give ourselves the ability to spend it on what we need to spend it, but also have it go through the process that it needs to go through and that process is the checks and balances. That is where we will be held accountable for what we decide and how we spend the money. So, I am comfortable with the Bill as-is. Councilmember Evslin.

The meeting was called back to order, and proceeded as follows:

Councilmember Evslin: First off, I really appreciate Tessie coming today. Also, Tessie, you had mentioned you had eight (8) years of service in Open Space, I think you have had about twenty (20) years. However long Open Space has been around you have been serving Open Space. Even when I was on, you were not on the commission, but you were there all the time helping inform us of what had happened in the past. When Councilmember Cowden mentioned institutional knowledge, you are the institution of Open Space, so thank you for your service. Also, I agree, basically, with what you are saying. I support the Bill as-is, right now because I do think we should get it into law as close to the Charter Amendment as possible. I would support, as we talked a little bit last time with Ka'āina here, maybe coming back later on and trying to narrow the use or give the Open Space Commission—write them into the process somehow, so we cannot use it for improvements without them, but I feel like to do that later on, get this done, do not jeopardize this Bill as-in, then come back later to narrow it would be my hope, and to do that with Open Space or with you to get that done correctly. If there is the support of the body here, then that could pass. I do support voting on this today as-is. I also want to say it is exciting for—when Marie mentioned inventory of access, that is huge. Even when I was on Open Space Commission—however many years ago, eight (8) years ago—we talked about that all the time, that we do not know where these are.

I have seen some rough maps out there, as Bruce mentioned, some work has been done in the past, but nothing really comprehensive and that will be invaluable for us as a body. I support this, I would love to work with you, Tessie and anyone willing later on down the road to try and craft something that could limit this a little bit more. I know Chair Kaneshiro has said we are the check on how that fund is used, but I think it is vitally important that we empower the Open Space Commission as much as possible. The Open Space Commissioners will sit there all day long, taking testimony from people who are saying this access is overgrown or telling them all of the issues and there is little action they can take, right? The Open Space Commissioners are the ones who are most knowledgeable about the access issues that we are facing and it is vitally important they are written into the process and empower to act on that and we do not take that power away from them. Anyway, that is where I am at on that. Thank you.

Council Chair Kaneshiro: Are there any comments from any other Councilmembers? Councilmember Kagawa.

Councilmember Kagawa: First, let me defend the purchase of the Black Pot property and the rationale. I think Mayor Carvalho did a wonderful job before leaving his term in office, he settled a problem we had. We had a lot of things go wrong on the County-end, which created...put the Sheehan's in a good position to take the County for a lot of money down the road. We had some errors that were made, large errors, but then what did it fix though? Black Pot Beach, look at that place, cars are parked all over the place. We have tourist and locals who love to go down there with that small property. It allowed us to buy something that was not available to be bought. He did not want to sell it to us. We were going to take it adversely. That is why the lawsuit was a problem for us. I think Mauna Kea Trask did a wonderful job in getting this deal done, but we did not have any money to buy it, four million five hundred thousand dollars (\$4,500,000) or whatever it costs. Yes, it was over the appraised value, but what is the appraised value in the north shore? How many locals do you see who own property down there, from Hanalei to Hā'ena? Let us get real about what happened then and let us praise Mayor Carvalho for doing the job before he left. It is no longer Mayor Derek S.K. Kawakami's problem anymore. I think Mayor Kawakami has enough problems to fix. I want to defend that. Yes, money was used from the Open Space Commission. If I was on the Open Space Commission, I would feel angry too, because why are we on the commission, if we do not have money. I think this Council, we need to decide, how do we create the fund? Do you want to raise tax to boost up that fund? Then propose a bill. We can put five million dollars (\$5,000,000) more, ten million dollars (\$10,000,000) more, if we want. Do you have the votes to pass it through Council and satisfy what misdeed was done in your mind? We can fix it, but remember it comes with something. You either need to cut costs or you need to raise tax. We cannot keep criticizing the past when we do not even have enough knowledge about what happened in the past, because it was an executive decision meeting. So, I am comfortable with the knowledge I had in Executive Session, in supporting Mayor Carvalho in fixing a huge problem that we had. I acknowledge also, how bad it looks to the Open Space Commission, who spends their volunteer hours knowing we did not even run that decision through them, or Mayor Carvalho did it, but he had, what I feel, was in a no-win situation. Of course the Open Space Commission would say, "find it somewhere else." Again, it was a

business decision that was really tough, but I think was a good purchase. Look at that place, it is so popular, at least we have some options going forward to take care of crowds and local community in using it. It will not be in the hands of whoever friends with Zuckerberg can use it. He was not going to build on it. He was going to leave it open. He just wanted to acquire it knowing that parcel could be available. He is just one (1) person, there are a lot of other people that probably want it. Not all of them want to build big mansions and Transient Vacation Rentals (TVRs). Some of them just want to acquire it and get a large beautiful piece of Kaua'i. There is no shortage there, I will tell you. Chinese have a lot of money, too. Alright, thank you Chair.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: Very short, on the Black Pot piece, I was relieved when the purchase was made. I am not criticizing that, I am empathizing with the position of Open Space and losing what was gained over a long time. I will support this today, primarily because when we put that item "c" in the way it is—what I have watched in the Open Space Commission meetings that I have followed, is properties that were really wanted to be purchased often were not allowed to happen because Parks and Public Works said they were not willing to mow and maintain them because their budget was strained already. I have seen purchases not happen because of that challenge. Also, the market moved so fast, when these pieces come up, we cannot wait another month or another two (2) months to make that decision. The Open Space Commission needs to respond quickly and affirmatively to be able to pick up these pieces. I will approve it to allow for that strength. I am very willing and wanting to be a second on Councilmember Evslin's work with the Open Space Commission to look at how we can adapt it and to work with Planning and the Office of the County Attorney to make sure that whatever we come up with will be an acceptable adaptation, because I want to respect the role of the Open Space Commission. That is my position. Again, especially as a north shore person, I do feel like making that purchase was a right choice for the County to have made. I appreciate Mayor Carvalho for having done it. I am just sorry for Open Space. Thank you.

Councilmember Evslin: Just real quickly. I think Black Pot is a good example of why use of the funds for acquisition should not have to be stamped by Open Space. I think you are right that we need the ability to move quickly sometimes in Executive Session to do things like that on land acquisition. I think improvements are a little bit different, the need for speed is the same and it could or should go through the process of having their final input on it.

Council Chair Kaneshiro: Again, regarding Black Pot, it was a situation that has not come up before. All of the conversations on that was in Executive Session. Would we have loved to tell Open Space? Yes, we would have, but we are not allowed to talk about Executive Session items in the public. It was two-fold. I think it was a win-win. We were able to settle a lawsuit that was going to continue to go on and cost us money and we were able to purchase a property, that I believe everyone was happy we purchased. If we did not purchase it now, I think in ten (10) or twenty (20) years, people will say, "Oh, my God, it gets sold to someone else." We

were going to say, "We really wish we had that property." The Council at the time all understood that. Yes, we need to purchase that property now or else it will be gone from the public forever. We were able to expand our beach park there and is adjacent to a property we already have. It made total sense to purchase. That is that on that. As far as the Bill itself, I do appreciate the Bill, I think it is important we are allowed to make improvements. A lot of the time when it comes to purchasing property, the Council is like we can purchase it, but how is anyone going to use it if it does not get improved? Who is going to do the improvements? Using the Open Space fund to purchase a property, improve it, and then say, "Okay, County Administration now it is your turn." Whoever needs to take it over, is how it should be spent. It says improvements, it does not say perpetual maintenance. I do not expect us to be using this money for perpetual maintenance. Identifying these easements, maybe Open Space uses the money to clear up and improve the easement one (1) time, then it is the County's turn to take it over. It is not going to be Open Space Commission's responsibility to keep maintaining it every year or two (2) years. Again, if you look at the way it is written now, the County will save a lot of money just identifying these easements and spending money on improving the easement. Doing that is a lot cheaper than buying a whole new property for access to the public, which a lot of the areas we are looking at buying property, we may have existing easements there already. I am really glad we are looking at these easements. Again, when I talk of checks and balances, I am talking checks and balances on the Council side and Open Space. Open Space can come up and say, "If Council wants to do a project and spend the money," Open Space can come up and say, "We do not approve of it, also." So there is checks and balances on both sides. That is where I get the confidence in the Bill, knowing this Bill will help us, especially once we start identifying those easements. I think people will be a lot happier. I think we will be surprised at how many easements the County has had and acquired, but we have not identified them and do not use them. With that, are there any further comments? Councilmember Kagawa.

Councilmember Kagawa: I think I have about ten (10) seconds left. I think what we need to do, and I hope Mayor Kawakami will try to start this, we need to improve our volunteerism efforts. We have a lot of people willing to volunteer out there. We had Ho'olokahi which was used to restore bathrooms, fix parks, and build dugouts. To do trails, I am almost certain if we have some type of Ho'olokahi started up, by providing meals and whatever have you, for the volunteers, we will have people willing to volunteer their time and clean some of these accesses, which will not cost the County anything. I think having more a sustainable type of attitude is what we need going forward, because we cannot rely on government for everything, whether it be State or County. There is a lot of people that are really ready to volunteer. We saw at our conference how everyone talked about empowering groups that are volunteering, but I think you need to have a grant that will recognize and help them get the job done, whether it is providing tools or heavy equipment. One (1) person going out there with heavy equipment and the other folks helping and volunteering. I hope that we can revive that, because that can cure some of our problems in a sustainable way and not just one time. Thanks.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: In agreement with Councilmember Kagawa, and that has come up at Open Space, so by being able to purchase these faster, we can work on those stewardships agreements. I know when the Chinese cemetery in Kekaha was purchased, the community out there that was affiliated with that cemetery would take care of it. That is something we need to be encouraging and working with.

Council Chair Kaneshiro: Are there any further comments from the members? If not roll call vote.

The motion to approve Bill No. 2747, Draft 1 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:	Brun, Cowden, Evslin, Kagawa, Kaneshiro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Chock, Kualii	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Five (5) ayes. Two (2) excused.

Council Chair Kaneshiro: That concludes the business on our agenda. We actually have public hearing at 1:30 p.m. We have three (3) bills for public testimony at 1:30 p.m.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 9:58 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:jy