

PUBLIC HEARING

APRIL 7, 2021

A public hearing of the Council of the County of Kaua'i was called to order by Bill DeCosta, Chair, Public Works & Veterans Services Committee, on Wednesday, April 7, 2021, at 9:04 a.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Līhu'e, and the presence of the following was noted:

Honorable Bernard P. Carvalho, Jr.
Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Bill DeCosta
Honorable Luke A. Evslin (*via remote technology*)
Honorable KipuKai Kuali'i
Honorable Arryl Kaneshiro

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Please note that we will run today's meeting pursuant to the Governor's Supplementary Emergency Proclamations with the most recent relating to the Sunshine Law being his Eighteenth Supplementary Emergency Proclamation dated February 12, 2021.

The Clerk read the notice of the public hearing on the following:

“Resolution No. 2021-13 – RESOLUTION AUTHORIZING THE ACQUISITION OF EASEMENT INTERESTS IN LAND REQUIRED FOR PUBLIC USE, TO WIT: THE PEDESTRIAN AND BICYCLE PATH THAT CONSTITUTES PART OF THE COUNTY'S PUBLIC PARK SYSTEM, WAIPOULI, DISTRICT OF PUNA, COUNTY OF KAUA'I, HAWAII, AND DECLARING THE NECESSITY OF THE ACQUISITION THEREOF BY EMINENT DOMAIN,”

which was ordered to print by the Council of the County of Kaua'i on March 10, 2021, and published in The Garden Island newspaper on March 17, 2021.

The following communications were received for the record:

1. Bigley, Erin, dated April 6, 2021
2. Carter, Patrick, dated April 6, 2021
3. Hands, Eve, dated April 5, 2021
4. Healy, Donald, dated April 2, 2021
5. Lamouria, Gary, dated April 2, 2021
6. Lenahan, Peggy, dated April 6, 2021
7. MacCallum, Bob, dated March 29, 2021
8. Morimoto, Peter, dated April 7, 2021
9. Pender, Kathleen, dated April 4, 2021
10. Penwell, David, dated April 6, 2021

11. Powers, Rick, dated April 6, 2021
12. Ransbury, Mary, dated April 6, 2021
13. Sears, Trisha Lei, dated April 5, 2021
14. Sears, Trisha Lei, dated April 6, 2021
15. Sears, Trisha Lei, dated April 6, 2021
16. Sheppard, Toby, dated April 6, 2021
17. Sonnenberg, Rick and Kelley, Kathy, dated April 4, 2021

(Ten registered speakers requested to testify regarding this agenda item.)

The hearing proceeded as follows:

Committee Chair DeCosta: For the record, we did receive written testimony and we do have registered speakers. This item will appear again on the April 21, 2021 Council Meeting agenda. I would like to give some instructions on how we run our public hearing, then I will call on our ten (10) registered speakers. Before I call on our first speaker, I would like to say, you need to state your name for the record, you will have six (6) minutes to testify, and you will see a green light. A yellow light will signal you have thirty (30) seconds to sum up your testimony. I will let you know when those thirty (30) seconds are up, if you cannot see the yellow light. There will be a red light, which means your time is over. If you are passionate about your time and you have another sentence to wrap-up, I will allow you to complete your sentence, but you need to honor the red light and at that point your testimony will be over. First speaker, please state your name for the record. The first speaker is Peter Morimoto.

PETER MORIMOTO *(via remote technology)*: Good morning, Councilmembers. My name is Peter Morimoto. I am testifying against the portion of the Resolution that condemns a path along the shoreline. I actually support the portion that gives the lateral access to that shoreline. That is my testimony.

Committee Chair DeCosta: Are you finished, Peter? That was a quick one. We like quick ones, but thank you for sharing your concerns, Peter.

Mr. Morimoto: Yes, I submitted written testimony, too. I would urge the Council to look at the link, it shows the rate of erosion at different levels of sea level rise and that would explain why I think it is not a good idea to condemn the path along the shoreline.

Committee Chair DeCosta: We did read your testimony and we did see the pictures. Thank you, Peter.

Mr. Morimoto: Okay. Bye.

Committee Chair DeCosta: Bye, Peter. Second speaker, for the record, please state your name. You will have six (6) minutes. Thirty (30) seconds at the end, the yellow light will show up, then the red light will tell you that your time is up. That is the last time that I am going to repeat those instructions.

RICK POWERS (*via remote technology*): My name is Rick Powers. I am actually calling from the path in question here. The only thing I really have to say, as a resident of the area, is that this Resolution is looking at both a requirement for public use, to wit, I can say that there already is a 5-foot wide bike path and pedestrian path that goes through this area that is a suitable size for the environment on these two (2) resorts; the Kaua'i Coast at the Beach Boy and the Islander on the Beach, which are not off-set as you likely know and are very close to the shore. Also, declaring this a necessity, which I find very hard to believe based on the fact that there are alternate paths that are available that would make a much less costly route for the path to be put in and it would also be less environmentally destructive to the shoreline, which is eroding. I have also submitted written testimony to the Council with a photograph looking at some of the erosion along the shore and I do not believe that this property can sustain a 12-foot wide cement path through here. After looking at the photos and hearing my testimony, you are still not convinced, I would strongly encourage you to come to visit and I am convinced that you would understand in common sense that this area and environment would not sustain a path this wide. That is all I have to say. Thank you for your consideration and everything you do to make Kaua'i a beautiful place to live. Thank you.

Committee Chair DeCosta: Thank you, Rick Powers. Third speaker, Trisha Sears. Please state your name for the record.

TRISHA SEARS (*via remote technology*): *Aloha*, Councilmembers. My name is Trisha Lei Sears, also known as Patti Sears. I am a 40-year resident of Kaua'i and I live at Islander on the Beach. In fact, in 1984, I worked at the old Kaua'i Sands and I just love this area. Our board approved and signed for a permeable paver grid path, which works fine. The problem is, that after our board signed, the specification was changed to a permeable concrete path in which the pores get clogged with sand over time and it then does not work; it is then like solid concrete, in which we have now seen the erosion caused by solid concrete. If anyone has seen it across from Coco Palms or at Lydgate—that is what happens to solid concrete. Also, a blind corner is in the present route and is an accident waiting to happen at the south-east boundary of the Islander on the Beach. Our County does not need to set itself up to be liable for any accidents from a blind corner intersection. We have a lot of *keiki* and local families that come to the Islander on the Beach during the summer months and holidays and most of the little *keiki* I see here just run across the grass and the existing path to the beach from the *lanai* here and do not stop and look before they cross. This small section fronting the old Beach Boy, now the Kaua'i Coast Resort, the Islander on the Beach, and the old Kaua'i Sands hotel, now the Kaua'i Shores, all the way down to Lae Nani is sacred to the Hawaiian people, as this section is and should be respected and left in peace, as it is their ancestral burial grounds and our endangered shearwater birds nesting area. We had a baby shearwater born in front of the Islander on the Beach last season and had to call the Kaua'i Humane Society and rescue it and hand feed it for the baby's safety, because it almost got stepped on in the nest the mother made under an Ironwood tree straight out in front of me. So for four (4) nights in a row, another lady and I stayed up most of the night taking turns for a little shut eye and watched the mother fly to her nest wanting to feed her baby and it was so sad the baby was not there—it was now at the Kaua'i Humane Society for its safety. This will happen even more with more people leaning their

bikes into the *naupaka* and going down to the beach not realizing the babies' nests are underneath. So to reroute this little section of the bike path as in the alternate map provided to each of you only makes sense, because us local people do not want to have to pay higher taxes soon down the road to cover erosion repairs, which would be evident as erosion has already taken place close to the County planned route along this section. We already have enough of the existing path to repair as the previous study done does not account for the global climate change we are in now and the major coastal erosion, which is now happening. Where is the money going to come from for repairs to do all these repairs? Taxpayers. No taxpayer wants their taxes increased, so I beg your consideration to this matter. Come down and see for yourself. I do not know if you have even walked this path recently to see the erosion taking place, but if you have not, please come down and see what is happening here. It is just a little bit north of the erosion going on across from Coco Palms to the Lydgate area and it is a nightmare down there. So thank you for all your hard work and service to our beautiful community and island. Trisha Sears, also known as Patti to a lot of you. Thank you very much.

Committee Chair DeCosta: There is a clarifying question from Vice Chair Chock.

Councilmember Chock: Thank you.

Ms. Sears: Yes.

Councilmember Chock: Ms. Sears, did I hear that you represent the Home Owner Association (HOA) for Islander on the Beach?

Ms. Sears: No, I do not.

Councilmember Chock: Thank you.

Ms. Sears: I just live here. I am a 40-year resident. In fact, I used to work at Kaua'i Sands when I was young, waitressing three (3) shifts, and it was my dream to live in this area someday and I retired, I am almost seventy-two (72) years old next week. I have made my dream come true from hard work and saving. I used to farm on four and one-third (4 1/3) acres off Kahuna Road and now I am retired, living down here off of the ocean, and I want to see a preserve for the birds, the ancestral burial grounds, and I do not want to see the coastline eroding from a solid concrete path 12-feet wide in front of us. We were grandfathered in and do not have the setback like a lot of the area on the island. I think it was JoAnn A. Yukimura who had it approved. We were grandfathered in, so they can put it as close to the ocean next to the erosion that already started and it is not right. Let us do it right this time and build it behind these two (2) little resorts. It can connect to Papaloa Road, the people can stop at the Coconut Marketplace, get a drink, have lunch, patronize the shops there, use the bathrooms—there are no bathrooms from the Kapa'a Beach Park to Lydgate.

Councilmember Chock: Thank you, Ms. Sears. I appreciate it. Thank you.

Ms. Sears: Okay.

Councilmember Chock: Thank you, Committee Chair DeCosta.

Committee Chair DeCosta: Thank you, Vice Chair Chock. Thank you, Patti. Enjoy your lemonade out there on the beautiful beach in front of your place.

Ms. Sears: Thank you.

Committee Chair DeCosta: You are welcome. Let us move on to our next speaker, number four, Mary Ransbury. For the record, please state your name before you start. Mary, you are on.

MARY RANSBURY (*via remote technology*): My name is Mary Ransbury. Aloha, Council and Mayor. I just want to say thank you for this opportunity to provide a personal testimony. I have been a taxpaying citizen of Kaua'i for over twenty (20) years. I walk this current path from Kaua'i Coast to the Islander on the Beach daily. I am very familiar with the actual topography of the area and familiar with the location of the proposed path in front of Kaua'i Coast and Islander on the Beach. There are times when we get rainfall that with high tides, it can be in the near eighteen (18) inches over the current path we have—it just sets until it absorbs into the ground. Having a 12-foot path would be absolutely incredible—it would just be a nightmare trying to absorb and it would eventually erode. I am a retired trauma nurse and my testimony is the proposed current bike path would have absolutely no safe space if placed in front of the Kaua'i Coast and Islander on the Beach. These structures are old Hawai'i with no setback distancing. Kaua'i Coast and Islander on the Beach are high density housing occupancy that can have an upwards of three hundred (300) to four hundred (400) visitors, owners, or guests per day crossing over that path out to the beach under less than a mile distance. Hundreds of children without fear run a short distance to crossover to the beach; with the proposed path they would be fully exposed to constant danger. There is an increase of electric bicyclists zooming at least thirty (30) miles per hour; the proximity and lack of visibility from building to beach, and from side-to-side leaves zero (0) reaction to get to safety. Pedestrians do not wear helmets. Bicyclists are often seen with their heads down, one hand texting, one hand on the handle bar. Anyone crossing over to the beach at Kaua'i Coast and Islander on the Beach have limited distance visibility leaving no time to protect themselves. A mother preoccupied with her kids and their toys, an elderly couple on the stroll hard of hearing, recovering from a hip replacement, who is slow to walk, a teenager with headphones listening to music—all crossing over the path to walk out to view the beach with no time to react, will be plowed over by a cyclist, electric bike, or a skateboarder. Head injuries and hip fractures will be inevitable, because of the location of the proposed path. It is not safe for pedestrians who just come to enjoy the beach. All it takes is one (1) tragic death, as I have seen too many times over one (1) person with a helmet and one (1) without. I have dedicated much of my volunteer time with Save Our Shearwaters (SOS) and I work with our Department of Land and Natural Resources (DLNR) biologist with the nesting of the shearwaters that have returned to that area. We have just established some new protected nesting areas for that area, because they are starting to return to that area. That particular area where

you are looking out to the ironwoods is where they are starting to nest again. We have seen the return of these shearwaters, specifically under these ironwoods and burrows. These shearwaters will be trampled by cyclists who decide to detour on the beach edge and who will approach the area so fast with no time to notice that these are nesting sites below them. The burrows and the babies are easily not seen in their nesting sites and will be destroyed. I know you have asked Patti Sears if she represents the HOA. I am on the Board of Directors at Islander on the Beach and I have worked with Lyle and Doug for years and I have been watching this bike path get out of control, so I have a lot of history with this path. That is it.

Committee Chair DeCosta: Councilmembers, does anyone have a question or clarification? I do. I did not know the shearwater and the babies are encroaching in that area. Maybe we need some signs for all of the vacation kids that go across the path to not encroach on the native sea birds like we do with the monk seals, but thank you for that piece of information.

Ms. Ransbury: I do have signs. We put up signs, but the problem is they do not even look up to look at the signs, so the biologist brought me two (2) more signs to put up.

Committee Chair DeCosta: Mary, who does not look up? The children who stay at the vacation rentals?

Ms. Ransbury: The bicyclists and people who are texting, so we have tried to create some protected areas. But we brought in two (2) more signs to see if we can ensure that they stay away from the areas during the nesting time.

Committee Chair DeCosta: Okay, thank you. Speaker number five. For the record, please state your name. Sharon Olsen.

SHARON OLSEN (*via remote technology*): Hi, my name is Sharon Olsen. I just want to say, *aloha* to the Councilmembers, especially Mr. Bill DeCosta, you have actually helped me about a month ago in Home Depot, so thank you for that. I just want to concur and support all of the testimony that has been given up to this point. I have discussed the issues in detail with my neighbors, fellow residents, and board members here at Islander on the Beach, and I share the same concerns with increased traffic, the danger to the natural habitat there, and the birds that are nesting there. I also share the same concerns about the safety of children and families, even the elderly, with there not being a designated crossing path to get from the Islander on the Beach across the path and down to the beach. I share the same concern for the safety of people who are young or elderly, or people who just might not be paying attention to the bikes on the path. I have the same concern that we do not have the same setback as other properties, being that Islander on the Beach is an older property and as it has been stated, has been grandfathered in. I do agree with the rerouting idea to go closer to Coconut Marketplace, where there are a lot of amenities. There are services there, such as public restrooms, places to park bicycles and to keep bicycles in a designated parking area, as opposed to having those strictly thrown along the shore, thrown along the beach, thrown into nest or nesting areas, and I hope that the Councilmembers will take into consideration all of the concerns that

have been presented today. I just want to again concur with everything that has been stated by my neighbors and fellow residents up to this point.

Committee Chair DeCosta: Councilmembers, do you have anything to discuss?

Councilmember Kualii: Clarifying questions.

Councilmember Cowden: We cannot discuss.

Committee Chair DeCosta: Okay, I am sorry. Thank you. Are there any clarifying questions? Sharon, thank you so much. I remember you now, I think I helped you load flooring.

Ms. Olsen: Yes, you did and I thank you very much. You saved me time and it was also nice to make your acquaintance.

Committee Chair DeCosta: Thank you. That is what we do in Hawai'i—we take care of each other. Thank you so much for perpetuating that, also. Our next speaker, Bob MacCallum. For the record, please state your name, Bob.

BOB MACCALLUM (*via remote technology*): Good morning, all. Thank you very much, Council, for allowing me time to say a few words. It is interesting, there are sections of the bike path that could be built by the sea to what I would call acceptable in municipal safety standards, and that would be on the 1,500-foot of shoreline on the vacant lots on either side of the Sheraton. There along the shoreline, the bike path could be built further back from the beach thus avoiding erosion issues. Also, due to the setback rate of erosion that is now in effect, new resort buildings on those lots will have to be built from 150-foot back from the shoreline, just like building "G" at Waipouli is now. This will allow for designated naupaka-sided funneling path, which would guide resort guests to dedicated safety crossing with appropriate signage. This type of control, with the only way to get to the beach crossing, could also employ ground and pedestrian active rapid flashing light-emitting diode (LED) lights, which are the latest technology for pedestrian crosswalk and that type of crosswalk is basically installed all over America—this would make for an extremely safe mode for pedestrians to cross on their way to the beach and back. Now the problem that the Islander on the Beach and Kaua'i Coast, is that it is impossible to construct this type of safe, funneling, crossing system, simply because the wrung to do so does not exist. This point is inclusively, I would think, because the path at the Islander on the Beach and the Kaua'i Coast cannot be built to acceptable, municipal, safety standards, as it can be built elsewhere—it should not be built at all and should be scrapped in favor of an alternative safe route where the problem—that is mentioned by everyone—pedestrian cross path traffic simply does not exist at all. On the erosion side of the ledger, shoreline (inaudible) points out that the day will come when the proposed path in front of the Islander on the Beach and Kaua'i Coast will need to be demolished and dispensed of quite possibly in a landfill. The intensity of storm surge erosion that we are now experiencing at Wailua due to global warming suggests that the day will come a lot sooner than later. Let us protect the public from serious cross path accidents and the path itself..

(Council Chair Kaneshiro was noted as not present.)

Mr. MacCallum: ...from destruction from erosion by moving the planned path to an alternative route now, rather than having to do this all over again in the future and at huge additional expense. That is my testimony. Thank you very much.

Committee Chair DeCosta: Thank you, Bob. We will be moving on to speaker number seven, Kathleen Pender. For the record, please state your full name before starting to speak.

KATHLEEN PENDER *(via remote technology)*: My name is Katy Pender. I am a resident of Kaua'i, work at Papaya's Natural Foods, and I walk this path every day with my dog. Over the last five (5) years, I have seen major erosion issues. There is clearly no room here for a 12-foot path. It will only be a money pit to the city and cause nothing but liability and danger for tourists and residents alike. This is a very sacred piece of land out here—it is very beautiful and it is very special.

(Council Chair Kaneshiro was noted as present.)

Ms. Pender: This path will destroy the sacredness and it will leave nothing to the shorefront in front of both of these resorts, particularly in front of the Kaua'i Coast—they almost have nothing left now—all that there will be when tourists come is concrete. I do support the bike path, I believe it is a wonderful thing. I am not opposed to the bike path. I am opposed to this proposed route. There is really no upside to putting a 12-foot path in front of these two (2) resorts where it does not fit and completely bypass local business at the Coconut Marketplace. I find that really perplexing and I cannot imagine how local businesses are feeling about having the bike path routing all of these tourists away from them and away from necessary facilities—there are no facilities here. As spoken by many people, the nesting shearwaters. We have many monk seals come up on this beach. This is not a location that can sustain that kind of traffic—it will absolutely destroy the sacred land and for no upside—that is the whole point—we are talking about two (2) tiny resorts of oceanfront bike path and for all that we would be giving up for that makes no sense. I am absolutely perplexed that it has gotten this far in the planning without that being noticed that we are bypassing local business, bypassing any facilities for tourists to be using, and trying to shove this path in where there will be no oceanfront left for anyone to enjoy and the erosion is inevitable. It is absolutely going to be a money pit to the city, it is going to be an eyesore, and will ruin the land here for no upside whatsoever. They are also proposing that the path going back up to the street be shoved in by two (2) resorts that between the Kaua'i Shores and the Islander on the Beach, where there is clearly no room for that. People will be walking out their front door into a path. Old trees will have to be removed. We have a beautiful breadfruit tree that we donate the fruit from that to hungry people and those are going to be removed. We have major water issues over there already, so there will be massive costs in maintaining the wall they are proposing there, because of the water issues—it literally is a flood zone over there and putting a wall up in a flood zone and removing the soil, trees, and landscaping, and putting in concrete—it is going to be a disaster and the city will be responsible for all of that maintenance. So I implore you

to reroute this bike path, relook at it. I beg all of you to please come out here, do not look at it on paper. Please come out here. Please walk this land. Please imagine a 12-foot concrete path here and what it will do to this beautiful island. Thank you.

Committee Chair DeCosta: Are there any clarifying questions from the Members? Thank you, Kathleen. Moving on to speaker number eight, Todd Bigley. For the record, Todd, please state your full name.

TODD BIGLEY (*via remote technology*): Hello, my name is Todd Bigley. I am a resident of the Islander on the Beach. I actually have very little to say, because I think it has already been stated so many times. I object to this large bike path. I think it will be a desecration to this south side of the island. Everyone has already made a point that it is perfectly clear that this would just be disastrous. That is all. I am quick and easy. Thank you for listening to me.

Committee Chair DeCosta: Thank you, Todd. Are there any clarifying questions? We are moving on to speaker number nine, Alfonso Murillo. Alfonso, please state your name for the record.

ALFONSO MURILLO (*via remote technology*): Alfonso Murillo. With all this talk about climate change, water levels rising, all this talk about the Wailua Beach right down the highway here that we are losing it, and to continue to constructing along the shoreline, more specifically, right here between these two (2) resorts, there is short space—it is just not right, it makes no sense. The pathway should be in the front. There is a street out there already. There is signage out there already. The previous speaker who spoke, the Coconut Marketplace is there and that could invigorate business, it would help businesses to keep on operating. That is all I have to say. Thank you.

Committee Chair DeCosta: Thank you, Alfonso. Are there any clarifying questions? We are moving on to our last speaker, Warren Ledungen.

WARREN LEDUNGEN (*via remote technology*): Aloha, my name is Warren Ledungen. I want to thank you all for giving me the opportunity to speak on the proposed path. As a permanent taxpaying resident of Kaua'i, I have to say the most impressive thing I observed since I came here is the amazing amount of care and consideration that the island local governors put into preserving, conserving, and protecting the island's incredibly beautiful ecosystem. I have to say, you folks are really above and beyond on that one. That being said, I have absolutely no ecological or biological expertise, but I think it defies logic and common sense that it is obviously ill-advised to lay a 12-foot wide strip of concrete on top of a very delicate coastal ecosystem that is already experiencing more than its share of coastal erosion. I think any fair-minded person would agree that the narrow distance between the ocean and the Kaua'i Coast Resort and Islander on the Beach will not accommodate the path without having detrimental impact on the delicate coastal area. It should be noted that the path, already being completed along the ocean north of the Kaua'i Coast Resort, is more than twice the distance from the ocean. I believe the only safe and responsible way to accommodate Mother Nature and protect this section of the shoreline is to reroute the path and turn it at the northern property line of the Kaua'i

Coast Resort back to the street, and take it behind Coconut Marketplace where it can reconnect with the original path. With all due respect, I cannot believe that the people who do such a great job taking care of this island are okay with this currently proposed path. Hopefully, this information I have provided will help everyone to see it is absolutely imperative that we get this right. Thank you for your time. *Mahalo.*

Committee Chair DeCosta: Thank you, Warren. Are there any clarifying questions? This concludes all our speakers for the day.

There being no further testimony on this matter, the public hearing adjourned at 9:40 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', with a long horizontal flourish extending to the right.

JADE K. FOUNTAIN-TANIGAWA
County Clerk

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