

PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES PRESERVATION FUND COMMISSION

JODI HIGUCHI SAYEGUSA, CLERK OF COMMISSION

SHAYLYN KIMURA, CHAIR
NANCY KANNA, VICE CHAIR
TARYN DIZON, MEMBER
JONATHAN LUCAS, MEMBER
MARK ONO, MEMBER
ROBIN PRATT, MEMBER

Pursuant to Hawai'i Revised Statutes Section 92-3.7, which codified Act 220, SLH 2021, the meetings of the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund Commission will be conducted as follows:

- **The meeting location that will be open to the public with audiovisual connection is:**
 - Līhu'e Civic Center, Moikeha Building
 - Meeting Room 2A-2B
 - 4444 Rice Street, Līhu'e, Kauai, Hawaii
- The public may also attend the meeting through Zoom using link provided on the agenda.
 - If the Zoom connection or audio/visual connection is lost and cannot be restored within 30 minutes during the meetings, the Commission will continue all matters and reconvene at the next scheduled Commission Meeting.
- **Written testimony** indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item and submitted to planningdepartment@kauai.gov or mailed to the Kauai County Planning Department 4444 Rice Street., Ste A473, Lihue, Hawaii 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be distributed to all Commissioners prior to the meeting. Any testimony received after this time and up to the start of the meeting will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.
- **Oral testimony** will be taken **in-person at the public meeting location and via Zoom link** listed on the agenda.
 - All testifier audio and video will be disabled until it is your turn to testify.
 - Per the Commission's and Chairs practice, there is three-minute time limit per testifier, per agenda item.
 - If there are temporary technical glitches during your turn to testify, we may have to move on to the next person due to time constraints; we appreciate your understanding.
- **IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ASEGRETI@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.**

**PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES
PRESERVATION FUND COMMISSION TELECONFERENCE
MEETING NOTICE AND AGENDA**

**Thursday, October 13, 2022
1:00 p.m. or shortly thereafter**

ZOOM MEETING LINK:

<https://us06web.zoom.us/j/83724982129>

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting(s) of the Commission

1. None for this meeting.

E. RECEIPT OF ITEMS FOR THE RECORD

F. GENERAL BUSINESS

G. COMMUNICATIONS

H. UNFINISHED BUSINESS (For Action)

I. NEW BUSINESS (For Action)

1. Update on a 1.8 acre property known as Kaluanono, further identified as Tax Map Key (TMK) (4) 5-6-004:010 and a .25 acre property known as Halulu Fishpond further identified as Tax Map Key (TMK) (4) 5-6-004:017 located in Waipa, Waipa Ahupuaa, Halalea Moku. (Preliminary report 4/9/15, Supplemental report 5/9/19)

J. EXECUTIVE SESSION

EXECUTIVE SESSION: Pursuant to Hawai'i Revised Statutes 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the following matters:

1. Update on a 1.8 acre property known as Kaluanono, further identified as Tax Map Key (TMK) (4) 5-6-004:010 and a .25 acre property known as Halulu Fishpond further identified as Tax Map Key (TMK) (4) 5-6-004:017 located in Waipa, Waipa Ahupuaa, Halalea Moku. (Preliminary report 4/9/15, Supplemental report 5/9/19)

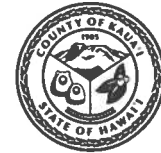
K. ANNOUNCEMENTS

1. Topics for Future Meetings.
2. The following regularly scheduled Open Space Commission meeting will be held at 1:00 p.m., or shortly thereafter, on or about November 10, 2022. If a meeting may be held sooner, the Commission will post notice in compliance with Hawai'i Revised Statutes Chapter 92. The Open Space Commission anticipates this meeting to be held in-person at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766. The Commission also anticipates providing a virtual platform capability for members of the public to testify remotely. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

L. ADJOURNMENT

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

**Public Access, Open Space, and Natural Resources Preservation
Fund Commission (“Open Space Commission”)**

UPDATE

I. SUMMARY

Consideration of a request to amend the Open Space Commission’s former approval that recommended \$850,000 of Open Space Funds be used to acquire the Kaluanono and Halulu Fishpond property and a conservation easement for both properties. Instead, the amended recommendation to consider \$850,000 of Open Space Funds be used to acquire the Halulu Fishpond, its access, and a conservation easement owned by the County pertaining to the fishpond.

Open Space Commission action may include any of the following actions:

1. Approve the request to amend the former approval as requested; or
2. Decline to amend the former approval; or
3. Suggest any other amendment of the former approval; or
4. Defer consideration of the request.

II. BACKGROUND OF PROPERTY

PROJECT INFORMATION			
Parcel Location:	Waipā		
Tax Map Key(s):	(4) 5-6-004:010 (Kaluanono) (4)5-6-004:017 (Halulu Fishpond)	Area:	1.8 (Kaluanono) 0.25 (Halulu Fishpond)
LAND USE DESIGNATIONS & VALUES			
Zoning:	Open		
State Land Use District:	Agriculture		
General Plan Designation:	Agriculture		
Real Property Assessed Value:	\$2,350,000 as of 2019 (Kaluanono) \$1,100,000 as of 2019 (Halulu Fishpond)		
Owner(s):	Waioli Corporation		
Owner Response:	No response to date.		
Date Public Recommendation Received:	2015		

III. PROJECT DESCRIPTION AND BACKGROUND

Kaluanono is a privately held 1.8-acre property at TMK (4) 5-6-004:010 and Halulu Fishpond Access is a 0.25 acre property at TMK (4) 5-6-004:017 that are both stewarded by Waipā Foundation. Kaluanono is the historic name for the property along Waipā Stream that was traditionally planted in wetland kalo (taro). Halulu Fishpond Access includes the community path to Halulu Fishpond, and part of the fishpond itself. Each year, thousands of students, and attendees of Waipā Foundation's Music and Mango Festival, and Kalo Festival, walk through Halulu Fishpond Access property to learn and enjoy Hawaiian cultural elements at Halulu Fishpond.

The lot of record is bordered to the east of Kūhiō Highway, to its west by the shoreline, and north and south are properties currently leased by Waipa Foundation and undeveloped vacant properties.

The proposal was first presented to the Commission at its meeting on April 9, 2015. The Trust for Public Lands and Waipā Foundation sought funding to assist with the purchase of the two kuleana properties in Waipā. These parcels were for sale and their purchase was critical to restoring the entire ahupua'a to a thriving place that feeds the community both physically and culturally. Waipā Foundation proposed to own and manage the lands as living learning center.

Over the years, significant work was done to clear the way to make the purchase happen. The Trust for Public Lands and Waipā Foundation worked diligently with the landowner to resolve the properties' title. In addition, the organizations were in the process of securing funds from other entities including The Trust for Public Lands and the Legacy Lands Commission after the 2019 appraisals reflected that the acquisitions would exceed the Fund's balance at the time.

During its October 10, 2019 meeting, the Open Space Commission approved \$850,000 for the acquisition of a conservation easement on both the Kaluanono and Halulu Fishpond. However, the Project was "on-hold" until confirmation was received that additional funding was secured from other entities.

Since the Commission's approval on October 10, 2019, Waipā Foundation and the property owner have discussed the possibility of entering long term leases or a donation of the Kaluanono property for potential affordable farmworker housing. The use of Open Space Funds for the acquisition, however, would likely prohibit any possibility for farmworker housing. Instead, the Foundation proposes to apply the \$850,000 of Open Space Funds to acquire the Halulu Fishpond and its access. In addition, the Foundation has acquired \$400,000 from the State Legislature as well as \$50,000 of State Legacy Land Conservation Funds to apply to the Halulu Fishpond purchase. This total of \$1.3 million would cover any increase in value to the property since the property's appraisal in 2019 that appraised the property at \$1.1 million.

IV. PRELIMINARY EVALUATION

The following should be considered regarding the possible amended acquisition:

Under Rules of Practice and Procedure of the County of Kaua‘i Public Access, Open Space, and Natural Resources Preservation Fund Commission, as amended on April 14, 2016, (Open Space Rules) §1-5-4, the possible acquisition of the Halulu Fishpond and Access *will* comply with all criteria for acquisition:

1. The proposal fulfills at least one of the Commission’s purposes. Actually, the acquisition fulfills all of the following purposes:

- Public outdoor recreation and education, including access to beaches and mountains
- Preservation of historic or culturally important land areas and sites
- Protection of significant habitats or ecosystems, including buffer zones
- Preserving forests, beaches, coastal areas and agricultural lands
- Conserving land in order to reduce erosion, floods, landslides, and runoff
- Improving disabled and public access to, and enjoyment of, public land and open space
- Acquiring disabled and public access to public land, and open space
- Conserving land for open space and scenic values

Supporting the acquisition of fishpond would further Waipā Foundation’s mission and its various malamā ‘āina programs. The community would be benefitted with a community space and living learning center where Hawaiian cultural practices and values are taught. In particular, the acquisition would allow the thousands of students and attendees of Waipā Foundation’s Music and Mango Festival and Kalo Festival to access the Halulu Fishpond Access property and learn and enjoy Hawaiian cultural elements at Halulu Fishpond. This mission and these program fulfills all of the Fund’s purposes name above.

2. The cost for the acquisition *would* be commensurate to the public interest served.

Especially with the addition of other funding sources, the cost of the County’s contribution acquisition would be commensurate to the public interest served. The landowner is willing to work with and sell the access and portion of the fishpond to the Foundation; thus, no additional litigation or other costs are needed for the acquisition.

In addition, the public interest served is immense. The Foundation and its various programs and community events are renown in the North Shore community and throughout Kaua'i. Permanently securing the access to the Halulu Fishpond and a portion of the fishpond would secure the Foundation's permanent ability to continue its work to foster sustainability and community. Also, the conveyance of a conservation easement owned by the property pertaining to the fishpond and access would also solidify conservation of that resource.

3. **The process for acquiring the Halulu Fishpond and access will be commensurate to the public interest served. Factors may include, but are not limited to:**
 - a. **The type of property interest that is proposed for acquisition (for example, an easement versus fee simple ownership)**
 - b. **Whether or not the acquisition will be an adversarial process.**

The landowner is willing to work with and sell the access and portion of the fishpond to the Foundation; thus, no additional litigation is needed for the acquisition. The Foundation has also secured the additional State funds to cover the current value of the property.

4. **The required maintenance will be reasonable and commensurate to the public interest served.**

The acquisition would allow the Foundation to own, maintain, and further steward the fishpond and access. Thus, there would be no maintenance required by the County.

5. **Pursuant to Section 1-5-5 of the Open Space Rules, any proposed acquisition that contains extremely dangerous attributes in the land or that poses a risk of serious injury or death shall not be recommended.**

Prohibitive factors for acquisition of the fishpond and access do not exist.

V. PRELIMINARY CONCLUSION

Based on the information contained in the Report's Findings and Evaluation, the Planning Department concludes the following:

1. Acquisition of the Halulu Fishpond, access, and a conservation easement will fulfill at least one of the Commission's purposes for public access, open space, and natural resources preservation.
2. The cost for the acquisition is commensurate to the public interest served.
3. The process for acquiring the Halulu Fishpond, access, and conservation easement will be commensurate to the public interest served.
4. The fishpond and access would require maintenance; however, these responsibilities would be borne by the stewards and owners. Thus, there will be no cost implications and maintenance required by the County.
5. In addition, pursuant to Section 1-5-5 of the Open Space Rules, there are no extremely dangerous attributes in the land that poses a risk of serious injury or death.

VI. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation it is hereby recommended that the Commission **approve** the request to amend its former recommendation and recommend that \$850,000 of Open Space Funds be used to acquire the Halulu Fishpond and access, as well as a conservation easement pertaining to the property.

This report may not represent the Planning Department's final recommendation in view of the forthcoming public hearings before the Open Space Commission where the entire record should be considered prior to decision making. The entire record includes but is not be limited to:

1. Government agency comments, if any;
2. Testimony from the general public and interested others; and
3. The landowner's response to an inquiry for acquisition.

Approved & Recommended to Commission:

By *Jodi Higuchi Sayagusa*
JODI A. HIGUCHI SAYAGUSA
Deputy Director of Planning

EXHIBIT A

Request from Waipā Foundation



September 6, 2022

HAWAII

1164 Bishop St., Ste. 1512
Honolulu, HI 96813
tpl.org

Mr. Ka'āina Hull, Director
Kaua'i County Planning Department
4444 Rice Street., Ste A473
Lihue, Hawaii 96766

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Merrill Lynch

Mark Linscott
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Young Brothers

Kurt Matsumoto
Pūlama Lāna'i

John Meier
Conservationist

Mino McLean
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Jeff Overton
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Mike B. Pietsch
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Brad Punu
Anatha

Kirstin Punu
AES

Race Randle
Lendlease Americas

Tom Reeve
Conservationist

Ka'iulani Sodaro
Ward Village/Howard Hughes

Jan Sullivan
Oceanit

Re: Waipā Foundaiton – Halulu Fishpond Access

Aloha Mr. Hull –

We are requesting that the County convene the Open Space Commission to consider revising its recommendation for funding for the Halulu Fishpon Access and Kaluanono parcels. As you know, in 2019, the Open Space Commission previously approved a total of \$850,000 for Waipa to purchase both the Kaluanono stream side property and the Halulu Fishpond Access property. We would like to request the \$850,000 be allocated solely to the Halulu Fishpond Access property.

The Waipā Foundation is currently in discussions with the owner of the properties to lease long term (or possibly donate) the Kaluanono property for potential affordable farmworker housing. If the Kaluanono property was purchased with Open Space funds, housing would likely be prohibited.

We believe we have sufficient funds to purchase the Halulu Fishpond Access property if the \$850,000 previously recommended by the Open Space Commission can be allocated solely to the Halulu Fishpond Access property. Senator Ronald Kouchi was able to appropriate \$400,000 for the acquisition of the Halulu Fishpond Access property this past session. We also previously secured \$50,000 of State Legacy Land Conservation funds for this same property (total state funds: \$450,000).

The County's 2019 appraisal estimated the value of the Halulu Fishpond Access Property at \$1.1 million. The value has likely risen since 2019. With \$850,000 of Open Space funds and \$450,000 of State funding, we would have a total of \$1.3 million to cover any increase in value, verified by an updated appraisal, and therefore request that the Open Space Commission consider allocating all \$850,000 of funding it previously approved to be allocated solely to the Halulu Fishpond Access property.

Thank you for your consideration of this request.

Mahalo,

Lea Hong, Associate Vice-President
Hawaii'i State Director
Edmund C. Olson Trust Fellow
Trust for Public Land

Stacy Sproat
Executive Director
Waipā Foundation

EXHIBIT B

Area Map



1) Kaluanono
TMK: (4) 5-6-004:010
1.8 acres, Zoned Agricultural
Tax Assessed Value: \$800,000

2) Halulu Fishpond Access
TMK: (4) 5-6-004:017
.25 acres, Zoned Agricultural
Tax Assessed Value: \$1,104,000

Halulu Fishpond
Halulu Fishpond
Community Path

H a n a l e i B a y

WAIKOKO

WAIIPÄ

WAIOLI

Kalihi Rd

Waipoli Beach Park