On November 29, 2021, Governor David Y. Ige issued an Emergency Proclamation, which continued the suspension of Hawai‘i Revised Statutes (HRS) Chapter 92, relating to Public Agency Meetings and Records (also known as the Sunshine Law) as it pertained to the COVID-19 Response. HRS Chapter 92 was suspended to the extent necessary to enable boards to conduct business in-person or through remote technology without any board members or members of the public physically present in the same location. In addition, on December 29, 2021, Governor Ige issued a proclamation suspending HRS 92-3.7 to the extent necessary to suspend the requirement to have at least one meeting location that is open to the public.

The meetings of the County of Kaua‘i Public Access, Open Space, and Natural Resources Preservation Fund Commission will be conducted as follows until further notice:

- Meetings will be publicly noticed pursuant to HRS Chapter 92.
- In-person meetings will be closed to the public to be consistent with social distancing practices.
- Commissioners, Planning Department Staff, parties to agenda items, and resource individuals may appear via the ZOOM remote technology.
- The meeting will be live streamed and also available as an archived meeting after completion at www.kauai.gov/Webcast-Meetings. Please note video production services or enhancements will not be available.
- **Written testimony** 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, Lihu‘e, Hawai‘i 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 during the public hearing portion of the meeting via ZOOM remote technology platform. Anyone interested in providing oral must register for the meeting. Once you register for the meeting, you will receive the meeting link that is unique to each registrant that cannot be shared.
  - It shall be the responsibility of the testifier to join the meeting through the ZOOM link provided via E-mail to provide their oral testimony. In addition, it shall be the responsibility of the testifier to ensure that the ZOOM software is downloaded and operational prior to the meeting.
  - 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.
  - 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 any major and insurmountable technical difficulties are encountered during the meetings, the Public Access, Open Space, and Natural Resources Preservation Fund Commission will continue all matters and reconvene at the next scheduled Commission Meeting.
- Minutes of meetings will be completed pursuant to HRS Chapter 92 and posted to the Public Access, Open Space, and Natural Resources Preservation Fund Commission’s website upon completion and approval.
PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES
PRESERVATION FUND COMMISSION TELECONFERENCE
MEETING NOTICE AND AGENDA

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

ZOOM MEETING REGISTRATION LINK:
https://zoom.us/webinar/register/\WN CDzB5wZtSoWX7AqP6Wsypw

A. CALL TO ORDER

B. ROLL CALL

C. SELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

D. APPROVAL OF AGENDA

E. MINUTES of the meeting(s) of the Commission
   1. October 14, 2021

F. RECEIPT OF ITEMS FOR THE RECORD

G. HEARINGS AND PUBLIC COMMENT. The Public Access, Open Space, and Natural Resources Preservation Fund Commission will accept written testimony for any agenda item. Written testimony indicating your 1) name, 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 in writing to planningdepartment@kauai.gov or mailed to the County of Kaua‘i Planning Department, 4444 Rice Street, Suite 473, Līhu‘e, Hawai‘i 96766. Written testimony received by the Planning Department before 1:00 p.m. on Wednesday, October 13, 2021, will be distributed to all Commissioners prior to the meeting. Written testimony received after 1 p.m. on Wednesday, January 12, 2022, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.

Oral testimony will be taken at the beginning of the meeting on any agenda item via the Zoom remote technology platform. Once you register for the meeting, you will receive the meeting link that is unique to each registrant that cannot be shared. It shall be the responsibility of the testifier to register for the Zoom meeting and ensure that the Zoom software is downloaded prior to the meeting.

H. COMMUNICATION

I. GENERAL BUSINESS
J. **UNFINISHED BUSINESS (For Action)**

1. Review and discussion of the dedication of an easement and possible improvements related to the easement located on land identified as tax map key (4) 5-4-11: 04 and (4) 5-4-12: 11 that accesses Kaumumene or Hideaways Beach.

2. Discussion and development of the biennial list of priority projects to be reported to the Kauai County Council and the Mayor.

K. **NEW BUSINESS (For Action)**

L. **EXECUTIVE SESSION**

EXECUTIVE SESSION: The Commission may go into executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawai‘i Revised Statutes ("H.R.S."), without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92-7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

M. **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 March 10, 2022. The Open Space Commission anticipates meeting via teleconference, but will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

N. **ADJOURNMENT**

NOTE: 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.
COUNTY OF KAUA‘I  
Minutes of Meeting  
OPEN SESSION

<table>
<thead>
<tr>
<th>Board/Commission:</th>
<th>Public Access, Open Space and Natural Resources Preservation Fund Commission</th>
<th>Meeting Date</th>
<th>October 14, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Zoom Teleconference</td>
<td>Start of Meeting:</td>
<td>1:04 p.m.</td>
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<tr>
<td>Excused</td>
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<td>Absent</td>
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### SUBJECT

**Oath of Office**

Prior to the meeting being called to order, Deputy County Clerk Scott Sato administered the Oath of Office to Anahola/Ha‘ena Council Appointee Commissioner Erica Taniguchi serving a second term ending 12/31/23.

Chair Kanna, Vice Chair Kimura (internet connection was choppy, camera not working and not visible), Commissioner Dizon (could not use her camera and not visible), Commissioner Lucas, Commissioner Ono, Commissioner Taniguchi, Deputy County Attorney Barzilai, Deputy Director Higuchi-Sayegusa, Planner Hironaka, Commission Specialist Sadora, Commission Clerk Nakamatsu, Administrator Ching and Commission Support Clerk Muragin were logged onto Zoom Teleconference.

### ACTION

**A. Call To Order**

Chair Kanna called the meeting to order at 1:04 p.m.

**B. Roll Call**

Quorum was established with six commissioners present.
Ms. Higuchi Sayegusa paused the meeting to introduce new Commissioner Johnathan Lucas. Commissioner Lucas said he was a licensed architect on Kaua‘i for 20-years and taught at Kaua‘i Community College. He said he served on local community boards but was searching to participate and help in community government and found open space aligned with his value on retaining undeveloped land which was very important to the quality of life on Kaua‘i.

Ms. Sadora and the commissioners took a moment to recognize and honor the many contributions of the late Open Space Commissioner Theodore Blake.

**Due to connectivity issues Vice Chair Kimura disconnected from the meeting at 1:16 p.m.**

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<tr>
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<tr>
<td>C. Approval of Agenda</td>
<td>Ms. Ono moved to approve the agenda, as circulated. Ms. Taniguchi seconded the motion. Motion carried 5:0.</td>
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<tr>
<td>D. Minutes of the Meeting(s) of the Commission</td>
<td>Due to connectivity issues Vice Chair Kimura disconnected from the meeting at 1:16 p.m.</td>
<td>Ms. Ono moved to approve the February 11, 2021, minutes, as circulated. Ms. Dizon seconded the motion. Motion carried 5:0.</td>
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<td>E. Receipt of Items For The Record (None)</td>
<td>There were no items for the record.</td>
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<td>F. Hearings and Public Comment</td>
<td>There were none.</td>
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<td>G. Communication</td>
<td>Letter from Reid Kawane, Chair of the Charter Review Commission, dated October 1, 2021, requesting any proposals to amend the Charter. Vice Chair Kimura regained access and entered the meeting by audio only at 1:19 p.m.</td>
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<td>Ms. Higuchi Sayegusa advised the commissioners to submit proposals in writing or contact a staff member to discuss. The proposals would be placed on the agenda and discussed as a whole body. Ms. Ching said proposed amendments to the charter would need to be informally presented to the charter commission for review first. The charter commission would decide if the proposal would be placed on next year’s ballot and then there would be a formal write up of the proposal.</td>
<td></td>
<td>Ms. Ono moved to receive a communication dated October 1, 2021, from Reid Kawane, Chair of the Charter Review Commission requesting submittal of any proposals to amend the Charter. Ms. Taniguchi seconded the motion. Motion carried 6:0.</td>
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**H. General Business**

**H.1.** Update on vacant commissioner positions.

Ms. Ching shared the following:
- Three vacant positions and Līhu'e/Hanamā'ulu mayoral appointee Commissioner Karen Ono’s second term would end December 31, 2021; however, she agreed to a 90-day extension and would term out March 31, 2022.
- The first position was a Hanapēpē/Ele'ele council nomination
- The second position was Kapa'a/Wailua mayoral nomination
- The third position was an at-large commission nomination
- The Līhu'e/Hanamā'ulu mayoral nomination would open in April

**I. Unfinished Business (For Action)**

**I.1.** Update on potential acquisition of 55.408- and 46.461-acre parcels located in Līhu'e district further identified as tax map key (4)3-2-001:001 and (4)3-1-001:012.

Vice Chair Kimura apologized and said there was no discussion on the vacant positions before moving on to the next agenda item and asked if she could ask Ms. Ching a question on the vacant positions.
Deputy Attorney General Laura Barzilai stated the commission could go back to discussions in H.1. with a motion. Ms. Ono moved to leave I. Unfinished Business and return discussions back to H. General Business to further discuss the update on vacant commissioner positions. Ms. Taniguchi seconded the motion. Motion carried 6:0.

**H. General Business**

**H.1. Update on vacant commissioner positions.**

Ms. Kimura said several months ago she asked Boards and Commissions if the terms could be extended for the months that they did not meet, since other commissions were allowed to meet and inquired about recruitment to fill the vacant positions because that had always been a problem.

Ms. Ching assured her that she was actively recruiting volunteers for this commission and other commissions and requested DCA Barzilai address the extension of terms. DCA Barzilai asked Vice Chair Kimura to formally submit a request for legal review so the county attorney’s office could appropriately research the matter.

With no further discussion from the commission, Chair Kanna moved to the next agenda item.

**I. Unfinished Business (For Action)**

**I.1. Update on potential acquisition of 55.408- and 46.461-acre parcels located in Li‘u‘e district further identified as tax map key (4)3-2-001:001 and (4)3-1-001:012.**

Ms. Higuchi Sayegusa updated the commission on the status of the Alekoko (Menehune) Fishpond. She said the county council received the commissions support to acquire the parcels; however, recently a third-party philanthropist may donate the necessary funds to acquire the parcels. Ms. Higuchi Sayegusa said there were no other updates.

With no further discussion, Chair Kanna moved on to the next agenda item.
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<tr>
<td>J. New Business (For Action)</td>
<td>J.I. Review and discussion of the dedication of an easement and possible improvements related to the easement located on land identified as tax map key (4)5-4-11:04 and (4)5-4-12:11 that accesses Hideaways Beach.</td>
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Deputy County Attorney Mark Bradbury gave a brief background history:

- May 1975 Princeville Corporation thought they conveyed an easement that included the beach access trail to Hideaway's Beach to the County of Kaua'i.
- The trail started at the top of Puu Poa Condominium property down to Hideaway's Beach and was the only foot trail to the secluded beach.
- The individual that described the easement deed back in 1975, did not draft it accurately and it had a different description on another parcel that led to another beach.
- The error was discovered shortly after the deed was drafted and over the next 40-years the Puu Poa Condominium Homeowners Association and the County of Kaua'i talked of redrafting the deed, but it was never completed, and no one maintained the trail.
- Two years ago, a visitor from California got injured and filed a claim that named the County of Kaua'i. The county said the trail was not legally conveyed, which led the visitor to file a lawsuit against the County of Kaua'i and Puu Poa Condominium HOA; the lawsuit has since been settled.
- Puu Poa Condominium Homeowners Association does not want the trail but paid for a new survey and easement deed.

DCA Bradbury then asked the commission for the following:

- Commit open space funds to finance the necessary repairs required to make the trail safe. Once the commission commits to funding the repairs, it would be presented to council along with the new easement deed which would help DCA Bradbury get council to adopt the dedication of the trail.
- If the easement was not conveyed to the county Puu Poa Condominium Homeowners Association would close the trail due to liability and the public would lose access to the beach.
- Received verbal repair estimates of $55,000 to $60,000 and could possibly go up to
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<td>$70,000.</td>
<td>• Councilwomen Felicia Cowden said she knew a group of north shore individuals who offered to maintain the trail if Public Works or Parks and Recreation was not able to maintain the trail.</td>
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Ms. Higuchi Sayegusa informed the commission of the following:

- The county charter was amended in 2018 to add the use of open space funds for improvements related to acquisition of land and property entitlements and improve public pedestrian accesses to coastal accesses.
- This would fit into the improvement related to an acquisition of a coastal access and would be the first project to fund an improvement related to an acquisition or related to a coastal access.
- If the commission approved the expenditure of funds for improvements on the easement, the department would package the recommendation to the county council along with an appraisal.

Questions:

1. Ms. Ono asked if the request for funds would repair the trail to make it acceptable for the open space portfolio. DCA Bradbury replied that the funds would repair the trail to bring it into a safe condition for the public to safely use the trail. He needed the commission to commit to funding the repairs so it could be presented to the county council for adoption of the dedication of the easement. He said he went down the trail and confirmed that it was extremely dangerous, and the county should not take liability in its current condition; it must be repaired. The easement does not cost anything.

2. Chair Kanna asked for details of the improvements. DCA Bradbury said Councilwomen Cowden sought several contractors for repair estimates. He said both contractors would remove the existing structure and replace with concrete molded stairs with railings on the side all the way down until the trail evens out and becomes flat at the bottom.

3. Chair Kanna understood what Councilwomen Cowden and the contractors thought would be needed but was more concerned over what the public wanted and if the public had any...
### SUBJECT DISCUSSION ACTION

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<td>input in what the repairs to the trail should look like. DCA Bradbury said there were no public input because prior discussion took place in executive session. He wasn’t sure if the trail was still closed but when it was closed there was a lot of public concern.</td>
<td>4. Vice Chair Kimura concurred with everything DCA Bradbury shared because she was also contacted by several community groups. She said it was like “putting the cart before the horse”, because what if the easement was not conveyed. She asked if there were any obstacles to prolong or prevent full conveyance of the trail to the county. DCA Bradbury said there were no obstacles for recordation of the easement deed; council not wanting the easement trail would be the only obstacle. He reemphasized that no funds would be needed now, he only needed the commission to commitment to fund the necessary repairs.</td>
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<td>Vice Chair Kimura commented that it would be difficult to commit open space funds when past county practices have been the use of open space funds without their knowledge which prevented them from following through on recommended acquisitions. She also remembered that requests to maintain trails were always denied by parks and recreation due to lack of manpower.</td>
<td>5. Vice Chair Kimura commented that it would be difficult to commit open space funds when past county practices have been the use of open space funds without their knowledge which prevented them from following through on recommended acquisitions. She also remembered that requests to maintain trails were always denied by parks and recreation due to lack of manpower.</td>
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<td>Ms. Higuchi Sayegusa said they would develop a process and create a criterion to prioritize the types of improvements they would want to fund. The department would approach the individuals and commit a stewardship agreement to maintain the trail and that would accompany the commitment of funds and easement to council.</td>
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<td>Vice Chair Kimura thanked the DCA Bradbury for the work he put into this project and agreed with the discussion. She said the footpath was the only access to the beach and there would be community commitment to maintain the trail once its repaired.</td>
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<td>6. Ms. Ono asked for the fund balance. Commission Specialist Nani Sadora replied to date the balance was $3.1 million and it included black pot and there were no other outstanding acquisitions.</td>
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<td>Ms. Higuchi Sayegusa displayed pictures of the current condition to Hideaway's Beach so the commission could specify desired repairs to the trail.</td>
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<td>Mr. Lucas commented that the trail was exactly what open space was all about. He recommended using GatorBar which last longer than rebars if concrete was used for the stairs. The railings should be made of aluminum and not steel. The salt air would begin to rot the steel railings in a few years. Mr. Lucas was also concerned for the contractors. He wanted to make sure they understood that the repairs would need to be done by county code, properly permitted, inspected, and designed for safety to prevent future issues. He said the recommended materials may cost more for better quality but in the long run it would result in a safer trail that last longer.</td>
<td>Ms. Ono motioned to defer dedication of an easement and possible improvements related to the easement located on land identified as tax map key (4)5-4-11:04 and (4)5-4-12:11 that accesses Hideaways Beach to a future meeting to allow open space planners to pursue estimates in accordance with Commissioner Jonathan Lucas’s suggestions. Ms. Dizon seconded the motion. Motion carried 6:0.</td>
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<td>Vice Chair Kimura moved to allow the open space planners to pursue further information on the potential for stewardship for the land.</td>
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### J.2. Update on the Coastal Access Inventory Update Project

Ms. Higuchi Sayegusa said the project updated and digitized the Kaua’i County Beach Access data from 1991 through funding from the coastal zone management program. The consultants Sea Engineering, along with staff visited and inspected accesses across the island. They collected information that resulted in a huge number of accesses created by subdivision approvals and SMA (special management area) projects. She said they completed 62 sites and compiled a total of 218 coastal accesses.

*Commissioner Karen Ono left the meeting at 2:25 p.m.*

They prioritized the sites with county and state-owned and few were excluded due to various reasons of safety hazards or erosions. She displayed the GIS map on the screen to visually demonstrate what was created and the large number of inventory of access it contained.

Ms. Higuchi Sayegusa said the next steps would include;
- Find out more information on Maui’s website that allowed the public to locate documented coastal accesses. Staff and commission may consider a similar program for future use of this GIS map.
- Gather public comments and vet possible issues to culturally sensitive locations that would need to be addressed.
- Discuss the criteria’s and prioritize possible improvements to these accesses.
- Revisit and update the list of accesses to demarcate with signage.

Questions:

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<td>1.</td>
<td>Vice Chair Kimura asked if the list of accesses was to demarcate and what was the perimeters to be included on the list. Ms. Sadora said the commission already identified that improvements would include a four-foot post and beach access sign. She offered to send the Maui link to the commission so they could see what was available to the public as something to consider for this GIS map.</td>
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<td>2.</td>
<td>Ms. Taniguchi asked if Ms. Higuchi Sayegusa could email access to the GIS map. Ms. Higuchi Sayegusa said it could not be shared it required a license to access the file and the file was huge. She welcomed the commission to contact staff if they wanted to setup a meeting to review the GIS map again.</td>
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Ms. Dizon commented that it was critical for the county to provide accurate information. She shared that there were many hiking apps that offered the user false skewed information that placed them at risk. She said it may be the reason for the recent increase in county rescue resources.

J.3. Discussion and development of the biennial list of priority projects to be reported to the Kaua‘i County Council and the Mayor.

Commission Specialist Nani Sadora recounted that the biennial report was almost finalized in 2017 when Rain18 happened, and a decision was made to not complete it but hold it until the next biennial which was 2019. Then the COVID-19 pandemic and they held back the report again until the next biennial which was 2021. She said they have the 2017 report that could be used with updates and packaged to council.

Questions:

1. Vice Chair Kimura asked if the process required public comment. Ms. Sadora said the public was now able to submit recommendations at anytime there was no timetable for public outreach.

2. Vice Chair Kimura remembered that they had an online survey and wondered if that could be offered again. Ms. Sadora replied that if the commission wanted, they could offer the survey for a certain period and advertise in the garden island newspaper, midweek, and radio.
DCA Barzilai read portions of the Rules of Practice and Procedure of the County of Kaua‘i Public Access, Open Space, and Natural Resources Preservation Fund Commission, Chapter V. Report Process, 1-5-2 Public Input (a-c) and 1-5-6 Biennial Report (a-e). She concluded that there were no specifics on public input and no specifics that prohibited it either. She said the commission could pursue public input as discussed.

Chair Kanna commented that the pandemic closed off prior methods of public contact and an online survey period would allow the public to reconnect with open space. She asked Ms. Higuchi Sayegusa if the survey would be on new acquisitions or comments on the biennial report. Ms. Higuchi Sayegusa suggested the commission concentrate on providing an updated biennial report and moving forward seek public input. Chair Kanna and Vice Chair Kimura volunteered to work with Ms. Sadora on finalizing the draft to bring back to the commission for review and approval.

Ms. Sadora shared her screen and presented several cover designs for the commission to consider that updated the look and feel of the packaged biennial report. She said the vision was to highlight its success in acquisitions and present an active commission.

Ms. Dizon moved to nominate Chair Nancy Kanna and Vice Chair Shaylyn Kimura to work with open space planner Nani Sadora to update the biennial report and present the draft to the commission for review and approval. Mr. Lucas seconded the motion. Motion carried 5:0.

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<tr>
<td>Executive Session</td>
<td>The commission did not go into executive session.</td>
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<tr>
<td>Announcements</td>
<td>There were no announcements.</td>
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<tr>
<td>Next Meeting</td>
<td>Next meeting Thursday, December 9, 2021 at 1:00 p.m.</td>
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</table>
Ms. Higuchi Sayegusa thanked the commission for their dedication and patience and announced that meetings would be held every other month and resume monthly once the pandemic situation improves.

Next agenda topics for discussion would include:
1. Update on Hideaway's easement
2. Next steps to coastal accesses

With no further business to conduct, Chair Kanna called for a motion to adjourn. Ms. Dizon moved to adjourn the meeting. Vice Chair Kimura seconded the motion. Motion carried 5:0.

Chair Kanna adjourned the meeting at 2:57pm

<table>
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<tr>
<th>SUBJECT</th>
<th>DISCUSSION</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date and Agenda Topics for Discussion</td>
<td>Ms. Higuchi Sayegusa thanked the commission for their dedication and patience and announced that meetings would be held every other month and resume monthly once the pandemic situation improves. Next agenda topics for discussion would include; 1. Update on Hideaway’s easement 2. Next steps to coastal accesses</td>
<td>Ms. Dizon moved to adjourn the meeting. Vice Chair Kimura seconded the motion. Motion carried 5:0. Chair Kanna adjourned the meeting at 2:57pm</td>
</tr>
<tr>
<td>Adjournment</td>
<td>With no further business to conduct, Chair Kanna called for a motion to adjourn.</td>
<td></td>
</tr>
</tbody>
</table>

Submitted by: Sandra M. Muragin, Commission Support Clerk
Reviewed and Approved by: Nancy Kanna, Chair

( ) Approved as circulated.
( ) Approved with amendments. See minutes of _____ meeting.
Public Access, Open Space, and Natural Resources Preservation Fund Commission ("Open Space Commission")

PRELIMINARY REPORT

I. SUMMARY

Consideration of the grant of easement, possible improvements, and future maintenance of the improvements related to the coastal access to Kaumumene or Kenomene, known as Hideaways Beach.

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

1. Recommendation that the County Council accept the grant of easement; or
2. Recommendation that the County Council accept the grant of easement and a recommendation to approve the use of Public Access, Open Space, and Natural Resources Preservation Funds for improvements related to the coastal access easement; or
3. A recommendation that the County Council NOT accept the grant of easement; or
4. A recommendation to defer consideration of the grant of easement and/or possible improvements.

II. BACKGROUND INFORMATION

<table>
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<th>PROJECT INFORMATION</th>
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<tr>
<td>Parcel Location:</td>
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<td>Tax Map Key(s):</td>
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<tr>
<td>Area:</td>
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<tr>
<td>LAND USE DESIGNATIONS &amp; VALUES</td>
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<tr>
<td>Zoning:</td>
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<tr>
<td>State Land Use District (SLUD):</td>
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<td>General Plan Designation:</td>
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<td>Assessed Value:</td>
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<td>Market Value:</td>
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<td>Appraised Value:</td>
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<td>Owner(s):</td>
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<td>Owner Response:</td>
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An Equal Opportunity Employer

JAN 06 2022
The beach, which is now known as Hideaways Beach, was formerly named Kaumumene or Kenomene. This beach is located at the bottom of the cliff and was previously used as a “holding area” for Hawaiians who were diagnosed with symptoms of leprosy as they waited for a boat to pick them up for their journey to Kalaupapa, Moloka'i. Today, the coastal access and beach is heavily used by experienced fishermen and surfers to access the shoreline and its resources.

III. PROJECT DESCRIPTION AND USE

As described by Deputy County Attorney Mark Bradbury, on May 15, 1975, the Princeville Corporation, formerly known as Eagle County Development Corporation, conveyed a six-foot-wide easement to the County. The easement was intended to transfer possession and control of the beach access trail to Kaumumene. However, the easement’s legal description was inaccurately drawn. Because of this mistake, the trail remains owned by Pu’u Po’a Condominiums. During the past five decades, the County and Pu’u Po’a have held discussions relative to redrafting the easement description but it never occurred.

Two years ago, a tourist from California injured his hand on a rusted handrail while descending the trail. The injured person filed a claim against the County seeking monetary damages. The claim was denied and the injured person subsequently filed suit against the County. The case was subsequently settled by the parties.

At its own expense, Pu’u Po’a had the easement redrafted to accurately describe the easement in relation to the access or trail. Pu’u Po’a seeks to dedicate the entire easement to the County.

The easement begins at a parking lot currently owned by Princeville at Hanalei Community Association or SOF-Xi Kaua’i PV Hotel, LP that is adjacent to a tennis court that is owned by the Pu’u Po’a Community Association. From this parking lot, the easement traverses along a pathway created between two fences with Pu’u Po’a on the western side and a parking lot owned by SOF-Xi Kaua’i PV Hotel, LP on the eastern side. This portion of the coastal access is relatively flat and within the SLUD Urban District and County Resort District. Once past this flat portion, the access traverses down the cliff and onto land in the SLUD Conservation District.

The trail has been maintained by community members and local stewards. However, ongoing maintenance of the access has been challenging particularly along the steep hilly portions of the access that are located makai of Pu’u Po’a and the parking lots. The existing poles, steel railings, and previously installed old concrete are rusted and deteriorated, and constant erosion occurs on the path, especially after heavy rains.

IV. ADDITIONAL FINDINGS

At the October 14, 2021 meeting, the Open Space Commission requested further research regarding possible improvements to the coastal access that may be funded by the Public Access, Open Space, and Natural Resources Preservation Fund (“the Fund”) as well as opportunities to formalize an agreement to establish stewardship by a public interest group for future ongoing maintenance of the coastal access and its improvements.

Possible Scope and Magnitude of the Improvements
At the October 14, 2021 meeting, Open Space Commissioners discussed the following guidance for the scope, character, and magnitude of any improvements for the Kaumumene easement and coastal access:

- GatorBar lasts longer than rebars if concrete was used for the stairs.
- The railings should be made of aluminum and not steel. The salt air would begin to rot the steel railings in a few years.
- Contractors must understand that the repairs would need to be done by county code, properly permitted, inspected, and designed for safety to prevent future issues.
- The recommended materials may cost more for better quality but in the long run it would result in a safer trail that last longer.

In addition to these suggestions, several community members and local stewards who regularly volunteer their time to maintain the existing access and improvements have expressed a preference for improvements that are resilient from erosion, deterioration, and rust, and against the use of concrete. An option presented by one community member featured an elevated grated metal walkway and stairs that are affixed to the ground by posts that are driven into the ground. Another suggestion by a representative from Pacific Concrete Cutting & Coring, Inc. would feature Trex decking that is coated with anti-slip coating and set on a wooden frame and metal pins. This option was suggested due to the steepness, varying terrain, and limited space along some areas of the access, which may make prefabricated stairs infeasible.

The exact design of any improvements will be vetted during the procurement process, which will likely necessitate a design-build request for proposals with selection criteria that is weighted toward low price or other factors. However, the ultimate design of the improvements and overall project scope will affect the complexity of the project and the magnitude of its cost.

An additional consideration that may influence the project’s overall complexity and cost will depend on the difficulty of the pre-construction engineering and permit approval processes. Any construction work in the coastal area may be subject to an environmental assessment under Hawai’i Revised Statutes Chapter 343. Also, preliminary research regarding the permits that will be required for the construction of any improvements include either a Special Management Area (SMA) Minor permit if the construction cost of the improvements is less than $500,000, or a SMA Use Permit if the project is more than $500,000. A SMA Minor permit is subject to an in-house review by the Planning Department and may take 2-3 months. A SMA Use Permit is subject to public hearing and Planning Commission review and approval, which may take up to 6 months to accomplish. If the SMA Use Permit is contested or subject to an intervention, a contested case must be endured and may extend beyond 6 months.

In addition to these county-level permits, most, if not all of the necessary improvements would occur on the portion of the access within the SLUD Conservation District. Thus, a Conservation District Use Permit may be required. A shoreline certification may be required, which is a process that may require Department of Land and Natural Resources (DLNR) or Board of Land and Natural Resources (BLNR) approval. Then, depending on the magnitude of the improvements, either of the following would be required for work in the SLUD Conservation District: site plan approval by the DLNR; permit approval by DLNR; or permit and management plan approval by the BLNR. Site plan approval is a relatively simple process while BLNR
management plan and permit approvals may be extremely complex and time consuming. There is potential for a contested case if the shoreline certification is challenged, or if the permit and management plan is challenged or subject to intervention before the BLNR.

**Estimated Cost**

If the Grant of Easement is accepted by the County Council and a project to construct improvements to the coastal access is recommended by the Open Space Commission and approved by County Council, the project scope, improvements’ design, and cost will be further determined and eventually vetted through the procurement and contracting processes. To obtain a rough estimate for improvements to the coastal access, the Planning Department reached out to a list of contractors that were suggested by the County of Kaua‘i Department of Public Works. In total, three estimates were received. In addition, Councilmember Felicia Cowden passed on estimates provided from several other contractors. These estimates were obtained to seek an appropriate range to base any request to use the Fund for improvements. The estimates ranged from $50,000 to $1.5 million:

- **$1.5M**: The trail is very steep and very narrow in some spots. Due to the varying terrain, the limited space, and the access, ... prefabricated stairs are [not] a viable option. We would propose a method with used for the Uluwehi Falls Trail for DLNR- we used Trex decking set on a wooden frame and metal pins. The decking gets coated with an anti-slip coating.

- **$980,000**: $550,000 was included for the stair’s material; and $25,000 for engineering services to assist with design of the stairs.

- **$450,000** (rough order of magnitude) for elevated metal stairs:
  - Materials:
    - $208,000 - Alum stairs/posts
    - $32,000 – Concrete/rebars
  - $82,000 - Labor:
    - $45,000 – General Requirements
    - $4,500 – Bonds & Insurance
    - $58,500 – OH/fee

- **$55,000 - $65,000**: Concrete stairs and trail repair work.

- **$50,000**: Concrete stairs and trail repair work.

As stated above, the overall project cost will depend on the project scope including engineering services and permit approvals, design of the improvements, and resulting construction and labor requirements associated with the resulting design.

**Maintenance**

Based on the suggestions of several community members, the Planning Department initiated contact with Surfrider Foundation to discuss the possibility of its service as the organizing entity that could facilitate volunteer work for the ongoing maintenance of the coastal access and
improvements once they are constructed. Initial discussions have indicated that they are very interested in serving in that capacity. In addition, several community members have individually expressed their willingness and dedication to continue their efforts to maintain the coastal access and any resulting improvements.

V. PRELIMINARY EVALUATION

The following should be considered regarding the grant of easement for the coastal access:

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, acceptance of the grant of easement complies with all criteria for acquisition:

1. The proposal fulfills at least one of the Commission purposes; specifically, the proposal meets the following:
   - Provide public outdoor recreation and education, including access to beaches and mountains;
   - Preserve forests, beaches, coastal areas and agricultural lands;
   - Improve public access to, and enjoyment of, public lands and open space;
   - Acquiring public access to public land and open space.

The county’s acquisition of the access may result in some impacts to the “protection of significant habitats or ecosystems” or “preservation of historic or culturally important land areas and sites,” especially if improvements allow or encourage greater accessibility to Kaumumene. However, the limited capacity in the parking lot already limits public access. In addition, the Commission may consider signage be included in the overall project to discourage irresponsible beach use or other negative impacts.

2. The cost for the acquisition is commensurate to the public interest served. Aside from “consideration” of $1 to underlie and validate the easement’s conveyance, the accepting the grant of easement will not obligate an upfront cost to the County (analysis of the costs related to improvements are discussed below). Thus, the cost for the acquisition is commensurate to the public interest served, which would ensure the public’s continued access to Kaumumene for fishermen, surfers, and beach users.

3. The process for acquisition is commensurate to the public interest served. The grant of easement is voluntarily being offered by the landowners to the County of Kaua‘i. The grant of easement document was already drafted, and survey work is complete. Initially, the document was presented to the County Council, who sought the recommendation and input of the Open Space Commission. Thus, at this point,
the public interest served outweighs the complexity of the acquisition process especially since the process for acquiring the easement is at its final stages.

4. The maintenance requirements associated with acquiring the easement and any resulting improvements will have cost implications. However, the arrangement for a formalized stewardship agreement with either the Surfrider Foundation or community stewards would minimize any such implications and provide a viable solution for future and ongoing maintenance.

Under Open Space Rules §1-5-5, there do not appear to be any prohibitive factors for acquisition of the subject property. Risk that users may encounter harm or injury, however, is inherent to the use of the beach or coastal areas. Several community members clarified that the surf and beach are appropriate for experienced surfers or fishermen. To minimize this risk, the Open Space Commission may consider signage as part of the project improvements to warn users of inherent dangers and risks along the access and at the beach and coastal areas.

Finally, under Open Space Rules §1-5-6, the urgency or timing for consideration of acceptance of the Grant of Easement relates to the wrap up of the litigation. Also, the access has been temporarily chained off from use until solutions for the repair of the existing improvements and maintenance of the access are determined.

The following should be considered regarding consideration of funding any improvements:

Recent amendments to both the County of Kaua‘i Charter and Kaua‘i County Code Chapter 6, Article 14, now allow the use of the Fund for improvements at the time of acquisition of property entitlement or to improve access to coastal areas. Specifically, Section 19.15C.(1) of the Charter (2018) specifies that:

The moneys in this [Public access, open space, natural resources preservation fund] shall be utilized for purchasing or otherwise acquiring lands or property entitlements and any corresponding improvement of those lands or property entitlements for land conservation purposes in the County of Kaua‘i for 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; protecting watershed lands to preserve water quality and water supply; 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.

Also, Charter Section 19.15C.(3) states that:

The moneys in this fund may also be used to improve public pedestrian access to coastal areas.

In addition, Kaua‘i County Code (KCC) §6-14.1 states the following:
(a) . . . The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements and any corresponding improvement of those lands or property entitlements for land conservation purposes in the County of Kaua‘i for the following purposes:

1. Public outdoor recreation and education, including access to beaches and mountains;
2. Preservation of historic or culturally important land areas and sites;
3. Protection of significant habitats or ecosystems, including buffer zones;
4. Preserving forests, beaches, coastal areas, and agricultural lands;
5. Protecting watershed lands to preserve water quality and water supply;
6. Conserving land in order to reduce erosion, floods, landslides, and runoff;
7. Improving public access to, and enjoyment of, public land, and open space;
8. Acquiring public access to public land, and open space;
9. Conserving land for open space and scenic values . . .

(c) The moneys in this fund may also be used to improve public pedestrian access to coastal areas.

Therefore, under Charter Section 19.15C. and KCC §6-14.1, the Fund may be used for “corresponding improvements” at time of “acquiring lands or property entitlements” or to “improve public pedestrian access to coastal areas.”

Although the Open Space Rules do not yet contain rules or regulations that pertain to funding of improvements, the criterion for acquisition of property entitlements provides a framework to analyze funding improvements.

First, under Open Space Rules §1-5-4, funding improvements complies with all criteria for acquisition:

1. The proposal fulfills at least one of the Commission purposes, specifically the following:
   - Provide public outdoor recreation and education, including access to beaches and mountains;
   - Preserve forests, beaches, coastal areas and agricultural lands;
   - Improve public access to, and enjoyment of, public lands and open space;
   - Acquiring public access to public land and open space.

Again, improving access may result in some impacts to the “protection of significant habitats or ecosystems” or “preservation of historic or culturally important land areas.
and sites" when the improvements provide greater accessibility to Kaumumene. However, the limited capacity in the parking lot already limits public access. Also, signage may be considered for this project to discourage irresponsible beach use or other negative impacts.

2. The cost of the improvements is commensurate to the public interest served. As noted by the large range of estimates received, the costs related to permitting and construction of improvements could be extensive and up to $1.5 million. However, this figure anticipates a potential for complicated pre-construction engineering and permit approval processes. For example, there is potential for contested cases at three possible stages: 1) SMA Use Permit; 2) Shoreline Certification; and 3) BLNR permit and management plan approval. However, the final costs and permit complexity will depend on the scope and design of the improvements.

Despite this cost, the public interest served would be immense. There is great interest by the community users to restore and continue access to this beach and its resources. Thus, the cost of improvements is commensurate to the public interest served.

3. The process for the improvements is commensurate to the public interested served. Again, the process for the improvements could be complex depending on the scope and design of the improvements and the permit processes required. Any construction work in the coastal area may be subject to an environmental assessment under Hawai‘i Revised Statutes Chapter 343. Also, a SMA Minor permit or SMA Use Permit may be required. In addition, either of the following would be required for work in the SLUD Conservation District: site plan approval by the DLNR; permit approval by DLNR; or permit and management plan approval by the BLNR. SMA Use Permit, shoreline certification, and BLNR management plan and permit approvals could be extremely complex and time consuming, especially with the possibility of undergoing protracted contested cases.

Despite these complexities, the public interest served would be immense. Especially if the easement is accepted by the County Council and the easement becomes a county-owned property interest, the County or Planning Department may lend some expertise to support navigating the land use approval process. Thus, process for the improvements is commensurate to the public interested served.

4. There will be cost implications related to the improvements. The extent of the maintenance requirements, however, will depend on the type of improvements. For example, installation of trex decking or metal walkways and stairs would necessitate minimum maintenance in the form of vegetation clearing or weed-whacking. In addition, the arrangement for a formalized stewardship agreement with either the Surfrider Foundation or community stewards would minimize any such implications and provide a viable solution for future and ongoing maintenance.

Under Open Space Rules §1-5-5, there do not appear to be any prohibitive factors for acquisition of the subject property. However, inherent to the use of the beach or coastal areas
is a risk that users may encounter harm or injury. Several community members clarified that the surf and beach are appropriate for experienced surfers or fishermen. The Open Space Commission may consider signage as part of the project improvements to warn users of inherent dangers and risks along the access and at the beach and coastal areas.

Under Open Space Rules §1-5-6, urgency or timing for the improvements also relates to the County's consideration of acceptance of the Grant of Easement. The access has been temporarily chained off from use until solutions for the repair of the existing improvements and maintenance of the access are determined.

"Acquisition Plan"

Regarding an "acquisition plan," if the County Council accepts the easement, the County must consider improving the current access. To that end, the County must initiate a design-build request for proposals procurement to select and contract with a contractor. Pre-construction engineering and permit approvals will be pursued. Construction will require clearing the current rusted railings and decaying concrete and rebar. Then, the improvements must be constructed.

As a necessary step, the Open Space Commission should seek approval to use the Fund for improvements from the County Council. This amount would represent the not-to-exceed amount that it may work within to further determine the scope of the project and improvement's design. For example, the County of Planning Department may offer its expertise to obtain the necessary permit approvals to minimize pre-construction work costs. Also, the County could further research cost-effective and viable designs for the improvements.

Finally, a stewardship agreement must be finalized with an entity that may serve as an organizing entity for volunteer work for ongoing future maintenance beyond the initial construction and installation of the improvements.

VI. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion it is recommended that the grant of easement be accepted by the County Council.

In addition, it is recommended that the Open Space Commission seek approval to expend up to $1.5 million for improvements related to improvements to the coastal access.

The Commission is further advised that this report does not represent the Planning Department’s final recommendation in view of the forthcoming public hearing process whereby the entire record should be considered prior to decision making. The entire record includes but is not be limited to:

1. Pending government agency comments;
2. Testimony from the general public and interested others; and
3. The land owner’s response.
Approved & Recommended to Commission:

By

JODI A. HIGUCHI SAYAGUSA
Deputy Director of Planning

Date: 1/6/2022
AMENDED GRANT OF EASEMENT

PARTIES:

GRANTOR: ASSOCIATION OF APARTMENT OWNERS OF PU'U PO'A and SOF-XI KAUAI PV HOTEL, L.P., a Foreign Limited Partnership authorized to do business in the State of Hawaii

GRANTEE: COUNTY OF KAUAI

PROPERTY DESCRIPTION:

TMK: (4) 5-4-11: 04 and (4) 5-4-12: 11
AMENDED GRANT OF EASEMENT

This AMENDED Grant of Easement, made and executed this _____ day of __________, 2021, by and between ASSOCIATION OF APARTMENT OWNERS OF PU‘U PO‘A (the “Association”) and SOF-XI KAUAʻI PV HOTEL, L.P. (“SOF-XI”), a Foreign Limited Partnership authorized to do business in the state of Hawaii, hereinafter collectively called the “Grantors”, and the COUNTY OF KAUAʻI, a political subdivision of the State of Hawaii, whose principal place of business and post office address is Lihue, Kauai, Hawaii 96766, hereinafter called the “Grantee”.

WITNESSETH:

Whereas, a Grant of Easement between Princeville Corporation, as the original Grantor ("Princeville Corp."), and the County of Kauai, as the original Grantee was entered into on August 9, 1974, and recorded in the Bureau of Conveyances, State of Hawaii at liber 10636, page 589, on May 15, 1975 (the “Original Grant of Easement”), with regard to the following easement area:

Easement “P-1”, 6 feet wide, over, under and across Lot 3, as shown on File Plan 1197 recorded in the Bureau of Conveyances, situate at Hanalei, Halelea, County of Kauai, State of Hawaii (the “Easement P-1”).

Whereas, Princeville Corp.’s successor-in-interest is SOF-XI;

Whereas, Easement P-1 was not constructed and/or maintained as noted and described in the Original Grant of Easement, and was instead relocated to be partly on SOF-XI’s property and partly on the Association’s property.

Therefore, this Amended Grant of Easement seeks to extinguish Easement “P-1”, document the new location hereinafter designated as Easement “P-2”, name all affected parties to this document, including the Association, and set forth herein the terms and conditions of that Amended Grant of Easement by Grantors and Grantee, as follows:

THAT the Grantors, in consideration of the sum of ONE DOLLAR ($1.00) to it paid by the Grantee, the receipt whereof is hereby acknowledged, and of the covenants of the Grantors and Grantee as hereinafter contained, do hereby grant and convey unto the Grantee, its successors and permitted assigns, a perpetual easement, limited to pedestrian access purposes over, under and across as follows: hereinafter referred to as the “easement area”:

Easement “P-2”, 6 feet wide, over, under and across that land identified as TMK No. 4-5-4-011-04 (“Parcel 4”) and TMK No. 4-5-4-12-11 (“Lot 2-A”), situated at Hanalei, Halelea, County of Kauai, State of Hawaii, and as more particularly described on
Exhibit "A" and more particularly delineated on Exhibit "B" (i.e., the Esaki Surveying & Mapping August 27, 2021 Survey map and the Esaki Surveying & Mapping Legal Description), both of which are attached hereto and made a part hereof (the Easement Area).

TOGETHER with the right of ingress to and egress from the Easement Area over Road A of File Plan 1197, and together also with the right to construct, reconstruct, install, maintain, operate, repair and remove from the Easement Area such pedestrian pathways as the Grantee shall deem necessary or expedient.

TO HAVE AND TO HOLD the same unto the Grantee, its successors and permitted assigns, for the purposes hereinabove provided and for so long as so used, except as provided hereinbelow.

The parties hereto do mutually covenant and agree:

1. That the Grantors shall not at any time during the term of this indenture erect any building foundation, barrier and/or obstruction of any kind below and/or on the surface of the Easement Area or at any time erect any building or structure of any kind on the Easement Area unless such construction shall be first approved in writing by the County of Kauai by its Department of Public Works, and unless such construction shall not interfere with the Grantee's use of the easement area; provided, however, that this provision shall not prohibit the Grantors from laying, maintaining, operating, repairing or removing its own water or sewer pipelines, conduits or drains below the surface of the Easement Area insofar as such uses do not interfere with the exercise by the Grantee of the rights herein granted. If Grantors do undertake such latter measures, notice will be provided to Grantee prior to such work. Furthermore, this provision will not prohibit Grantors from, besides terminating this Amended Grant of Easement as noted below, erecting signs, barriers and/or fences to temporarily prevent access to the Easement Area if it is not maintained by Grantee so as to provide safe pedestrian access.

2. Grantee will use due care and diligence to keep the Easement Area in good condition and repair and will promptly make any repairs necessary to maintain the pedestrian pathway in a safe condition for pedestrians' access with respect to the Easement Area.

3. That the Grantee shall indemnify, defend and hold harmless the Grantors, including their respective officers, directors, members, agents, managers, insurers and successors and assigns, against any claims, demands, losses and/or damages to Grantors', including, but not limited to, Grantors' respective properties, the property of others, and/or from any claims, demands, losses and/or liability alleged to have arisen from anyone's use of the Easement Area, and for any claims, demands, losses and/or injury to or death of anyone when such demands, claims, losses,
damages, injury or death arises or proximately results from the negligence of the Grantee, its officers, agents, contractors and/or servants, and/or the use of the Easement Area.

4. That the Grantee shall not assign any rights herein granted or otherwise given without the written consent of the Grantors, which consent may be withheld based totally on the discretion of one or both Grantors.

5. That, except as otherwise herein provided, the Grantee shall not be liable or responsible for any damage to any building, structure or building foundation of any kind, placed or erected or used within the Easement Area, caused by or resulting from the exercise by the Grantor of the rights herein granted in paragraph 1 above.

6. That if and when the Grantee shall cease to use the Easement Area for pedestrian access purposes, shall cease to operate a pedestrian pathway through, under or across the parcel of land comprising the Easement Area, and/or shall fail to maintain the Easement Area in a safe condition, i.e., in the Easement Area must be maintain so as to prevent against bodily injury, harm or death, and/or property damage, then the rights granted and the obligations imposed hereunder shall thereupon terminate without any action on the part of the Grantors. In such event, either of the Grantors may record an instrument terminating this Amended Grant of Easement, and take any and all steps to prevent any pedestrian access to the Easement Area.

7. This instrument constitutes an amendment to the Original Grant of Easement, and it shall be considered the entire agreement between the parties with respect to their rights, duties and obligations hereunder, and all matters related thereto, and supersedes all prior negotiations, representations, correspondence, understandings and agreements between the parties. Any amendment to this instrument shall be ineffective unless in writing and signed by the parties hereto.

That the term "Grantors" wherever used herein shall be held to mean and include the Grantors, and their respective officers, directors, members, agents, managers, insurers, and successors and assigns, and that the term "Grantee" wherever used herein shall be held to mean the County of Kauai, and its successors or permitted assigns and that this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

This instrument may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page. It is agreed that fax (facsimile) or electronic copies of this instrument and any related documents will be fully binding and effective for all purposes whether or not originally executed documents are transmitted to any party.
hereto. Fax and/or electronic signatures on documents will be treated the same as original signatures.

IN WITNESS WHEREOF, said Grantors and Grantees have caused these presents to be executed on the day and year first above written.

[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
ASSOCIATION OF APARTMENT OWNERS
OF PU’U PO‘A

By ________________________________

Print Name: ________________________

Title: ______________________________

By ________________________________

Print Name: ________________________

Title: ______________________________

"GRANTOR"
SOF-XI KAUA'II PV HOTEL, L.P., a Foreign Limited Partnership

By ________________________________

Print Name: ________________________

Title: ______________________________

By ________________________________

Print Name: ________________________

Title: ______________________________

"GRANTOR"
COUNTY OF KAUAI

By ____________________________
Its Mayor

By ____________________________
Its County Clerk

"GRANTEE"
APPROVED:

County Engineer

APPROVED AS TO FORM AND LEGALITY

County Attorney

APPROVED:

Planning Director
STATE OF HAWAII
COUNTY OF ________________

On this ___ day of _____________, 2021, before me personally appeared ____________________________, personally known to me or proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person is the ________________________ of the Association of Apartment Owners of Pu‘u Po‘a, and that said instrument was signed on behalf of said Association by authority of its Board of Directors and that said officer acknowledged said instrument to be the free act and deed of said Association.

Signature: ____________________________
Printed Name: _______________________
Notary Public, State of Hawaii

Notary Signature: ____________________________
Printed Name of Notary: _______________________

NOTARY CERTIFICATE (Hawaii Administrative Rules § 5-11-8)

Document Identification or Description: Amended Grant Of Easement
Date of Document: ____________________________  No. of Pages: __
Date of Notarization and Certificate: ____________________________
Jurisdiction (in which notarial act is performed): ________ Circuit

Notary Signature: ____________________________
Printed Name of Notary: _______________________

(Official Stamp or Seal)
STATE OF HAWAII
COUNTY OF ________________

On this ___ day of ________________, 2021, before me personally appeared
________________________________________, personally known
to me or proved to me on the basis of satisfactory evidence, who, being by me duly
sworn or affirmed, did say that such person is the
________________________________________ of the Association of
Apartment Owners of Pu’u Po’a, and that said instrument was signed on behalf of said
Association by authority of its Board of Directors and that said officer acknowledged
said instrument to be the free act and deed of said Association.

Signature: ________________________________
Printed Name: ________________________________
Notary Public, State of Hawaii

(Official Stamp or Seal) My commission expires: __________

NOTARY CERTIFICATE (Hawaii Administrative Rules § 5-11-8)

Document Identification or Description: Amended Grant Of Easement
Date of Document: ________________________________ No. of Pages: ___
Date of Notarization and Certificate: ________________
Jurisdiction (in which notarial act is performed): ________ Circuit
Notary Signature: ________________________________
Printed Name of Notary: ________________________________

(Official Stamp or Seal)
On this ___ day of __________, 2021, before me personally appeared ______________________________, personally known to me or proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person is the ___________________________________________ of SOF-XI KAUAI PV HOTEL, L.P., a Foreign Limited Partnership, and that said instrument was signed on behalf of said partnership by authority of its partners, and that ______________________________________________ acknowledged said instrument to be the free act and deed of said partnership.

Notary Public, State of ________________

_____________________________________
(Pринted Name of Notary Public)

My commission expires: ____________
STATE OF __________________ )
COUNTY OF __________________ ) SS.

On this ___ day of _____________, 2021, before me personally appeared ____________________________, personally known to me or proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person is the ____________________________ of SOF-XI KAUAI PV HOTEL, L.P., a Foreign Limited Partnership, and that said instrument was signed on behalf of said partnership by authority of its partners, and that ____________________________ acknowledged said instrument to be the free act and deed of said partnership.

Notary Public, State of _____________

(Printed Name of Notary Public)

My commission expires: _____________
On this ___ day of ____________, 2021, before me personally appeared __________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument in the capacities shown, and acknowledged that execution to be the free act and deed of said person.

Signature: ____________________________
Printed Name: ____________________________
Notary Public, State of Hawaii

(Date of Notarization and Certificate)
My commission expires: ________________

DOCUMENT IDENTIFICATION OR DESCRIPTION: Amended Grant Of Easement

DATE OF DOCUMENT: ____________________________  NO. OF PAGES: __

DATE OF NOTARIZATION AND CERTIFICATE: ____________________________

JURISDICTION (IN WHICH NOTARIAL ACT IS PERFORMED): ________ Circuit

NOTARY SIGNATURE: ____________________________

PRINTED NAME OF NOTARY: ____________________________

(Official Stamp or Seal)
STATE OF HAWAII
COUNTY OF ____________________

On this ___ day of ________________, 2021, before me personally appeared ________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument in the capacities shown, and acknowledged that execution to be the free act and deed of said person.

Signature: ____________________________
Printed Name: ________________________
Notary Public, State of Hawaii

(Official Stamp or Seal) My commission expires: __________

NOTARY CERTIFICATE (Hawaii Administrative Rules § 5-11-8)

Document Identification or Description: Amended Grant Of Easement
Date of Document: __________________________ No. of Pages: ___
Date of Notarization and Certificate: ________________
Jurisdiction (in which notarial act is performed): ________ Circuit
Notary Signature: ____________________________
Printed Name of Notary: ________________________

(Official Stamp or Seal)
EXHIBIT "B"

[INSERT NEW LEGAL DESCRIPTION]
EASEMENT P-2  
(For Trail Purposes)

LAND SITUATED AT HANALEI, HALALEA, KAUAI, HAWAII

Being Portion of Parcel 4 and Lot 2-A  
Princeville at Hanalei  
Also Being Portion of Grant 4845 to Albert S. Wilcox

Beginning at the southeast corner of this parcel of land, on the north side of Ka Haku Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station “POOKU” being 5,855.34 feet North and 10,433.37 feet West, thence running by azimuths measured clockwise from true South:

1. 73° 50' 44"  
2. 160° 00'  
3. 70° 00'  
4. 135° 00'  
5. 161° 00'  
6. 181° 00'  
7. 140° 00'  
8. 148° 00'  
9. 219° 00'  
10. 273° 00'  
11. 251° 00'  
12. 296° 00'  
13. 240° 00'  
14. 277° 00'  
15. 267° 00'

6.01 feet along the north side of Ka Haku Road;  
300.40 feet along the remainder of Parcel 4;  
31.00 feet along the remainder of Parcel 4;  
20.00 feet along the remainder of Parcel 4;  
22.00 feet along the remainder of Parcel 4;  
37.00 feet along the remainder of Parcel 4 and Lot 2-A;  
22.00 feet along the remainder of Lot 2-A;  
70.00 feet along the remainder of Lot 2-A;  
86.00 feet along the remainder of Lot 2-A;  
47.00 feet along the remainder of Lot 2-A;  
15.00 feet along the remainder of Lot 2-A;  
34.00 feet along the remainder of Lot 2-A;  
18.00 feet along the remainder of Lot 2-A;  
25.00 feet along the remainder of Lot 2-A;  
19.00 feet along the remainder of Lot 2-A;
<table>
<thead>
<tr>
<th>No.</th>
<th>Bearing</th>
<th>Distance</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>256° 00'</td>
<td>14.00 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>17</td>
<td>233° 00'</td>
<td>10.00 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>18</td>
<td>194° 00'</td>
<td>5.00 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>19</td>
<td>152° 00'</td>
<td>5.00 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>20</td>
<td>242° 00'</td>
<td>6.00 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>21</td>
<td>332° 00'</td>
<td>7.30 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>22</td>
<td>14° 00'</td>
<td>9.43 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>23</td>
<td>53° 00'</td>
<td>13.35 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>24</td>
<td>76° 00'</td>
<td>15.79 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>25</td>
<td>87° 00'</td>
<td>20.10 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>26</td>
<td>97° 00'</td>
<td>23.52 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>27</td>
<td>60° 00'</td>
<td>19.18 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>28</td>
<td>116° 00'</td>
<td>34.70 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>29</td>
<td>71° 00'</td>
<td>13.68 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>30</td>
<td>93° 00'</td>
<td>45.12 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>31</td>
<td>39° 00'</td>
<td>78.66 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>32</td>
<td>328° 00'</td>
<td>55.32 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>33</td>
<td>320° 00'</td>
<td>23.81 ft</td>
<td>feet along the remainder of Lot 2-A;</td>
</tr>
<tr>
<td>34</td>
<td>1° 00'</td>
<td>38.19 ft</td>
<td>feet along the remainder of Lot 2-A and Parcel 4;</td>
</tr>
<tr>
<td>35</td>
<td>341° 00'</td>
<td>19.55 ft</td>
<td>feet along the remainder of Parcel 4;</td>
</tr>
<tr>
<td>36</td>
<td>315° 00'</td>
<td>14.79 ft</td>
<td>feet along the remainder of Parcel 4;</td>
</tr>
<tr>
<td>37</td>
<td>250° 00'</td>
<td>33.18 ft</td>
<td>feet along the remainder of Parcel 4;</td>
</tr>
</tbody>
</table>
38. 340° 00' 306.80 feet along Lot 2-A to the point of beginning and containing an area of 4,688 sq. ft.
DESIGNATION OF EASEMENT P-2
BEING PORTION OF PARCEL 4 AND LOT 2-A
Princeville at Hanalei
HANALEI, KAUA'I, HAWAII
Tax Map Key: (4) 5-4-11-04 and (4) 5-4-12-11
Prepared for: PMK LLP
Date: August 27, 2021
DESIGNATION OF EASEMENT P-2
BEING PORTION OF PARCEL 4 AND LOT 2-A
Princeville at Hanalei
HANALEI, KAUAI, HAWAI'I
Tax Map Key: (4) 5-4-11: 04
and (4) 5-4-12: 11
Prepared for: PMK LLP
Date: August 27, 2021
HIDEAWAYS BEACH TRAIL