



PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND COMMISSION

JODI HIGUCHI SAYEGUSA, CLERK OF COMMISSION

SHAYLYN ORNELLAS, CHAIR
ROBIN PRATT, VICE CHAIR
MANUEL CABRAL, MEMBER
WILLIAM KINNEY, MEMBER
JONATHAN LUCAS, MEMBER
MARK ONO, MEMBER
MAI SHINTANI, MEMBER

- 25
- The Public Access, Open Space, Natural Resources Preservation Fund Commission meeting will be at:

Pi'ikoi Suite 300
Boards and Commission Meeting Room
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i

- **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 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 at least **24 hours prior** to the meeting will be posted as testimony to the Commission's website prior to the meeting (<https://www.kauai.gov/OpenSpace>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.
- **Oral testimony** will be taken on specific agenda items, at the public meeting location indicated on the meeting agenda.
- **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 ADAVIS@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, NATURAL RESOURCES PRESERVATION FUND
COMMISSION**

MEETING NOTICE AND AGENDA

**Friday, November 14, 2025
1:00 p.m. or shortly thereafter**

A. SWEARING IN OF NEW EX OFFICIO COMMISSIONER

B. CALL TO ORDER

25 NOV -7 A9:13

C. ROLL CALL

D. APPROVAL OF AGENDA

25 NOV -7 A9:13
COUNTY OF KAUAI

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

1. August 14, 2025

F. RECEIPT OF ITEMS FOR THE RECORD

G. GENERAL BUSINESS

1. Discussion and recommendations for administrative rules to allow up to 5% of the Public Access, Open Space, and Natural Resources Preservation Fund to be used for the maintenance of entitlements acquired by the Public Access, Open Space, Natural Resources Preservation Fund.
2. Briefing regarding other County and State funds for conservation and preservation land acquisitions.
3. Update on the proposed 1924 Battle of Hanapēpē monument, to be located on a 0.2867-acre parcel in Hanapēpē, Kona Moku, identified as Tax Map Key (4) 1-8-008:071.
4. Update on a proposal to acquire access to State of Hawai'i property through 4901 Waiakalua Street, Kīlauea, Hawai'i 96754, Ko'olau Moku, further identified as Tax Map Key 5-1-005:036 (Richard S. Tallman and Lisa Flores) (Preliminary Report 6/1/2022)
5. Update on Kukui'ula Bay Access through the former Hoban or Leight property (currently, Kaikapu LLC property) located in Koloa District, Kona Moku, further identified as Tax Map Key (4) 2-6-003:017.

H. COMMUNICATIONS

I. UNFINISHED BUSINESS (For Action)

J. NEW BUSINESS (For Action)

1. Report and recommendation on a proposal to acquire an access easement to Pāpa‘a Bay located on a lot further identified as Tax Map Key (4) 4-9-005:027 and (4) 4-9-006:011.

- a. Preliminary Report 11/6/25

2. Report and recommendation on the proposal to acquire an ‘Aliomanu Beach Access, located on a lot further identified as Tax Map Key (4) 4-9-004:013 (Preliminary Report 3/9/2017, Supplemental Report 05/31/2022, and Amended Preliminary Report 04/04/2025).

- a. Final Report 10/1/2025

K. 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. Discussion and recommendations for administrative rules for the approved charter amendment to allow up to 5% of the Public Access, Open Space, and Natural Resources Preservation Fund to be used for the maintenance of entitlements acquired by the fund.
2. Briefing regarding other County and State funds for conservation and preservation land acquisitions.
3. Update on the proposed 1924 Battle of Hanapēpē monument, to be located on a 0.2867-acre parcel in Hanapēpē, Kona Moku, identified as Tax Map Key (4) 1-8-008:071.
4. Update on a proposal to acquire access to State of Hawai‘i property through 4901 Waiakalua Street, Kīlauea, Hawai‘i 96754, Ko‘olau Moku, further identified as Tax Map Key 5-1-005:036 (Richard S. Tallman and Lisa Flores) (Preliminary Report 6/1/2022)
5. Report and recommendation on a proposal to acquire an access easement to Pāpa‘a Bay located on a lot further identified as Tax Map Key (4) 4-9-005:027 and (4) 4-9-006:011.

- a. Preliminary Report 11/6/25

6. Report and recommendation on the proposal to acquire an ‘Aliomanu Beach Access, located on a lot further identified as Tax Map Key (4) 4-9-004:013 (Preliminary Report 3/9/2017, Supplemental Report 05/31/2022, and Amended Preliminary Report 04/04/2025).

- a. Final Report 10/1/2025

7. Update on Kukui'ula Bay Access through the former Hoban or Leight property (currently, Kaikapu LLC property) located in Koloa District, Kona Moku, further identified as Tax Map Key (4) 2-6-003:017.

L. 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 December 11, 2025. The Open Space Commission anticipates this meeting to be held in-person at the Līhu'e Civic Center, Moikeha Building 2A/2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

M. ADJOURNMENT

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

DRAFT To Be Approved

Board/Commission:		Public Access, Open Space, Natural Resources Preservation Fund Commission	Meeting Date	August 14, 2025	
Location	Moikeha Meeting Room 2A/2B		Start of Meeting: 1:00 p.m.		End of Meeting: 2:10 p.m.
Present	Chair Shaylyn Ornellas and Vice Chair Robin Pratt. Commissioners: Manuel Cabral, Nancy Kanna (<i>in at 1:15 p.m.</i>), William Kinney, and Mark Ono. Deputy County Attorney Kimberly Torigoe. Planning Department Staff: Deputy Planning Director Jodi A. Higuchi Sayegusa, Planner Shelea Koga, and Open Space Secretary Brent Sokei. Office of Boards and Commissions: Administrator Ellen Ching and Commission Support Clerk Lisa Oyama.				
Excused	Commissioners: Jonathan Lucas and Mai Shintani.				
Absent					
SUBJECT	DISCUSSION			ACTION	
A. Call to Order	Chair Ornellas called the meeting to order at 1:00 p.m. There was no one present from the public to provide testimony on any of the agenda items.				
B. Roll Call	Deputy Planning Director Jodi A. Higuchi Sayegusa verified attendance by roll call: Commissioner Cabral replied present. Commissioner Kanna was not present at roll call (<i>in at 1:15 p.m.</i>). Commissioner Kinney replied present. Commissioner Lucas was excused. Commissioner Ono replied present. Commissioner Shintani was excused. Vice Chair Pratt replied present. Chair Ornellas replied present.			Quorum was established with five Commissioners present.	
C. Approval of Agenda	Chair Ornellas asked for a motion to approve the agenda.			Vice Chair Pratt moved to approve the agenda, as circulated. Mr. Kinney	

**E.1.
November 14, 2025**

SUBJECT	DISCUSSION	ACTION
		seconded the motion. Motion carried 5:0.
D. Minutes of the Meeting(s) of the Commission	1. July 17, 2025	Mr. Kinney moved to approve the minutes of the July 17, 2025 meeting of the Commission. Vice Chair Pratt seconded the motion. Motion carried 5:0.
E. Receipt of Items for the Record	Ms. Higuchi Sayegusa stated that there were no items for receipt.	
F. General Business	<u>F.1.</u> <u>Update on the current balance of the Public Access, Open Space, and Natural Resources Preservation Fund.</u> Ms. Koga reported that the current balance in the Fund is approximately \$5,044,000. The last drop that just happened was approximately \$1,200,000. This amount does not account for the Hanapēpē monument that is going to the County Council for approval, as well as the Hoban/Leight property that Deputy County Attorney Andrew Michaels talked to the Commission about at the Commission's last meeting.	No action was taken regarding this agenda item.
	<u>F.2.</u> <u>Discussion and recommendations on public input for the Biennial Report of the public Access, Open Space, and Natural Resources Preservation Fund Commission.</u> Ms. Koga stated that this agenda item has been on-going to see what the Commission wanted to do to get more public input. Back in June, the Commission asked Ms. Koga to get a brochure designed and to get other collateral that they could take to neighborhood boards. Ms. Koga stated that she sent that to the Commissioners back in June, but that she also had some printed copies available. Ms. Koga also offered to resend digital copies to the Commissioners as well. Ms. Koga stated that she was unsure if Mr. Ono was able to distribute some of the printed brochures she provided for him. There has already been a new proposal submitted by a member of the public and that proposal will appear on the Commission's next meeting agenda.	

SUBJECT	DISCUSSION	ACTION
	Chair Ornellas thanked Ms. Koga for the work that she did on the brochure and expressed appreciation for being able to share the information digitally. Chair Ornellas stated that the Kīlauea Neighborhood Association puts out an agenda and this item might be an item for their Association to consider. Chair Ornellas further stated that she could send the digital information to the Association President, and their Association can decide if they would like to give the Commission time to present.	No action was taken regarding this agenda item.
	<u>F.3.</u> <u>Update on a proposal to acquire access to State of Hawai‘i property through 4901 Waiakalua Street, Kīlauea, Hawai‘i 96754, Ko‘olau Moku, further identified as Tax Map Key 5-1-005:036 (Richard S. Tallman and Lisa Flores) (Preliminary Report 6/1/2022).</u> Ms. Koga provided an update on this agenda item. The last time the Kīlauea Mauka Access was discussed by the Commission, the Department informed the Commission that they were working on getting a survey. In order to get a survey done, procurement has to be followed that includes obtaining three (3) quotes. Ms. Koga stated that she received two (2) quotes, and is waiting for the third quote to come in. She has heard from a surveyor who is interested and is waiting for the quote which should arrive sometime this week. The lowest quote for this work was \$8,000 and the highest quote was upward of \$13,000. Once the third quote is received, Ms. Koga will be able to finish the procurement process. Once the surveyor is onboard, they will be able to go out to look at the site with Ms. Koga, Ms. Higuchi Sayegusa, and Ms. Laura Barzilai from the Office of the County Attorney. Once the survey is finalized with the metes and bounds, Ms. Barzilai is going to be working with the landowners’ attorney Mauna Kea Trask to finalize and have it conveyed to the County officially. Chair Ornellas thanked Ms. Koga for the update.	No action was taken regarding this agenda item.
G. Communications	There were no Communications on the Commission’s agenda.	
H. Unfinished Business (For	<u>H.1.</u> <u>Report and recommendation on the proposal to acquire an ‘Aliomanu Beach Access, located on a lot further identified as Tax Map Key (4) 4-9-004:013 (Preliminary Report</u>	

SUBJECT	DISCUSSION	ACTION
Action)	<u>3/9/2017, Supplemental Report 5/31/2022).</u> a. <u>Amended Preliminary Report 4/4/2025 (deferred on 5/8/2025)</u> <u>H.2.</u> <u>Report and recommendation on the proposal to acquire an ‘Aliomanu Beach Access, located on a lot further identified as Tax Map Key (4) 4-9-004:012.</u> a. <u>Preliminary Report 5/30/2025 (deferred on 6/12/2025)</u> There being no objections, discussion regarding agenda items H.1. and H.2. were taken together. Ms. Koga stated that these matters were discussed at the Commission’s June meeting. The Director’s Reports and recommendations were discussed regarding both properties and are both adjacent to ‘Aliomanu Stream. At the last Commission meeting, the Commission asked the Department to look into surveyors and appraisers to see if they would be willing to survey or appraise without the owner’s consent. At this time, both landowners are unresponsive and are not willing to convey an easement to the County. Ms. Koga stated that she contacted a couple of surveyors and a couple appraisers who said they could not appraise for an easement. The appraisers did provide Ms. Koga with a lead on someone who could do that kind of work. Ms. Koga stated that she is waiting for a call back from Mr. Curtis Bedwell to see if he is able to do those kinds of appraisals. The three surveyors that responded said that they would be unable to do the work without the owners’ consent, because they would have to walk on the property in order to survey the proposed easement. Ms. Koga also noted that the Commission also requested that Ms. Barzilai do some work on navigable streams and the definition of that. Ms. Koga deferred the update on that portion to Deputy County Attorney Kimberly Torigoe (Ms. Torigoe). Ms. Torigoe stated that the Commission asked Ms. Barzilai two questions. The first question being whether ‘Aliomanu Stream is a navigable stream under State of Hawai‘i control. The	

SUBJECT	DISCUSSION	ACTION
	answer is yes, but the State is not going to take control of the stream. There would be no assistance from the State regarding getting public access to it. The second question is whether there is public access to the shoreline through the stream. The answer is no. Mr. Ono asked if Ms. Torigoe could expand on the short answer to question 2. Ms. Torigoe responded that the Deputy County Attorney's research showed that the stream is a State water resource held in public trust, even if the State Department of Land and Natural Resources (DLNR) does not manage, administer, or exercise control over it. The stream is a navigable stream under Hawai'i Revised Statutes (HRS) Section 171-3. The State, through communications with the Office of the County Attorney indicated that they are not going to assist or support public shoreline access at that stream. Chair Ornellas asked who that response was coming from and whether it came specifically from DLNR or more specifically from the Commission on Water Resource Management (CWRM). Ms. Torigoe responded that she was unsure of who her Office was corresponding with specifically. Chair Ornellas asked Mr. Ono if his question was answered. Mr. Ono responded that his question was not totally answered, but he understood what was going on. Mr. Ono asked if part of the reason may be because the easement is not on the State's property. Ms. Koga responded that there is no official easement as of right now. The County is looking at acquiring an easement on one of the two parcels. Ms. Koga stated that Ms. Barzilai had researched whether the stream was navigable and whether public access is allowed through the stream. Ms. Barzilai determined through her research that while it is a waterway, it is not navigable. Ms. Koga noted that public access could not go through the stream unless they traversed the waterway via kayak. Ms. Higuchi Sayegusa stated that the Department is trying to check off all other considerations before they strategize to take a specific route with this access. Ms. Higuchi Sayegusa stated that this exercise was to look at access through the stream instead of having to go through the expensive condemnation process. Ms. Higuchi Sayegusa further stated that access through the stream is not a reliable or official means of access.	

SUBJECT	DISCUSSION	ACTION
	Ms. Torigoe further noted that the person that the Office of the County Attorney spoke to at the State of Hawai‘i basically said that the State’s interpretation of what is navigable is very different from that of case law. Unless the State is going to claim it, which the State already stated that they would not, then the County would not be able to claim that it is navigable because the State is not claiming it. There is basically no access through the stream. Mr. Ono asked whether it would be legal or illegal if he walked in the middle of the stream. Ms. Torigoe responded that she was unsure as based on her understanding, the boundary itself may be in the stream. Chair Ornellas stated that prior access was made via the stream. Mr. Ono stated that he remembers Chair Ornellas mentioning that students would traverse the area through the stream. Chair Ornellas further stated that because the boundary goes through the stream, that is why students walk in the actual stream so that they stay within the boundary so as not to trespass. <i>Ms. Kanna was noted as present at 1:15 p.m.</i> Mr. Ono asked again whether it is illegal to walk in the stream. Ms. Torigoe responded that it would depend on where the boundaries are. Mr. Ono stated that there are property owners on both sides. Ms. Torigoe noted that based on her understanding, the stream may have changed course throughout the years. Mr. Ono asked whether the only way to get the stream boundaries is to have a survey done. Ms. Torigoe responded that Mr. Ono was correct. Mr. Kinney stated that if the boundary is in the stream, what happens when a boundary goes into the ocean, and someone loses all their land that way, where does the boundary end up. Mr. Kinney asked if someone would be able to build to the reef if the boundary was taken up by the ocean. Chair Ornellas responded that someone could not build near the reef. This issue is being experienced along that entire coast. Last week, Chair Ornellas stated that she was on a site visit with consultants wearing her Department of Hawaiian Home Lands (DHHL) hat on. There was a huge discrepancy about jurisdiction that runs from the Anahola Lighthouse all the way up the ‘Aliomanu shoreline. A part of the problem is due to the revetment work that was done in the area closer to Anahola. Now all of the entities are taking a hands off approach. Chair Ornellas stated that a similar type of situation is happening near the bridge area off of Anahola Beach	

SUBJECT	DISCUSSION	ACTION
	Park. There have been longstanding issues there since that bridge was damaged with jurisdictional issues between DHHL, the State of Hawai‘i, and the County of Kaua‘i. The research that goes into these jurisdictional issues becomes so much harder because no one wants to take ownership or responsibility. Chair Ornellas stated that all waterways come under the purview of the State DLNR, however, they can say that they are not claiming it and that makes it really difficult when dealing with ownership-type issues. This situation might be unique in that the County did have easements through the old County roadway. Ms. Koga stated that the top portion was the County’s roadway, but the boundaries are really hard to figure out because the stream probably moved throughout the years. The difficulty with this specific access is that it is difficult to get boundaries established without a survey and a survey cannot be done because the landowners are unwilling at this point. Ms. Koga displayed a map of the area being discussed. The boundary lines that were shown on the screen were not accurate because the Department would depend on the survey to plot the metes and bounds. It is difficult to tell which property the stream is encroaching on or whether it is encroaching on both properties being discussed. Chair Ornellas asked Ms. Koga to click on the norther parcel. Mr. Ono asked when the property was sold whether they would have to have a survey done of the property lines. Chair Ornellas responded that they could have also had the property staked. Mr. Ono further asked if that information is public record. Chair Ornellas responded that Mr. Ono was correct. Mr. Ono stated that if it is public knowledge, then it should be easy to figure out where the property lines are. Chair Ornellas responded that if in the transaction the owners decided to just stake the property, then they would just be plotting points. The survey would provide the actual boundaries. Mr. Ono asked if there might be a way to look at what is available publicly to possibly chart out global positioning system (GPS) points to get an estimate of where the boundaries might be. Chair Ornellas responded that the survey report might not be public knowledge because it was a part of the real estate transaction. Mr. Ono stated that the information would be part of the real estate transaction. Chair Ornellas stated that as a realtor, she is not able to request pieces of a real estate transaction unless there is a court order.	

SUBJECT	DISCUSSION	ACTION
	Ms. Koga noted that the closest that the Department could get would be to find the deed for the property to show the metes and bounds. Even with the metes and bounds, it would take a surveyor to stake those metes and bounds. Mr. Ono stated that he was trying to figure out a way to get around the roadblocks that are being presented. Mr. Kinney stated that the picture he was looking at shows the boundary lines in the stream. If the State does not want to claim it and no one else wants to claim that portion as the property, then the legal owner should be able to build a rock wall right down the middle of the stream. Ms. Higuchi Sayegusa responded that what Mr. Kinney is speaking to is a part of the dilemma. The Department could get whatever previous records that are available and publicly recorded for the parcels. They surveyor could orient that information to the land. The Department is also trying to figure out where the stream has traversed and maybe there is a claim that the area where the stream has historically meandered whether that could be a part of a public access area or area where there is a resource that exists for public access. On top of that, there are coastal waters and the historical high water mark that comes into play for the boundary for the public trust and unencumbered State lands. The ultimate goal is to be able to bring something to the Kaua‘i County Council along with the justification to say that the Department and Commission has explored all of the various options and the recommendation is what it is because of that exploration and research. The Commission could ultimately choose to abandon the easement as well if it is deemed to be disadvantageous due to cost or other reasons. The Commission may also decide whether it wants to recommend the parcel that historically has had access through it due to cultural reasons. The Department is doing their due diligence to get to a point where a recommendation can be made to the Commission and ultimately to the Kaua‘i County Council. Mr. Ono asked if the State DLNR decided it would not consider the stream a waterway or if they decided not to claim it. Ms. Torigoe responded that the State responded that they were not going to make a claim that it is a navigable waterway. Mr. Ono asked if someone else could claim that stream as their waterway. Ms. Torigoe responded that only the State can make that claim.	

SUBJECT	DISCUSSION	ACTION
	Mr. Kinney asked if the stream is still a State navigable waterway but that they are not claiming it under the Office of Conservation and Coastal Lands (OCCL). Mr. Kinney further stated that OCCL is arbitrary and capricious about what they decide to take on based on the contentiousness of that area. Mr. Kinney stated that it appears the State has decided that they are just not going to deal with the issue and the waterway at this point. Mr. Ono stated that he was hoping that someone else could take ownership. Mr. Kinney and Ms. Torigoe responded that it is still the State's jurisdiction for that waterway whether they want to stake claim to it or not. Ms. Torigoe further responded that if they do not stake a claim to that waterway, they are basically saying they are not going to do anything to assist the County. Mr. Ono asked if DLNR has a role with the waterway. Ms. Torigoe asked Mr. Ono if he was talking about maintenance of the waterway. Mr. Ono responded that he meant whether they would deal with encroachment of plants or what happens with the waterflow. Ms. Torigoe responded that she was unsure of the answer to that question. Mr. Ono asked if that was something that she could look into. Ms. Torigoe responded that her Office did ask for documentation from DLNR about the stream as well as sending a document request to the State CWRM and both requests returned no documents. Mr. Ono asked if not being able to turnover documents meant that they had no jurisdiction over the waterway. Ms. Torigoe responded that it meant that they did not have any documents related to the waterway. Mr. Ono asked if the State would have the jurisdiction to not allow a homeowner to have vegetation overgrowth encroach on the stream. Ms. Torigoe responded that she was unsure of whether DLNR would or not. Mr. Ono asked if there was supposedly someone managing the streams and had heard that it might be DLNR's responsibility. He had a homeowner claim DLNR told them they could not use a certain chemical near a stream near their property. Mr. Ono stated that he would hope that	

SUBJECT	DISCUSSION	ACTION
	DLNR could look into the issue as the overgrowth of vegetation is slowing down the flow of the waterway. Chair Ornellas stated officially that Ms. Kanna entered the meeting during the discussion that had occurred. Chair Ornellas stated that the issue is a difficult one. Mr. Ono stated that the issue is not something that is important just for this one stream but is one that could have statewide implications for the future. Chair Ornellas stated that it is very frustrating when the State DLNR takes ownership and responsibility when it wants to but yet also decides for other waterways that they are not going to and leaves that responsibility to other parties. Mr. Ono asked if the State could appoint someone else to have jurisdiction over a waterway. Ms. Torigoe responded that the decision would be up to the State. It is the State's right, and no one can take away that right. Mr. Ono asked again if the State could appoint someone to do what they are not willing to do. Mr. Kinney responded that he does not believe that could be done. Ms. Torigoe responded that it would depend on the State agency responsible and was not sure if they were authorized to do that or not. Mr. Ono stated that he wondered if it would take a State Constitutional Amendment for DLNR to make that choice. Ms. Torigoe responded that she does not believe it would be a Constitutional Amendment. Mr. Ono asked for the specific citation of the law that governs this issue. Ms. Higuchi Sayegusa responded that she believes it is HRS Section 171 and that there is a statute that states that the streams are the responsibility of the State unless it is a private function. It is written in a way where the default should be the State having to maintain and exert control over these types of streams unless they deem it to be a private issue or traversing private land. Ms. Higuchi Sayegusa further explained that the County has dealt with this issue at the river mouth in Waimea with a back and forth dialogue with the State. The County has ended up going out to dredge it and clear it up because it becomes a safety issue. The County has in certain situations used its resources to take care of certain waterways, but the statute does put that responsibility in the State's hands.	

SUBJECT	DISCUSSION	ACTION
	Chair Ornellas stated that for the purpose of this discussion, the Commission has to decide to either act on what next steps would be recommended to the Kaua‘i County Council or to recommend another course of action. Ms. Higuchi Sayegusa stated that Chair Ornellas was accurate in her statement. Ms. Higuchi Sayegusa stated that for agenda items H.1. and H.2., the Commission previously deferred decision-making as far as recommending approval of the Preliminary Reports for each item. The Department would seek the Commission’s action to approve the recommendation of the Director’s Report to say that the Commission preliminarily approves the Department moving forward with continued research and in getting things aligned for eventual presentation and approval by the Kaua‘i County Council. Ms. Koga added that both Preliminary Reports recommend that the Commission considers moving the items forward towards final recommendations. Ms. Koga noted that since both easements are on opposite sides of the stream, the Commission may decide to pursue both easements, just one easement over the other, or none. Mr. Kinney asked if the access point in agenda item H.1. was the access currently used by the community. Ms. Koga responded that Mr. Kinney was correct. Mr. Kinney asked if the access in agenda item H.2. was not currently being used by the community for access. Ms. Koga responded that the south parcel has a wall along the road and the one to the north is flatter and more accessible. Ms. Koga noted that when discussions with the Crabtree’s occurred, they were not willing to convey an access easement to the County, but they did acknowledge that they are not stopping people and are not planning on stopping people from accessing it from their property. They are just not willing to convey the access to the County at this point. This was confirmed with Ms. Nalani Kaneakua and her community organization. The other owner of the opposite parcel just did not respond at all. Chair Ornellas reminded the Commission that the second access point came into play when the first parcel’s owners changed their mind about conveying access. Chair Ornellas asked the Department whether they felt in the interest of time, the amount of work, etc., if it would be advantageous not to approve the second access point. Ms. Koga responded that in her opinion,	

SUBJECT	DISCUSSION	ACTION
	since both owners are unwilling to convey an easement, that access has previously been used on the northern parcel, and that the County would not want to pay for both parcels to go through the condemnation process, it would be prudent for the Commission to choose one access point over the other. Ms. Koga stated that her recommendation to the Commission would be to recommend to the Kaua‘i County Council that they pursue an access easement through the northern parcel. Ms. Koga further stated that her opinion would be different if the second parcel’s owners were responsive and/or willing to discuss the matter further with the County. Mr. Kinney stated that the acquisition comes with the added cost of a possible contentious relationship with the property owners if condemnation is pursued, especially as they are already letting access through their property as it stands. Ms. Koga stated that if the Commission was interested, she could read the email that the property owner transmitted explaining why they were not willing to provide an access easement. Ms. Kanna stated that given that the current property owners have allowed public access through their property without a formal access easement, she wondered if there was a way to attach a stipulation that if the property is sold, that the new property owner(s) would need to allow public access through the property. Chair Ornellas responded that she does not believe that can be done. Ms. Kanna stated that she is just thinking outside of the box for ideas. Chair Ornellas stated that it is important to remember that since the access first came before the Commission, there have been three different owners already. Chair Ornellas recapped that the first owner allowed access through their property. The second owner absolutely did not allow access through their property and why the students were walking through the stream. The third owners were open to providing an access easement and then subsequently changed their minds. Ms. Koga read the letter from the current property owners as follows: “Thank you for following up regarding the potential easement conveyance on our property along the stream to provide access to the coastline. We appreciate the County’s efforts to address our previous concerns regarding maintenance and responsible access, as well as the proposed stewardship arrangement. But after careful consideration, however, we have decided	

SUBJECT	DISCUSSION	ACTION
	that we are unable to convey an easement to the County of Kaua‘i at this time. It is important to provide some historical context about this property. When the previous owners, the Kidler’s owned the land, they completely cut off all access along the stream and actively threatened legal consequences to anyone attempting to cross the property. They even filed a lawsuit against us regarding access issues. In contrast, since taking ownership of the property, we have taken a much more accommodating approach with the community on ‘Aliomanu Road. For over twenty years we have allowed respectful pedestrian access across our property to the beach and have personally maintained the path along the stream at our own expense. While we understand the County’s desire to formalize this access through an easement, several concerns remain that cannot be resolved through the proposed stewardship arrangement. 1. Increased vehicle access and environmental impact. Granting an easement could encourage the use of vehicles to access the beach which would disrupt the areas ecosystem including endangered species and could contribute to erosion along the stream and coastline. 2. Off leashed dogs and threats to endangered species. We have observed that increased foot traffic along the stream has led to more visitors bringing dogs, many of which are left off leash. This proposes a significant threat to endangered species in the area, particularly the Hawaiian Monk Seal and Hawaiian Coots, which are highly vulnerable to disturbance, harassment, and predation by dogs. Protecting these endangered animals is a priority for us and we believe increased traffic and unmanaged pet behavior will exacerbate this issue. 3. Litter and maintenance issues. Even with a Stewardship Agreement, we have already observed trash and debris being left in the area, which we have taken it upon ourselves to clean up. Formalizing access would likely increase these issues and put additional strain on efforts to keep this area clean and preserved. 4. Impact on property value. A legal easement will permanently encumber our property, reduce its value, and restrict our ability to protect and manage it as we have done for years. Additionally, it is worth noting that there are other nearby public access points to the beach that provide viable alternatives for cultural practitioners and recreational users. These existing access points ensure that the community can still enjoy the coastline without requiring a formal easement on our property. While we are unable to grant an easement, we remain committed to supporting the community by continuing to allow respectful pedestrian access to the beach. This arrangement has worked successfully for decades, and we hope that it can continue to provide the community with access while preserving the environmental and cultural significance of the area. We greatly value our	

SUBJECT	DISCUSSION	ACTION
	relationship with the community and appreciate the County’s efforts to foster stewardship of Kaua‘i’s natural resources. Please do not hesitate to reach out to us.” Mr. Ono asked if that was directly from the landowner. Ms. Koga responded that the email came directly from the landowners. Both husband and wife own the parcel, and the email communication came from the wife. Mr. Ono asked if the Department had plans to respond to the email. Ms. Koga responded to the email thanking them for following up and as she had previously briefed the Commission. Mr. Ono asked if the Commission moves towards condemnation, if that would require a survey to be done. Ms. Higuchi Sayegusa responded that at some point in the process a survey should be done, but that she does not believe that a survey could be done prior to recommendation and action from the Kaua‘i County Council. Permission from the landowner for the survey to be done would be needed. Mr. Ono asked about the one person who Ms. Koga communicated with. Ms. Koga responded that the person she is waiting for a reply from is an appraiser. The surveyors all said that they could not do the work without permission from the landowner. Ms. Higuchi Sayegusa added that an appraisal would be embedded in the condemnation process. The Department could venture to do one before recommendation to the Kaua‘i County Council is done, but that appraisal would need to be done anyway during the condemnation process. Ms. Koga stated that based on responses from surveyors and appraisers, the work would need to be determined on a case by case basis and is dependent on whether they can see the parcel and access from the road or from an aerial view. Ms. Koga explained that approval of the preliminary recommendation will allow her to do more formal research and prepare a final report for the Commission’s review and ultimate recommendation to the Kaua‘i County Council. Mr. Ono asked what additional research would reveal. Ms. Koga responded that there is not much research that could be done. Chair Ornellas stated that Ms. Koga could draft final report that the Commission would review and ultimately make a final decision on whether to recommend pursuing the access easement or not. Ms. Koga responded that Chair Ornellas was	

SUBJECT	DISCUSSION	ACTION
	correct. Ms. Higuchi Sayegusa noted that the Department is just following the Commission's Rules on what is expected of them in terms of lining up the recommendation to the Kaua'i County Council. The Commission must act on a Preliminary Report and then after that is done, that is when the Department does a lot of the actual research. Once that is done, the Department would issue a final recommendation and if the Commission approves of that, then that would be recommended to the Kaua'i County Council in a formal manner, which in this case would be a formal condemnation for the access easement. Vice Chair Pratt asked if there were any setbacks for waterways. Vice Chair Pratt noted that there is usually a 10' setback for properties from roadways and other things. Ms. Higuchi Sayegusa asked for clarification as to which waterway Vice Chair Pratt was referring to, whether it was the coastal setback or the stream. Vice Chair Pratt responded that she was referring to the stream. Ms. Koga responded that there are probably setback rules that must be followed but that she was unsure of the specifics. Ms. Koga noted that the Engineering Division might have more information about setbacks from the stream. The Planning Department does not monitor that. Ms. Koga noted that the Planning Department does monitor coastal setbacks. From the beach there has to be a specific setback on the property itself. Mr. Kinney stated that on behalf of the property owner, they are aware that the Commission is not seeking access for exclusive use only but that one of the goals of the Commission is to seek access for public use, which means the risk of bringing in unsavory types of access, including a possible increase in activity and use. To balance that, there are a lot of cultural benefits that come with the education that Ms. Kaneakua and her organization does about the area. The education that is provided through the access and education creates so much benefit for the ecosystem. All of the concerns raised by the landowner are negated by the education that is provided by the cultural access and use of the area. Concerns about the increase in trash and adverse effects on endangered species are fixable by creating the access for educational purposes by the community. Mr. Kinney stated that he would not waste time on both agenda items but would focus his time and attention on the access in agenda item H.1. Chair Ornellas stated that she was thinking about 'Anini Beach and the three footpaths that are	

SUBJECT	DISCUSSION	ACTION
	located there. In the ‘Aliomanu Beach area, she would not recommend vehicular access as there is not a lot of room for vehicles to turn around. There are very few residents on that specific road and there are more vacation rentals in that area. The County’s existing parking area should be used for any parking. Mr. Ono asked about the discussion about the vegetation that was planted encroaching on the County’s property. Chair Ornellas responded that the bamboo that was planted encroached on the County’s property and that the landowners also own the piece of property that is right across the County’s roadway. First they started planting on the downside of the stream and then on the upside. The upside used to be a lot more open. Mr. Ono stated that his recommendation would be for the Department to prepare a Final Report so that the Commission can pursue the condemnation of the northern property with the TMK of (4) 4-9-004:013. Mr. Ono also stated that he would like for the County to enforce the encroachment of vegetation on the County’s property. Ms. Higuchi Sayegusa acknowledged Mr. Ono’s request. Ms. Higuchi Sayegusa responded that the encroachment issue involves coordination with the Department of Public Works as the roadway is a County roadway. The Department would need to work with the Department of Public Works to enforce the encroachment issue in that specific area. After the Commission’s field visit, the Department did reach out to the Department of Public Works. Ms. Higuchi Sayegusa committed to reaching out to the Department of Public Works again. Ms. Koga stated that if the Commission is recommending that the Department go after the landowner for enforcement of the vegetation encroachment, the enforcement action would affect two parcels both of which are owned by the Crabtree’s. Ms. Higuchi Sayegusa reminded the Commission that both agenda items currently being discussed include Preliminary Reports that were deferred. If the Commission would like to move forward, approval of the Preliminary Report for the agenda item would be necessary in order for the Department to take any additional research or formal action towards condemnation. Mr. Ono asked if approval of the Preliminary Report would allow the Department to move forward with a Final Report. Ms. Higuchi Sayegusa acknowledged that Mr. Ono was correct and that according to the Commission’s Rules, it would be up to the Department to prepare a Final	Ms. Kanna moved to approve the Amended Preliminary Report pertaining to (4) 4-9-

SUBJECT	DISCUSSION	ACTION
	Report for the Commission's consideration and recommendation. Ms. Higuchi Sayegusa stated that agenda item H.2. also has a Preliminary Report tied to it. The Department's recommendation was to move forward with approval of the Preliminary Report, but with the discussion that occurred during the meeting, it appears that the Commission is prioritizing the access through agenda item H.1. Action needs to be taken on agenda item H.2. regardless. Mr. Kinney asked if the Commission could defer action on agenda item H.2. Ms. Higuchi Sayegusa responded that the Commission could defer action, but that would place it at a point where the Commission has not advised the Department to do anything additional for that specific access point. Ms. Kanna stated that if the Commission needs to do anything addressing that access point, the Commission could revive the issue and do a formal approval at a future meeting of the Commission. Ms. Higuchi Sayegusa stated that the Commission could defer the item to a specific date or also deny the recommendations made in the Preliminary Report. Ms. Kanna stated that she does not want to fully deny the recommendations just in case there is something that needs to resurface that the Commission does not currently see. Ms. Higuchi Sayegusa responded that if the Commission would like to keep the item open, they could simply offer a motion to defer the agenda item. A motion to deny the recommendations would not allow the Department to do any additional research. A motion to receive the item for the record is similar to a motion to deny but provides no formal denial. Mr. Kinney stated that he does not feel the item needs to be brought up again. Ms. Kanna stated that the Commission is setting a precedence with action taken. It is important for the Commission to send a message that they are tired of landowners bullying the County and the public by taking over land that is really not theirs. In this situation there are two landowners who are doing this. Ms. Kanna further stated that she is unsure if she is ready to give up taking any action on agenda item H.2. at this point. Chair Ornellas recommended that the deferral not be open-ended and that it be brought back before the Commission after resolution of the proceedings from agenda item H.1. Ms. Kanna further stated that the landowners did not even respond to requests from the County and that they have a responsibility to their community as well. Mr. Kinney suggested that the Commission keep agenda item H.2. open to allow the landowner the chance to respond. Ms. Koga stated that the letters to the landowners were sent	004:013 and agenda item H.1. Vice Chair Pratt seconded the motion. Motion carried 6:0.

SUBJECT	DISCUSSION	ACTION
	out certified mail, so she does know that they received it. Ms. Kanna asked the Commission to think deeply about the message that they want to send to these types of landowners. Ms. Kanna further stated that she feels the Commission needs to send a message that they mean business.	Mr. Kinney moved to defer agenda item H.2. until agenda item H.1. is resolved through the pursuit of an easement for agenda item H.1. Mr. Ono seconded the motion. Motion carried 6:0.
I. New Business (For Action)	There was no New Business (For Action) on the Commission's agenda.	
J. Executive Session	The Commission did not convene in Executive Session on any agenda item.	
K. Announcements	<u>K.1. Topics for Future Meetings.</u> Ms. Koga stated that she did get a proposal for research on the Pāpa'a Bay access. There was an access there, but it was not formally conveyed to the County. It may be more of an enforcement action instead of a formal acquisition. Ms. Koga stated that a student member will be joining the Commission shortly. Chair Ornellas asked when the student member would be joining the Commission. Administrator Ching reported that Spencer Cook expressed interest in serving on the Commission and that was approved by Mayor Kawakami. Mr. Cook will be the second student member to serve on a board or commission. The student members will be joining the Commission at its September meeting. The student member is ex-officio and the reason for that is due to the liability concern of the student member participating in executive session. The student members can participate in the discussion, but they are not voting members, nor would they participate in executive sessions. Mr. Ono asked if the student member will be sworn in. Administrator Ching responded that they will be sworn in and have already received documentation that the Mayor has appointed them to	

SUBJECT	DISCUSSION	ACTION
	serve. For positions that typically get interviewed by the County Council, the student members will go through that entire process as well. Ms. Koga stated that she and Ms. Higuchi Sayegusa are also working on the Rules regarding the use of the Fund to be used by stewards for the maintenance of access points around the island, as was recently passed by a Charter Amendment. Administrative Rules need to be created for that, so the proposed Administrative Rules will be before the Commission at its next meeting. Chair Ornellas stated that she had comments regarding the non-responsiveness of landowners to requests sent by the County and in line with comments made earlier in the meeting by Ms. Kanna and Mr. Ono. Chair Ornellas asked if there was a window of time where a response was requested. Ms. Koga responded that the letter did give a response deadline. Ms. Koga noted that she also looks up as much information as possible such as email information or a phone number for additional contact attempts. For the last letters sent out, two weeks were given as a response deadline. A follow up phone call was also made. Any further communication by the Department would be determined based on action taken by the Commission. If access is not sought because of pursuing another route, then that would determine the course of action for future communication with the landowner. Chair Ornellas asked how communications on agenda item H.2. would be determined based on the deferral action and given that resolution of agenda item H.1. could take years if it went to litigation. Chair Ornellas further asked how long ago initial communications were sent. Ms. Koga responded that her initial attempts were made in June. Chair Ornellas asked if the Department had any standard operating procedures for non-responsive landowners. If they do not respond and the Department stops trying as well, it is almost as if no party is actively trying to reach out. Chair Ornellas encouraged the Department to look at that process internally. Ms. Higuchi Sayegusa explained that she recently attended a Hawai'i Conservation Conference and it was a good experience. She was invited to talk about funding for conservation. Ms. Higuchi Sayegusa stated that she could report back to the Commission about how other Open Space Commissions run things in their specific jurisdictions.	

SUBJECT	DISCUSSION	ACTION
	The County of Kaua‘i’s program is very accommodating, and the Planning Department handles all of the work. In other counties the proposer of acquisitions is required to have a complete package with all of the information provided. This allows their funds to be stretched farther. This could also help with ensuring that Ms. Koga’s time is not spent chasing down people. This also ensures that proposals also have stewards who are interested in the projects as well. Ms. Higuchi Sayegusa noted that by posting an agenda item like that, she could then lead a discussion about how the Department might be able to improve upon their processes. Mr. Kinney asked if there was any update on the monument design. Ms. Higuchi Sayegusa responded that some proposals may be submitted by the next meeting and that an agenda item related to that could be placed on the next agenda. Mr. Kinney requested an update on the Hanapēpē parcels in its entirety. Chair Ornellas also requested notification to Commissioners when anything that the Commission has discussed or recommended a position is transmitted to the Kaua‘i County Council. By knowing, Commissioners can choose to attend if they are available. The Council has also called upon members of the Commission who are in attendance to help them shed light on various proposals. Ms. Higuchi Sayegusa and Ms. Koga acknowledged that the request can be fulfilled. <u>K.2.</u> The following regularly scheduled Open Space Commission meeting will be held at 1:00 p.m., or shortly thereafter, on September 11, 2025. The Open Space Commission anticipates this meeting to be held in-person at the Līhu‘e Civic Center, Moikeha Building 2A/2B, 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.	
L. Adjournment	Chair Ornellas asked for a motion to adjourn the meeting.	Vice Chair Pratt moved for the adjournment of the meeting. Ms. Kanna seconded the motion. Motion carried 6:0. The meeting was adjourned at 2:10 p.m.

Submitted by: *Lisa Oyama*
Lisa Oyama, Commission Support Clerk

Reviewed and Approved by: _____
Shaylyn Ornellas, Chair

() Approved as circulated.

() Approved with amendments. See minutes of _____ meeting.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUNAGA, MANAGING DIRECTOR

Public Access, Open Space, and Natural Resources Preservation Fund Commission ("Open Space Commission")

PRELIMINARY REPORT

I. SUMMARY

Consideration of the possible condemnation of a coastal access easement on a portion of the property.

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

1. Recommendation that the County Council consider acquiring a portion of the property for a coastal access easement using Open Space Funds; or
2. A recommendation that the County Council NOT consider acquiring a portion of the property for a coastal access easement using Open Space Funds; or
3. A recommendation to defer consideration.

II. BACKGROUND OF PROPERTY

PROJECT INFORMATION			
Parcel Location:	Pāpa'a Bay		
Tax Map Key(s):	(4) 4-9-006:011	Area:	67.46 acres
LAND USE DESIGNATIONS & VALUES			
Zoning:	Open/ Conservation		
State Land Use District:	Conservation		
General Plan Designation:			
Real Property Assessed Value:	\$19,485,800		
Market Value:	Not for sale		
Owner(s):	Kaua'i Kai Property LLC		
Owner Response:			
Date Public Recommendation Received:	July 28, 2025		
Preliminary Report Date:	November 06, 2025		

III. PROJECT DESCRIPTION AND USE

The subject lot of record is approximately 67.46 acres in size and is located adjacent to Pāpaʻa Bay, Pāpaʻa Ahupuaʻa, Koʻolau Moku, Kauaʻi Island, Hawaiʻi. The property lies within the County of Kauaʻi's Open Zoning District and the State Land Use Conservation District, with a General Plan designation of Agricultural/Natural.

The parcel slopes from an elevation of about one hundred fifty (150) feet above sea level down to the shoreline of Pāpaʻa Bay. The terrain includes grassy open space, landscaped areas, and natural coastal vegetation such as ironwood, coconut, and other trees. The shoreline consists of sandy and rocky sections.

The lot contains multiple residential dwellings, accessory structures, and a swimming pool, all primarily used for residential purposes. The remaining acreage consists of open space and undeveloped coastal areas.

A public beach access easement, established through the subdivision process, provides legal public access to Pāpaʻa Bay along the southern portion of the property. The access is regularly used by residents and visitors for recreation and shoreline fishing.

IV. ADDITIONAL FINDINGS AND BACKGROUND

The lot of record is not currently listed for sale on the open market and is non-owner occupied. The property is bordered by agricultural lands to the north and residential parcels to the south and west.

This proposal was originally submitted to the Open Space Commission in 2005 as a request to establish an additional public access to Pāpaʻa Bay. Over the years, the Commission reviewed the existing access points and conducted site visits to evaluate shoreline entry to the bay. In the 2015 Open Space Biennial Report to the County Council, the Commission noted that Pāpaʻa Bay already had existing public beach accesses and determined that no further action was necessary. At that time, the Commission concluded that the existing access adequately served the public's need for shoreline entry in this area.

A new request was later submitted through the Open Space Input process in July 2025 by a community member (Exhibit A), who stated that a previously used pathway to the bay had been fenced off by the landowner in 2004, restricting public access that had been used for many years. In response, the Planning Department conducted a site visit on September 11, 2025, and verified that the beach access was not blocked to foot traffic, though the trail was overgrown and in need of maintenance (Exhibit B).

The County of Kaua'i has previously argued for public beach access rights in *Mandalay Properties Hawai'i LLC v. County of Kaua'i*, Case No. 05-15383 (U.S. Court of Appeals, Ninth Circuit), and *County of Kaua'i v. Mandalay Properties Hawai'i LLC*, Civ. No. 05-00052 (U.S. District Court). The courts ruled in favor of Mandalay Properties Hawai'i LLC, determining that the disputed area was not a public right-of-way and that the only valid public access to Pāpa'a Bay is along the designated trail on the southern edge of the bay.

A public beach access easement, established through the subdivision process, currently provides legal access to Pāpa'a Bay along the southern portion of the subject property (Exhibit C). The easement traverses both the subject parcel, TMK (4) 4-9-006:011, and the adjacent parcel, TMK (4) 4-9-005:027 (Exhibit D). This access allows residents and visitors to reach the shoreline for recreation and fishing and includes adequate parking areas to accommodate users.

V. PRELIMINARY EVALUATION

The following should be considered regarding the possible acquisition of a coastal access easement on a portion of the property:

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 lot of record or a coastal access easement over a portion of the property *may* comply with all criteria for acquisition:

- 1. The proposal fulfills at least one of the Commission's purposes; specifically, the following:**
 - 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
 - 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

The County's acquisition of a coastal access easement over a portion of the property would provide greater access to the beach, coastline, and its treasured resources. It would also improve disabled and public access to, and enjoyment of, public land and open space.

2. The cost for the acquisition *may not* be commensurate to the public interest served where an access easement over a portion of the property is acquired.

The cost associated with acquiring an additional access easement over the subject property may not be proportional to the public benefit gained. A legal public beach access easement already exists along the southern portion of the property, providing shoreline entry for recreation and fishing. This existing easement satisfies the condition of approval established through the subdivision process and fulfills the County's objective to provide public access to Pāpa'a Bay.

While another easement would benefit the public interest by providing greater access to the beach, it would result in additional costs related to appraisal, acquisition, potential condemnation proceedings, and long-term maintenance. Given the presence of a legally established and functional public access, the acquisition of an additional easement would not result in a significant increase in public benefit and therefore may not be commensurate with the cost of acquisition.

3. The process for acquiring an access easement over a portion of the property *may not* 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 process for acquiring an additional access easement over the subject property would likely be complex and potentially adversarial. The lot of record is not listed for sale and is non-owner occupied, which makes voluntary negotiation for acquisition unlikely. It is also unlikely that the owners would be willing to sell a portion of the property for another beach access since they have already fulfilled the condition of approval requiring them to provide a public beach access through the subdivision process. Therefore, it is probable that any effort to acquire an additional easement would require condemnation.

The condemnation process would involve appraisals, legal proceedings, and the payment of just compensation along with any potential severance damages, extending the timeframe for acquisition by an estimated one to two years. Considering the existing public beach access already provides legal and functional entry to the shoreline, the

costs, resources, and duration associated with pursuing an additional adversarial acquisition process would not be justified by the limited public benefit gained.

- 4. The access easement would require maintenance; however, the cost implications for the maintenance requirements could be reasonable and commensurate to the public interest served.**

Maintenance requirements for a shoreline access easement would likely be minimal, involving routine grass cutting, weed control, and tree trimming to ensure public safety and accessibility.

At this time, no community group or organization has been identified to assume stewardship of any additional access, meaning that maintenance would fall under the responsibility of the Department of Parks and Recreation. While the overall maintenance costs may be reasonable, the creation of another access easement would increase the County's maintenance obligations.

- 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.**

There do not appear to be any prohibitive factors for acquisition of the subject lot of record or a portion of the property for an access easement.

VI. PRELIMINARY CONCLUSION

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

1. Acquisition of a coastal access easement may fulfill at least one of the Commission's purposes for public access, open space, and natural resources preservation.
2. The cost for the acquisition may not be commensurate to the public interest served where an access easement over a portion of the property is acquired.
3. The process for acquiring an access easement over a portion of the property may not be commensurate to the public interest served.

4. The access easement would require maintenance; however, the cost implications for the maintenance requirements could be reasonable and commensurate to the public interest served.
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.

VII. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion it is hereby recommended that the proposal to acquire a portion of the property for a coastal access easement using Open Space Funds **NOT be considered by the County Council.**

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.

By  _____
SHELEA KOGA
Planner

Approved & Recommended to Commission:

By  _____
JODI A. HIGUCHI SAYEGUSA
Deputy Director of Planning

“EXHIBIT A”

(Community Member Request through Open Space Input Survey)

For reference

Open Space Site Suggestion

Submitted by: Anonymous user

Submitted time: Jul 28, 2025, 3:12:24 PM

Identify the location of your site suggestion. Click on the exact location on the map that you are interested in.

Lat: 22.1733 Lon: -159.3138



Earthstar Geographics | Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, USFWS

Powered by Esri

What type of suggestion do you suggest for this place?

Aquire easement

Why do you suggest this place? What is the opportunity or problem?

Papa'a bay access was removed in 1997 by Peter Guber,producer of the movie, Six days and seven nights.

Before the production of that movie, there was direct access on Papa'a road, down to the bay.

Peter installed a huge maintenance shed and put a fence around it; blocking public access. He also planted trees to close off the access for good.

There was a protest to try and re-open this area in 2004. I have the newspaper articles documenting the protest and the fact that Guber blocked the government road access to the bay

It's been 27 years and it's time this problem was fixed once and for all, giving the public and the local fisherman free and easy access to Papa'a bay once again.

Indicate which of the commission's purpose the proposal fulfills:

- **8) Acquiring disabled and public access to public land, and open space**

Is the cost for the acquisition commensurate to the public interest served?

Yes

Will the process for the acquisition be commensurate to the public interest served?

The state of Hawaii, DLNR, has a legal responsibility to open access to this bay once again. They are 27 years negligent of their duties.

Describe the maintenance requirements involved with the proposal?

A pathway needs to be reinstated, leading from Papa'a road down to the bay.

“EXHIBIT B”

(Planning Department Site Visit Photos)

For reference







“EXHIBIT C”

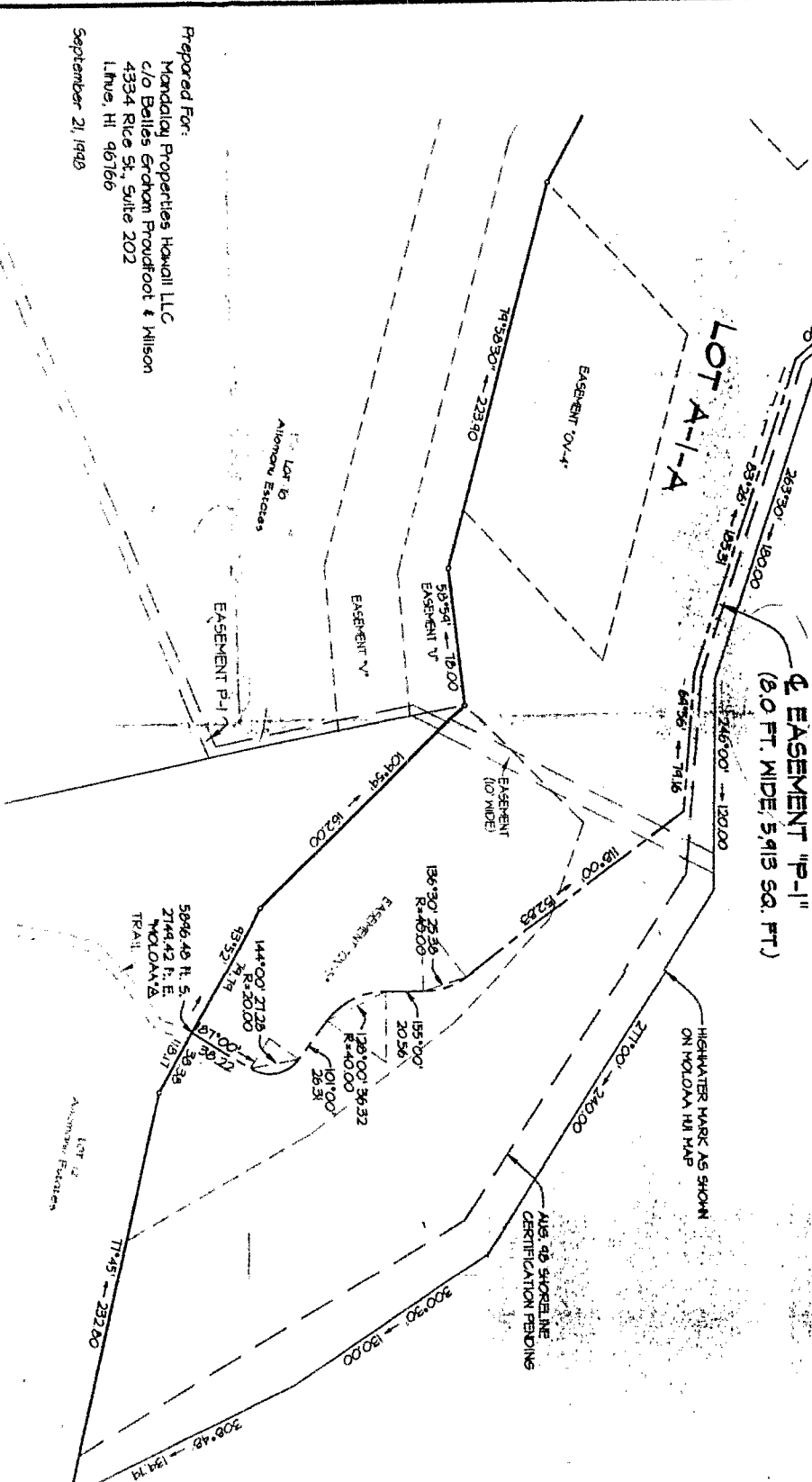
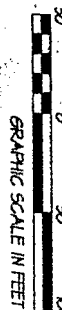
(TMK: (4) 4-9-006:011 P-1 Grant of Easement Map)

For reference

TRUE NORTH
Scale: 1 INCH = 50 FEET

9.49.44
8.43

MAP DESIGNATING
EASEMENT "P-1"
FOR SHORELINE ACCESS PURPOSES
AFFECTING LOT A-1-A
AT PAPAA, KAWAIIHAU, KAUAI, HAWAII



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION

RONALD J. WAGNER
Licensed Professional Land Surveyor
Certificate No. 5074

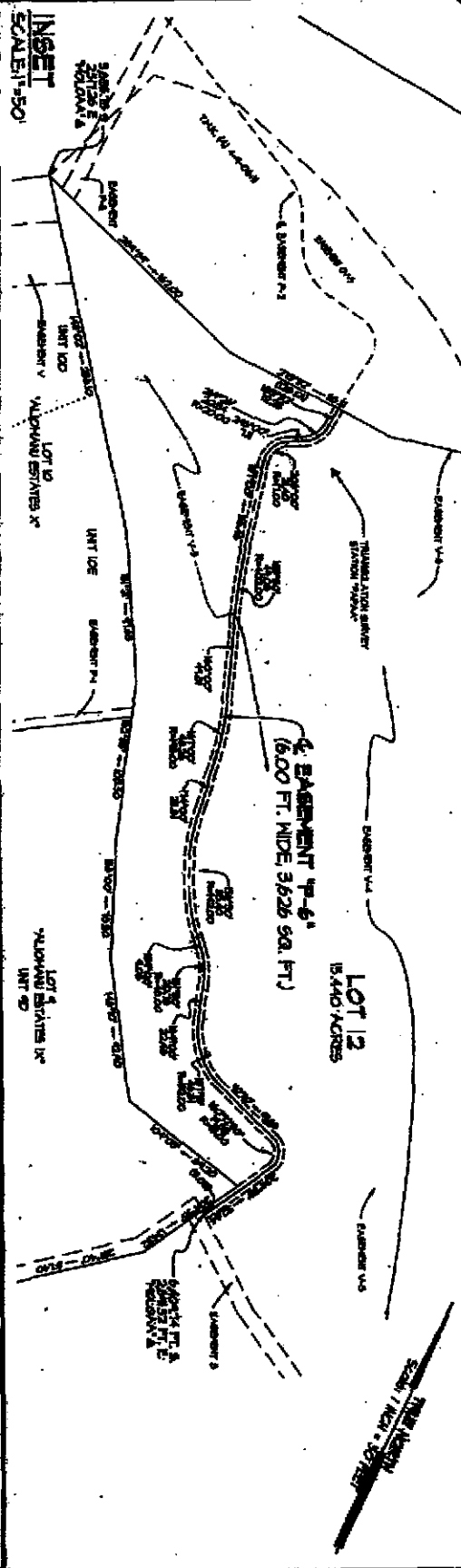
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Mandakley Properties Hawaii LLC
c/o Belles Graham Proudfoot & Milson
4334 Rice St., Suite 202
Lihue, HI 96766
September 21, 1998

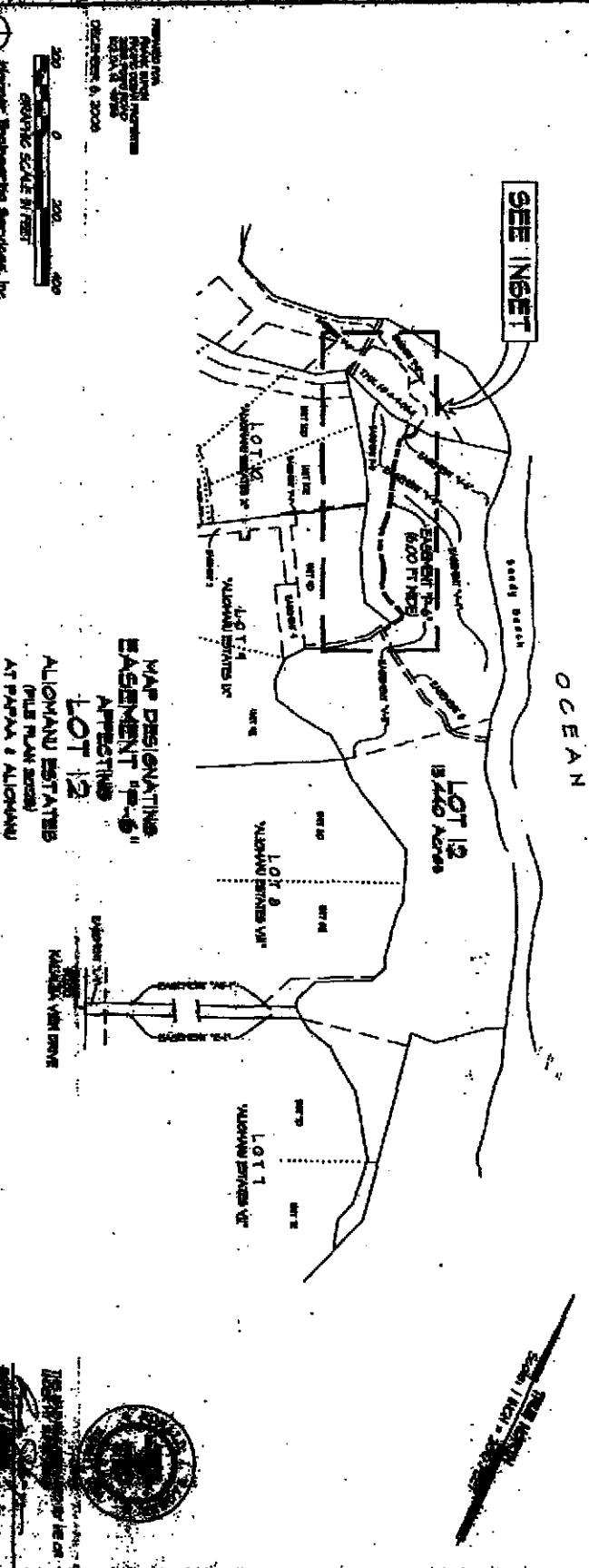
“EXHIBIT D”

(TMK: (4) 4-9-005:027 P-6 Grant of Easement Map)

For reference



SEE INSET



200 0 200
GRAPHIC SCALE IN FEET
Mapmaker Engineering Services, Inc.
All lot lines measured to center (5000-200-1000)
NAD 83 (1983)

MAP DESIGNATING
EASEMENT "P-6"
ATTESTING
LOT 12
ALOMANU ESTATES
(PLS PLAN BOOK)
AT PAPA & ALOMANU
KAWAII, KAUAI, HAWAII

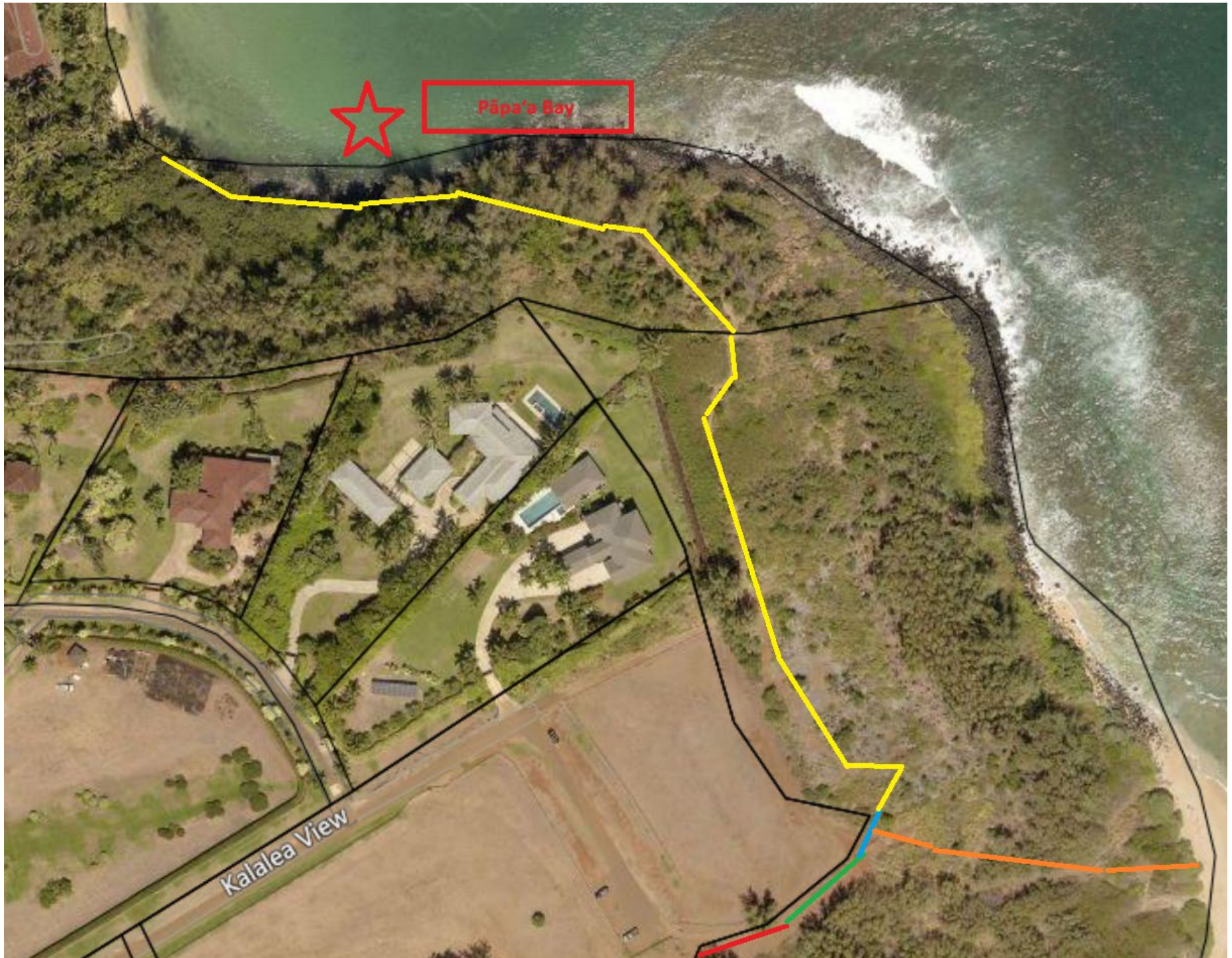


EXHIBIT C

“EXHIBIT E”

(Aerial Map)

For reference



DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUNAGA, MANAGING DIRECTOR

Public Access, Open Space, and Natural Resources Preservation Fund Commission ("Open Space Commission")

Final Evaluation and Condemnation Recommendation

I. SUMMARY

Consideration of the condemnation of a coastal access easement over a portion of
TMK (4) 4-9-004:013

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

1. Recommendation that the County Council consider condemnation of a coastal access easement on a portion of the property using Open Space Funds; or
2. A recommendation that the County Council NOT consider condemnation of a coastal access easement on a portion of the property; or
3. A recommendation to defer consideration.

II. BACKGROUND OF PROPERTY

PROJECT INFORMATION			
Parcel Location:	'Aliomanu		
Tax Map Key(s):	(4) 4-9-004:013	Area:	1.393
LAND USE DESIGNATIONS & VALUES			
Zoning:	Open		
State Land Use District:	Urban		
General Plan Designation:	Residential Community		
Real Property Assessed Value:			
Market Value:			
Owner(s):	Gerald Crabtree and Isabella Graef		
Owner Response:	February 6, 2025		
Date Public Recommendation Received:	March 9, 2017		
Preliminary Report Date:	May 9, 2017		

Updated Preliminary Report Date:	May 31, 2022
Amended Preliminary Report Date:	April 4, 2025
Final Report Date:	October 1, 2025

III. PROJECT DESCRIPTION AND USE

The subject lot of record is approximately 1.393 acres in size and is located in ‘Aliomanu, ‘Aliomanu Ahupua‘a, Ko‘olau Moku, Kaua‘i Island, Hawai‘i. The property is located within the County of Kaua‘i’s Open Zoning District, State Land Use Urban District and its General Plan Designation is Residential Community.

The lot of record is bordered to the north by ‘Aliomanu Road at a dead end. The property is bordered to the north and south by residential properties that are currently in residential use. The property is bordered to the east by the shoreline. A bridge once connected ‘Aliomanu Road to the other side of the ‘Aliomanu neighborhood referenced as the old Belt Road Loop. The bridge was destroyed after it was washed out by a tsunami in the mid 60’s and was never rebuilt.

The lot is approximately ten (10) feet above sea level and is nearly level. Pine trees border the lot and coconut trees line the eastern edge of the lot bordering ‘Aliomanu stream, which has been an area used by the community to access the coastline. A dead end roadway ends at the eastern portion of the property at ‘Aliomanu stream.

Along the northeastern boundary closest to the shoreline, the lot contains a 1 bedroom 1 bath cottage with 646 square feet living area and is approximately 37 feet from the approximate shoreline. Fronting the cottage is another rectangular structure identified as a garage per information gathered from the real property assessment records. The garage is approximately 137 feet from the vegetation of the shoreline.

The community has relied on the eastern edge of the lot along and within the ‘Aliomanu Stream to access the beach and coastline. The coast near the subject lot and its resources are valued for cultural, educational, and recreational purposes including fishing and limu gathering. The coastal and stream ecosystem near the lot of record is especially unique where ‘Aliomanu Stream enters the sea.

IV. ADDITIONAL FINDINGS AND BACKGROUND

Since 2017, the Open Space Commission has reviewed reports and testimony related to the possible acquisition of this property for a coastal access easement. While the Kaua‘i Historic Preservation Review Commission determined that the structures on the lot do not have

architectural historical value, the Commission recognized the cultural and community significance of maintaining shoreline access in this location.

The Planning Department has engaged with the landowners, Gerald Crabtree and Isabella Graef, on multiple occasions to explore the voluntary conveyance of an easement. On February 6, 2025, the landowners stated they were unable to provide an easement due to concerns about property value, liability, maintenance, vehicle access, and impacts to sensitive species. As a result, voluntary acquisition is no longer an option, and condemnation is the only available path.

Community testimony, including presentations by local cultural practitioners such as Nalani Kaneakua, has emphasized the importance of the area for limu cultivation, cultural practices, and community gathering. The Hosea Lovell Foundation, through its Ko'olau Limu Project, has also expressed interest in stewarding the access if it is acquired, providing a community partnership for long-term care.

On August 14, 2025, the Open Space Commission voted to approve the Planning Department's preliminary report, directing that the proposal to condemn a portion of the subject property for a coastal access easement be further evaluated and formalized in this Final Director's Report.

V. EVALUATION

The following should be considered regarding the possible acquisition of a coastal access easement on a portion of the property:

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 lot of record or a coastal access easement over a portion of the property *will* comply with all criteria for acquisition:

1. The proposal fulfills at least one of the Commission's purposes; specifically, the following:

- 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
- 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

The proposed condemnation of a coastal access easement over the subject parcel is consistent with multiple purposes set forth under the Public Access, Open Space, and Natural Resources Preservation Fund. These purposes include the provision of public outdoor recreation and education opportunities, preservation of culturally significant land areas, and the improvement of access to coastal resources.

The 'Aliomanu shoreline has historically been an area of cultural and educational importance, with testimony provided by community members such as Ms. Nalani Kaneakua highlighting its role in limu cultivation and traditional gathering practices. Securing legal access would reinforce these cultural uses, preserve community traditions, and provide educational opportunities for schools and nonprofit organizations

2. The cost for the acquisition is commensurate to the public interest served where an access easement over a portion of the property is acquired.

The subject lot of record is not publicly for sale, and the landowners have stated that they are unwilling to sell the property or any portion of it to the County. As a result, acquisition would require an adversarial condemnation process.

While a legal access point exists approximately 750 feet north at Kukuna Road, the establishment of an easement at the subject property would provide more direct shoreline access and secure a pathway that has historically been used by the community. Formalizing this traditional access would also help manage impacts and provide clear authority for stewardship and maintenance. Although the absence of dedicated parking in the immediate area may limit the number of users, a designated access at this location would still represent a substantial public benefit.

3. The process for acquiring an access easement over a portion of the property is 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.**

Because the property owners are unwilling to sell, acquisition can only be achieved through condemnation proceedings. The cost of condemnation would include just

compensation for the easement, potential severance damages reflecting any decrease in the value of the remaining parcel, and litigation costs associated with the adversarial process.

Although these costs may be significant, the Department finds that they are commensurate with the public benefits served. The acquisition would ensure continued shoreline access at a location of longstanding cultural use. Furthermore, because only an easement is sought (rather than fee simple ownership), the overall costs should be substantially less than a full property acquisition, while still meeting the Commission's objectives.

4. The access easement would require maintenance; however, the cost implications for the maintenance requirements are reasonable and commensurate to the public interest served.

The ongoing maintenance requirements for an access easement at this site are expected to be limited in scope and cost. Routine grass cutting, vegetation clearing, and signage installation will ensure the pathway remains safe and usable.

Importantly, the Hosea Lovell Foundation, through its Ko'olau Limu Project, has expressed willingness to serve as the steward of the easement if acquired. This organization has deep cultural ties to the area and is already engaged in limu restoration and education. Their involvement provides an opportunity to link access management with cultural stewardship, reinforcing the community's connection to the resource and ensuring proper care of the site.

The availability of a willing steward further strengthens the feasibility of acquisition, as it reduces the County's direct maintenance burden while promoting community partnership.

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.

Pursuant to Section 1-5-5 of the Open Space Rules, properties presenting extremely dangerous attributes or risks of serious injury or death shall not be recommended for acquisition.

The Department's site visits and review of available data indicate no prohibitive hazards associated with the proposed easement. The topography is relatively level, and the path leads to

a stream-mouth area that is already used informally for access. With appropriate signage and maintenance, no unreasonable safety risks are anticipated.

VI. CONCLUSION

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

1. Acquisition of a coastal access easement 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 where an access easement over a portion of the property is acquired.
3. The process for acquiring an access easement over a portion of the property is commensurate to the public interest served.
4. The access easement would require maintenance; however, the cost implications for the maintenance requirements is reasonable and commensurate to the public interest served.
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.

VII. RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is hereby recommended that the **County Council consider condemnation** of a portion of the subject property for a coastal access easement.

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.

By 
SHELEA KOGA
Planner

Approved & Recommended to Commission:

By 
JODI A. HIGUCHI SAYAGUSA
Deputy Director of Planning