

PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND COMMISSION

JODI A. HIGUCHI SAYEGUSA, CLERK OF COMMISSION

RECEIVED
26 MAY 29 A7:53

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

ROBIN PRATT, CHAIR
WILLIAM KINNEY, VICE CHAIR
SPENCER COOK, MEMBER, Ex-Officio
MANUEL CABRAL, MEMBER
NANCY KANNA, MEMBER
MARK ONO, MEMBER
SHAYLYN ORNELLAS, MEMBER
MAI SHINTANI, MEMBER

- 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, Lihu'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, Lihu'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, June 05, 2026

1:00 p.m. or shortly thereafter

26 MAY 29 A7:53

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

A. SWEARING IN OF NEW COMMISSIONER

B. CALL TO ORDER

C. ROLL CALL

D. APPROVAL OF AGENDA

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

1. April 2, 2026

F. RECEIPT OF ITEMS FOR THE RECORD

G. GENERAL BUSINESS

1. Discussion regarding the beach access leading to North 'Aliomanu Beach along Kukuna Road.
2. Discussion and recommendations on a bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to introduce a new article to the CZO to administer condominium property regime (CPR) proposals to require public accessways = KAUAI COUNTY COUNCIL.
 - a. Proposed draft bill pertaining to this matter.
3. Update regarding the recommendation to the County Council for condemnation of the 'Aliomanu Beach Access located on Tax Map Key (4) 4-9-004:013.

H. COMMUNICATIONS

I. UNFINISHED BUSINESS (For Action)

J. NEW BUSINESS (For Action)

1. Discussion and action on proposed amendments to the Rules of Practice and Procedure of the County of Kaua'i Public Access, Open Space, and Natural Resources Preservation Fund Commission, including an amended Chapter V. relating to the report process, and new Chapter VI. relating to a new application process for maintenance grants.

- a. Proposed rule amendments pertaining to this matter.

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 regarding the beach access leading to North 'Aliomanu Beach along Kukuna Road.
2. Discussion and recommendations on a bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to introduce a new article to the CZO to administer condominium property regime (CPR) proposals to require public accessways = KAUAI COUNTY COUNCIL.

- a. Proposed draft bill pertaining to this matter.

3. Update regarding the recommendation to the County Council for condemnation of the 'Aliomanu Beach Access located on Tax Map Key (4) 4-9-004:013.
4. Discussion and action on proposed amendments to the Rules of Practice and Procedure of the County of Kaua'i Public Access, Open Space, and Natural Resources Preservation Fund Commission, including an amended Chapter V. relating to the report process, and new Chapter VI. relating to a new application process for maintenance grants.

- a. Proposed rule amendments pertaining to this matter.

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 July 9, 2026. 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

OPEN SESSION MEETING MINUTES

| | | | |
|------------------|--|------------------------------------|----------------------------------|
| Board/Commission | Public Access, Open Space, Natural Resources Preservation Fund Commission | Meeting Date: | April 2, 2026 |
| Location | Pi`ikoi Building, Boards and Commissions Conference Room | Start of Meeting: 1:00 p.m. | End of Meeting: 2:10 p.m. |
| Present | Chair Robin Pratt and Vice Chair Willaim Kinney. Commissioners: Manuel Cabral, Nancy Kanna, Mark Ono, Shaylyn Ornellas, Mai Shintani, and Ex-Officio Spencer Cook. Also present: Deputy County Attorney Chris Donahoe. Planning Department Staff: Deputy Planning Director Jodi A. Higuchi Sayegusa, Planner Shalea Koga, and Open Space Secretary Brent Sokei. Office of Boards and Commissions: Commission Support Clerk Celine De Leon and Administrator Ellen Ching. | | |
| Excused | | | |
| Absent | | | |

| SUBJECT | DISCUSSION | ACTION |
|-------------------------|--|--|
| A. Call to Order | Chair Pratt called the meeting to order at 1:00 p.m. | |
| B. Roll Call | Deputy Planning Director Jodi A. Higuchi Sayegusa verified attendance by roll call. Commissioner Manuel Cabral replied here. Commissioner Nany Kanna replied here. Commissioner Mark Ono replied here. Commissioner Shaylyn Ornellas replied here. Commissioner Mai Shintani replied here. Ex-Officio Spencer Cook replied here. Vice Chair William Kinney replied here. Chair Robin Pratt replied here. | Quorum was established with seven (7) commissioners present. |
| C. Approval of | Ms. Higuchi Sayegusa suggested placing agenda item F4 ahead of agenda item F1 to | Ms. Kanna moved to approve the |

| SUBJECT | DISCUSSION | ACTION |
|---|---|---|
| Agenda | enhance efficiency. Additionally, the Commission is waiting for receipt of the hard copies of the most recent draft of the rules. | agenda as amended. Ms. Shintani seconded the motion. Motion carried 7:0. |
| D. Minutes of the meeting(s) of the Commission | 1. March 5, 2026 | Ms. Kanna moved to approve the March 5, 2026, meeting minutes. Vice Chair Kinney seconded the motion. Motion carried 7:0. |
| E. Receipt of Items for the Record | Ms. Higuchi Sayegusa reported that the final draft of Chapter 6, proposed amendments to the Open Space Commission rules, has been distributed, and that Mr. Sokei will distribute Chapter 5. | |
| F. General Business | <p>F4. <u>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.</u></p> <p><i>The Commission heard from Ms. Dorothea Hayashi.</i></p> <p>Ms. Hayashi, a Hanapēpē resident, third-generation community member, and former Open Space Commission member testified to provide historical context rather than opposition. She explained that the Commission expanded its focus from the North Shore to the Westside, where the Hanapēpē massacre area was identified as significant but little-known site and recommended for preservation despite private ownership. After years of effort, the County acquired the property in 2016, which she acknowledged and appreciated. She described the area as a beautiful open space and recalled that earlier efforts emphasized community-based stewardship, including outreach to local groups, whereas current management relies more on the County. She noted that prior</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>community input generally favored a plaque over statues and stressed the importance of community involvement. Although she initially had concerns about the current process, she recognizes it reflects a new generation’s approach and has come to accept it. She emphasized that the site should serve as a place for learning, reflection, and gratitude for history, and ultimately deferred decisions to current leaders and the younger generation.</p> <p>Ms. Ornellas expressed appreciation for Ms. Hayashi’s dedication and leadership, noting the project required difficult community engagement, especially with the Kūpuna. She emphasized the importance of better connecting with the community and committed to improving outreach and responsiveness to community needs.</p> <p><i>The Commission thanked Ms. Hayashi.</i></p> <p>Ms. Higuchi Sayegusa provided a project update, noting a three-month delay due to County contracting requirements, including compliance with Hawai`i Compliance Express (HCE), DCCA registration, and tax clearances. The contract is now finalized, and work is underway with the artist, including tracking benchmarks and payments. The completion timeline has shifted from September to November, with an unveiling planned then. In the meantime, the department is developing historical content and interpretive signage in coordination with the committee while the artist proceeds with fabrication.</p> <p>Chair Pratt inquired about the status of homeless individuals previously living under the tree, and Ms. Kanna confirmed they are no longer there.</p> <p>Ms. Higuchi Sayegusa stated that as construction approaches, they plan to coordinate</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>with the Parks Department to install barriers to control access and keep the site clear during installation. In the interim, Public Works has been using part of the property for staging related to a Moi Road project, which has helped deter homeless individuals from returning.</p> <p>Mr. Ono asked if “interactive” refers to using QR codes.</p> <p>Ms. Higuchi Sayegusa responded that QR codes are a future consideration as part of a broader second phase to include additional Hanapēpē histories. The current focus is completing the monument and interpretive signage for the historic event, with expanded interactive features to follow later.</p> <p>Mr. Ono requested additional historical context on the event and its impact, noting it was the first strike of its kind.</p> <p>Ms. Higuchi Sayegusa explained that the artist selection process relied on different artistic interpretations, with the central theme focused on peacemaking, cooperation, healing, and mediation. She noted that while the artist provides creative interpretation, the historical accuracy will be supported through interpretive signage informed by extensive research, including UH oral history work and ongoing publications.</p> <p>Ms. Ornellas asked when the property became part of the County Parks inventory.</p> <p>Chair Pratt asked if no steward had been found for the property.</p> <p>Ms. Higuchi Sayegusa explained that this is the first County acquisition designated for a</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>cultural purpose, unlike previous projects which were primarily Parks or Public Works assets. She noted that other properties are assigned to Parks or Public Works depending on use, and stewardship agreements are typically executed between the Parks Department and community stewards. She added that a sample stewardship agreement will be shared at a future meeting.</p> <p>Ms. Ornellas asked if the search for a steward was no longer ongoing.</p> <p>Ms. Higuchi Sayegusa said the search for a steward is ongoing, with potential support from Ms. Malia Nobriga and the Hawaiian Civic Club, as well as possible assistance from Westside Parks staff if needed.</p> <p>Ms. Ornellas referenced the Kekaha Chinese Cemetery as an example of a site without a steward.</p> <p>Ms. Higuchi Sayegusa said the Kekaha Chinese Cemetery has no formal steward but is maintained by Parks staff, and a stewardship agreement is being developed with Kikiaola Boat Harbor.</p> <p>With no further discussion, the Commission moved on to the next agenda item.</p> | |
| | <p>F1. <u>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.</u></p> <p>F2. <u>Discussion on possible amendments to the Public Access, Open Space, Natural</u></p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p><u>Resource Preservation Fund Commission administrative rules pertaining to proposal requirements.</u></p> <p><i>There was no public testimony.</i></p> <p>Ms. Higuchi Sayegusa noted that the latest draft had been distributed and that there were no substantive changes since the last discussion. Chapter 6 on maintenance grant applications was largely unchanged, aside from minor grammatical and formatting refinements completed by DCA Barzilai to tighten the language. She explained that these edits represent the primary updates from the prior meeting. She stated the intent to move the draft toward a formal public hearing under HRS 91 once the Commission is comfortable with it and noted the goal of aligning its progress with Chapter 5.</p> <p>Mr. Ono asked whether anyone else, beyond the Commission, needed to review the draft.</p> <p>Ms. Higuchi Sayegusa explained that the Small Business Regulatory Review Board must review any proposed rules that impact small businesses. She believed the Commission could submit a “no impact” statement, as the rule does not directly affect small businesses. She clarified that unlike estimated permit rules, this process for becoming a steward has no direct small business impact. She concluded that the item could be moved forward when the Commission is ready.</p> <p>Ms. Ornellas asked who was responsible for reviewing the applications.</p> <p>Ms. Koga said the department would review applications for completeness before forwarding them to the Commission for funding decisions, and that Open Space inquiries</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>from the public would come to her directly for response or escalation.</p> <p>Vice Chair Kinney asked whether stewards could hire vendors or use internal staff for stewardship work under an Open Space-funded agreement, and if the department enforces any restrictions on that.</p> <p>Ms. Higuchi Sayegusa said eligibility depends on being an approved steward with a County Parks agreement, after which applicants can propose funding and manage its use and internal operations as they see fit.</p> <p>Vice Chair Kinney agreed, referencing HCE, and noted that they would also have to go through the same process.</p> <p>Ms. Koga clarified that only the steward receiving the County grant must go through the process; any hired parties would not be required to do so.</p> <p>Ms. Higuchi Sayegusa clarified that requirements may depend on the amount and structure of the funding. She noted that contracts would require contractors to complete HCE compliance, but if structures as a grant, HCE may not apply. She added that vendors would still need to be set up with the finance department by providing tax documentation, but formal business registration proof may not be required.</p> <p>Chair Pratt said a stewardship agreement with the County is required to access the fund and that the process is intended to encourage more stewards, as noted by Ms. Hayashi.</p> <p>Ms. Ornellas asked what the reporting requirements under Chapter 6 would like look and whether recipients would be given specific milestones and deadlines for project</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>updates and completion.</p> <p>Chair Pratt referenced 1-67c, which requires reporting on expenditures, work completed, and accomplishments.</p> <p>Ms. Ornellas asked whether completion would be verified through inspections or documentation such as before-and-after photos.</p> <p>Ms. Koga said that reporting could include requiring recipients to submit photos, such as proof of work completed, within the one-year reporting period.</p> <p>Ms. Ornellas asked if reporting would be done by email rather than a presentation.</p> <p>Ms. Koga confirmed reporting would primarily be submitted by email, including a written report and photos, to verify proper use of funds, and noted that future funding could be withheld if funds are not used as proposed. She added that recipients should also explain any issues or changes in how funds were spent, so the department can relay that information to the Commission.</p> <p>DCA Donahoe explained that 1-68 Enforcement, the department has authority to enforce grant terms and conditions, conduct follow-up, and refer any breaches to the Office of the County Attorney, if necessary,</p> <p>Ms. Higuchi Sayegusa noted that Chapter 5 was revised following legal review and prior discussions, including Council’s suggestion to return Kaumumene funds to the Open Space Commission and allocate a portion as Public Works operating expenses. She clarified this would still fall within the 5% maintenance allowance, ensuring Public Works</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>could cover items like replacement ropes and similar ongoing maintenance costs, consistent with past practice.</p> <p>Ms. Ornellas asked how the arrangement would work from an accounting standpoint.</p> <p>Ms. Higuchi Sayegusa said qualified stewards, including the County or other government entities, could receive funds but questioned whether an internal agreement would be needed.</p> <p>Ms. Ornellas asked how the funds would be handled financially, whether they remain in the fund or are billed against it.</p> <p>Ms. Higuchi Sayegusa said the funds would return to the Open Space Fund, pending confirmation with Mr. Ken Shimonishi.</p> <p>Ms. Koga explained that the Open Space Fund is budgeted annually, with the 5% maintenance allocation set as a separate line item that the department would then charge against for expenses.</p> <p>Chair Pratt asked if salaries would be billed to the 5% allocation, expressing concern it could be used for staffing costs instead of materials and equipment.</p> <p>Ms. Higuchi Sayegusa said the funds would be used only for items like ropes, consistent with prior years in the CIP account.</p> <p>Vice Chair Kinney asked whether specialized maintenance requiring outside contractors would also be covered.</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>Ms. Higuchi Sayegusa said specialized maintenance would need to be covered in an approved budget or existing allocations, unless handled through the Commission.</p> <p>Ms. Ornellas said it should be explicitly addressed because the current language is too vague.</p> <p>Ms. Higuchi Sayegusa asked whether the Commission wanted to set an “up to” amount for supplies, however Chair Pratt responded that she did not support that.</p> <p>Ms. Koga suggested establishing a practice where any expenditure over a certain threshold would automatically be brought to the Commission for a vote.</p> <p>Ms. Higuchi Sayegusa suggested allowing materials and supplies up to \$5,000, with larger expenditures going to the Commission for approval.</p> <p>Ms. Ornellas asked if the proposal must go through public comment.</p> <p>Ms. Higuchi Sayegusa confirmed the proposal must go through formal rulemaking, including public notice in the newspaper and a public hearing held by the Open Space Commission before adoption.</p> <p>DCA Donahoe asked about the proposed change to the biennial report schedule in Chapter 5 to odd-numbered years.</p> <p>Ms. Higuchi Sayegusa noted the schedule may be misaligned with the ordinance or charter’s odd-year reference and proposed setting the first meeting in January of the</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>biennial report year.</p> <p>Ms. Ornellas asked if the language would be replaced and Ms. Higuchi Sayegusa confirmed it would be updated, noting the current year is 2026.</p> <p>Ms. Higuchi Sayegusa suggested clarifying the language aligning with odd biennial years, with the Commission vote occurring at the first January meeting of the reporting year, pending review.</p> <p>Vice Chair Kinney asked if June 30th of each year is the required submittal deadline.</p> <p>Ms. Higuchi Sayegusa clarified that the submission deadline would be changed to January 30 to align the review cycle with available funding information, allowing all proposals and revenue data to be gathered before evaluation. She noted this would support a structured annual review process led by staff, with preliminary analysis before Commission consideration. She added that a limited exception would remain for a “dossier” process to allow urgent or unique proposals outside the deadline and said this should be clearly reflection in Section 1-5-2a.</p> <p>DCA Donahoe cautioned against strict terms like “shall” or “must” and suggested adding a clause to allow an exception.</p> <p>Vice Chair Kinney asked whether the 60-day preliminary evaluation period is conducted by the Commission or staff, and Ms. Higuchi Sayegusa clarified that it is handled by Ms. Koga.</p> <p>Chair Pratt asked how to handle this year.</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>Ms. Higuchi Sayegusa said the department must submit a preliminary report within 60 days of receiving a complete proposal, unless extended by the Commission.</p> <p>Ms. Ornellas asked if review occurs internally before going to the Commission.</p> <p>Ms. Koga said she would prepare and submit the preliminary report to the Commission within 60 days.</p> <p>DCA Donahoe clarified that the “additional time” clause allows Ms. Koga to request an extension from the Commission if the 60-day deadline cannot be met.</p> <p>Ms. Koga said the process matches current practice, with a preliminary report brought to the Commission within 60 days.</p> <p>Mr. Ono asked if the changes should be finalized and brought to the Commission next meeting.</p> <p>Ms. Higuchi Sayegusa said they could either move forward or allow more review time. If approved, staff would proceed with newspaper publication for rulemaking, likely in June.</p> <p>Vice Chair Kinney said the only changes were to the materials language.</p> <p>Ms. Higuchi Sayegusa added that Chapter 5 also includes accepting the dossier recommendation exception to the June 30th deadline.</p> <p>With no further discussion, the Commission moved onto the next agenda item.</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | | |
| | <p>F3. <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></p> <p><i>There was no public testimony.</i></p> <p>Ms. Koga reported that attorneys are still negotiating between DCA Barzilai and the opposing counsel to finalize the easement document. The State has approved and will provide additional fencing so the full easement can be clearly marked from the start. They also discussed using the adjacent State parcel as a safety buffer to separate the property line from any hunting area, which should address owner concerns. These updates are expected to help move the easement toward execution soon.</p> <p>Ms. Higuchi Sayegusa said DLNR may install a check-in station at the trailhead to clearly mark the area as regulated. Hunting rules would apply, including restrictions on movement through residential areas with dogs and firearms. The goal is to reduce landowner concerns by highlighting DLNR and DOCARE enforcement and improve support for the easement.</p> <p>Mr. Ono asked if the parcel is already under DLNR jurisdiction before its designated use.</p> <p>Ms. Higuchi Sayegusa confirmed the parcel is DLNR land, leased by Jurassic Kahili Ranch, intended for public access and regulated hunting in designating areas further mauka.</p> | |

| SUBJECT | DISCUSSION | ACTION |
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| | <p>Mr. Cabral raised concerns about the safety buffer, noting that dogs may not follow boundaries while chasing boars and could enter private property.</p> <p>Chair Pratt said the State will fence the easement, and any additional protection would be the homeowners' responsibility.</p> <p>Ms. Shintani asked how the hunting check-in station would work and if it would be staffed.</p> <p>Mr. Cabral said the check-in station is a sign-in/sign-out sheet for hunters, with their names and tag numbers.</p> <p>Vice Chair Kinney supported the safety zone and said hunting is highly regulated with low accident rates, so residents should have limited concern.</p> <p>Ms. Koga said DLNR is preparing maps that will show the buffer zones, and those will be shared in future updates.</p> <p>With no further discussion, the Commission moved onto the next agenda item.</p> | |
| <p>G. Communications</p> | <p>There were no communications.</p> | |
| <p>H. Unfinished Business (For Action)</p> | <p>There was no unfinished business.</p> | |

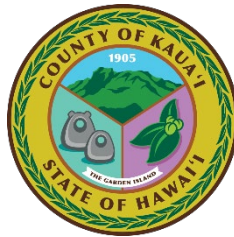
| SUBJECT | DISCUSSION | ACTION |
|---|--|---|
| I. New Business (For Action) | There was no new business. | |
| J. Executive Session | There was no executive session. | |
| K. Announcements | <p>Ms. Higuchi Sayegusa announced that the biennial report has been submitted and will be on the April 8th agenda.</p> <p>The Commission's next meeting is tentatively scheduled for June, with the exact date to be determined, as there are insufficient materials for a May meeting.</p> | |
| L. Adjournment | | <p>Ms. Kanna moved for the adjournment of the meeting. Mr. Ono seconded the motion. Motion carried 7:0.</p> <p>The meeting was adjourned at 2:10 p.m.</p> |

Submitted by: Celine De Leon
 Celine De Leon, Staff Support Clerk

Reviewed and Approved by: _____
 Robin Pratt, Chair

- () Approved as circulated on
- () Approved as amended. See minutes of _____ meeting.

RULES OF PRACTICE AND PROCEDURE OF THE
COUNTY OF KAUAI
PUBLIC ACCESS, OPEN SPACE, NATURAL
RESOURCES PRESERVATION FUND COMMISSION



ADOPTED AUGUST 10, 2005
AMENDED APRIL 14, 2016
RECODIFIED APRIL 2024
AMENDED JUNE 11, 2026

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**[PROPOSED] RULES OF PRACTICE AND PROCEDURE
OF THE KAUAI COUNTY PUBLIC ACCESS, OPEN SPACE AND NATURAL
RESOURCES PRESERVATION FUND COMMISSION**

Chapter I. General Provisions

- 1-1-1 Purpose. The intent and purpose of the Rules of Practice and Procedure of the Kauai County Public Access, Open Space, and Natural Resources Preservation Fund Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open, productive, and orderly manner.
- 1-1-2 Definitions. As used in these Rules, except as otherwise required by context:
- (a) "Agency" means the Planning Department of the County of Kauai or its authorized representative.
 - (b) "Commission," "Chairperson" and the "Commissioner" means the Public Access, Open Space and Natural Resources Preservation Fund Commission of the County of Kaua'i, State of Hawaii, its Chairperson, and a member thereof, respectively.
 - (c) "Director" means the Planning Director of the County of Kauai.
 - (d) "Ex parte communication" means private communications or arguments with members of the Commission or its hearing officer as to the merits of a proceeding with a view towards influencing the outcome of a proceeding.
 - (e) "HRS" means Hawaii Revised Statutes.
 - (f) "Meetings" means the convening of the Commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Commission has advisory power.
 - (g) "Person" means when appropriate to the context, not only individuals, but corporations, firms, associations, societies, and federal, state and county departments or agencies.
 - (h) "Presiding Officer" means and shall include any member of the Commission or a hearing officer duly designated as such. Unless otherwise designated, the Chairperson shall be the presiding officer.
 - (i) "Proceeding" means any matter that is brought before the Commission in which it has advisory authority.
 - (j) "Public Record" means the same as defined in Chapter 92, HRS, and shall include maps, rules and regulations, written statements of policy or interpretation formulated, adopted or used by the Commission in its functions, all decisions, orders, minutes of the Commission meetings and records of any docket on file with the Commission but shall not include records which invades the right of privacy of an individual.
 - (k) "Rules" means the Rules of Practice and Procedure before the Commission.

Chapter II. Organization & Parliamentary Rules

1-2-1 Organization. At the regular September meeting of each year, the Commission shall elect a Chairperson and Vice-Chairperson from among its members. They shall serve for a term of one year or until their successors are duly elected. No member shall succeed himself or herself as chairperson. In the event the Commission is not able to elect a regular Chairperson or Vice-Chairperson from among its members at its first September meeting, the incumbent chair may serve on a hold-over basis for a term not to exceed ninety (90) days.

1-2-2 Meetings.

- (l) Regular meetings of the Commission shall be held every first Wednesday or on such day as the Commission may designate. The place of meeting shall be the Lihue Civic Center, or such other place as may be designated by the Commission.
- (m) Subject to the conditions prescribed by these rules, special meetings may be called at any time by the chairperson, the director, or a majority of the Commission, who shall state the subject thereof, and the acts and business of the Commission at such special meeting shall be confined to such matters.
- (n) Each member shall be given oral or written notice at least five (5) working days prior to a special meeting, unless waived by such member.
- (o) The Commission shall prepare and post an agenda for all meetings of the Commission and its committees identifying the date, time, place, and subjects to be considered in compliance with the provisions of Chapter 91 and 92, HRS.

1-2-3 Adjournment. Meetings may be adjourned at any time by vote, and unless otherwise specified in the motion, every adjournment shall be deemed to be the next meeting of the Commission.

1-2-4 Quorum and Number of Votes Necessary for a Decision. Unless otherwise provided by law, a majority of all the members to which the Commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the Commission is entitled five (5) shall be necessary to make a Commission decision valid, failing which there shall have been no valid action taken.

1-2-5 Continuation of Decision Making. Any matter which fails to be validated by a majority concurrence of the Commission may be continued to any subsequent regular meeting.

1-2-6 Effective Date of Commission Decision. Unless a specific effective date is set forth, the effective date of a decision rendered by the Commission shall be the date of the meeting at which such valid decision was made.

1-2-7 Minutes and Transcripts.

- (a) Meetings. In accordance to HRS 92-9, the Commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members.

- (b) Copies of Recordings. In cases where copies of prerecorded tapes are requested, a fee of \$5.00 per hour (rounded off to the nearest half hour) of recording time shall be assessed in addition to the costs of the tapes used (rounded off to the nearest \$.50). Charges may be waived or modified when the requesting person provides the recording equipment, tapes, and performs the recording subject to conditions and supervision by the Planning Department.

1-2-8 Officers and Their Duties.

- (a) Presiding Officer. The Chairperson shall be the presiding officer of the Commission and the Vice-Chairperson shall be the presiding officer in the absence of the Chairperson.

The presiding officer shall:

- (1) Open all meeting of the Commission at the appointed hour by taking the chair and calling the meeting to order;
 - (2) Call for the approval of the minutes of any preceding meetings when a quorum is present;
 - (3) Maintain order and proper decorum;
 - (4) Announce the business before the Commission in the order prescribed by these rules;
 - (5) Review all matters properly brought before the Commission, call for votes upon the same and announce the results;
 - (6) Appoint all committees unless otherwise ordered by the Commission;
 - (7) Authenticate by signature all acts of the Commission as may be required by law, unless delegated to the Planning Director;
 - (8) Do and perform such other duties as may be required by law, or such as may be properly appertain to such office;
 - (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the Commission;
 - (10) Take into consideration such matters as shall not be within the scope of the duties or powers of any standing committee of the Commission; or as may be referred by the Commission, and to report thereon, together with such recommendations relative thereto as deemed advisable; and
 - (11) Represent the Commission in all functions, not otherwise directed by the Commission as the titular head of the Commission.
- (b) Clerk. The Planning Director shall serve as Clerk of the Commission and shall be directly responsible, or through staff members, to provide the following services;

- (1) To receive, submit, and coordinate all matters properly brought before the Commission in consultation with the chairperson;
- (2) To provide the agenda support materials for all meetings;
- (3) To read bills, resolutions, and other matters to the Commission, if so required;
- (4) To forward at once to the proper parties all communications and other matters, either directly or through a committee, as the case may be;
- (5) To deliver immediately to the chairperson of the appropriate committee all petitions, resolutions, bills or other matters as may be duly referred to such committee;
- (6) To serve in all matters as ex-officio clerk of the Commission and to do and perform all clerical duties and services pertaining to such position as the Commission shall from time to time direct, and such as shall by law or the rules, or rules hereafter adopted, be assigned or such as properly pertain to such position;
- (7) To have charge of all records of the Commission and be responsible for the same.

1-2-9 Committees. There shall be two kinds of committee:

- (a) Standing Committees, which shall not exceed five (5) members each.
- (b) Select Committees, which shall not exceed five (5) members each.

1-2-10 Committee Organization.

- (a) All committees of the Commission, contemplated under these rules, shall be appointed by the Chairperson subject to confirmation by a majority vote of the members of the Commission.
- (b) The first person named on a committee shall be the chairperson unless otherwise designated. The Committee Chairperson shall call and preside over committee meetings and may designate temporary alternate members in order to achieve a quorum and to take action in cases where members are absent.
- (c) No member shall serve as chairperson of more than one Standing Committee of the Commission.
- (d) No committee shall meet while the Commission is in session.
- (e) Committees shall be under the control and subject to the orders and appropriate rules of the Commission, and shall faithfully carry out such orders.
- (f) Vacancies on the standing committees shall be filled by the Chairperson of the Commission unless otherwise designated in subsection (b) above and no member of the standing committee shall resign therefrom without the consent and approval of the Commission.

- (g) A majority of the entire membership to which the committee is entitled shall constitute a quorum and the majority vote of the membership present shall be necessary to take any action.

- 1-2-11 Standing Committees. The Commission may establish the necessary standing committees to further the responsibilities and functions of the Public Access, Open Space, and Natural Resources Preservation Fund Commission.

- 1-2-12 Select Committees. A Select Committee shall consist of up to five (5) members, unless otherwise ordered by the Commission and shall be appointed from time to time as the occasion requires, serving until discharged after finally reporting on the special matter referred to it.

- 1-2-13 Committee Reports.
 - (a) Every committee shall be responsible for writing and submitting a meeting summary to include a list of attendees, topics covered, decisions and/or recommendations to the Commission as a whole.
 - (b) Committee chairpersons or other committee members shall report to the whole Commission at its meetings about the Committee's work on matters referred to them.
 - (c) Select Committees shall report as required by the Commission upon all matters referred to them, unless further time is allowed by vote of the Commission.
 - (d) Whenever any matter is referred to a committee, it shall be the duty of such committee to make diligent inquiry into all of the facts and circumstances connected with such matter. If necessary, the County Attorney may be consulted, documents and records searched, and everything done to bring all facts pertaining to such matter before the Commission.
 - (e) The report of the committee on any matter shall provide an evaluation and recommendation as to the disposal of such matter.

- 1-2-14 Voting.
 - (a) There shall be three methods of ascertaining the decision of the Commission upon any matter;
 - 1st, by call of the roll of the members and a record made by the Clerk of the vote of each member;
 - 2nd, by viva voca vote;
 - 3rd, by unanimous consent.
 - (b) Whenever the Commission is ready to vote on any question, the Chairperson, after stating the question, shall put such question to a vote, then announce the result of the vote to the Commission. Upon the request if any member of the Commission, the Clerk shall call the role. Unless a member is excused from voting, his silence shall be recorded as an affirmative vote.

- (c) No member shall refrain from voting unless excused by the Commission.
- (d) Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote; and after the announcement of the result, no one shall be permitted to vote or to change his vote.

1-2-15 Standards of Conduct.

- (a) Disclosure of Interest. Whenever a possible direct personal financial interest on any matter pending before the Commission or any of its committees becomes apparent, the affected member shall promptly make a disclosure to the Commission. When a member has made a disclosure of interest and is deemed by the Commission to have as conflict of interest, such conflict shall apply to all subsequent actions relating to said matter. A member with conflict of interest shall refrain from voting except where the member's vote is required to constitute a quorum to act in which event he shall be permitted to vote.
- (b) Code of Ethics. All Commission members and officers and employees of the Agency shall be subject and comply with the provisions of Chapter 3, Article I, of the Kauai County Code, as amended.

1-2-16 Petitions and Submittals to the Commission. Any person may petition the Commission. Petitions and other submittals shall be in writing, signed by the petitioners or persons presenting them.

1-2-17 Motions and Amendments. Motions and amendments may be verbal, but shall be reduced to writing if requested by the Chair, and shall be read from the Clerk's desk, if so desired.

1-2-18 Motions and Priorities.

- (a) No motion shall be received and considered by the Commission until the same has been seconded.
- (b) After a motion is stated or read by the Chair, it shall be deemed in the possession of, and shall be disposed of by vote of the Commission. However, it may be withdrawn by the mover with the consent of the second at any time before a vote or amendment.
- (c) Whenever any question shall be under discussion, the motions in order relative thereto prior to a vote shall be: first, to table; second, to previous question; third, to modify debate; fourth, to postpone definitely; fifth, to commit or recommit; and sixth, to amend; which motions shall have precedence in the order named. The first four (4) motions shall be decided without debate, and shall be put as soon as made.
- (d) When any of said motions shall be decided in the negative, the same shall not be revived at the same meeting relative to the main question under discussion. If all are negative as aforementioned, the only remaining question shall be as to the passage or adoption of the application or any other main question.
- (e) No member shall speak longer than five (5) minutes, nor more than twice on the same question without leave of the Commission, unless the member is the mover of the question pending, in which case the member shall be permitted to speak in reply, but not until every member choosing to speak shall have had the opportunity to speak.

1-2-19 Reconsideration. When a motion has been once made and carried in the affirmative or negative, only a member who voted with the prevailing side may move, at the same meeting, or at the next meeting, to reconsider it, and such motion shall take precedence over all other questions except a motion to adjourn.

1-2-20 Order and Decorum.

- (a) No person shall sit at the desk of the presiding officer or clerk, except by permission of the Chairperson, or at the desk of any commissioner, except by permission of that commissioner.
- (b) While the Chair is putting any question or addressing the Commission, no one shall walk out of the meeting room or across the floor; nor shall anyone entertain a private discourse, or pass between the member and Chair while the member is speaking.
- (c) When members are about to speak, they shall address themselves to the Chair, and shall confine their comments to the question under discussion, avoiding personalities.
- (d) If any member, in speaking or otherwise, transgresses these rules of procedure, the Chair or any member, may call him to order, and when so called to order, he shall immediately quiet down. The Chair shall then decide the question or order without debate, subject to an appeal to the Commission. In addition, the chair may call for the sense of the Commission on any question of order.
- (e) Whenever any person shall be called to order while speaking, the member shall be deemed to be in possession of the floor when the question of order is decided, and may proceed with the matter under discussion within the ruling made on the question of order.
- (f) No unauthorized person shall enter the floor of Commission except by permission of the presiding officer. The term "floor of Commission" shall mean that portion of the meeting room generally occupied by the Commission and as may be specifically designated by the presiding officer. The presiding officer shall determine, with concurrence of Commissioners, when members of the public may speak on topics being discussed and whether any time limitation per speaker will be set.
- (g) Any person or persons who willfully disrupt a meeting or hearing to prevent and compromise the conduct of the meeting may be removed from the room.

1-2-21 Order of Business.

- (a) After roll-call and the approval of the agenda and minutes, the Presiding Officer shall call for business in the following order:
 - (1) General business matters before the Commission and announcements
 - (2) Communications
 - (3) Committee Reports
 - (4) Unfinished Business or Old Business
 - (5) New Business

- (b) The Commission may, by previous motion, direct that any matter be made a special order of business, which shall take precedence as indicated in the order.
 - (c) The unfinished business or old business in which the Commission was engaged at the time of the last adjournment shall have the preference in the order of the day except for general business and announcements, communications, and committee reports, and invited speakers, and no other business shall be received until such unfinished business is disposed of, unless by special leave of the Commission.
 - (d) All questions relating to priority of business to be acted upon by the Commission shall be decided without debate.
- 1-2-22 Question of Order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for. Such question shall be decided by the Chair, without debate, subject to an appeal to the Commission.
- 1-2-23 Computation of Time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the close of the business of the next day which is not a Saturday, Sunday, or holiday.
- 1-2-24 Attendance. No member shall be absent from the service of the Commission, unless the member has so advised the Chair prior to the meeting or be sick and unable to attend.
- 1-2-25 News Reporters. News reporters wishing to take notes of the business of the Commission may be assigned such places by the Chair without interfering with the convenience of the Commission.
- 1-2-26 New Rules and Amendments. No rule of the Commission shall be altered or rescinded, nor shall any new rules be adopted without the affirmative vote of at least five (5) members of the Commission.
- 1-2-27 When Rules are Silent. For good cause, the Commission may vote to suspend the rules.
- 1-2-28 Severability. If any provision of these Rules of Practice and Procedures or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules of Practice and Procedures which can be given effect without the invalid provision or application, and to this end the provisions of these Rules of Practice and Procedures are severable.

Chapter III. Public Records, Inspection and Availability

- 1-3-1 Inspection of Public Records. All public records shall be available for inspection and copying by any person during established office hours and within reasonable timelines unless public inspection of such records is in violation of any other state or federal law.
- 1-3-2 Where Available.
- (a) The public may obtain information on matters within the jurisdiction of the Planning Department and Commission for the County of Kauai, by inquiring at the principle place of business of the Planning Department. All rules, orders or opinions of the agency are on file and available for public inspection at this office during business 4444 Rice Street, Suite A473, Lihue, Kauai 96766-1326.
- (b) Inquiry may be made in person at the agency during business hours or by submitting a request for information in writing to the Planning Director, Planning Department, Kapule Building, 4444 Rice Street, Suite A473, Lihue, Hawaii 96766-1326.
- 1-3-3 Copies of Public Records. Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the applicable fees or costs for publication, research, and postage are paid.
- 1-3-4 Denial of Inspection. Any person aggrieved by the denial by the officer having custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may seek enforcement action pursuant to HRS Chapter 92.

Chapter IV. Rule Adoption, Amendment, or Repeal Procedures

1-4-1 Initiation of Rule-Making Proceedings.

- (a) Motion by Commission. The Commission may, at time on its own motion, initiate proceeding for the adoption, amendment, or repeal of any rule or regulation of the Commission.
- (b) Petition by Person or Agency. Any interested person may petition the Commission for the adoption, amendment, or repeal of any rule or regulation of the Commission. Petitions for rule making filed with the Commission will become matters of public record.

1-4-2 Form and Contents. Petitions for rule making shall contain the name, address, and telephone number of each petitioner; the signature of each petitioner; a draft of the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter; a statement of the reasons in support of the proposed rule, amendment, or repeal and shall deposit with the County funds sufficient to cover appropriate meeting publication costs.

1-4-3 Action on Petition. The Commission shall, within thirty (30) days after the filing of a petition for rule making, either deny the petition in writing, stating its reasons for denial or initiate proceedings in accordance with Section 91-3 HR.S.

- (a) Denial of Petition. Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of public rule-making proceedings will not be considered by the Commission. The Commission shall notify the petitioner in writing of such denial, stating the reasons thereto. Denial of a petition shall not operate to prevent the Commission from acting, on its own motion, on any matter disclosed in the petition.
- (b) Acceptance of Petition. If the Commission determines that the petition is in order and that it disclosed sufficient reasons in support of the proposed rule making to justify the institution of rule-making proceedings, the following procedure set forth and applicable statutes and law shall apply.

1-4-4 Notice of Public Hearing to Discuss Rule Adoption, Amendment, or Repeal.

- (a) Publication and Mailing. When, pursuant to a petition therefore or upon its own motion, the Commission proposes to adopt, amend, or repeal a rule or regulation, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation which is published and issued within the County of Kaua'i; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the Commission's rulemaking proceedings at their last recorded address. The notices shall be published at least thirty (30) days prior to the date set for public hearing.
- (b) Form. A notice of the proposed adoption, amendment, or repeal of a rule or regulation shall include the requirements set forth in HRS Chapter 91-3

1-4-5 Commission Action. The Commission shall consider all relevant testimony and documents of record before taking final action in a rule-making proceeding. Final action

should be taken within forty-five (45) days after the end of period for submission of written comments or recommendations.

- 1-4-6 Effective Date. All rules shall be filed and take effect pursuant to HRS 91-4.
- 1-4-7 Emergency Rule Making. Notwithstanding the foregoing rules, the Commission may adopt emergency rules in accordance to the provisions of HRS 91-3 and 4 if the Commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule or regulation upon less than thirty (30) days notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than one hundred twenty (120) days without renewal. The emergency rule shall become effective upon filing with the County Clerk.

[Chapter V. — Report Process

~~1-5-1 — Authority. This rule governs the procedures of the Public Access, Open Space and Natural Resources Preservation Fund Commission pursuant to the authority conferred under Chapter 6, Article 14, Kauai County Code 1987 as amended (KCC).~~

~~1-5-2 — Public Input.~~

- ~~(a) — [The Commission shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to discussion during Commission meetings, community outreach to various groups, and participation in community events.]~~
- ~~(b) — [The Department shall solicit public input for proposals to be considered for funding. Strategies to solicit public input shall include but not be limited to community outreach to various groups and participation in community events.]~~
- ~~(c) — The Department shall maintain a website to inform the public of the Commission's purposes and provide a mechanism for the public to provide input on proposals.~~

~~1-5-3 — Department Review and Recommendation.~~

- ~~(a) — Within 45 days of receiving a proposal(s), the Department shall transmit a preliminary report on the public proposal(s) to the Commission. In the report, the Department shall provide a preliminary evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.~~
- ~~(b) — At least 90 days prior to the first Commission meeting in January of odd calendar years, the Department shall provide a final evaluation and recommendation for the proposal(s) received subsequent to the adoption of the last preceding biennial report. The recommendation shall be based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.~~
- ~~(c) — After further research, should the Department determine that a preliminarily approved recommendation for acquisition does not meet the criteria of Section 1-5-4 or has a prohibitive factor, the Department shall transmit an additional report to the Commission providing an amended evaluation and recommendation.~~

~~1-5-4 — Criteria for Acquisition. In the event that a proposal does not meet one or more of the following criteria, the proposed acquisition shall not be recommended. The Department shall submit a recommendation for acquisition only if all criteria established in subsections (a) through (d) of this section are met:~~

- ~~(a) — The proposal fulfills at least one of the Commission's purposes to provide:
 - ~~(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 disabled and public access to, and enjoyment of, public land and open space;~~
 - ~~(8) — Acquiring disabled and public access to public land, and open space;~~
 - ~~(9) — Conserving land open space and scenic values.~~
- ~~(b) — The cost for the acquisition is commensurate to the public interest served. The cost may be shared by other parties.~~
 - ~~(c) — The process for the acquisition is commensurate to the public interest served. Factors may include, but are not limited to:

 - ~~(1) — The type of property interest that is proposed for acquisition (for example, an easement versus fee simple ownership);~~
 - ~~(2) — Whether or not the acquisition will be an adversarial process.~~~~
 - ~~(d) — The lack of any maintenance requirements; or in the event there are maintenance requirements, the maintenance requirements have cost implications that are commensurate to the public interest served.~~

~~1-5-5 Prohibitive Factor. 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.~~

~~1-5-6 Biennial Report.~~

- ~~(a) — The Commission shall adopt a biennial report that:

 - ~~(1) — Reports the balance and reviews the sufficiency of the fund;~~
 - ~~(2) — Prioritizes land or property entitlements or proposals that were recommended for acquisition and are directly related to the purpose of Chapter 6 Article 14 of the KCC;~~
 - ~~(3) — Provides an acquisition plan for each proposal that is recommended for acquisition.~~~~
- ~~(b) — The biennial report shall be adopted by a majority vote of the Commission on the first meeting held in January of odd calendar years. In the event that no action is taken (for example, due to a lack of a majority vote), review and action on the biennial report shall be scheduled at each subsequent Commission meeting until action is taken.~~

- ~~(c) — The Commission shall attempt to prioritize the recommended projects, and the biennial report shall reflect the adopted prioritization of projects. In the event that no consensus is achieved on the prioritization of projects, the report shall reflect as such.~~
- ~~(d) — The biennial report shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.~~
- ~~(e) — The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of the biennial report. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.~~

~~1-5-7 Dossier Recommendation Process.~~

- ~~(a) — A Commission recommendation for acquisition outside of the biennial report (“dossier recommendation”) may be adopted and transmitted to Council and Mayor only when the Commission determines all of the following:
 - ~~(1) — The proposal meets the criteria for acquisition established under Section 1-5-4 of these rules;~~
 - ~~(2) — The proposal does not have a prohibitive factor under Section 1-5-5 of these rules;~~
 - ~~(3) — There is a demonstrable urgency concerning the timing of acquisition where delaying action to the upcoming biennial report will result in significantly more expense, an adversarial acquisition process, or both.~~~~
- ~~(b) — The dossier recommendation shall provide an acquisition plan for the proposal.~~
- ~~(c) — Prior to the Commission taking action on a dossier recommendation, the Department shall provide the Commission with an evaluation and recommendation based on the criteria or prohibitive factor for acquisition established in Section 1-5-4 and 1-5-5 of these rules.~~
- ~~(d) — The dossier recommendation shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.~~
- ~~(e) — The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of a dossier recommendation. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.]~~

Chapter V. Application Process for Open Space Funds

1-5-1 Authority. Pursuant to the authority conferred under Chapter 6, Article 14, Kauai County Code 1987 as amended (KCC), this rule governs the procedures of the Public Access, Open Space and Natural Resources Preservation Fund Commission (Open Space Commission) for proposals and applications for the use of Open Space Funds aside from proposals involving maintenance, which is governed by Chapter VI of these Rules.

1-5-2 Eligibility.

(a) Proposals for the use of Public Access, Open Space and Natural Resources Preservation Funds (Open Space Fund) shall be submitted by **June 30 of each year** using the forms and instructions provided by the Planning Department as amended from time to time, except for proposals submitted through the dossier process pursuant to Section 1-5-3(d) of these Rules. Maintenance proposals are governed by Chapter VI of these Rules.

(b) Eligible Proposals for the Use of Public Access, Open Space and Natural Resources Preservation Funds.

(1) Eligible proposals shall meet the criteria set forth in these Rules and include:

- i. Land or interests in land by the State or County;
- ii. Grant proposals submitted by qualified applicants for the acquisition of fee simple interests or other interests in land;
- iii. Improvements associated with land or interests in land acquired with the Fund; or
- iv. Improvements to public pedestrian access to coastal areas.

(2) Eligible expenditures related to land acquisitions or interests in land shall be limited to the following:

- i. The purchase of land in fee, interests in land, or permanent conservation easements under chapter 198, HRS at or below fair market value as determined by a Department-approved appraisal;
- ii. Appraisals;
- iii. Land surveys;
- iv. Title insurance and title report; and
- v. Environmental inspections and assessments.

(c) Proposal Criteria. The Department shall recommend a proposal only if one or more of the following criteria are met. The Department shall submit a recommendation for acquisition only if all criteria established in subsections i. through v. of this section are met:

(1) The proposal fulfills at least one of the Commission's purposes to provide:

- i. Public outdoor recreation and education, including access to beaches and mountains;
- ii. Preservation of historic or culturally important land areas and sites;
- iii. Protection of significant habitats or ecosystems, including buffer zones;
- iv. Preserving forests, beaches, coastal areas and agricultural lands;

- v. Protecting watershed lands to preserve water quality and water supply;
- vi. Conserving land in order to reduce erosion, floods, landslides, and runoff;
- vii. Improving disabled and public access to, and enjoyment of, public land and open space;
- viii. Acquiring disabled and public access to public land, and open space; and
- ix. Conserving land open space and scenic values.

- (2) The cost of the acquisition or improvement is commensurate with the public interest served. Costs may be shared by other parties.
- (3) The acquisition or improvement process is commensurate with the public interest served. Factors may include, but are not limited to:
 - i. Whether the property interest that is proposed for acquisition (for example, an easement versus fee simple ownership);
 - ii. Whether the property contains encumbrances or title defects that conflict with the purposes of the grant;
 - iii. Whether the acquisition will be an adversarial process; or
 - iv. Whether the improvements can be immediately implemented and sustained.
- (4) The absence of maintenance requirements where maintenance is necessary, or where maintenance is required, the associated costs do not outweigh the public interest served.
- (5) Prohibitive Factors. 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.

1-5-3 Process for Review.

(a) Preliminary Evaluation.

- (1) Within 60 days of receiving a timely and complete proposal, unless extended by the Commission, the Department shall transmit a preliminary report to the Commission. In the report, the Department shall provide a preliminary evaluation and recommendation based on the eligibility criteria.
- (2) If the Commission approves the preliminary evaluation, the review process shall commence, which may require the following:
 - i. The Department and/or a representative of the Commission may conduct a site visit to inspect the condition of the property and resources.
 - ii. Additional information about the property to be conserved may be required of the applicant and further explanation about the application materials submitted may be required.
 - iii. The Commission may discuss the strengths and weaknesses of the application.
 - iv. Public testimony may be received.

- (b) Final Evaluation and Recommendation.
- (1) Once the Commission has completed its review of the proposal, the Department shall provide a final evaluation and recommendation for the Commission's consideration.
 - (2) The recommendation shall be based on the criteria and prohibitive factors for acquisition established in these rules.
 - (3) If the Department determines that a preliminarily approved recommendation for acquisition does not meet the criteria or has a prohibitive factor, the Department shall transmit a revised report with an amended evaluation and recommendation.
 - (4) If the Commission recommends the proposal, the Commission shall incorporate the recommendation in the next biennial report or transmitted as a dossier recommendation.
- (c) Biennial Report.
- (1) The Commission shall adopt a biennial report that:
 - (2) Reports the balance and reviews the sufficiency of the fund;
 - (3) Prioritizes land or interests in land or proposals that were recommended for acquisition and are directly related to the purpose of Chapter 6 Article 14 of the KCC;
 - (4) Provides an acquisition plan for each recommended proposal.
 - (5) The biennial report shall be adopted by a majority vote of the Commission at the first meeting in January of each biennial reporting year. In the event that no action is taken (for example, due to a lack of a majority vote), review and action on the biennial report shall be scheduled at each subsequent Commission meeting until action is taken.
 - (6) The Commission shall attempt to prioritize the recommended projects, and the biennial report shall reflect the adopted prioritization of projects. In the event that no consensus is achieved on the prioritization of projects, the report shall reflect as such.
 - (7) The biennial report shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.
 - (8) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of the biennial report. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.
- (d) Dossier Recommendation Process.

- (1) A recommendation for acquisition outside the biennial report (“dossier recommendation”) may be adopted and transmitted to Council and Mayor only if:
 - i. The proposal meets the eligibility criteria for acquisition established in these rules;
 - ii. There is demonstrable urgency such that delaying action will result in significantly greater expense, an adversarial acquisition process, or both.
- (2) The dossier recommendation shall provide an acquisition plan for the proposal.
- (3) Prior to the Commission taking action on a dossier recommendation, the Department shall provide the Commission with an evaluation and recommendation based on the eligibility criteria of these rules.
- (4) The dossier recommendation shall be transmitted to the Council and Mayor within 30 days of adoption. The transmittal shall request a response from the Council within 120 days of its receipt of the transmittal.
- (5) The Chairperson, or a commissioner appointed by the Chairperson, shall represent the Commission before the Council during the presentation of a dossier recommendation. At the discretion of the Planning Director, a representative of the Planning Department may accompany the Commission representative during the presentation.

1-5-4 Land Acquisition Grants.

(a) Application for Land Acquisition Grants.

- (1) Eligible Applicants. The entity that will hold title to the interest in land, or its authorized representative, shall be the applicant.
- (2) Eligible applicants who may apply for land acquisition grants include:
 - i. Other government agencies with an intergovernmental agreement;
 - ii. Private owners where the acquired property or entitlement benefit the public and are protected in perpetuity; and
 - iii. Nonprofit land conservation organizations where the acquired property or entitlement benefit the public and are protected in perpetuity.

(b) Documentation for Land Acquisition Grant Applications. Land acquisition applications must include the following:

- (1) Evidence of a willing landowner agreeing to sell the property;
- (2) Documentation of resources being protected;
- (3) A detailed budget of all proposed grant fund expenditures and project costs;
- (4) Site surveys and assessments;
- (5) A title report and appraisal; and
- (6) Evidence of matching funds.

- (c) All proposals will be analyzed under the eligibility criteria listed in 1-5-2 and processed under 1-5-3 of these Rules.
- (d) Matching Funds for Land Acquisition Grants.
- (1) Matching funds of at least twenty-five per cent (25%) of the total project costs are required as part of the proposal.
 - (2) Matching funds may be in the form of:
 - i. Direct moneys;
 - ii. A combination of public and private funds;
 - iii. Land value donation;
 - iv. In-kind contributions; or
 - v. Any combination of the above.
 - (3) Project costs for calculating matching funds shall be limited to the following:
 - i. Land acquisition, property right acquisition, or conservation easements at or below fair market value as determined by a department-approved appraisal;
 - ii. Appraisals;
 - iii. Land surveys;
 - iv. Title insurance and title report;
 - v. Environmental inspections and assessments;
 - vi. Escrow fees, excluding taxes;
 - vii. Baseline documentation for conservation easements; and
 - viii. Attorneys' fees for the review and drafting of acquisition-related documents.
 - (4) Applicants shall provide evidence of the sources and expenditures of matching funds to the satisfaction of the Department prior to distribution of the grant.
 - (5) Matching fund expenditures must be reasonable and necessary for accomplishing project objectives and the purpose of the program.
 - (6) Qualifying entities must demonstrate the basis and method for valuation of in-kind contributions. Donated services must be provided by skilled professionals. In-kind contributions must be an integral and necessary part of the approved project.
 - (7) Lands being donated as matching funds shall be subject to the same requirements and restrictions as lands that are being acquired with grant funds.
 - (8) In cases where the actual total project costs at time of grant disbursement are less than the estimated total project costs stated in the project application, the Department shall require awardees to maintain the same proportion of matching funds to awarded funds that is set forth in the project application.
- (e) Land Acquisition Grant Agreements.

- (1) Where land acquisition funds are awarded to private or non-profit applicants, the County and the non-profit applicant shall enter into a grant agreement. The grant agreement may require terms including but not limited to the following:
 - i. A performance period not to exceed two (2) years from the grant agreement's execution, unless an extension is approved by the Department;
 - ii. A detailed budget and an accounting and documentary evidence of all proposed grant fund expenditures and project costs;
 - iii. Submit documentation of resources being protected;
 - iv. Site surveys and assessments;
 - v. Compliance with Chapter 343, HRS;
 - vi. Deed restriction or conservation easement conveyance to ensure land or acquisition is protected in perpetuity;
 - vii. Submit a copy of the proposed deed along with any baseline documentation and other supporting documentation; and
 - viii. Reporting requirements.
- (2) The Department may require the awardee to meet any other requirements to ensure protection of the County's interests in protecting resource values and ensuring compliance with the terms and conditions of the grant agreement.

(f) Enforcement of Grant Agreements.

- (1) Breach of grant agreement. In the event of a breach of the grant agreement, the Department may impose sanctions against the awardee including, but not limited to:
 - i. Suspension of all grant payments until the breach is cured to the Department's satisfaction;
 - ii. Suspension of the awardee's participation in any other County grant program until the breach is cured to the Department's satisfaction; and
 - iii. The County reserves the right to recover or require reimbursement of all County funds awarded and disbursed and to pursue any sanctions included as provisions of the grant agreement.
- (2) Breach of Conservation Easement or Deed Restriction. In the event of a breach of a conservation easement or deed restriction imposed as a condition of the grant, the Department may impose sanctions against the awardee including, but not limited to:
 - i. Suspension of the awardee's participation in any other County grant programs until such time as all breaches are cured to the Commission or Department's satisfaction; and
 - ii. Repayment of all County funds expended.
- (3) Enforcement. The Department shall have the authority to enforce any:
 - i. Term or condition of the grant agreement; and

- ii. Term or condition of any conservation easements, deed restrictions, and covenants placed by Department on lands acquired in whole or in part with land acquisition grant funds.
- iii. The Department may refer enforcement matters to the Office of the County Attorney for pursuit of available civil remedies.

Chapter VI. Application Process for Maintenance Grants

1-6-1 Authority. This rule governs the procedures for administering up to five percent (5%) of the Public Access, Open Space, Natural Resources Preservation Fund (the “Fund”) for maintenance of properties acquired or improved by the Fund pursuant to the authority conferred under Chapter 6, Article 14, Kaua‘i County Code 1987, as amended (KCC).

1-6-2 Annual Budgeting.

- (a) At the beginning of each fiscal year, the Planning Department (“Department”) shall allocate up to five percent (5%) of the Fund for maintenance projects or grants.
- (b) Any maintenance grant funds that were budgeted but unawarded for a period of five (5) years from the fiscal year in which they were allocated shall be revert to the main Open Space Fund account.

1-6-3 Eligible Uses.

- (a) Maintenance funding may be used for projects that support the upkeep and maintenance of:
 - (1) Properties acquired by the Fund; or
 - (2) Improvements acquired or improved with the Fund.
- (b) For proposed uses of the County of Kaua‘i or other governmental entity:
 - (1) Up to five thousand dollars (\$5,000) may be expended on items and expenses directly related to maintenance activities.
 - (2) Proposals exceeding five thousand dollars (\$5,000) shall require approval by the Commission.
- (c) Upon award, eligible stewards, as defined in Section 1-6-4 below, may retain maintenance funds for a period not to exceed two (2) years for the following purposes:
 - (1) Operations, equipment, materials, and supplies necessary for the maintenance of land or improvements acquired with the Fund;
 - (2) Operations, equipment, materials, and supplies necessary for the maintenance of public pedestrian coastal access improved with the Fund;
 - (3) Other costs or activities deemed necessary by the Commission to protect, preserve, or maintain the integrity of properties acquired or improved with the Fund.

1-6-4 Eligible Applicants.

- (a) Only designated stewards of property acquired or improved with the Fund are eligible to apply for maintenance funding.
- (b) A designated steward means any of the following:
 - (1) Owners of land or interests in land acquired using the Fund; or

- (2) A nonprofit or community-based organization with demonstrated relevant experience related to the proposed project. Such organizations shall have an executed and current Stewardship Agreement with the County of Kaua'i; or
- (3) The County of Kaua'i or another government entity with an intergovernmental agreement.

1-6-5 Application for Maintenance Projects.

- (a) Proposals for maintenance projects shall be submitted by **June 30 of each year** using the forms and instructions provided by the Planning Department as amended from time to time. Proposals and applications for the use of Open Space Funds are governed by Chapter V of these Rules.
- (b) Applications shall be submitted to the Planning Department on forms prescribed by the Commission.
- (c) Applications shall include:
 - (1) A description of the proposed maintenance work;
 - (2) A description of the public benefits served or resources protected;
 - (3) An itemized budget;
 - (4) A detailed scope of work and project timeline;
 - (5) A site plan;
 - (6) A copy of the applicable stewardship agreement with the County of Kaua'i; and
 - (7) Any other information required by the Department or Commission.

1-6-6 Review and Approval.

- (a) The Planning Department shall review applications for completeness and may request additional information as necessary.
- (b) Within 120 calendar days after the annual deadline for maintenance fund applications, the Commission shall evaluate and approve applications based on its criteria, including but not limited to the following:
 - (1) Alignment with, and the extent to which the proposal supports, the Fund's purposes;
 - (2) Steward's capacity to carry out maintenance responsibilities;
 - (3) Cost of proposed operations and maintenance activities;
 - (4) Proportion of matching funds leveraged, including in-kind contributions, if any;
 - (5) Urgency of need for the proposed operations and maintenance activities;
 - (6) Feasibility of achieving proposed objectives;
 - (7) Short-term and long-term effectiveness of proposed actions;
 - (8) Community support for the proposed activities;
 - (9) Feasibility of mitigating any environmental hazards;
 - (10) Past work and performance on county-funded projects, including stewardship;
 - (11) Public benefit, enjoyment, and safety resulting from the proposed activities; and
 - (12) Regional benefits of the proposed activity.

- (c) Projects using maintenance funds shall be completed within a period not to exceed two (2) years.

1-6-7 Maintenance Grant Agreements.

- (a) Where maintenance funds are awarded to a nonprofit or community-based organization, the County and the applicant shall enter into a grant agreement. The grant agreement may require terms including but not limited to the following:
 - (1) A performance period not to exceed two (2) years from execution of the grant agreement;
 - (2) A detailed budget, including accounting and supporting documentation for all proposed expenditures and project costs;
 - (3) Site surveys and assessments, as applicable;
 - (4) Documentation demonstrating compliance with Chapter 343, Hawai'i Revised Statutes, if applicable; and
 - (5) Periodic reporting requirements.
- (b) The Department may require the awardee to meet additional requirements to ensure protection of the County's interest in resource protection and compliance with the terms and conditions of the grant agreement.
- (c) Reporting and Accountability. Within thirty (30) days after the end of each year of the grant term, stewards receiving maintenance funds must submit a report detailing expenditures, work completed, accomplishments, and challenges. The Planning Department shall compile an annual summary report for the Commission for inclusion in the Commission's Biennial Report.

1-6-8 Enforcement.

- (a) Breach of grant agreement. In the event of a breach of the grant agreement, the Department may impose sanctions against the awardee including, but not limited to:
 - (1) Suspension of all grant payments until the breach is cured to the satisfaction of the Department;
 - (2) Suspension of the awardee's participation in any other County grant program until the breach is cured to the satisfaction of the Department; and
 - (3) The County reserves the right to recover or require reimbursement of all County funds awarded and disbursed and to pursue any sanctions authorized under the grant agreement or applicable law.
- (b) Enforcement.
 - (1) The Department shall have the authority to enforce any term or condition of the grant agreement.
 - (2) The Department may refer enforcement matters to the Office of the County Attorney for pursuit of available civil remedies.

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED,
BY ESTABLISHING A NEW ARTICLE RELATING TO
CONDOMINIUM PROPERTY REGIMES**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and Purpose. Chapter 9, Article 2.9, Kaua'i County Code 1987, as amended, requires that a subdivider or developer dedicate land for public access to adjacent shoreline and mountain areas. The Council finds that owners of large parcels are using the condominium property regime (CPR) process to circumvent the subdivision process, thereby avoiding possible conditions, including the requirement to allow public access to *mauka* and *makai* public lands. To address these complex issues, the State Legislature enacted Hawai'i Revised Statutes (HRS) Section 514B-6, which provides that "no later than July 1, 2022, the counties shall adopt supplemental rules governing condominium property regimes, including agricultural lands that are held in condominium property regimes." Given the clear intent of the State Legislature to have the respective counties regulate CPRs, the purpose of this Ordinance is to add a new Article to Chapter 8, Kaua'i County Code 1987, as amended, to govern CPRs, which shall be similar in effect to the Subdivision Ordinance for the County of Kaua'i. Consequently, the new CPR regulations will hold CPR applicants for CPR zoning clearance to an individualized review and determination, which will require the granting of relevant public access when reasonably appropriate.

SECTION 2. Chapter 8, relating to the Comprehensive Zoning Ordinance, Kaua'i County Code 1987, as amended, is hereby amended by establishing a new Article to be appropriately designated and to read as follows:

"ARTICLE __. CONDOMINIUM PROPERTY REGIMES (CPRs).

(a) As a condition precedent to final County approval of a CPR, the Planning Department in consultation with the Office of the County Attorney shall require a developer or CPR applicant, in cases where public access is not already provided, to dedicate land for public access by easement for pedestrian travel from a public highway or public street to the land below the high-water mark on any coastal shoreline, and to dedicate land for public access by right-of-way from a public highway or public street to areas in the mountains where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding, and other recreational purposes, and where there are existing mountain trails.

(b) For the purposes of this Section, the definition of lots, parcels, units, or interests shall be applicable to condominium property regime projects, which are created and established pursuant to Chapter 514B, Hawai'i Revised Statutes.

(c) Designation of public accessways shall be subject to the following requirements:

(1) "Standard" public accessways shall be a minimum of ten (10) feet in width.

(2) The Planning Department shall establish the preferred public access alignment with consideration of such factors as topography, approximate location to the nearest public street, shoreline, or public land, and configuration of property which is the subject of the CPR.

(3) "Standard" public accessways shall be designated at intervals of not less than three hundred (300) feet and not greater than one thousand five hundred (1,500) feet. The Planning Department may require that accessways be consolidated to provide sufficient area for vehicular access, parking, development of shoreline or other recreational facilities, or other public purposes; or may modify standard public accessways to take into consideration terrain features, length of frontage, uses of the property which is the subject of the CPR, and other pertinent factors; provided, however, that the total area to be conveyed shall not differ substantially from that which would be required by the provision of standard public accessways, unless additional areas and improvements are mutually agreed to by the CPR applicant and the appropriate County agencies.

(4) Public accessways shall be designed to specifications approved by the Department of Public Works and the Planning Department.

(5) Public accessways shall be clearly designated on the final map(s) of the CPR, recorded with the Bureau of Conveyances, and dedicated to the County, which shall then serve as a conclusive presumption of existing access.

(6) The County shall indemnify the landowner from damage or loss incurred within the easement boundaries to members of the public who reasonably utilize the easement, except in the event of landowner's proven negligence.

(7) Other specifications for improvements may include but not be limited to off-street parking requirements, turnarounds, grading, and greater access width.

(8) The County Engineer may restrict or prohibit passage over a public accessway for thirty (30) days if the County Engineer determines that:

(A) The accessway is unsafe;

(B) The area being accessed is hazardous; or

(C) The area is being reserved by the County as a partial segment for a future public accessway.

(9) If the County Engineer determines that a public accessway may require restrictions that exceed thirty (30) days, such recommendation shall immediately be transmitted to the Council for approval. In the event the public accessway continues to require restrictions and Council approval has not been obtained, the County Engineer may extend the required restrictions for an additional thirty (30) days so long as the determination is consistent with the criteria set forth in this Section. In cases where the Council has disapproved of a recommendation to restrict passage over a public accessway, the County Engineer shall not have the authority to extend the restrictions. The Council shall be notified in writing of any restrictions of public accessways no matter of its duration.

(d) In cases where a CPR is in close proximity to an existing accessway or where the County Engineer determines that an accessway is not feasible due to physical constraints or hazardous conditions, the Planning Department may require the CPR applicant to improve existing accessways that already exist within the CPR parcel.

(e) The Planning Department may require a CPR applicant to improve an existing accessway within a CPR prior to dedication to the County. Upon dedication of land for a public accessway as required by this Section and upon approval by the Planning Department or the Planning Commission, the County shall thereafter assume the costs of additional improvements for and maintenance of the accessway, and the CPR applicant shall accordingly be relieved from such costs.

(f) A CPR applicant shall prepare, execute, and record a conveyance document for the access within twelve (12) months from the date of the initial CPR application.

(g) The right of transit along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation or by the debris left by the wash of the waves. However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline, the Planning Department may require the conveyance of a lateral easement in proximity to the

makai boundaries of the property but not directly adjacent to the shoreline to form a public transit corridor which shall not be less than ten (10) feet in width. The Planning Department may also require lateral access or transitways in other situations where the Department determines it is in the public interest.

(h) Violation of any provision of this Section shall be subject to enforcement and penalties outlined in Section 8-3.5.

(i) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this Section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by the Planning Commission or a court of competent jurisdiction.”

SECTION 3. Pursuant to HRS Chapter 91, the Planning Commission may adopt administrative rules consistent with this Article as may be necessary to implement any of the provisions of this Article.

SECTION 4. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 5. All Ordinance material is new. The assigned Article number for the new Kaua'i County Code 1987, as amended, Chapter 8, ARTICLE __, "Condominium Property Regimes (CPRs)" shall be inserted in the blanks throughout.

SECTION 6. This Ordinance shall take effect upon its approval.

Introduced by:



FERN HOLLAND

DATE OF INTRODUCTION:

Lihu'e, Kaua'i, Hawai'i

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