

COUNTY OF KAUA‘I
Minutes of Meeting
OPEN SESSION

Approved

Board/Commission:		Public Access, Open Space, Natural Resources Preservation Fund Commission	Meeting Date	May 8, 2025	
Location	Moikeha Meeting Room 2A/2B		Start of Meeting: 1:00 p.m.		End of Meeting: 2:19 p.m.
Present	Chair Shaylyn Ornellas and Vice Chair Robin Pratt. Commissioners: Manuel Cabral, William Kinney (<i>in at 1:15 p.m.</i>), Mark Ono, and Mai Shintani. Deputy County Attorneys Laura Barzilai and Chris Donahoe. 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	Commissioner Jonthan Lucas				
Absent					
SUBJECT		DISCUSSION		ACTION	
A. Call to Order		Vice Chair Pratt 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 here. Commissioner Kinney was not present at roll call (<i>in at 1:15 p.m.</i>). Commissioner Lucas was excused. Commissioner Ono replied present. Commissioner Shintani replied present. Vice Chair Pratt replied present. Chair Ornellas replied here.		Quorum was established with five Commissioners present.	
C. Approval of Agenda		Vice Chair Pratt asked for a motion to approve the agenda.		Ms. Shintani moved to approve the agenda, as circulated. Mr. Cabral seconded the motion. Motion carried 5:0.	
D. Minutes of		1. February 6, 2025			

SUBJECT	DISCUSSION	ACTION
the Meeting(s) of the Commission	2. March 13, 2025	Ms. Shintani moved to approve the minutes of the February 6, 2025, and March 13, 2025 meetings of the Commission. Mr. Cabral seconded the motion. Motion carried 5:0.
E. Receipt of Items for the Record	Ms. Higuchi Sayegusa stated that Ms. Koga distributed for demonstrative purposes and for discussion some photos related to agenda item H.1.	Ms. Shintani moved to receive the photos for agenda item H.1 for the record. Ms. Cabral seconded the motion. Motion carried 5:0.
F. General Business	<p><u>F.1.</u> <u>Discussion and recommendations to fill the vacant at-large position of the Commission.</u></p> <p>Ms. Koga stated that the position is a Commission-appointed position which the Commission asked to place on the agenda until the vacancy is filled. Ms. Koga further stated that she spoke with Administrator Ching and Nancy Kanna is willing to return to the Commission if the Commission would like to appoint her to that position.</p> <p>Vice Chair Pratt asked if there was any discussion or other nominations to discuss. Mr. Ono asked if there was someone from the Hanapēpē region. Vice Chair Pratt responded that Mr. Cabral was serving in the Hanapēpē position. Ms. Kanna would be an at-large appointment by the Commission.</p> <p>Ms. Shintani asked if there were any specific reasons why open solicitations on a website or through another medium were not done for the position. Ms. Barzilai stated that she would defer to Administrator Ching for a response. Administrator Ching responded that there is a generalized application on the Office of Boards and Commission's homepage for anyone interested in applying for any board or commission. There are people who choose to apply and are willing to serve in a general sense. Some people are very specific on the board or commission that they would like to serve on. Ms. Shintani thanked Administrator Ching for the response.</p>	<p>Mr. Ono moved to nominate Ms. Nancy Kanna to serve as the Commission's At-Large appointment to the Commission. Ms. Shintani seconded the motion. Motion carried 5:0.</p> <p>Mr. Ono moved to close the nominations for the Commission's At-Large appointment to the Commission. Ms. Shintani seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p><u>F.2. 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>Ms. Koga recapped for the Commission that Deputy County Attorney Barzilai was in discussions with the owner’s attorneys on reaching some kind of settlement with the County of Kaua‘i. As a part of that process, the Department reached out to Michael Contrades who assisted on the Kaumumene project (stairs renovation and maintenance). Mr. Contrades was able to provide a cost estimate on what it would take to put up the fencing and other cost items. As a rough estimate, for surveying alone it would cost approximately \$8,000. Estimates for the fencing materials, concrete, equipment rental, labor, insurance, along with surveying and hiring a contractor, the cost estimate is approximately \$82,000. Ms. Koga noted that the Public Access, Open Space, Natural Resources Preservation Fund (Open Space Fund) cannot be used to cover it because it is an enforcement action.</p> <p>Ms. Barzilai stated that to use the Open Space Funds, it either has to be an acquisition, an improvement to that acquisition, or improvement to coastal access. The Commission is in a strange position in that this is mauka access. The Open Space Funds cannot be used to pay for any of the costs. Ms. Barzilai stated that she and Ms. Higuchi Sayegusa have concluded that the County is going to pay for the survey to move the process along. Ms. Barzilai stated that she is in negotiations with the landowner’s attorney as to a cost-sharing arrangement about the fence so</p>	<p>Ms. Shintani moved to approve the nomination of Ms. Nancy Kanna to serve as the Commission’s At-Large appointment to the Commission. Mr. Ono seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p>that they can settle the enforcement action for the pending subdivision condition compliance by paying for half of the fence. All those conditions would be included in a settlement between the County of Kaua‘i and the landowner. Ms. Barzilai stated that she hopes to have a final agreement soon.</p> <p>Ms. Higuchi Sayegusa stated that what Ms. Barzilai just explained is the current offer on the table. She was unsure where it would go after the landowner had considered the offer. The last request was that the County of Kaua‘i pay for the fence and the surveying. If the County pays for the fence, the County will have to enlist the help of the Department of Public Works to help with some of the contracting for the work. With that, the County would have to go through the procurement process and pay certain wages pursuant to the standards required. The cost estimate is a lot for the fence, but the fence is also quite lengthy from the end of the County roadway all the way to the State property. Ms. Higuchi Sayegusa stated that she is optimistic that the County could convince the landowner to pay for half of the cost and that the Department is working with the landowner.</p> <p>Mr. Ono asked if the first cost amount was for the survey. Ms. Higuchi Sayegusa and Ms. Koga confirmed that Mr. Ono was correct.</p> <p>Mr. Ono asked if the survey was the first part of the process. Ms. Higuchi Sayegusa responded that the survey is needed to see exactly where the fence would traverse the property according to the approved plans.</p> <p>Mr. Ono asked if it would be possible for someone in the community to set up a private GoFundMe account to fundraise for the cost of the fence. Ms. Higuchi Sayegusa responded that theoretically someone could fundraise for the fence if they would like to. Ms. Barzilai responded that if they are faced with litigation because there is a pending notice of violation on the property and they failed to comply with a subdivision requirement to offer the easement and to allow access to the easement, if they do not comply because they feel it is too expensive, they may just decide to pay for the fence. There is a negotiation process, and they have very smart counsel. It is going to take a little more time to get things resolved.</p>	

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	<p>Mr. Ono asked that Ms. Barzilai keep the ball rolling. Ms. Barzilai committed to doing so.</p> <p>Vice Chair Pratt asked for the timeline that is being pursued. Ms. Barzilai responded that she plans to follow up with the landowner’s counsel this week.</p> <p>Ms. Shintani asked about maintenance fees after the fence was built. Ms. Barzilai responded that the landowner has requested that the County maintain the easement. Ms. Higuchi Sayegusa stated that it is typical that when the County is conveyed an actual access easement, typically, the owner of that property will have to maintain that easement.</p> <p>Ms. Shintani asked if the landowners decide to sell, would the condition still apply to the new landowners. Ms. Barzilai responded that the condition runs with the land. It is a permanent condition.</p> <p>Ms. Higuchi Sayegusa stated that the Department can continue to provide updates throughout the process, but that the negotiations as one can assume are a back-and-forth dialogue. The issue is an enforcement issue, so the Department does have some leverage. The County is trying to move things along as quickly as possible.</p> <p><i>Mr. Kinney was noted as present at 1:15 p.m.</i></p> <p><u>F.3. Discussion and recommendations on public input for the Biennial Report of the Public Access, Open Space & Natural Resources Preservation Fund Commission</u></p> <p>Ms. Koga explained to the Commission that at its last meeting, it was brought up that the Department would work with the Commission on soliciting public input on the Biennial Report. The Biennial Report is due to the County Council at the beginning of 2026. In the Open Space Fund, there is approximately \$3.8 million. Simultaneously, a PIG is also looking at all the coastal accesses on the island. The Fund can now be used to improve those accesses. The question is whether the Commission wants to use the Fund for any of those accesses and how the</p>	<p>There was no action taken regarding this agenda item.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Commission wants to look at prioritizing it. The Fund could also be used for new acquisitions as well. The Department wanted to get feedback from the Commission on those items. The Commission may want to prioritize improvements of coastal accesses, and if so, those would need to be reflected accordingly in the Biennial Report. The Commission could also seek to get public input on new proposals and put that in the Biennial Report. Ms. Koga also noted for the Commission's information that there could be a cost for the Hoban & Leight property which is currently under litigation. Those costs may be paid for using the Fund.</p> <p>Ms. Higuchi Sayegusa stated that based on the ordinance amendment to conform the Code with the Charter provision for the stewardship piece, those additional uses also need to be included in the Biennial Report. The Commission would need to prioritize its efforts and match that with the various uses of the Fund. The Commission may also want to go to the community for input on new acquisitions. No more than 5% of the funds that exist will go to stewards to manage the accesses that already exist.</p> <p>Chair Ornellas expressed that the Commission should not be looking at it as an either or situation by soliciting public input. Hearing from the constituency and giving them avenues to communicate with the Commission is not unusual. It is the public process. The Commission should not choose to use funds for one specific use over another. Ms. Koga responded that the Department could look into Chair Ornellas' suggestion and how that can be messaged within the Report. Ms. Higuchi Sayegusa stated that she feels the Commission is okay due to realizing cost savings with the Kaumumene project savings. For the Hanapēpē project there will not be a lot of funding needed due to the Kaumumene project savings. In the past there have been a lot of recommendations with not enough funding. There will have to be a prioritization of the Fund that accompanies the various projects.</p> <p>Ms. Shintani asked for an explanation of the timeline regarding the work of the PIG and the submission of the Report to the County Council. Ms. Higuchi Sayegusa responded that the Charter and Ordinance provisions set up the Commission and its purpose. Ms. Higuchi Sayegusa also noted that she is unsure if there was a determination of how things came to a head. Every two years, the Commission issues a Report, and it is supposed to summarize all of the</p>	

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	<p>considerations in the prior two years. In the past, when Nani Sadora was the Open Space Planner at the time and in considering various proposals did kind of have a conversation with the Commission about which projects they would like to see funded and to calculate how much of the Fund would be utilized if that project moved forward. At that time, the focus was on considering certain acquisitions. Today, there are additional uses for the Fund and the Department wanted to bring that up with the Commission. Now it is not just about considering acquisitions that come up through the suggestions of the public, but it also embarks on prioritizing the coastal access improvement program.</p> <p>Ms. Shintani asked if prioritization needed to happen before the end of the calendar year. Ms. Higuchi Sayegusa responded that the timing might be something the Commission considers with every acquisition that comes through. The Department wanted to start that discussion with the Commission based on some of the scoping that the PIG could do. Ms. Koga added that the PIG is hoping to return to the Commission by the end of the year. Ms. Koga further noted that she intends to meet with the PIG members following the meeting to see how much additional time may be needed. After that discussion, she is hopeful she can give the Commission a better timeline. Ultimately, the end of the year is the target timeline for when the PIG would return to the Commission to show the product that the PIG produced and to get the full Commission's input.</p> <p>Ms. Shintani stated that she agrees with Chair Ornellas and that the Report should not be an either-or situation. She feels that the Commission should keep an open door for the public to reach out since the Commission should be advocating for the public.</p> <p>Mr. Ono asked if there was precedent set whereby if the Commission used up all the money in the Fund, whether there was another way for the Commission to get additional money. Ms. Higuchi Sayegusa stated that the situation did come up and at the end of the day it is up to the County Council to decide when to use the Fund. The Commission provides recommendations. There was a situation in the past where a proposal had come up and the recommendation did not originate from the Commission. However, the funds were expended from the Fund to pay for the settlement of the Sheehan properties and expansion of Black Pot Beach Park. At that time the</p>	

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	<p>Councilmembers promised that they would find more money and provide that.</p> <p>Mr. Ono stated that right now there are two properties that the Commission is looking at acquiring and he does not feel the Fund has enough to cover both. The one in litigation might take a while before the County is at a point where funds need to be expended. Ms. Higuchi Sayegusa stated that at the time, the promise was that funds would be found, if needed. There will need to be an ask made by the Commission and the funds would have to come from somewhere. Ms. Barzilai stated that there have been fluctuations in the Fund based on the real property taxes collected each year, so it is dependent year-to-year on the amount collected in real property taxes to determine the Fund balance each year.</p> <p>Vice Chair Pratt asked if there was any further discussion about the Biennial Report. Ms. Koga also noted that the Commission could provide suggestions on how they wanted to see public input being sought. Chair Ornellas stated that she would like to see a request for public input on the Commission's website again. Ms. Koga stated that that could be done. Ms. Koga informed the Commission that at the next meeting she would be sure to bring in the Neat Board but is unable to show the Commission the website due to the meeting space having a new screen which she was not sure how to use. Ms. Koga asked if Administrator Ching knew how to operate the new screen. Administrator Ching responded that she did not know how to either.</p> <p>Vice Chair Pratt asked if the public input portal was not already on the Commission's website. Ms. Koga responded that it was. Ms. Higuchi Sayegusa noted that there is an Open Space Survey link in the documents provided. Ms. Koga added that there is also a map provided along with a list of criteria concerning what the Commission is looking for. Ms. Higuchi Sayegusa added that the list of criteria was based on the Ordinance. Ms. Koga noted that the public could either click on the map or type in a tax map key number to take them to the place that they want to see the Commission acquire. Through that there are questions that the public is asked to answer. The site also sets the expectations to what the Commission can look at when looking at acquisitions. This helps the public understand that the Commission cannot just go out and acquire everything out there. For example, the Commission cannot go and purchase Ni'ihau or places that are known to be dangerous. Ms. Koga stated that if the Commission wanted a demonstration, she</p>	

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	<p>could add that agenda item on the Commission's next agenda and she could display and walk through the website.</p> <p>Vice Chair Pratt reminded Chair Ornellas that the lady from Hanalei who wanted a parcel acquired in that area went through the website route to contact the Commission. Chair Ornellas stated that in the past, the Commission has actively reached out to the public instead of just posting something on the website that someone from the public has to find. The Commission went to all of the neighborhood association meetings and divvyed up the island by the areas that each Commissioner represented. The Open Space Planner also went to these meetings. Chair Ornellas stated that she would like to see outreach that is a little more proactive.</p> <p>Vice Chair Pratt asked if there was a calendar of events where the Commission could partner with the Planning Department to volunteer to go out and do that outreach. Ms. Higuchi Sayegusa responded that the Department does have its own calendar of outreach endeavors, but it is specific to certain projects. Ms. Higuchi Sayegusa based off her memory stated that she could remember Ms. Sadora going out into the community based on when those neighborhood associations met on a regular basis. Ms. Higuchi Sayegusa further added that she has not kept tabs on those associations to see if they still meet on a regular basis or not. The other engagement items on the Department's calendar of events are very specific to a specific project. Ms. Higuchi Sayegusa stated that she and Ms. Koga could check the community calendars to see if the community organizations still hold meetings in various parts of the island. She knows that the Kilauea Neighborhood Association and the Kōloa Neighborhood Association are very active but is unsure if the other parts of the island had regular community meetings. Ms. Koga stated that she was not aware of other active community organizations and asked the Commissioners if they had any insight to give. Chair Ornellas responded that the Kilauea Neighborhood Association meets on the first Tuesday of every month. Mr. Kinney noted that the Hanalei to Hā'ena group is not active at this time. Chair Ornellas added that the Kapa'a Neighborhood Association used to meet at Kapa'a Middle School on the first Wednesday or Thursday, but that she could find out.</p> <p>Chair Ornellas added that the Commission's booth at the County Fair was not successful.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Koga asked if the Commissioners attended any of the community meetings. Chair Ornellas responded that she does.</p> <p><u>F.4. Update on a proposal to acquire 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4) 1-8-008:065 (Kaua‘i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).</u></p> <p><u>F.5. Update on a proposal to acquire a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4) 1-8-008:071 (Kaua‘i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).</u></p> <p><u>a. Amended Preliminary Report 4/4/2025</u></p> <p>Ms. Higuchi Sayegusa noted that F.4. and F.5. would be taken concurrently.</p> <p>Ms. Higuchi Sayegusa reported that the County is in a very good place regarding these items. Thankfully, through everyone’s collective efforts and most recently Ms. Barzilai’s efforts to keep on the escrow process, the County signed the deed on Tuesday. The seller is supposed to sign the deed today. Closing should follow shortly the day following the Commission meeting.</p> <p>Ms. Higuchi Sayegusa stated that everything is on track so that the parcel containing the gas station was addressed within the six months from the Phase 1 Environmental Site Assessment. Chair Ornellas asked if press was scheduled for the announcement. Ms. Higuchi Sayegusa responded that she would look into that further. Ms. Higuchi Sayegusa noted that the Department is now focused on what is next in regard to the property. She and the Mayor during their remaining time with the County would like to see a memorial or design for the property come to fruition within the current calendar year. Ms. Higuchi Sayegusa and Ms. Koga are trying to get a jump on formulating a plan to cite the memorial and get a design completed and constructed by</p>	<p>There was no action taken regarding this agenda item.</p>

SUBJECT	DISCUSSION	ACTION
	<p>the end of the year.</p> <p>Ms. Koga added that they will be meeting with the community members who helped get the acquisition going along with those who were involved in perpetuating the Hanapēpē Massacre event. Meetings will also be held with other agencies who have been working with the Department through the process. Once those meetings are completed and the Department has a better idea as to what the community would like to see, the Department can return to the Commission to get additional input and share the outcome of what the initial meetings were.</p> <p>Mr. Ono asked if there will be an open discussion on what the community would like to see or if the community will be given specific choices to select from. Ms. Higuchi Sayegusa stated that with this specific endeavor, the Department has been very careful to keep the key invested community members engaged throughout the entire process. The Department is going to check with these key individuals first. Their wishes have always been to have a passive park but that it also includes a quiet memorial to the history and events that occurred in that area. By trying to design a memorial, the Department understands that that could be a touchy subject as well. The Department would like to solicit designs but in a thoughtful way that incorporates the many voices of those who should be represented in the memorial. Ms. Higuchi Sayegusa and Ms. Koga have discussed possibly having a selection committee that would receive feedback, review proposals, and ultimately select a design. Representation should incorporate the Hanapēpē community, the Filipino community, labor organizations, etc. The Department still has to talk through the concept and work through it with the community.</p> <p>Mr. Ono stated that he likes what they did in Waimea at Pa'ula'ula. Mr. Ono stated that he appreciates the way it is set up, how open and accessible it is, etc.</p> <p>Vice Chair Pratt asked if the Department is going to be looking at fencing or boulders for the property. Mr. Kinney stated that boulders would be more of a subtle barrier. Ms. Higuchi Sayegusa stated that something is definitely needed to address the parking of vehicles. Vice Chair Pratt stated that she would hate to see the site be turned into a vehicle dumping ground. Ms. Higuchi Sayegusa stated that the item will definitely be brought back before the Commission</p>	

SUBJECT	DISCUSSION	ACTION
	<p>so that they are engaged in the process throughout.</p> <p>Ms. Higuchi Sayegusa stated that the Department is very pleased with the outcome and will highlight it in the Biennial Report. Vice Chair Pratt thanked the Department and the Administration for making it happen.</p>	<p>There was no action taken regarding this agenda item.</p>
G. Communications	<p>There were no Communications on the Commission's agenda.</p>	
H. Unfinished Business (For Action)	<p><u>H.1. 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).</u></p> <p>There was no one present from the public wishing to testify on this agenda item.</p> <p>Ms. Koga presented the following information:</p> <ul style="list-style-type: none"> • Before the Commission is the amended Preliminary Report for the 'Aliomanu Beach Access. • Before the Commission Meeting started, Ms. Koga printed out the pictures of when she did a site visit to the location a couple of weeks ago. • The Commission will be reviewing actions that it could take after presentation of the report. • One recommendation is that the Commission recommends to the County Council the process of condemnation for the easement of the property. • The Commission could also look at deferring the agenda item and deferring acting at this specific time. • The Commission could also recommend to the County Council that they not consider condemnation. • The subject lot of record is approximately 1.393 acres in size and is located in 'Aliomanu. • The Commission has had multiple Director's Report prior to today. The issue has evolved. 	

SUBJECT	DISCUSSION	ACTION
	<ul style="list-style-type: none">• Back on June 8, 2017, the Commission received a Preliminary Director's Report from the Planning Department when the Commission was considering whether to acquire the entire property which included two houses. After exploration, the Commission ultimately voted to still look into whether the acquisition of the lot of record could potentially be supported under the Commission's criteria to support acquisitions where the structures and site of historic or cultural importance were warranted.• On February 15, 2018, the Kaua'i Historic Preservation Review Commission (KHPRC) reviewed the lot of record and concluded that the structures retain no architectural historic significance.• Shortly thereafter RAIN18 and COVID-19 happened and so the project stalled as the staff was assigned to help with the emergency responses.• The issue came back to the Commission on June 9, 2022, when the Commission received an updated Preliminary Director's Report from the Planning Department. The Commission at that time voted to defer the acquisition to allow schools and community members the opportunity to attend the meeting and provide testimony on the importance of the proposed coastal access easement.• On June 9, 2022, the Commission continues its review and discussion of the potential access easement. During this meeting, they heard from Ms. Nalani Kaneakua, who presented the significance of the area, particularly in relation to limu cultivation.• At this time, the Planning Department was in discussion with the property owners who were willing to be open to the possibility of conveying coastal access. Unfortunately, a couple of months ago, they decided right now was not the right time and they became unwilling to convey access to the County.• The Preliminary Director's Report before the Commission today provides an update a revised recommendation regarding the proposed acquisition of a coastal access easement and whether the Commission wants to move forward with condemnation of it.• Through the report, the Department talks about different areas that could fulfill the criteria needed under the Commission for acquisition.• The cost of the acquisition may be commensurate to the public interest served where an access easement over a portion of the property is required.	

SUBJECT	DISCUSSION	ACTION
	<ul style="list-style-type: none"> • Right now, the lot of record is not publicly for sale and the landowners are not willing to sell or convey an easement to the County. As a result, the acquisition will require an adversarial condemnation process. The Department has their Deputy County Attorney Chris Donahoe who can provide the cost of going through the litigation and condemnation process. <p>Deputy County Attorney Chris Donahoe provided the following information:</p> <ul style="list-style-type: none"> • Mr. Donahoe stated that he did speak with County Attorney Matthew Bracken about some of the details of this acquisition or condemnation. • Mr. Donahoe presented the pros and cons of potential litigation in a condemnation proceeding such as this one. • This discussion is focused on the access on the north side of the stream. • One of the major issues is expenditure of funds and the cost, which would be a big issue. • To provide context, one of the condemnation actions that the County went through that was contested centered around the value of the property. There were experts involved. The case ended up at the Hawai'i Supreme Court and it took seven years to get a ruling. The ruling ultimately was in the County's favor, but it took seven years. There was also outside counsel involved. Outside counsel can range from between \$400-\$500 per hour to \$200 an hour, depending on who is willing to work on the case. • Just for the preparation time for the matter to get it through trial cost approximately \$250,000. There was an additional \$20,000-\$30,000 to take it to the Intermediate Court of Appeals level, which is just briefing and oral arguments. Another \$100,000 was spent taking it to the Supreme Court. That also includes the cost of experts (appraisers) which amounted to \$40,000. The difficulty with appraisers is that it is difficult to find someone who is willing to testify. Although in litigation there are subpoenas for that, when it is your witness, you want them to be on your side and willing to testify. Sometimes subpoenas are not the nicest way to get someone to court to testify. • The acquisition costs and severance damages (loss of use) also gets put into play. • For that one matter there was a total of \$500,000 that went into it. • One question was what would happen to the cost if it was handled internally by the Office 	

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	<p>of the County Attorney. Currently, the litigators that handle the condemnation actions are backed up. The issue would become whether the County would outsource and get outside counsel that may bring it to court faster, but there would ultimately be more costs involved. If the condemnation is handled internally, it may take longer due to the workload of the current litigation attorneys.</p> <ul style="list-style-type: none"> • Even if the process was done in-house, there would still be the cost of experts such as the appraisers. • There is also the cost of the attorneys. Time will be needed for discoveries, requests for documents, going through the documents, possible depositions, paying for court reporters, etc. • In speaking with the County Attorney, the cost would still be approximately \$160,000 handling the task in-house. • A current condemnation that the Office is currently working on just starting and the cost has already exceeded \$40,000 in time and fees. • If by chance the County loses, the County could be on the hook for attorney's fees, their expert costs, their appraisal fees and costs. • If the condemnation was contested, the County would have to prove that the condemnation was for public purpose or public use in connection with a taking under the Hawai'i Constitution under the Taking Statutes. • One argument in the County's favor would be that the County and State have the Public Trust duty and obligation under the Hawai'i Constitution which is Article 11, Section 1, which states that "The State and its political subdivisions shall conserve and protect Hawai'i's natural beauty and all natural resources." One of the arguments would be that the County actually has an obligation and the duty to protect this resource. • Another argument in the County's favor is the protection of the Native Hawaiian traditional and customary rights and practices, like the gathering of limu. • Those would be two strong arguments in the County's favor going into a contested condemnation action. • One argument that the County would have to avoid is that the stated public use and commendation would be pretextual as the Court found to a private person or purpose. 	

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	<p>This means that the County is facilitating the condemnation for one private user or one private group. There was a case where the Court in 2008 remanded the case because it said that the County taking private property and conveying to a private developer for the purpose of a highway and residential expansion, which arguably was beneficial to the public at-large, but it was for the profit of one corporation.</p> <ul style="list-style-type: none">• A condemnation case is lengthy and the document preparation is extensive.• If the County can argue that the access is for the public's access to the limu grounds, that would be the route to go. Just saying it is for public beach access is not sufficient considering there is public beach access nearby.• In condemnation proceedings, just because there is a Council Resolution and just because there is public support, it is not a foregoing conclusion.• There was one case where a court in Hawai'i held that there was a public use under a rational basis standard (lowest standard with government intervention), which is easier to prove. However, the court stated that it is not conclusive and can still be challenged. The County's condemnation action still could be challenged.• The valuation aspect can also be costly in a battle of experts. Acquisition costs, loss of use, and severance damages also need to be factored into the final cost.• County Attorney Bracken also pointed out that in looking at the access, there would be a possibility for consideration of acquiring the south access point instead of the north one. The suggestion was made to see if there may be more movement with the property owner.• The south piece appears to be smaller in size and that could be favorable to the County when it comes to land valuation and acquisition. There would be less severance damage and costs. <p>Ms. Higuchi Sayegusa stated that she does not believe the Commission ever considered acquisition of the other side of the river. Based on her memory, the north side already had parking access and has been the point of access in recent history. The landowner had initially discussed the possibility of amicably providing an easement, however that is not in play any longer.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Higuchi Sayegusa stated that the Commission will need to decide whether there is a possibility of trying to acquire the other side of the river as the size of the easement is less.</p> <p>Mr. Donahoe added that one of the difficulties in seeing the size for appraisal purposes is that neither property owner would allow access, and the County would have to go through litigation to survey the parcel based on the fencing and no trespassing signage.</p> <p>Vice Chair Pratt stated that she recalls the landowner on the south side giving pushback to any discussion of an easement. She recalls them possibly building a wall. Ms. Barzilai responded that she does not recall if that area had ever been explored. Looking at the photos, there appears to be various concrete impediments that block access. However, there are established trails on both sides of the stream.</p> <p>Mr. Barzilai stated that the Office of the County Attorney is not at the stage where they would seek a formal Council Resolution for condemnation. Ms. Higuchi Sayegusa stated that it appears that the group is festering, however there was a Preliminary Report, and the Department is at a stage where negotiations with the landowner were occurring. He previously expressed a willingness to convey. Now the discussions have pivoted. Ms. Koga prepared a revised Preliminary Valuation Report evaluating the pros and cons of condemnation.</p> <p>Ms. Higuchi Sayegusa stated that the Commission could decide to explore condemnation or access on the other side of the stream and compare that to the current report that was provided to the Commission. Regardless, acquiring access would include paying litigation costs either through special counsel or any other costs or time and effort by the Office of the County Attorney that would have to be expended. The County would also have to pay for the actual easement itself and the severance damages.</p> <p>Ms. Higuchi Sayegusa stated that the Commission may want to decide whether they want to pursue the north side access, south side access, or both access points. However, the overall costs will differ. The south side access easement and parcel is not on the Commission's agenda, but that could be posted on a future meeting agenda. The Commission could possibly defer this item,</p>	

SUBJECT	DISCUSSION	ACTION
	<p>and Ms. Koga could start research on the south side access point, launch that as an agenda item, and then have both items on the agenda for consideration and exploration of condemnation.</p> <p>Vice Chair Pratt stated that she feels Ms. Higuchi Sayegusa's recommendation is a good one because if this matter ever gets to the Council, they will be asking the same questions about acquiring access on the other side of the stream. Vice Chair Pratt further stated that the Commission needs to be sure it does its due diligence.</p> <p>Mr. Ono asked if anyone had an estimate on the cost of the easement and severance damages. Ms. Barzilai and Mr. Donahoe responded that a cost estimate would be difficult to provide. The cost is dependent on the size, the amount of use, property value, etc. A more current report will also need to be sought as there is probably a price difference in the appraised value between 2017 and current.</p> <p>Mr. Ono asked if there was an estimate in the 2017 report. Mr. Donahoe responded that there was no estimate as a survey was needed before a cost estimate could be determined. The County would find out in litigation what that appraised amount would be.</p> <p>Vice Chair Pratt asked if the land changed hands. Ms. Higuchi Sayegusa responded that when the acquisition was initially lodged it was with a landowner that was adversarial. Then the property was sold to the Crabtrees and they were friendly and amenable, until they were not.</p> <p>Mr. Donahoe stated that if the acquisition were to go to condemnation, discovery would occur and that is where the County would get details on the value and severance damages.</p> <p>Mr. Ono stated that he was looking for some kind of estimate to help him better understand his position. Vice Chair Pratt stated that the process would be long and expensive.</p> <p>Ms. Barzilai stated that the Hoban property could be looked at as an example. The valuation was definitely above \$1 million, and it was just an alleyway. Degradation of use and enjoyment was also calculated into the appraisal. Ms. Higuchi Sayegusa stated that incorporated in the cost are</p>	

SUBJECT	DISCUSSION	ACTION
	<p>also considerations like deprivation, the loss of privacy, and considerations of that nature which are hard to put a number on.</p> <p>Ms. Barzilai explained that there also may be dueling experts involved where the County's expert may say one thing and the landowner's expert may say something else.</p> <p>Mr. Donahoe stated that one expert could say that with limu cultivation there is a need for equipment to traverse the access, but someone could argue that with that type of operation, there would be less people in the area as well. Ms. Barzilai noted that it is not as if the County is going to erect a sign pointing people to 'Aliomanu, it is to preserve an access point for limu practitioners to be able to access the limu source.</p> <p>Ms. Shintani asked in the history of the Open Space Commission whether there was litigation of this nature that was considered. Ms. Higuchi Sayegusa responded that the County is currently in litigation on the Hoban-Leight property. Mr. Donahoe added that the County went through a similar proceeding with the Black Pot property acquisition.</p> <p>Ms. Shintani stated that in not really understanding the process of litigation, whether there were attempts for meditation or discussion between the owners and the stewards (limu community). Mr. Donahoe responded that there is the process of going to mediation that could be a possibility. Whether litigation has started or not, mediation is always a possibility. Ms. Shintani wondered if there was anything the Commission could do to bridge the two sides from a community perspective. Ms. Shintani stated that she would want to avoid the lengthy and costly litigation process if at all possible. Ms. Koga responded that when the Department first spoke with the landowners and they were still willing to convey the easement, they still had concerns. Some of their concerns included whether the County could maintain the access to the level that they are maintaining it now. Part of that is looking for a steward that could assist the County with that maintenance. When the County went back to the owners, they informed them of the steward found, and they responded that at this time, they were just not willing to convey an access easement.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Donahoe informed the Commission that he provided costs to the County, but there are also costs to the litigants as well. That is sometimes used for negotiation purposes as well to prevent the matter from going to costly litigation when there is a rational and reasonable resolution that could be accomplished. It may involve compromise from both sides, but that is a lot better than the time that a property would have to go through to fight the County's efforts.</p> <p>Mr. Kinney stated that he is in support of mediation as a first step if the Commission decides to continue pursuing the parcel. He does not want to assume that the Commission or any County staff knows the details of the relationship between the property owner and the rest of the community. Being amicable at one point and then having a change of heart could be due to a specific relationship, issue, or a breakdown in communication that the Commission is unaware of.</p> <p>Ms. Barzilai stated that the next for the County would be to send a final demand to the property owner to invite them to discuss the process moving forward. Ms. Higuchi Sayegusa stated that if formal mediation is sought, there would be some sort of cost-sharing involved. If the County hosts it, the County would need to procure it and split the cost. Ms. Higuchi Sayegusa asked if that is an administrative expense. Ms. Barzilai responded that it could possibly be considered an administrative cost.</p> <p>Ms. Higuchi Sayegusa stated that the Department can definitely explore mediation for this particular item.</p> <p>Vice Chair Pratt asked if the landowner lives on Kaua'i full-time. Ms. Koga responded that they are not here full-time. They are currently on the mainland and the house was actually boarded up. Ms. Koga noted that when the Department tried to get in touch with the landowners, they did not respond to attempts for months. They only responded when the County mentioned that if they did not hear back, condemnation would be sought. Ms. Koga stated that the Department can try to reach out to the landowners again, but it might take a while to get a response.</p> <p>Mr. Ono asked if the limu growers are still accessing the area through that site. Ms. Koga</p>	

SUBJECT	DISCUSSION	ACTION
	<p>responded that they are. Ms. Higuchi Sayegusa stated that the relationship between the landowner and the limu practitioners is okay at the moment as they are being allowed to practice their cultural gathering rights. One of the goals is to get a perpetual access easement as the current landowner may eventually sell the parcel.</p> <p>Chair Ornellas stated that the grassy area already belongs to the County. Ms. Koga clarified that the part walking down onto the beach is not under County ownership, but the part where the road used to be is under County ownership.</p> <p>Vice Chair Pratt asked if the County may own up to the coconut tree with the sign on it. Ms. Koga confirmed that Vice Chair Pratt was correct.</p> <p>Chair Ornellas stated that the Kidders, who own the property on the south side allowed children to traverse their property when the north owner blocked access. Chair Ornellas stated for the record that she supports looking at both access points and also supports the idea of mediation. She is not deterred by cost as she is looking at a cultural and historical practice that has been used for generations. The group that was found as stewards has been taking care of the area for at least five generations back. You cannot put a value on that. Just because there is not a willing landowner, that does not deter Chair Ornellas from wanting to move forward.</p> <p>Mr. Ono asked how the determination is made as to what parts of the property are a part of the stream or not a part of the stream. Looking at the pictures, there appears high-water levels. Ms. Higuchi Sayegusa stated that that is a legal issue that would need to be looked into. Ms. Barzilai responded that the stream changes over time. The stream changes course and banks. The high-water wash determines the State boundary. Ms. Barzilai stated that she is unsure of how to engage the State on that determination. Ms. Higuchi Sayegusa and Mr. Donahoe both noted that the high-water mark as it relates to the ocean and the riparian aspect is something that the Office of the County Attorney would need to further investigate.</p>	<p>Ms. Shintani moved to defer action while the Planning Department looks into action on the south property. Mr. Cabral seconded the motion. Motion carried 6:0.</p>
I. New Business (For Action)	There was no New business (For Action) on the Commission's agenda.	
J. Executive	<u>J.1. Discussion and recommendations to fill the vacant at-large position of the Commission.</u>	

SUBJECT	DISCUSSION	ACTION
Session	<p><u>J.2.</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></p> <p><u>J.3.</u> <u>Discussion and recommendations on public input for the Biennial Report of the Public Access, Open Space & Natural Resources Preservation Fund Commission.</u></p> <p><u>J.4.</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 3/9/2017, Supplemental Report 05/31/2022).</u></p> <p style="padding-left: 40px;">a. <u>Amended Preliminary Report</u></p> <p><u>J.5.</u> <u>Update on a proposal to acquire 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4) 1-8-008:065 (Kaua‘i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).</u></p> <p><u>J.6.</u> <u>Update on a proposal to acquire a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4) 1-8-008:071 (Kaua‘i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).</u></p>	There was no Executive Session held for any agenda item.
K. Announcements	<p><u>K.1.</u> <u>Topics for Future Meetings.</u></p> <ul style="list-style-type: none"> • Vice Chair Pratt requested an agenda item for discussion on the 5% amount for stewardship, the application process for obtaining those funds, and other related matters. • The General Business items that are being rolled from meeting to meeting. • Hanapēpē Community Meeting outcome (if meeting is held) • Neighborhood Association outreach as it relates to the Biennial Report. 	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Ornellas asked when the amount going to the Fund would be known for the upcoming Fiscal Year. Ms. Higuchi Sayegusa noted that approximately a week after the Fiscal Year begins is when the Department of Finance could provide a better figure.</p> <p>Mr. Kinney asked if the Department felt they would be in touch with the Hanapēpē community before the Commission’s next meeting. Ms. Higuchi Sayegusa responded that the Department is working on scheduling a meeting. Ms. Koga noted that if the Department does meet with the Hanapēpē community, they could place an agenda item to inform the Commission on what occurred in the meeting.</p> <p>Chair Ornellas asked that the Department report back on which neighborhood associations the Commission could do outreach with on the Biennial Report.</p> <p>Ms. Higuchi Sayegusa noted that Ms. Koga was also hoping to have the PIG report back to the Commission.</p> <p><u>K.2.</u> The next regularly scheduled meeting of the Public Access, Open Space, Natural Resources Preservation Fund Commission will be scheduled for June 12, 2025, at 1:00 p.m., or shortly thereafter, at the Līhu‘e Civic Center, Moikeha Building 2A/2B, 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i.</p> <p>Ms. Higuchi Sayegusa noted that she may not be in attendance. Chair Ornellas asked if the meeting could be pushed back a week. Ms. Higuchi Sayegusa noted that Mr. Sokei would reach out to the Commission to seek an amicable meeting date. If the June meeting date does not work, Ms. Koga could use that date to work with the PIG members. A Commission meeting could then be held in July. Mr. Sokei will help to coordinate a meeting date. Chair Ornellas asked if Ms. Kanna would be sworn in at the next meeting. Ms. Koga confirmed that was correct.</p>	
L. Adjournment	Vice Chair Pratt asked for a motion to adjourn the meeting.	Ms. Shintani moved for the adjournment of the meeting. Mr. Ono seconded the motion.

SUBJECT	DISCUSSION	ACTION
		<p>Motion carried 6:0.</p> <p>The meeting was adjourned at 2:19 p.m.</p>

Submitted by: Lisa Oyama
Lisa Oyama, Commission Support Clerk

Reviewed and Approved by: _____
Shaylyn Ornellas, Chair

(X) Approved as circulated.

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