



PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND COMMISSION

JODI A. HIGUCHI SAYEGUSA, CLERK OF COMMISSION

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

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OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

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

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

- **Written testimony** indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item in writing to planningdepartment@kauai.gov or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be posted as testimony to the Commission's website prior to the meeting (<https://www.kauai.gov/OpenSpace>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.
- **Oral testimony** will be taken on specific agenda items, at the public meeting location indicated on the meeting agenda.
- **IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ADAVIS@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.**

**PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND
COMMISSION**

MEETING NOTICE AND AGENDA

**Thursday, July 09, 2026
1:00 p.m. or shortly thereafter**

RECEIVED

26 JUL -2 18:40 26

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

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

1. June 5, 2026

E. RECEIPT OF ITEMS FOR THE RECORD

F. GENERAL BUSINESS

1. Discussion regarding the beach access leading to North 'Aliomanu Beach along Kukuna Road.
2. 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.

G. COMMUNICATIONS

H. UNFINISHED 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.

I. NEW BUSINESS (For Action)

J. EXECUTIVE SESSION

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

1. Discussion regarding the beach access leading to North 'Aliomanu Beach along Kukuna Road.
2. 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.
3. 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. 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 August 13, 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.

L. ADJOURNMENT

OPEN SESSION MEETING MINUTES

Board/Commission		Public Access, Open Space, Natural Resources Preservation Fund Commission	Meeting Date:	June 5, 2026	
Location	Pi'ikoi Building, Boards and Commissions Conference Room		Start of Meeting: 1:15 p.m.		End of Meeting: 2:19 p.m.
Present	Chair Robin Pratt. Commissioners: Manuel Cabral, Nancy Kanna, Mark Ono, and Taryn Dizon. Also present: Deputy County Attorney Laura Barzilai. Planning Department Staff: Deputy Planning Director Jodi A. Higuchi Sayegusa, Planner Shalea Koga, and Secretary Shanlee Jimenez. Office of Boards and Commissions Staff: Support Clerk Celine De Leon.				
Excused	Vice Chair William Kinney. Commissioners: Shaylyn Ornellas and Mai Shintani.				
Absent	Ex-Officio Spencer Cook				



SUBJECT	DISCUSSION	ACTION
A. Swearing in of New Commissioner	Before the meeting started, Mr. Lyndon Yoshioka swore-in new commissioner Ms. Taryn Dizon.	
B. Call to Order	Chair Pratt called the meeting to order at 1:15 p.m.	
C. Roll Call	Deputy Planning Director Jodi A. Higuchi Sayegusa verified attendance by roll call: Commissioner Manuel Cabral replied here. Commissioner Nancy Kanna replied here. Commissioner Mark Ono replied here. Commissioner Shaylyn Ornellas was excused. Commissioner Mai Shintani was excused. Commissioner Taryn Dizon replied here.	

SUBJECT	DISCUSSION	ACTION
	Ex-Officio Spencer Cook was absent. Vice Chair William Kinney was excused. Chair Robin Pratt replied here.	A quorum of five (5) was ascertained.
D. Approval of Agenda		Ms. Kanna moved to approve the June 5, 2026, meeting agenda. Mr. Ono seconded the motion. Motion carried 5:0.
E. Minutes of the Meeting(s) of the Commission	1. April 2, 2026	Ms. Dizon moved to approve the April 2, 2026, meeting minutes. Mr. Cabral seconded the motion. Motion carried 5:0.
F. Receipt of Items for the Record	Ms. Higuchi Sayegusa noted that comments from the Hawai'i Island Land Trust were distributed for the record. Based on its experience with similar Open Space programs, the organization provided constructive edits to the proposed rules.	Ms. Kanna moved to receive the comments submitted by Hawai'i Island Land Trust. Mr. Ono seconded the motion. Motion carried 5:0.
G. General Business	1. <u>Discussion regarding the beach access leading to North `Aliomanu Beach along Kukuna Road.</u> Ms. Koga requested deferral of the item to the next meeting so Ms. Ornellas could be present for the discussion.	Ms. Kanna moved to defer agenda item G1 until the next meeting. Mr. Ono seconded the motion. Motion carried 5:0.
	2. <u>Disussion 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 accessways = KAUAI COUNTY</u>	

SUBJECT	DISCUSSION	ACTION
	<p><u>COUNCIL</u></p> <p><i>There was no public testimony.</i></p> <p>Ms. Koga explained the following:</p> <ul style="list-style-type: none">• The bill was previously heard by the Planning Commission and deferred so the Open Space Commission could review it and provide comments.• The Open Space Commission has previously raised concerns about improving public access, but existing Condominium Property Rights (CPRs) regulations did not provide the same public access requirements as subdivisions.• The proposed bill is intended to align CPR requirements with subdivision requirements so CPRs can no longer circumvent public access obligations.• The bill would apply the same standards for the width, spacing, location, and design of public accessways that currently apply to subdivisions.• CPR applications would be reviewed by the Planning Department.• The Planning Department would work with the County Attorney's Office to determine whether there is an appropriate nexus to require public access for a particular parcel. <p>DCA Barzilai clarified that the requirements apply only to coastal parcels and those adjacent to existing mauka trails.</p> <p>Mr. Ono asked about the design requirements for public access.</p> <p>DCA Barzilai said the bill sets technical standards like a minimum 10-foot width,</p>	

SUBJECT	DISCUSSION	ACTION
	<p>while placement would be determined case-by-case by the Planning Department and County Attorney during CPR review.</p> <p>Mr. Ono asked if the bill addresses ADA requirements.</p> <p>DCA Barzilai said ADA requirements likely can't be imposed on private landowners unless it's county access, and she has not reviewed the issue.</p> <p>Mr. Ono noted many existing access points are not accessible and raised ADA concerns for future consideration.</p> <p>DCA Barzilai said ADA accessibility can be considered with this bill.</p> <p>Ms. Koga said access should consider destination and cultural significance, balancing preservation of cultural practices with providing access.</p> <p>DCA Barzilai said some locations may not be suitable for ADA access due to safety concerns, and the bill would handle these decisions case by case.</p> <p>Mr. Cabral said a nexus is the only way existing trails are addressed under the proposal.</p> <p>DCA Barzilai confirmed the nexus applies to both mauka and makai areas.</p> <p>Mr. Cabral asked if the same rules could be applied to all new CPR developments.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>DCA Barzilai said she’s unsure about retroactive application, but all CPRs seeking Planning Department approval would be reviewed.</p> <p>Mr. Cabral asked if access could be located elsewhere on the mountain.</p> <p>Ms. Koga said new CPRs connecting to the mountain would be reviewed, and the County Attorney would determine if a proportional nexus for access exists.</p> <p>Chair Pratt said access may depend on obtaining approval for it.</p> <p>Mr. Ono said it is like the situation at the Kīlauea property.</p> <p>DCA Barzilai said access in the Kīlauea case was required as a subdivision condition.</p> <p>Ms. Higuchi Sayegusa said subdivision approvals can require access, while CPR properties previously could not; under the bill, CPRs would be reviewed for nexus and proportionally to potentially require access.</p> <p>DCA Barzilai said the bill involves individualized determinations and has passed first reading.</p> <p>Ms. Higuchi Sayegusa said the bill originated from Councilmember Holland, is being reviewed by the Planning and Open Space Commissions and will return to the Planning Commission then the County Council for further hearings and possible final readings.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Kanna asked if other counties have adopted similar measures or if this is the first.</p> <p>Ms. Higuchi Sayegusa said other counties likely do not have the same approach, though Hawai'i County may have similar CPR access requirements.</p> <p>Ms. Dizon commended the bill as a step toward being more proactive in securing public access, noting current inequities in access and impacts on cultural practices like limu gathering, but expressed concern that it is too limited because it only applies to subdivisions and CPRs and would not address large developments outside those processes, leaving gaps in access protection.</p> <p>Mr. Ono asked if additional language could be added to address the issue.</p> <p>Ms. Kanna cautioned against adding too much to one bill.</p> <p>Ms. Koga explained that the CPR route was chosen because the Planning Department already has a review process for CPR applications where access conditions can be considered, whereas large land sales outside CPR approvals do not have a comparable mechanism for imposing such requirements.</p> <p>Ms. Higuchi Sayegusa said that even with private ownership or changes in ownership, constitutional protections still exist for traditional and customary practices, which can require access to resources and trails despite excluding public entry.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>DCA Barzilai noted the issue is complex and asked Ms. Dizon to clarify her point.</p> <p>Ms. Dizon cited Mr. Zuckerberg’s land and said people feel criminalized for accessing nearby beaches for cultural practices and suggested that Ms. Ornellas could elaborate.</p> <p>DCA Barzilai suggested addressing access through the Zuckerberg initiative or negotiation.</p> <p>Ms. Dizon said strong security buffers on large private lands limit public access, which is especially concerning on a small island where scarce coastal resources like limu are important for cultural gathering.</p> <p>Mr. Ono asked if the Commission needs to review the bill language.</p> <p>Ms. Koga said the language is included in the packets.</p> <p>DCA Barzilai noted the following:</p> <ul style="list-style-type: none">● A proposed change to page 2, paragraph c5 of the bill involving technical requirements.● Public accessways would be required to be clearly designated on the final CPR map.● The recorded, approved final map would serve as a “conclusive presumption” of existing access.● Language referring to recording with the Bureau of Conveyances would be removed.● The change is intended to prevent disputes where access was shown on	

SUBJECT	DISCUSSION	ACTION
	<p>maps but not later formalized through easements.</p> <ul style="list-style-type: none">• This would help avoid litigation over whether access legally exists.• Once approved and recorded, the map would serve as legally binding evidence of access that cannot be challenged in court. <p>Ms. Dizon said the change would help prevent issues like those in Kīlauea.</p> <p>DCA Barzilai said the change would reduce administrative work, while Ms. Kanna cautioned that there may still be potential loopholes.</p> <p>DCA Barzilai said there may be objections from landowners at second reading, but things are currently going well.</p> <p>Mr. Ono asked how the bill related to the PIG survey and whether those access points would be recorded.</p> <p>DCA Barzilai said the bill applies prospectively and not necessarily to the PIG survey, and that existing access would be evaluated case by case based on available evidence such as maps or records.</p> <p>Ms. Koga said PIG-listed accesses may be informal or unrecorded but traditionally used and the bill applies only to new CPR applications.</p> <p>Mr. Ono asked how already mapped access points would be treated.</p> <p>Ms. Koga asked whether Mr. Ono was referring to the specific language DCA Barzilai proposed.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>DCA Barzilai said Mr. Ono was asking whether there should be follow-up on all identified access points.</p> <p>Mr. Ono said unrecorded access points should be documented and formalized.</p> <p>DCA Barzilai cautioned that formalizing unrecorded access could expose issues and risk objections that might jeopardize the access.</p> <p>Ms. Higuchi Sayegusa said the approach is case by case and applies going forward to new coastal or mauka access, aiming to prevent issues seen in the current coastal access inventory.</p> <p>Ms. Kanna said the proposal levels the playing field and makes it fair.</p> <p>With no further discussion, the Commission moved onto the next agenda item.</p>	<p>Ms. Kanna moved to receive Bill No. 2986. Ms. Dizon seconded the motion. Motion carried 5:0.</p>
	<p>3. <u>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.</u></p> <p><i>There was no public testimony.</i></p> <p>Ms. Koga said the following:</p> <ul style="list-style-type: none"> • An update on the recommended condemnation of the `Aliomanu beach 	

SUBJECT	DISCUSSION	ACTION
	<p>access included in the biennial report transmitted to Council.</p> <ul style="list-style-type: none">● Ms. Koga, Ms. Higuchi Sayegusa, and Ms. Ornellas testified before Council on Wednesday, providing the history of the `Aliomanu beach access.● Ms. Nalani Kaneakua testified on the cultural significance and history of the access.● Numerous community members also provided testimony.● Council Chair Rapozo forwarded an email from the landowner, Mr. Crabtree, who expressed concerns but has begun corresponding with the County.● Ms. Koga and Ms. Higuchi Sayegusa will contact Mr. Crabtree to explore mediation and work toward a possible agreement.● Staff will request that Council defer the condemnation resolution until July to allow time for negotiations.● If an agreement is not reached, the County will proceed with the condemnation resolution in July. <p>Ms. Higuchi Sayegusa stated that staff will make one final effort to reach an amicable agreement with Mr. Crabtree, with voluntary conveyance of the beach access as the preferred outcome.</p> <p>DCA Barzilai stated that the only acceptable resolution is a grant of easement from the landowner.</p> <p>Ms. Higuchi Sayegusa emphasized the need to secure long-term public access through a permanent easement.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>DCA Barzilai noted the potential future for fencing.</p> <p>Mr. Ono asked about conducting a land survey despite access limitations.</p> <p>Ms. Dizon asked whether a land survey had been completed.</p> <p>Ms. Koga stated that the survey could not proceed without the owner's permission, leading to the condemnation route.</p> <p>Ms. Dizon asked about surveying the County easement due to possible encroachment.</p> <p>Ms. Koga clarified that the County could survey its right-of-way but not the stream area on private property.</p> <p>Ms. Dizon noted concerns about possible encroachment on the County easement and suggested a survey of the easement would benefit the public.</p> <p>Ms. Koga stated that Public Works would determine the road right-of-way and address any encroachments, while staff pursue the easement process concurrently.</p> <p>Chair Pratt requested that the matter be placed on the next agenda to receive updates on discussions with the landowner and whether it will proceed to Council. Ms. Koga confirmed.</p> <p>With no further discussion, the Commission moved onto the next agenda item.</p>	

SUBJECT	DISCUSSION	ACTION
H. Communications	There were no communications.	
I. Unfinished Business (For Action)	There was no unfinished business.	
J. New Business (For Action)	<p>1. <u>Discussion and action on proposed amendments to the Rules of Practice and Procedure of the County of Kauaʻi 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.</u></p> <p><i>There was no public testimony.</i></p> <p>Ms. Higuchi Sayegusa reported that the updated draft replaces Chapter 5 and adds a new Chapter 6. She shared that staff received constructive feedback from the Hawaiʻi Island Land Trust (HILT) during the public review process, requested the Commission’s input, and suggested delaying action for one month to research the comments.</p> <p>Chair Pratt asked if the blue comments were from HILT.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Higuchi Sayegusa confirmed the blue comments were from Mr. Dane Kealoha from HILT. She said his feedback focused on clarifying applicant qualifications, including whether eligibility should be limited to 501(c3) nonprofits, and noted that staff preferred not to impose that limitation, leaving the decision to the Commission.</p> <p>Chair Pratt asked whether non 501(c3) groups, such as youth football teams, would be eligible applicants.</p> <p>Ms. Kanna said that creating and maintaining it is costly and burdensome, especially for small land stewards.</p> <p>Chair Pratt asked how to document eligibility guidance and whether community groups should be included as applicants.</p> <p>Ms. Dizon supported the “hours” language but questioned whether hours can be effectively tracked.</p> <p>Ms. Koga noted that all proposals will ultimately come before the Commission, which will decide on a case-by-case basis whether applicants qualify, especially if eligibility criteria are kept broad.</p> <p>Ms. Higuchi Sayegusa explained that eligible costs may include not only land acquisition but also related expenses such as baseline documentation, due diligence, and staff time. She also noted that land acquisition grants could go to nonprofits or government agencies to support purchases, and that a suggestion was made to limit grant eligibility to 501(c3) organizations.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Dizon said restricting eligibility would be very limiting for Kauaʻi.</p> <p>Chair Pratt said property acquirers should be established entities.</p> <p>Mr. Ono asked if acquiring entities would also act as stewards of the property.</p> <p>Ms. Higuchi Sayegusa said fee simple owners must manage and steward the land, typically placing a conservation easement with the County or another qualified entity to ensure perpetual protection, and asked whether land grant eligibility for conservation nonprofits should be limited to 501(c3) for standardization.</p> <p>Ms. Dizon distinguished land acquisition from stewardship and maintenance as separate responsibilities.</p> <p>Chair Pratt said entities could partner with another nonprofit if they cannot handle stewardship.</p> <p>Ms. Dizon said land acquisition is a more formal process.</p> <p>Ms. Higuchi Sayegusa said Mr. Kealoha’s comment suggested that requiring a site survey, assessment, title report, and appraisal at the application stage may be too burdensome. She proposed making these items conditions of the grant agreement before funds are disbursed instead.</p> <p>Ms. Dizon asked how to avoid jeopardizing funds.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Higuchi Sayegusa suggested incorporating the requirement into the review process.</p> <p>Ms. Dizon asked how due diligence would be verified, referencing the Hanapēpē project process.</p> <p>Ms. Higuchi Sayegusa clarified that acquisition due diligence studies are separate Ka Pa`akai review, which applies to permitting and land use considerations.</p> <p>Ms. Dizon expressed concern about inheriting problems.</p> <p>Ms. Higuchi Sayegusa suggested requiring due diligence and Chapter 343 compliance through the grant agreement while distinguishing application requirements from pre-funding conditions.</p> <p>Ms. Dizon said requirements may burden nonprofits but should be addressed upfront rather than after the fact.</p> <p>Ms. Higuchi Sayegusa asked whether the 25% matching funds requirement should remain, noting it helps distribute Open Space funding and ensures applicant investment.</p> <p>Ms. Kanna supported the comment and said it should be carefully considered given multiple overlapping requirements.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Higuchi Sayegusa said the 25% match would likely be retained with a longer performance period. She noted Mr. Kealoha's suggestion to allow attorney fees and land trust monitoring/enforcement costs to count as matching funds and said she was open to including those given prior discussions about the costs of conservation easements.</p> <p>Ms. Dizon asked what enforcement would entail.</p> <p>Ms. Higuchi Sayegusa said enforcement would involve monitoring compliance with conservation easements to ensure no development and adherence to conservation standards.</p> <p>Ms. Dizon asked if the planning department would handle monitoring.</p> <p>Ms. Higuchi Sayegusa said monitoring would be handled by Ms. Koga.</p> <p>Chair Pratt explained that conservation easements require maintaining existing land conditions without adding new structures or making changes after acquisition.</p> <p>Ms. Higuchi Sayegusa proposed using monitoring costs as part of the 25% match, extending performance to three years, clarifying cultural impact study requirements, and allowing flexibility on who holds conservation easements; she also questioned whether monitoring/enforcement can be included under the 5% maintenance allowance within existing rules.</p> <p>DCA Barzilai said it may be beyond scope but worth considering whether</p>	

SUBJECT	DISCUSSION	ACTION
	<p>maintenance grants could include monitoring tied to stewardship and will review further.</p> <p>Ms. Higuchi Sayegusa used Waipā as an example and asked whether the county could fund both site maintenance and HILT’s monitoring/enforcement of conservation goals.</p> <p>Ms. Koga said island-based teams would coordinate through local branches.</p> <p>With no further discussion, the Commission moved onto the next agenda item.</p>	<p>Chair Pratt moved to defer agenda item J1 to the next meeting. Ms. Kanna seconded the motion. Motion carried 5:0.</p>
K. Executive Session	There was no executive session.	
L. Announcements	<p>1. Topics for Future Meetings</p> <p>Ms. Higuchi Sayegusa had no announcements and noted the July ‘Aliomanu hearing.</p> <p>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 anticipate 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.</p>	

SUBJECT	DISCUSSION	ACTION
M. Adjournment		Ms. Kanna moved for the adjournment of the meeting. Ms. Dizon seconded the motion. Motion carried 5:0. The meeting was adjourned at 2:19 p.m.

Submitted by: _____
Celine De Leon, Staff Support Clerk

Reviewed and Approved by: _____
Robin Pratt, Chair

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

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.

i. Eligible proposals shall meet the criteria set forth in these Rules and include:

1. Land or interests in land by the State or County;
2. Grant proposals submitted by **eligible** applicants for the acquisition of fee simple interests or other interests in land;
3. Improvements associated with land or interests in land acquired with the Fund; or
4. Improvements to public pedestrian access to coastal areas.

ii. Eligible expenditures related to land acquisitions or interests in land shall be limited to the following:

1. 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;
2. Appraisals;
3. Baseline documentation report and preparation;
4. Environmental inspections and assessments;
5. Land surveys;
6. Title insurance and title report; and
7. **Other acquisition-related expenses, including staff time to facilitate the acquisition requirements.**

(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:

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

- i. 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.

- ii. If the Commission approves the preliminary evaluation, the review process shall commence, which may require the following:
 - 1. The Department and/or a representative of the Commission may conduct a site visit to inspect the condition of the property and resources.
 - 2. 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.
 - 3. The Commission may discuss the strengths and weaknesses of the application.
 - 4. Public testimony may be received.

(b) Final Evaluation and Recommendation.

- i. Once the Commission has completed its review of the proposal, the Department shall provide a final evaluation and recommendation for the Commission's consideration.
- ii. The recommendation shall be based on the criteria and prohibitive factors for acquisition established in these rules.
- iii. 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.
- iv. 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.

- i. The Commission shall adopt a biennial report that:
 - 1. Reports the balance and reviews the sufficiency of the fund;
 - 2. 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;
 - 3. Provides an acquisition plan for each recommended proposal.
- ii. 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.

- iii. 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.
- iv. 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.
- v. 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.

- i. A recommendation for acquisition outside the biennial report (“dossier recommendation”) may be adopted and transmitted to Council and Mayor only if:
 - 1. The proposal meets the eligibility criteria for acquisition established in these rules;
 - 2. There is demonstrable urgency such that delaying action will result in significantly greater expense, an adversarial acquisition process, or both.
- ii. The dossier recommendation shall provide an acquisition plan for the proposal.
- iii. 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.
- iv. 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.
- v. 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.

- i. Eligible Applicants. The entity that will hold title to the interest in land, or its authorized representative, shall be the applicant.
- ii. Eligible applicants who may apply for land acquisition grants include:
 1. Other government agencies with an intergovernmental agreement;
 2. Private owners where the acquired property or entitlement benefit the public and are protected in perpetuity; and
 3. **Nonprofit land conservation organizations, which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal Revenue Code of 1954, as amended, and whose organizational purposes are designed to facilitate the purposes of the fund.**

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

- i. Evidence that the landowner is willing to sell the property;
- ii. **The proposed purchase price or an estimate of the land acquisition cost, supported by relevant information such as prior appraisals, the landowner's asking price, recent comparable sales, or public tax assessments;**
- iii. Documentation identifying the resources to be protected;
- iv. A detailed budget for all proposed grant-funded expenditures and project costs, including estimated costs for staff time required to complete acquisition-related requirements, site surveys and assessments, title reports, and appraisals; and
- v. 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.

- i. Matching funds of at least twenty-five per cent (25%) of the total project costs are required as part of the proposal.
- ii. Matching funds may be in the form of:
 1. Direct moneys;
 2. A combination of public and private funds;
 3. Land value donation;
 4. In-kind contributions; or
 5. Any combination of the above.
- iii. Project costs for calculating matching funds shall be limited to the following:

1. Land acquisition, property right acquisition, or conservation easements at or below fair market value as determined by a department-approved appraisal;
 2. Appraisals;
 3. Land surveys;
 4. Title insurance and title report;
 5. Environmental inspections and assessments;
 6. Escrow fees, excluding taxes;
 7. Baseline documentation for conservation easements;
 8. Attorneys' fees for the review and drafting of acquisition-related documents; and
 9. **Funds raised for stewarding, monitoring, and enforcing the conservation easement.**
- iv. Applicants shall provide evidence of the sources and expenditures of matching funds to the satisfaction of the Department prior to distribution of the grant.
 - v. Matching fund expenditures must be reasonable and necessary for accomplishing project objectives and the purpose of the program.
 - vi. 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.
 - vii. Lands being donated as matching funds shall be subject to the same requirements and restrictions as lands that are being acquired with grant funds.
 - viii. 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.

- i. 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 include, but is not limited to, the following terms and conditions:
 1. A performance period not to exceed **three (3) years** from the grant agreement's execution, unless an extension is approved by the Department;
 2. A detailed budget, together with accounting records and documentary evidence of all proposed grant-funded expenditures and project costs;
 3. Submission of documentation identifying the resources to be protected;

4. Submission of documentation identifying the resources to be protected, including an analysis of traditional and customary Native Hawaiian rights;
5. Completion of site surveys and assessments;
6. Submission of a title report and appraisal;
7. Compliance with Chapter 343, HRS;
8. **Conveyance of a deed restriction or conservation easement, held by the County or an eligible nonprofit land conservation organization, to ensure that the land acquired is protected in perpetuity;**
9. A copy of the proposed deed, together with any baseline documentation and other supporting documentation; and
10. Reporting requirements.

- ii. 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.

- i. 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 Department's satisfaction;
 2. Suspension of the awardee's participation in any other County grant program until the breach is cured to the Department's satisfaction; and
 3. 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.
- ii. 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:
 1. 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
 2. Repayment of all County funds expended.
- iii. Enforcement. The Department shall have the authority to enforce any:
 1. Term or condition of the grant agreement; and

2. 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.
3. 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:
 - i. Properties acquired by the Fund; or
 - ii. Improvements acquired or improved with the Fund.
- (b) For proposed uses of the County of Kaua‘i or other governmental entity:
 - i. Up to five thousand dollars (\$5,000) may be expended on items and expenses directly related to maintenance activities.
 - ii. 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, may retain maintenance funds for a period not to exceed two (2) years for the following purposes:
 - i. Operations, equipment, materials, and supplies necessary to maintain land or improvements acquired with the Fund;
 - ii. Operations, equipment, materials, and supplies necessary to maintain public pedestrian coastal access improved with the Fund;
 - iii. Other costs or activities deemed necessary by the Commission to protect, preserve, or maintain the integrity of properties acquired or improved with the Fund; and
 - iv. **Where a deed restriction or conservation easement has been conveyed to the County or an eligible nonprofit land conservation organization, costs associated with monitoring and enforcement of the deed restriction or conservation easement.**

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:
 - i. Owners of land or interests in land acquired using the Fund; or
 - ii. 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
 - iii. 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:
 - i. A description of the proposed maintenance work;
 - ii. A description of the public benefits served or resources protected;
 - iii. An itemized budget;
 - iv. A detailed scope of work and project timeline;
 - v. A site plan;
 - vi. A copy of the applicable stewardship agreement with the County of Kaua'i; and
 - vii. 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:
 - i. Alignment with, and the extent to which the proposal supports, the Fund's purposes;
 - ii. Steward's capacity to carry out maintenance responsibilities;

- iii. Cost of proposed operations and maintenance activities;
- iv. Proportion of matching funds leveraged, including in-kind contributions, if any;
- v. Urgency of need for the proposed operations and maintenance activities;
- vi. Feasibility of achieving proposed objectives;
- vii. Short-term and long-term effectiveness of proposed actions;
- viii. Community support for the proposed activities;
- ix. Feasibility of mitigating any environmental hazards;
- x. Past work and performance on county-funded projects, including stewardship;
- xi. Public benefit, enjoyment, and safety resulting from the proposed activities; and
- xii. 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:

- i. A performance period not to exceed two (2) years from execution of the grant agreement;
- ii. A detailed budget, including accounting and supporting documentation for all proposed expenditures and project costs;
- iii. Site surveys and assessments, as applicable;
- iv. Documentation demonstrating compliance with Chapter 343, Hawai‘i Revised Statutes, if applicable; and
- v. 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:

- i. Suspension of all grant payments until the breach is cured to the satisfaction of the Department;

- ii. Suspension of the awardee's participation in any other County grant program until the breach is cured to the satisfaction of the Department; and
- iii. 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.

- i. The Department shall have the authority to enforce any term or condition of the grant agreement.
- ii. The Department may refer enforcement matters to the Office of the County Attorney for pursuit of available civil remedies.

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- (a) Maintenance funding may be used for projects that support the upkeep and maintenance of:
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- (b) For proposed uses of the County of Kaua‘i or other governmental entity:
 - i. Up to five thousand dollars (\$5,000) may be expended on items and expenses directly related to maintenance activities.
 - ii. 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:
 - i. Operations, equipment, materials, and supplies necessary for the maintenance of land or improvements acquired with the Fund;
 - ii. Operations, equipment, materials, and supplies necessary for the maintenance of public pedestrian coastal access improved with the Fund;
 - iii. Other costs or activities deemed necessary by the Commission to protect, preserve, or maintain the integrity of properties acquired or improved with the Fund.

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- (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:

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