

**COUNTY OF KAUAI  
PUBLIC ACCESS, OPEN SPACE & NATURAL RESOURCES  
PRESERVATION FUND COMMISSION**

**2007 & 2008 REPORT  
TO THE KAUAI COUNTY COUNCIL AND  
MAYOR BERNARD CARVALHO, JR.**

**INCLUDING RECOMMENDATIONS FOR PRIORITY PROJECTS TO BE  
CONSIDERED FOR FUNDING**



**January 22, 2009**



COUNTY OF KAUAI  
PUBLIC ACCESS, OPEN SPACE & NATURAL RESOURCES  
PRESERVATION FUND COMMISSION

2007 & 2008 REPORT  
TO THE KAUAI COUNTY COUNCIL AND  
MAYOR BERNARD CARVALHO, JR.

January 22, 2009

Prepared by:  
County of Kauai  
Public Access, Open Space & Natural Resources  
Preservation Fund Commission

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Caren Diamond, Vice Chair  
Beryl L. Bailey Blaich  
Puna Kalama Dawson  
Theresita Kinnaman  
Eugene Punzal  
Jean Nishida Souza  
Randall Uyehara  
Johanna Ventura

Administrative Support:  
Planning Department Staff



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**Public Access, Open Space and Natural Resources Preservation Fund  
Program 2007 Public Input Process Survey Results**

By Dave Caylor, County of Kauai, Planning Department, March 13, 2008



## ***Executive Summary***

### ***Program Background***

The Public Access, Open Space, and Natural Resources Preservation Fund (the Fund), was established in 2002 by County Charter Amendment. The fund receives a minimum of one half of one percent (0.5%) of Kauai's annual certified real property taxes. The fund accumulates, cannot lapse nor be utilized for other purposes. No more than five percent of the fund may be used for administrative purposes. Purposes for which the fund can be used are outlined in the Charter Amendment, a copy of which can be found in the Appendix.

**Status of the Fund. The fund's balance as of December 1, 2008 was \$1.7 million dollars.**

In 2003, the County Council enacted Ordinance 812 which established the Public Access, Open Space, and Natural Resources Preservation Fund Commission (Open Space Commission). The commission is mandated to solicit public input and work with the Planning Department to develop an annual list of priority projects to be considered for funding. The Open Space Commission was first formed and sworn in during September 2004. A current roster of the individuals that comprise the commission can be found in the letter of introduction prefacing this report.

The Commission's recommendations presented in this current report build upon its prior efforts. Each year, the Commission is privileged to hear from more members of the public and learn of more concerns, sites of interest, and issues of importance to charting Kauai's efforts to protect and preserve public access, open space, and natural resources. These valuable interactions allow commissioners to incorporate a broader range of public opinion into the recommendations forwarded to Council and the Administration.

### ***Commission Recommendations for Acquisition***

Likelihood of success was a pivotal consideration for the commission in making its 2007 & 2008 recommendations. It is our hope that the County Council may find opportunity in 2009 to approve the first County of Kauai Open Space Fund acquisition from among the following priority recommendations.

#### **Priority Project Recommendations**

In order of priority, the following six sites are recommended for acquisition utilizing the Open Space Fund:

- 1. Black Pot Park Expansion (Hanalei District)**
- 2. Salt Pond Park Expansion (Waimea District)**
- 3. Haena Point (Brescia) (Hanalei District)**
- 4. North Kapaa Coastal Lands (Kawaihau District)**
- 5. CGB / Evslin (Waimea District)**
- 6. Haena Beach Park Lateral Access (Hanalei District)**

## **Secondary Recommendations**

In addition to the priority project recommendations, the Commission makes six secondary recommendations for future action should opportunities for success improve. These projects, in geographic order from the west side to north shore, counter-clockwise around the island (*not* in priority order), are:

1. Hoban (Koloa District)
2. Nukumoi Surf Shop (Koloa District)
3. Mahaulepu & Gillin's (including CJM & Haula) (Koloa District)
4. Alekoko Fishpond (Lihue District)
5. Coco Palms (Kawaihau District)
6. Papaa Bay Easement (Kawaihau District)

## **Other Commission Findings**

The Open Space Commission has a specific mandate and scope that precludes it from being able to address and resolve questions and concerns it receives from the public regarding issues and projects related to enforcement, recordation, or governmental jurisdiction of previously utilized access-ways, including traditional and historic paths and trails. However, funding to investigate the status of these issues is an allowable use of the open space fund, should the County Council choose to do so.

The County Council has an opportunity to undertake the following with Open Space Funds:

- 1) Investigate the status of unresolved public accesses identified in the Commission's 2005 report.
- 2) Investigate the status of public access to Alexander Dam from Kaumualii Highway in Kalaheo and measures to remedy the situation.
- 3) Conduct a study of the options available to the County to establish access-ways and implementation of the purposes of the Commission, other than use of the Fund for land acquisition.

As stated in the Commission's 2006 Report, the Commission continues to look forward to meeting with the County Council and Administration to address problems affecting the effectiveness of the Commission.

## **2007 & 2008 Public Input Process**

The following opportunities for public input occurred in 2007 / 2008 and served as the foundation for the Commission's deliberations in putting forth its recommendations: Regular commission meetings, six open space regional meetings, and a 2007 online public survey. The commission also conducted a field trip encompassing Kalaheo, Eleele, Hanapepe, Waimea, Kekaha, and Niumalu in April, 2008.

As a whole, commissioners heard that residents are concerned about:

- The disparity between the authorized roles and scope of the Commission and the public's expectations of the Commission's roles;
- The lack of results from the open space fund program;
- The problems with enforcement and jurisdiction;
- Significant loss and diminishment of accesses and resources in makai and mauka areas;
- Beach erosion, encroachment and, consequentially, loss of lateral access;
- Problems affecting specific sites and issues in their local areas;
- How the rapid pace of development has impacted their ability to access special areas formerly open to all;
- Environmental damage occurring to unique sites such as the Salt Ponds at Puolo Point;
- Significant cultural sites, such as Alekoko Fish Pond, needing more protection.

## ***Conclusions***

Survey respondents were significantly concerned about the ability to preserve Kauai's open spaces for future generations. And indeed, there has been no tangible action of acquisition, protection, or preservation consistent with the purposes of the Open Space Fund since the Fund was establishment in 2002. While the fund is still modest in comparison to real estate values, its balance has grown over the past four years to a useful, viable sum. It is our hope that the County Council may find opportunity in 2009 to approve the first County of Kauai Open Space Fund acquisition from among the Commission's priority recommendations.

The Commission is currently working with a facilitator and others to formulate specific amendment proposals for Ordinance No. 812 and other measures to make the County's Open Space Fund program more effective. The Commission looks forward to discussing any possible changes with the County Council and administration in 2009.

## **1) Program Background**

### **1-A. 2002 Charter Amendment and the Open Space Fund**

On November 5, 2002, Kauai voters passed an amendment to the Kauai County Charter creating the Public Access, Open Space, and Natural Resources Preservation Fund (the Fund). The amendment specified that the Fund would receive a minimum of one half of one percent (0.5%) of Kauai's certified real property taxes each year for purchasing or otherwise acquiring lands or property entitlements in the County of Kauai. The charter amendment also stipulated that any balance remaining in the Fund at the end of the fiscal year "shall not lapse, but shall remain in the fund, accumulating from year to year." The amendment also directed the County Council to "by ordinance establish procedures for the administration and priorities for the expenditure of moneys" in the Fund.

Purposes for which the fund can be used, as well as the full scope of the fund, are outlined in the Charter Amendment, a copy of which can be found in the Appendix.

**Status of the Fund. The fund's balance as of December 1, 2008, was \$1.7 million dollars.**

### **1-B. Ordinance 812 and the Open Space Commission**

On December 8, 2003, the Kauai County Council fulfilled its obligation under the Charter to define the procedures for administering and spending moneys in the Fund by passing Ordinance 812.<sup>1</sup> This ordinance established a "fund advisory commission" known as the Public Access, Open Space, and Natural Resources Preservation Fund Commission (the Commission) to solicit public input and work with the Planning Department to develop an annual list of priority projects to be considered for funding.

The Commission, more commonly known as the "Open Space Commission," was officially formed in September, 2004. It is made up of four Mayor-appointed members, four Council-appointed members, and one member appointed by the eight commissioners. Five of the nine commissioners represent specific geographic areas of Kauai (Waimea-Kekaha, Hanapepe-Eleele, Koloa-Poipu-Kalaheo, Lihue-Hanamaulu, Kapaa-Wailua, and Anahola-Haena), and four serve "at large."

### **1-C. Historical Perspective**

The recommendations of the Commission that were previously formulated and submitted to the County Council & Mayor in 2005 and 2006 resulted from many hours of meetings, discussions with members of the public, analysis of data collected from public surveys, study

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<sup>1</sup> Ordinance 812 was signed into law by Mayor Bryan J. Baptiste on December 15, 2003.

of a wide range of topics relevant to open space preservation and public access protection, and the efforts and cooperation of commissioners, program staff, other Administration officials, and members of the Kauai County Council. Considerable focus was put on creating a new program and equipping commissioners and staff to implement the requirements of Ordinance 812, creating and conducting an annual public process for recommending priority projects for funding consideration.

The Commission's recommendations presented in this current report build upon these prior efforts. Each year, the Commission is privileged to hear from more members of the public and learn of more concerns, sites of interest, and issues of importance to charting Kauai's efforts to protect and preserve public access, open space, and natural resources. These valuable interactions allow commissioners to incorporate a broader range of public opinion into the recommendations forwarded to Council and the Administration.

Public access and open space concerns on Kauai do not remain static from year to year, rather new developments can threaten access to public resources formerly open and accessible and commonly enjoyed by Kauai residents and visitors. Properties are bought and sold each year, new opportunities arise for acquiring lands and easements, and not insignificantly, the Open Space Fund continues to grow through annual appropriations from real property taxes.

In short, this report is the product of the work of multiple years as well as current recommendations for the funding of projects, and it is the intention of the Commission to continue to build upon the work of past and current commissioners, staff, and public participants in the process of identifying and recommending projects to preserve, protect, and enhance everyone's ability to enjoy Kauai's natural and cultural treasures.

## **2) Open Space Commission Recommendations**

In 2008, the Commission and the open space/public access specialist refined criteria to assess acquisition opportunities. Factors considered included: the priorities of the open space program, County Charter, General Plan priorities, resource attributes, public interest, Commission's past assessment and selection criteria, and details of feasibility.

Likelihood of success was a pivotal consideration for the commission in making its 2007 & 2008 recommendations. In particular, the Commission weighed considerations such as landowner willingness, availability of partnerships, public mobilization and need as well as the timeliness of each opportunity in consideration of the fund's balance.

While the fund is still modest in comparison to real estate values, its balance has grown over the past four years to a useful, viable sum. It is our hope that the County Council may find opportunity in 2009 to approve the first County of Kauai Open Space Fund acquisition from among the following priority recommendations.

### **2-A. Priority Project Recommendations for Acquisition**

In order of priority, the following six sites are recommended for acquisition utilizing the Open Space Fund:

- 1. Black Pot Park Expansion (Hanalei District)**
- 2. Salt Pond Park Expansion (Waimea District)**
- 3. Haena Point (Brescia) (Hanalei District)**
- 4. North Kapaa Coastal Lands (Kawaihau District)**
- 5. CGB / Evslyn (Waimea District)**
- 6. Haena Beach Park Lateral Access (Hanalei District)**

Abstracts for each project (including aerial images, tax parcel information and other details) can be found in the Appendix, along with an island map indicating the location of all priority and secondary recommendations (which are noted on the following page).

The commission recommends that, if possible, more than one property be acquired. The following actions may be combined to effectively leverage the Open Space fund:

1. Appropriate additional County funding,
2. Solicit donations and garner grants through application by the County or others
3. Partner with other government agencies such as the State of Hawaii Legacy Lands Program and non-profits like Kauai Public Land Trust and the Trust for Public Lands.

## **2-B. Secondary Recommendations for Acquisition**

In addition to the priority project recommendations, the Commission recommends six sites for secondary consideration. Each was determined to be important to the people of Kauai, but due to high acquisition costs, concerns about the feasibility given current funding levels and other considerations, these five projects are recommended for future action should opportunities for success improve.

These projects, in geographic order from the west side to north shore, counter-clockwise around the island (*not* in priority order), are:

- Hoban (Koloa District)
- Nukumoi Surf Shop (Koloa District)
- Mahaulepu & Gillin's (including CJM & Haula) (Koloa District)
- Alekoko Fish Pond (Lihue District)
- Coco Palms (Kawaihau District)
- Papaa Bay Easement (Kawaihau District)

## **2-C Other Commission Findings**

Access to beaches, as well as mauka access, continues to be a primary public input concern. Unfortunately, the Open Space Commission has not been able to address and resolve public questions and concerns regarding issues and projects related to enforcement, recordation, or governmental jurisdiction of previously utilized access-ways, including traditional and historic paths and trails.

Since 2005, the public has raised these issues at Commission meetings and during the annual public input processes with the expectation that the Commission could resolve them or advocate for their resolution. Contrary to the Commissioners' perceptions of the Commission's roles and responsibilities, the Commission has been informed that its enabling legislation precludes this Commission from addressing these issues and making a recommendation to address these issues in this report. The Commission has been informed, nonetheless, that funding to investigate the status of these issues is an allowable use of the open space fund, should the County Council choose to do so.

In addition, the Commission is limited by its enabling legislation and not able to address or investigate other means beyond the use of the Open Space Fund to acquire lands, access-ways, and implement projects. The Commission feels there is a urgent need to take a special look at how the County acquires public access ways. Such a study could include considering whether to provide incentives to landowners not currently required to provide access and options to manage or share management of such easements.

The County Council has the opportunity to undertake the following by using the Open Space Fund:

- 4) Investigate the status of unresolved public accesses identified in the Commission's 2005 report.
- 5) Investigate the status of public access to Alexander Dam from Kaumualii Highway in Kalaheo and measures to remedy the situation.
- 6) Conduct a study of the options available to the County to establish access-ways and implementation of the purposes of the Commission, other than use of the Fund for land acquisition.

As stated in the Commission's 2006 Report, the Commission continues to look forward to meeting with the County Council and Administration to address problems affecting the effectiveness of the Commission.

## ***2-D. Sites Considered in the Commission's Final Review***

The priority and secondary recommendations were selected from a total of 106 sites considered in 2007 and 2008. In its final review of suggestions made by the public, the Commission considered twenty-one (21) sites.

All of the the following sites were deemed by the Commission to merit further discussion and perhaps future protection efforts. They appear here in geographic order, from the west side to north shore, counter-clockwise around the island. The island map in the appendix indicates all 21 sites (map legend specifies priority & secondary recommendations).

- CGB / Evslin
  - Acquisition of coastal parcels between Mamo Road and Akepa Road in Kekaha.
- Salt Pond Park Expansion
  - Acquisition of state lands west of Salt Pond Park for park expansion purposes.
- Hoban
  - Acquisition of a six (6) feet wide pedestrian easement from Lawai Beach Road to the shoreline east of Spouting Horn.
- Knudsen-Poipu (Kiahuna)
  - Acquisition of coastal parcel at the end of Hoonani Road in Poipu for beach access and open space preservation.
- Poipu Beach Park Expansion
  - Acquisition of one coastal parcel to the west of Poipu Beach Park for purposes of park expansion.
- Nukumoi Surf Shop
  - Acquisition of the Nukumoi Surf Shop parcel across Hoone Road from Poipu Beach Park for purposes of cultural preservation and protection of nearby heiau.
- Poipu Loran Station
  - Acquisition of coastal parcel for open space preservation and access to the shoreline.

- Mahaulepu & Gillin's (including CJM & Haula)
- Alekoko Fishpond
  - Acquisition of the Alekoko Fishpond parcel and adjacent Huleia River parcel for protection of cultural resources and open space.
- Nukolii Beach Park Expansion
  - Acquisition of coastal parcel for preservation of open space and improvements to shoreline access.
- Coco Palms
  - Acquisition of several parcels for protection of cultural resources and open space.
- Coconut Beach
  - Acquisition of coastal parcels to preserve open space, improve shoreline access.
- North Kapaa Coastal Lands
  - Acquisition of parcels between Kuhio Highway and coastline to preserve open space, coastal views, and to provide additional access to the multi-use pathway.
- Papaa Bay (purchase of parcel)
  - Acquisition of coastal parcel to improve access to the shoreline.
- Papaa Bay (purchase of easement)
  - Acquisition of an easement along the existing roadway for beach access purposes.
- Moloaa Coastal Trail
  - Acquisition of trail easement along historic trail corridor, which is thought to deviate from existing Na Ala Hele trail corridor.
- Kilauea Falls & Valley
  - Acquisition of parcel for open space preservation and public access through Kilauea River valley.
- Kauapea Beach #2
  - Acquisition of pedestrian trail easement from Kauapea Road to eastern side of Kauapea Beach.
- Black Pot Park Expansion
  - Acquisition of parcels adjacent to Black Pot Park in Hanalei for park expansion and open space preservation.
- Haena Point (Brescia)
  - Acquisition of coastal parcel for protection of cultural resources.
- Haena Beach Park Lateral Access
  - Acquisition of coastal lateral shoreline easement across ten (10) coastal parcels from existing public beach access approximately 1,100 feet east of Haena Beach Park to Haena Beach Park.

### **3) 2007 & 2008 Public Input Process**

The following opportunities for public input occurred in 2007 / 2008 and served as the foundation for the Commission's deliberations in putting forth its recommendations:

**Regular commission meetings.** With few exceptions, the Commission met twice monthly on the 2<sup>nd</sup> and 4<sup>th</sup> Thursdays of the month at the County's facilities in Lihue. At its meetings, the commission accepted public testimony on a number of community issues and projects and held open discussion as we assessed each of the sites considered in making our recommendations using weighted assessment criteria. (See appendix for template we used)

**Open Space program regional meetings.** Six publicized public meetings were held in July 2007. These took place in Waimea, Koloa, Lihue, Kapaa, Kilauea, and Hanalei. A total of 72 participated in the public meetings which were conducted by Planning Department staff and hosted by two commissioners most familiar with each particular region. Meetings were publicized by newspaper articles, an informational brochure and radio announcements.

**2007 Online Public Survey.** An on-line survey of public input was utilized for the first time from July 16 through September 30, 2007. 209 surveys were submitted online; 10 paper surveys were submitted. The survey results are generally summarized on the following pages and analyzed in more depth in the Planning Department staff report submitted concurrently with the Commission's report to the Council and Mayor.

**West Side Field Trip.** The Commission conducted a field trip encompassing Kalaheo, Eleele, Hanapepe, Waimea, Kekaha, and Niumalu in April 2008. A few members of the public accommodated the Commission or joined the field trip at advertised stopping points. Similar field trips were conducted in previous years to the South, North and East Shores. Public testimony was taken at Commission meetings prior to and after the field trips. The Commission completed a field trip report of its observations, identified issues, and opportunities. (see Appendix for field trip report)

#### **3-A. Summary of Comments received at 2007 Regional Meetings**

As a whole, commissioners heard that residents are concerned about:

- The disparity between the authorized roles and scope of the Commission and the public's expectations of the Commission's roles;
- The lack of results from the open space fund program;
- The problems with enforcement and jurisdiction;
- Significant loss and diminishment of accesses and resources in makai and mauka areas;
- Beach erosion, encroachment and, consequentially, loss of lateral access;
- Problems affecting specific sites and issues in their local areas;
- How development has impacted their ability to access special areas formerly open to all;
- Environmental damage occurring to unique sites such as the Salt Ponds at Puolo Point;
- Significant cultural sites, such as Alekoko Fish Pond, needing more protections.

### **3-B. Summary of Public Input from 2007 Survey**

The 2007 public input survey was an on-line survey with content created by staff and the commission and developed by staff used free technology and online services provide by SurveyMonkey.com. The survey was also available in paper form (See Appendix)

The survey was accessible through [www.Kauai.gov/OpenSpace](http://www.Kauai.gov/OpenSpace) from mid July through September, two and a half months. It was publicized in newspaper articles and on local radio stations and through the commission's regional meetings.

There were a total of 219 survey respondents, 209 online and 10 by paper form. Full details concerning the survey's findings and data analysis can be found in the Planning Department staff report submitted concurrently with the Commission's Recommendations Report to the Council and Mayor.

The staff report has a wealth of information concerning how survey participants support the various open space fund purposes and the overall intent of the Open Space Fund program.

For example, respondents ranked the fourteen purposes of the open space fund on a scale from 1 (not at all important) to 5 (extremely important). The mean scores ranged from a high of 4.85 for "preserving beaches" to a low of 4.31 for "public outdoor education."

Responses to questions concerning the importance, current satisfaction and confidence in our ability to achieve the five aspects of Kauai natural and cultural heritage (access to mountain areas, access to beaches, protection of open spaces, protection of natural resources, protection of cultural sites) were perhaps the most telling and alarming.

These questions asked about access to mountain areas and beaches, preservation of open space, and protection of Kauai's natural resources and cultural sites. Satisfaction with the amount of access to mountain and beach areas and protection of open space is mixed. There is less satisfaction with today's protection of natural resources. Respondents are especially dissatisfied with current protection of cultural sites.

Respondents expressed little confidence in protection of access to beaches and mountains and protection of natural resources and cultural sites for future generations. There was strong disagreement with the statement "I am confident that Kauai's open spaces will be protected for future generations."

Taken together, the responses to this set of questions indicate that the people of Kauai have real concerns about our future ability to protect the things the Open Space Fund was intended to protect.

## **4) Conclusions**

There has been no tangible action of acquisition, protection, or preservation consistent with the purposes of the Open Space Fund since the Fund was establishment in 2002. While the fund is still modest in comparison to real estate values, its balance has grown over the past four years to a useful, viable sum. It is our hope that the County Council may find opportunity in 2009 to approve the first County of Kauai Open Space Fund acquisition from among the Commission's priority recommendations.

While there have been successes in the open space program on Kauai (e.g., Ka Ala Hele Makalae – East Side Shared Use Path, Canela acquisition, Kilauea Point National Wildlife Refuge expansion), there has been a lack of tangible action from the open space fund program since its establishment in 2002. The following statement from the Commission's 2006 Report is still applicable today:

***“This is a critical time for the Commission and the County’s open space and public access program primarily due to the lack of explicit authorization to do more than make recommendations on projects for funding and the actual size of the fund. There is a need to clarify the Commission’s roles, increase the size of the fund to implement priority acquisitions and projects, and to help resolve issues. Bold actions are needed to amend Ordinance No. 812 to meet Commissioners’ and public expectations and needs.”***

The Commission is currently working with a facilitator and others to formulate specific amendment proposals for Ordinance No. 812 and other measures. The Commission looks forward to discussing any possible changes with the County Council and administration in 2009.

## **Appendix A**

### **Charter Amendment**



## OFFICE OF THE COUNTY CLERK

### 2002 AMENDMENT The Charter of the County of Kauai

#### **"Section 19.15. Fund Administration.**

A. Deposit of Funds. Money received by officers and employees shall be deposited promptly to the county's account in depositories authorized by law.

B. Creation of Funds. In addition to the funds established by this charter, the mayor, with the approval of the council, may establish other funds when necessary and when no appropriate class of funds exists. Nothing in this section shall preclude the council from introducing and adopting other funds by ordinance.

#### C. Public Access, Open Space, Natural Resources Preservation Fund.

(1) In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the certified real property tax revenues to a fund known as the public access, open space, natural resources preservation fund. The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Kauai for the following purposes: public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; preserving forests, beaches, coastal areas and agricultural lands; protecting watershed lands to preserve water quality and water supply; conserving land in order to reduce erosion, floods, landslides, and runoff; improving disabled and public access to, and enjoyment of, public land, and open space; acquiring disabled and public access to public land, and open space.

(2) The moneys in this fund may also be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to Sections 3.13, 3.14, or 3.15, Charter, in whole or in part – for the purposes enumerated in paragraph (1) of this section and for the payment of costs associated with the purchase, redemption or refunding of such bonds.

(3) At any given time, no more than five percent (5%) of this fund shall be used for administrative expenses

(4) Any balance remaining in this fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in this fund shall not be used for any purpose except those listed in this section.

(5) The Council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund."

**“Section 19.08. Administration and Enforcement of the Annual Budget Ordinance.**

A. The enactment of the annual budget ordinance shall constitute an appropriation of the sums specified therein for the purposes and from the funds indicated. Such appropriation shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse at the end of the fiscal year, except that appropriations to the fund established by paragraph C of section 19.15 shall not lapse, but shall remain in the fund, accumulating from year-to-year. Agencies authorized to make expenditures under the annual budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available and as allotted.

B. Immediately following the enactment of the annual budget ordinance, the heads of all agencies shall submit to the director of finance schedules showing the expenditures anticipated for each quarter of the fiscal year.

C. The approval of an expenditure schedule by the mayor shall constitute a budgetary allotment which shall, unless a revision thereof is approved by the mayor, be binding upon such agencies and the director of finance shall approve or issue no requisition, purchase order, voucher or warrant that is not in accordance with such allotment.

D. The allotment herein provided may be altered at any time by the mayor. The mayor shall direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.

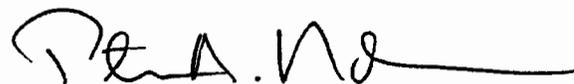
E. Any part of an allotment which is not expended or encumbered shall be deemed re-allotted for the next allotment period.

F. The mayor may at any time transfer an unencumbered appropriation balance or portion thereof within a division or between divisions in the same department. Transfers between departments, boards or commissions shall be made only by the council by ordinance adopted pursuant to Section 19.07B, upon the recommendations of the mayor.”

**“Section 19.12. Lapse of Appropriations.** Every appropriation shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered, except appropriations to the fund established by paragraph C of section 19.15 and appropriations for capital budget items where any portion of said appropriation has been expended.”

These Amendments to Sections 19.15, 19.08, and 19.12 of The Charter of the County of Kauai were duly adopted by the voters at the November 2002 General Election.

Lihue, Hawaii  
November 26, 2002



Peter A. Nakamura  
County Clerk, County of Kauai

## **Appendix B**

### **Ordinance 812**



**A BILL FOR AN ORDINANCE TO ADMINISTER THE PUBLIC ACCESS,  
OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND**

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

SECTION 1. A new Article 14, entitled "Public Access, Open Space and Natural Resources Preservation Fund" is hereby added to Title III, Chapter 6, of the Kaua'i County Code 1987, as amended, to read as follows:

**"TITLE III.**

**TAXATION AND FINANCIAL ADMINISTRATION**

**CHAPTER**

**6 GENERAL PROVISIONS RELATING TO FINANCE**

(The purpose of this Chapter is to accommodate those non-tax ordinances that deal with the subject of county fiscal administration.)

Article 14	Public Access, Open Space, and Natural Resources Preservation Fund.
Sec. 6-14.1	Purpose.
Sec. 6-14.2	Administration.
Sec. 6-14.3	Appropriation of Funds.

**ARTICLE 14. PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES  
PRESERVATION FUND**

**Sec. 6-14.1 Purpose.**

(a) In adopting each fiscal year's budget and capital program, the Council shall appropriate a minimum of one-half of one percent (0.5%) of the certified real property tax revenues to a fund known as the Public Access, Open Space, and Natural Resources Preservation Fund ("Fund"). The moneys in this Fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the County of Kaua'i for the following purposes:

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

(b) The moneys in this Fund may also be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to Sections 3.13, 3.14, or 3.15, Charter, in whole or in part – for the purposes enumerated

in paragraph (a) of this section and for the payment of costs associated with the purchase, redemption or refunding of such bonds.

(c) Any balance remaining in this Fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in this Fund shall not be used for any purpose except those listed in this section.

**“Sec. 6-14.2 Administration.**

(a) A community-based process that incorporates countywide community input for the purposes of establishing annual recommended priorities of lands or other property entitlements to be acquired for those land conservation purposes described in Section 6-14.1(a) of this article and paragraph C of Section 19.15 of the Charter shall be utilized by the County.

To meet this intent, a fund advisory commission (‘Commission’) shall be established consisting of [seven (7)] nine (9) appointees. [The Mayor shall appoint three (3) members, the Council shall appoint three (3) members, and the seventh member shall be appointed by the appointed six (6). If there is no agreement on the selection of the seventh member within forty-five (45) days of the appointment of the sixth member, the seventh member shall be appointed by the Mayor and confirmed by the Council. The appointing authorities shall consider representation from each of the following six (6) development plan areas when making appointments to the Commission:

- (1) Waimea – Kekaha;
- (2) Hanapēpē – ‘Ele‘ele;
- (3) Kōloa – Po‘ipū – Kalāheo
- (4) Līhu‘e – Hanamā‘ulu;
- (5) Kapa‘a – Wailua; and
- (6) North Shore (Anahola to Hā‘ena)]

(1) The Mayor shall select four (4) appointees, with at least one (1) from each of the following development plan areas and one (1) at-large:

- (A) Waimea – Kekaha;
- (B) Līhu‘e – Hanamā‘ulu; and
- (C) Kapa‘a – Wailua.

(2) The Council shall select four (4) appointees, with at least one (1) from each of the following development plan areas and one (1) at-large:

- (A) Hanapēpē – ‘Ele‘ele,
- (B) Kōloa – Po‘ipū – Kalāheo; and
- (C) North Shore (Anahola to Hā‘ena)

(3) One (1) island wide, at-large appointee shall be selected by the appointed eight (8). If there is no agreement on the selection of the one (1) additional member within forty-five (45) days of the appointment of the eight member, the one (1) additional member shall be appointed by the Mayor and confirmed by the Council.

(4) Initial terms of appointment shall be as follows:

- (A) All at-large appointees shall serve initial terms of one (1) year.
- (B) Two (2) Mayoral district appointees shall serve three-year terms.
- (C) One (1) Mayoral district appointee shall serve an initial one-year term.
- (D) Two Council district appointees shall serve initial terms of two (2) years.
- (E) One Council district appointee shall serve a three-year term.

- Pursuant to Charter Section 23.02(B), all subsequent appointments shall serve for staggered terms of three (3) years and until their successors are appointed. However, no holdover term shall extend beyond ninety (90) days.

- (5) The role of the Commission shall be to:

- (A) Work with the Planning Department to develop an annual list of priority projects to be considered for funding; and

- (B) Solicit public input on development of the annual list of priority projects to be considered for funding.

(b) The Commission shall establish annual recommended priorities of lands or property entitlements to be acquired, or for the funding of projects directly related to the purposes of this article.

(c) For administrative purposes, this Commission shall be attached to the Planning Department.

(d) At any given time, no more than five percent (5%) of this fund shall be used for administrative expenses.

(e) Meetings of this Commission shall comply with requirements of Chapter 92, Hawai'i Revised Statutes (the 'Sunshine Law').

(f) The Commission shall adopt administrative rules of procedure pursuant to Chapter 91, Hawai'i Revised Statutes (the 'Hawai'i Administrative Procedures Act') within one hundred and eighty (180) days of the full appointment of the Commission's membership.

#### **Sec. 6-14.3 Appropriation of Funds.**

(a) Appropriations for expenditure from this fund shall be made by ordinance.

(b) The Commission shall transmit annual recommendations to the Council for priorities of lands or other property entitlements to be acquired, or for the funding of projects directly related to the purposes of this article."

SECTION 2. Severability. If any provision of this ordinance, or the application thereof to any person or property or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3. Effective Date. This ordinance shall take effect upon its enactment.

INTRODUCED BY: /s/ BILL "KAIPO" ASING

DATE OF INTRODUCTION:

**July 17, 2003**

Lihu'e, Kaua'i, Hawai'i

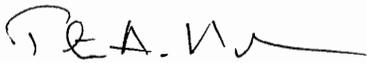
D:\My Documents\BILLS\2078 d1.doc\JFT:ao

CERTIFICATE OF THE COUNTY CLERK

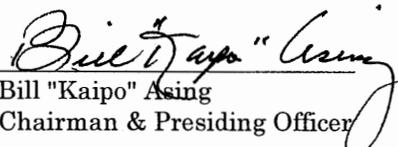
I hereby certify that heretofore attached is a true and correct copy of Bill No. 2078, Draft 1, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on December 8, 2003, by the following vote:

FOR ADOPTION: Furfaro, Munechika, Rapozo, Tokioka, Yukimura, Asing	TOTAL - 6,
AGAINST ADOPTION: None	TOTAL - 0,
EXCUSED & NOT VOTING: Kaneshiro	TOTAL - 1.

Lihue, Hawaii  
December 9, 2003

  
Peter A. Nakamura  
County Clerk, County of Kauai

ATTEST:

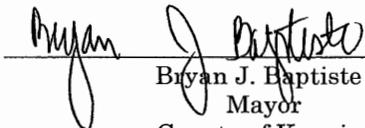
  
Bill "Kaipo" Asing  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 9, 2003

Approved this 15<sup>th</sup> day of

December, 2003.

  
Bryan J. Baptiste  
Mayor  
County of Kauai

## **Appendix C**

### **Commission Assessment Form**







## **Appendix D**

### **Abstracts for Each Acquisition Recommendation**



## Black Pot Park Expansion (Hanalei District)



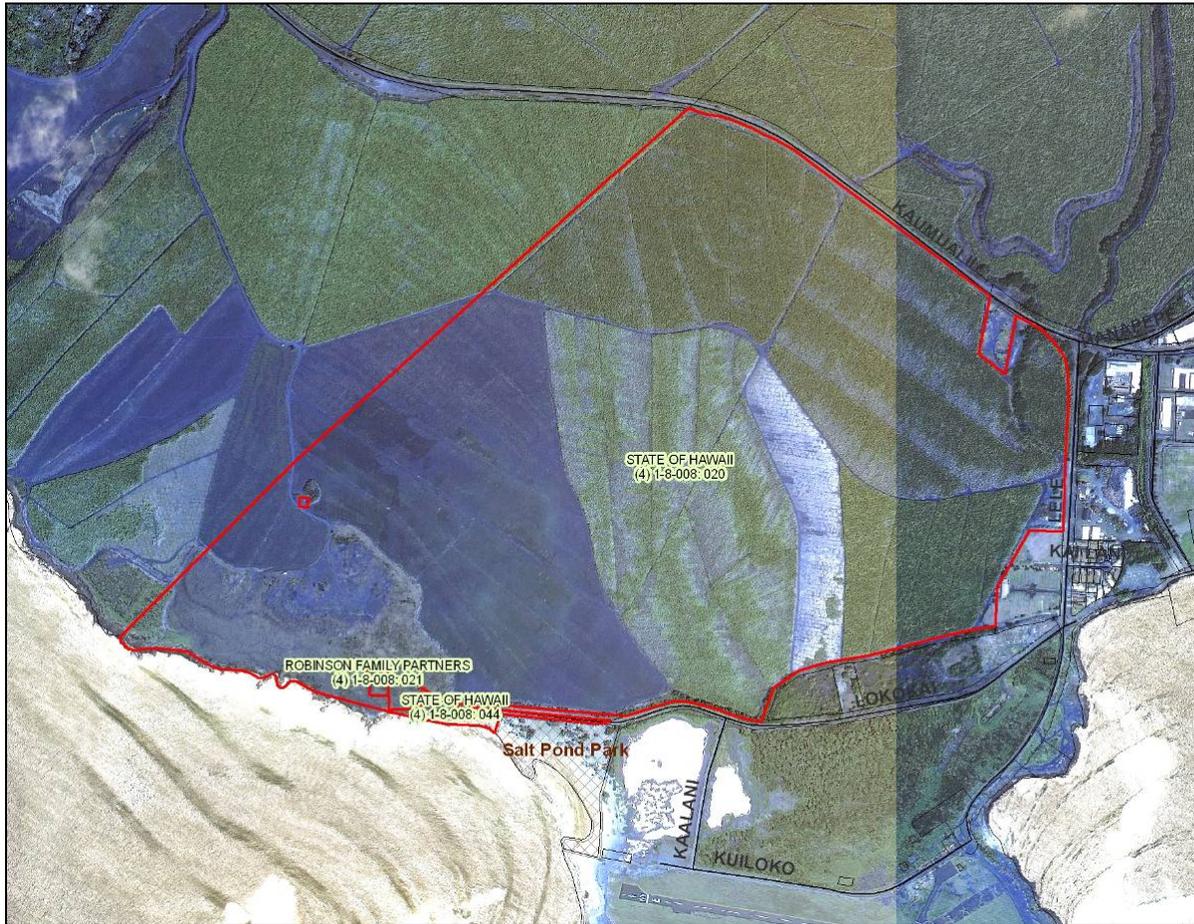
Owners	TMK	Address	Acres	Assessment
Ohana Hanalei LLC	(4)5-5-001:005	Weke Rd	0.5000	\$2,255,900
John C. Hodge	(4)5-5-001:011	4896 Weke Rd	0.7383	\$4,662,200
Michael G. Sheehan	(4)5-5-001:033	Weke Rd	0.8790	\$2,751,700
Michael G. Sheehan	(4)5-5-001:034	Off Weke Rd	1.3570	\$3,275,500
Kevin J. Horgan; Monica T. Horgan	(4)5-5-001:040	4895 Weke Rd	0.2800	\$2,183,400
Michael G. Sheehan	(4)5-5-001:049	Weke Rd	0.2910	\$1,707,100
			4.0453	\$16,835,800

### Recommendation:

- Purchase or otherwise acquire any or all parcels adjacent to Black Pot Park.
- Acquisition would be for park expansion purposes, improvement to coastal and river access, and preservation of open space.
- Additional parcels, particularly upriver, should also be considered if available funding and opportunity allow.
- Support efforts by Kauai Public Land Trust to obtain grants and other funding for land acquisition at this location.

\*Parcel boundaries appearing in aerial images are approximate.

## Salt Pond Park Expansion (Waimea District)



Owners	TMK	Address	Acres	Assessment
State of Hawaii (Gay & Robinson Inc, Lessee)	(4)1-8-008:020	Kaunualii Hwy	379.060	\$1,666,400
Robinson Family Partners	(4)1-8-008:021	Off Lokokai Rd?	.900	
State of Hawaii (County of Kauai, Lessee)	(4)1-8-008:044	Off Lokokai Rd	1.906	\$291,300
			381.866	\$1,957,700

### Recommendation:

- Purchase, encumber or otherwise transfer state lands encompassing portions of TMK (4)1-8-008:020 immediately west of Salt Pond Park and mauka of Lokokai Road, along with possible purchase of TMK (4)1-8-008:021.
- Acquisition would be for park expansion mauka and westward and for protection and buffering of the salt ponds.
- The current roadway and parking area are on TMK (4)1-8-008:044, owned by the State of Hawaii and leased by the County of Kauai.

\*Parcel boundaries appearing in aerial images are approximate.

## Haena Point (Brescia) (Hanalei District)



Owner	TMK	Address	Acres	Assessment
Jodie A. Brescia; Joseph A. Brescia	(4)5-8-009:045	7342A Alealea	0.4157	\$1,924,200
			0.4157	\$1,924,200

### Recommendation:

- Purchase of this Haena Point parcel.
- Acquisition would be to protect cultural resources currently threatened by ongoing construction.
- Support north shore community-based efforts underway to raise funds through Kauai Public Land Trust and Malama Kauai to assist with this purchase.

\*Parcel boundaries appearing in aerial images are approximate.

## North Kapaa Coastal Lands (Kawaihau District)



Owners	TMK	Address	Acres	Assessment
South Pacific Bistro Inc	(4)4-5-012:023	1638 Kuhio Hwy	0.220	\$669,800
South Pacific Bistro Inc	(4)4-5-013:003	1654 Kuhio Hwy	0.310	\$328,900
State of Hawaii (Richard Jasper, Lessee)	(4)4-5-013:029	Kuhio Hwy	0.113	\$7,600
			0.643	\$1,006,300

### Recommendation:

- Purchase of privately held parcels, along with transfer or lease of state-owned parcel.
- Acquisition would be for improved public access to the shoreline and Kapaa Beach Park, improved access to the new coastal multi-use path, and for preservation of open space and ocean views.

\*Parcel boundaries appearing in aerial images are approximate.

## CGB / Evslin (Waimea District)



Owners	TMK	Address	Acres	Assessment
CGB Partners	(4)1-3-005:040	Kaumualii Hwy	4.6470	\$2,294,100
Lee A. Evslin Trust; Monica C. Evslin Trust	(4)1-3-005:053	8808 Kaumualii Hwy	1.6810	\$1,404,300
Lee A. Evslin Trust; Monica C. Evslin Trust	(4)1-3-005:054	8809 Kaumualii Hwy	0.0024	\$100
State of Hawaii	(4)1-3-005:061	Kaumualii Hwy	0.0548	\$242,900
			6.3852	\$3,941,400

### Recommendation:

- Purchase of privately held parcels, along with transfer or lease of state owned parcel, for public shoreline access and preservation of open space.
- At this writing, TMK (4)1-3-005:040 is for sale and listed for \$2,400,000.
- At this writing, TMKs (4)1-3-005:053 and (4)1-3-005:054 are for sale and listed together for \$1,550,000.

\*Parcel boundaries appearing in aerial images are approximate.

## Haena Beach Park Lateral Access (Hanalei District)



Owners	TMK	Address	Acres	Assessment
Ed E. Ben-Dor; Joan B. Ben-Dor	(4)5-9-005:020	7878 Kuhio Hwy	1.097	\$2,891,500
Caprice Moran; Mark G. Moran	(4)5-9-005:021	7866 Kuhio Hwy	0.363	\$2,856,400
Ben Dyre Family Ltd Partnership	(4)5-9-005:022	7858 Kuhio Hwy	0.590	\$3,341,100
Ive Revocable Trust	(4)5-9-005:023	7848 Kuhio Hwy	0.334	\$2,934,100
Sharon L. Carroll; Harold R. Downs	(4)5-9-005:024	7840 Kuhio Hwy	0.336	\$2,367,300
Sally A. M. Mist Trust	(4)5-9-005:025	7834 Kuhio Hwy	0.333	\$2,271,300
Troy Eckert	(4)5-9-005:026	7826A Kuhio Hwy	0.441	\$2,617,600
Catherine M. Bartmess Trustee	(4)5-9-005:027	7820 Kuhio Hwy	0.345	\$2,358,200
Barbara R. Banke; Jess S. Jackson; Christopher A. B. Jackson; Katherine Ann B. Jackson; Julia K. B. Jackson	(4)5-9-005:028	Kuhio Hwy	2.463	\$5,819,600
Browning Family Trust	(4)5-9-005:029	7772 Kuhio Hwy	0.683	\$3,584,800
			6.985	\$31,041,900

### Recommendation:

- Acquire lateral easement along shoreline above the influence of seasonally high waves to provide safe lateral access.
- Easement of approximately 1,100 feet in length by 10 feet wide for a total of approximately 11,000 square feet (of 304,267 square feet total in listed parcels).
- Easement from existing public shoreline access “road E” to Haena Beach Park.
- State matching funds may become available if SB 2525, “Making an Appropriation for Acquisition of a Public Right of Access to Haena Beach Park,” passes.

\*Parcel boundaries appearing in aerial images are approximate.

## Hoban (Koloa District)



Owner	TMK	Address	Acres	Assessment
Robert M. Hoban Trust	(4)2-6-003:017	4432 Lawai Beach Rd	0.2842	\$3,327,800
			0.2842	\$3,327,800

### Recommendation:

- Purchase of pedestrian easement from Lawai Beach Road to shoreline along southeast property line.
- Existing County of Kauai drainage easement at this location was traditionally used by local residents to access the shoreline, but property owner now prohibits access.
- Additional funding for the creation of a pedestrian easement for beach access may be available through Conditions of Ordinance PM-2004-370 relating to Zoning Designation at Kukuiula, Kauai, Section 2.15e(2), in consultation with the Koloa Community Association.

\*Parcel boundaries appearing in aerial images are approximate.

## Nukumoi Surf Shop (Koloa District)



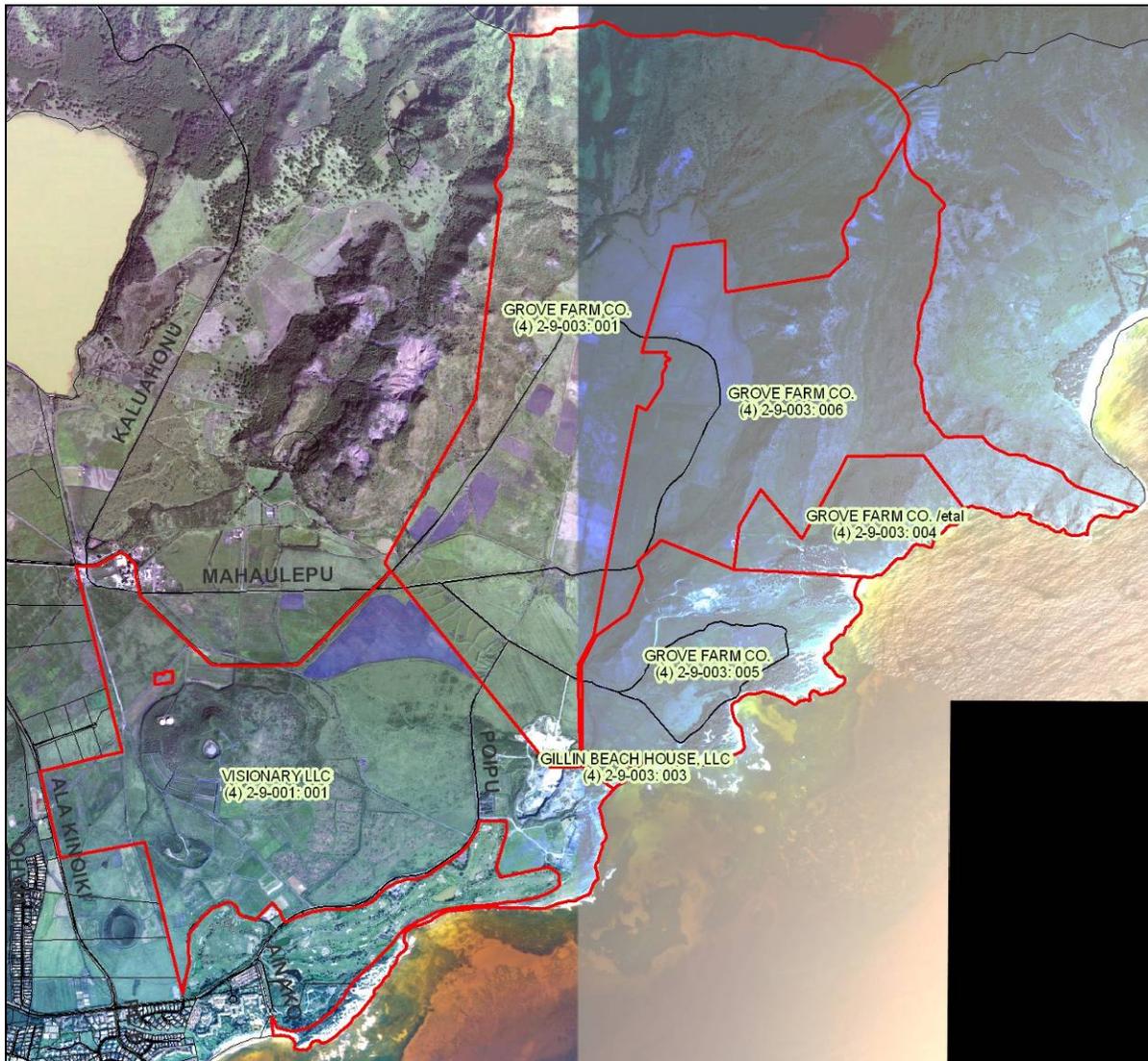
Owner	TMK	Address	Acres	Assessment
Kaha Kai LLC	(4)2-8-017:016	2080 Hoone Rd	1.202	\$2,211,800
			1.202	\$2,211,800

### Recommendation:

- Purchase parcel to protect cultural resources on adjoining County of Kauai parcels and prevent future development.
- Purchase of acquisition is for expansion of Poipu Beach Park mauka.
- The parcel's zoning is Open Special Treatment – Cultural (ST-C) and Open Special Treatment – Public (ST-P).

\*Parcel boundaries appearing in aerial images are approximate.

## Mahaulepu & Gillin's (including CJM & Haula) (Koloa District)



Owners	TMK	Address	Acres	Assessment
Visionary LLC	(4)2-9-001:001	n/a	1076.073	\$9,464,300
Grove Farm Co. Ltd.	(4)2-9-003:001	n/a	1417.750	\$3,328,100
Gillin Beach House, LLC	(4)2-9-003:003	n/a	0.697	\$1,536,600
Grove Farm Co. Inc.; Gabriel I; Christine V. Kali; Minnie Kong; Violet A. Lumabao	(4)2-9-003:004	n/a	153.000	\$803,200
Grove Farm Co. Ltd.	(4)2-9-003:005	n/a	360.303	\$2,263,900
Grove Farm Co. Ltd.	(4)2-9-003:006	n/a	766.250	\$3,336,300
			3774.073	\$20,732,400

### Recommendation:

- Acquisition of all or any of these parcels or portions thereof to protect historic, cultural, and natural resources of the area and to improve access to the shoreline.

\*Parcel boundaries appearing in aerial images are approximate.

## Alekoko Fishpond (Lihue District)



Owners	TMK	Address	Acres	Assessment
Okada Trucking Co Ltd	(4)3-2-001:001	n/a	55.408	\$554,100
Okada Trucking Co Ltd	(4)3-1-001:012	n/a	46.641	\$18,700
			102.049	\$572,800

### Recommendation:

- Acquisition of these parcels for protection and restoration of the fishpond and to prevent residential development on TMK (4)3-2-001:001, which may impact the historical integrity of this important cultural site.
- Restoration and preservation of the fishpond might best be accomplished through partnering with local non-profit organizations interested in the cultural, research, and educational potential of the site.

\*Parcel boundaries appearing in aerial images are approximate.

## Coco Palms (Kawaihau District)



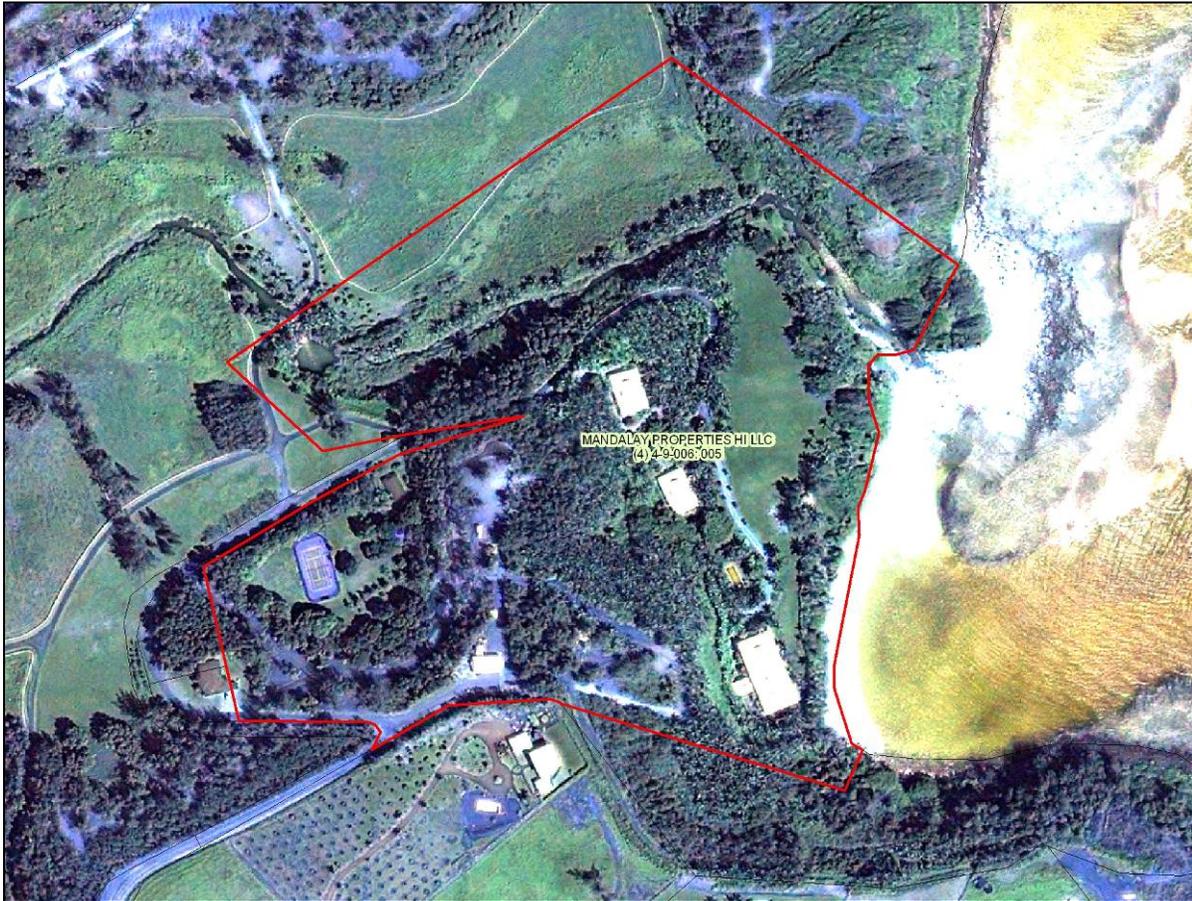
Owners	TMK	Address	Acres	Assessment
Coco Palms Ventures LLC	(4)4-1-003:004	n/a	18.880	\$23,100
State of Hawaii (Coco Palms Ventures LLC Lessee)	(4)4-1-003:005	Kuamoo Rd	14.834	\$0
Coco Palms Resort; Coco Palms Ventures LLC	(4)4-1-003:007	241 Kuhio Hwy	12.630	\$24,160,600
State of Hawaii	(4)4-1-003:011	Drainage	0.496	\$200
State of Hawaii (Coco Palms Ventures LLC Lessee)	(4)4-1-003:017	Kuamoo Rd	0.855	\$0
State of Hawaii (Wailua Associates Lessee of one condo)	(4)4-1-003:039	Kuhio Hwy	0.492	\$236,600
			48.187	\$24,420,500

### Recommendation:

- Purchase privately held parcels and transfer or encumber state owned parcels, to protect the cultural and/or historic resources, preserve open space, and prevent resort development at this site.
- Support legislative and community efforts for acquisition of any or all noted parcels.

\*Parcel boundaries appearing in aerial images are approximate.

## Papaa Bay Easement (Kawaihau District)



Owner	TMK	Address	Acres	Assessment
Mandalay Properties HI LLC	(4)4-9-006:005		6.07	\$3,369,600
			6.07	\$3,369,600

### Recommendation:

- Purchase of vehicular easement through the parcel to the bay along the existing roadway corridor, including parking area easement at the makai end of the road.

\*Parcel boundaries appearing in aerial images are approximate.