



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

**JODI HIGUCHI SAYEGUSA**, CLERK OF COMMISSION

**JONATHAN LUCAS**, CHAIR  
**ROBIN PRATT**, VICE CHAIR  
**TARYN DIZON**, MEMBER  
**WILLIAM KINNEY**, MEMBER  
**MARK ONO**, MEMBER  
**SHAYLYN ORNELLAS**, MEMBER  
**MAI SHINTANI**, MEMBER

24 OCT -4 A9:22

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

**Līhu'e Civic Center, Moikeha Building  
Meeting Room 2A-2B  
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i**

OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

- **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](mailto: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, October 10, 2024  
1:00 p.m. or shortly thereafter**

RECEIVED

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA**

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

1. August 8, 2024.

**E. RECEIPT OF ITEMS FOR THE RECORD**

**F. GENERAL BUSINESS**

1. Update on a proposal to acquire a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 065 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).
2. Update on a proposal to acquire a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 071 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).
3. Update on 'Aliomanu Beach Access, located on a lot further identified as Tax Map Key (4) 4-9-004:013 (Preliminary Report 3/9/2017, Supplemental Report 05/31/2022)
4. Discussion and recommendations for prioritizing improvements for coastal accesses.

**G. COMMUNICATIONS**

**H. UNFINISHED BUSINESS (For Action)**

**I. NEW BUSINESS (For Action)**

1. Proposal to acquire a 0.5431 acres parcel located in Hanalei, Halele'a Moku, further identified as Tax Map Key (4) 5-5-005: 007 (Scarp Ridge Propco LLC).
  - a. Preliminary Director's Report

24 OCT -4 A9:22

OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

## **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. Update on a proposal to acquire a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 065 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).
2. Update on a proposal to acquire a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4)1-8-008: 071 (Kaua'i Petroleum Co. LTD) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).
3. Update on 'Aliomanu Beach Access, located on a lot further identified as Tax Map Key (4) 4-9-004:013 (Preliminary Report 3/9/2017, Supplemental Report 05/31/2022)
4. Discussion and recommendations for prioritizing improvements for coastal accesses.
5. Proposal to acquire a 0.5431 acres parcel located in Hanalei, Halele'a Moku, further identified as Tax Map Key (4) 5-5-005: 007 (Scarp Ridge Propco LLC).
  - a. Preliminary Director's Report

## **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 December 12, 2024. 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**

COUNTY OF KAUA‘I  
Minutes of Meeting  
OPEN SESSION

**DRAFT To Be Approved**

Board/Commission:	<b>Public Access, Open Space and Natural Resources Preservation Fund Commission</b>	Meeting Date	<b>August 8, 2024</b>	
Location	Moikeha Meeting Room 2A/2B	Start of Meeting: 1:00 p.m.	End of Meeting: 2:50 p.m.	
Present	Vice Chair Robin Pratt. Commissioners: Taryn Dizon, William Kinney ( <i>in at 1:02 p.m.</i> ), Mark Ono, Shaylyn Ornellas, and Mai Shintani. Deputy County Attorney Laura Barzilai. Planning Department Staff: Deputy Planning Director Jodi A. Higuchi Sayegusa, Planner Shelea Koga, Open Space Secretary Brent Sokei, and Planning Department Secretary Shanlee Jimenez. Office of Boards and Commissions: Administrator Ellen Ching and Commission Support Clerk Lisa Oyama.			
Excused	Chair Jonathan Lucas			
Absent				
<b>SUBJECT</b>	<b>DISCUSSION</b>		<b>ACTION</b>	
<b>A. Call to Order</b>	Vice Chair Pratt called the meeting to order at 1:00 p.m.			
<b>B. Roll Call</b>	<p>Deputy Planning Director Jodi A. Higuchi Sayegusa verified attendance by roll call:  Commissioner Dizon replied present.  Commissioner Kinney was present at 1:02 p.m.  Commissioner Ono replied present.  Commissioner Ornellas replied present.  Commissioner Shintani replied present.  Vice Chair Pratt replied present.  Chair Lucas was noted as excused.</p> <p>Ms. Higuchi Sayegusa introduced Brent Sokei as the new Open Space Secretary.</p>		Quorum was established with five Commissioners present.	
<b>C. Approval of Agenda</b>	<i>Mr. Kinney was noted as present.</i>		Mr. Ono moved to approve the agenda, as circulated. Ms. Dizon seconded the motion. Motion carried 6:0.	
<b>D. Minutes of the Meeting(s) of the</b>	1. None for this meeting.			

SUBJECT	DISCUSSION	ACTION
<b>Commission</b>		
<b>E. Receipt of Items for the Record</b>	Ms. Higuchi Sayegusa stated that there were no items for receipt.	
<b>F. General Business</b>	<p><u><b>F.1.</b> Update on a proposal to acquire a 0.2764 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4) 1-8-008:065 (Kaua‘i Petroleum Co. Ltd) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).</u></p> <p><u><b>F.2.</b> Update on a proposal to acquire a 0.2867 acre parcel located in Hanapēpē, Kona Moku, further identified as Tax Map Key (4) 1-8-008:071 (Kaua‘i Petroleum Co. Ltd) (Preliminary Report 12/29/2017, Supplemental 1-5 2/8/2018 to 10/19/2019, Final Report and Recommendation to acquire 05/16/2024).</u></p> <p>Ms. Higuchi Sayegusa stated that these items were placed on the Commission’s agenda so that an update could be provided on these items which were the priority focus of the Department for the past two to three months as it relates to the Commission. There were several County Council hearings to obtain authorization to use the Fund to proceed with the negotiation to purchase the property. That authorization was received. During that process, presentations were made, members of the public appeared to provide context on the history of the area and the background of the proposal. A majority of the Councilmembers were in full support to proceed. Currently, the Department is talking with Par Hawai‘i to reinstate the negotiations to fine tune the terms of the acquisitions. Ms. Higuchi Sayegusa noted that one of the potential hangups could be that the makai parcel which previously housed a gas station, would need to be purchased as-is, without doing any Phase II Environmental Site Assessment work or any soil testing of any kind. The Kaua‘i contact for Par Hawai‘i notified the Planning Department that the final decisions are still with their CEO, who is working with their risk managers back in Texas on this sale. The County would like to at least be able to do some soil and grounds testing before moving forward with the final purchase, along with ground penetrating radar work to confirm that all of the gas tanks were removed properly. Thereafter, the price would then need to be renegotiated. The amount</p>	

SUBJECT	DISCUSSION	ACTION
	<p>approved by the County Council was a not to exceed amount based on the original higher end of the appraisal. There may be the possibility of renegotiating the price of the possibly the makai parcel based on the results of any soil testing that could occur.</p> <p>Ms. Koga stated that in the past couple of weeks, she, Ms. Higuchi Sayegusa, Ms. Marisa Valenciano, a couple of members of the Hanapēpē community, and some of the representatives from other County departments have been working on the Centennial event for the Hanapēpē Massacre event that is slated for September 9, 2024. The event is going to be held at the Hanapēpē parcel sites. There will be a blessing, keynote speakers who will give a brief history of the Hanapepe Massacre event, how the event affected the community, etc. The Commission will be invited to the event. The event will take place around 2:00-3:00 p.m. Invitations will be sent out in the weeks to follow.</p> <p>Ms. Ornellas asked what the ceiling price was for the parcels. Ms. Higuchi Sayegusa responded that it was approximately \$1.4M. Ms. Higuchi Sayegusa further noted that due to cost savings that were realized in relation to the Hideaways/Kaumumene coastal access improvements in the amount of \$1.2M, the Fund would only be expending an additional \$165,000 for the Hanapēpē parcels as the cost savings from the Kaumumene project would be repurposed for this parcel purchase. Ms. Ornellas asked for confirmation that the total purchase price cannot exceed the \$1.4M. Ms. Higuchi Sayegusa confirmed that Ms. Ornellas was correct and that if the purchase price were to exceed that amount, additional Council approval would be needed.</p> <p>Ms. Ornellas inquired as to why the landowner was in opposition of the County testing the soil on the parcels. Ms. Higuchi Sayegusa responded that the landowner inherited the property somewhere between 2018 to current. Par Pacific acquired Kaua‘i Petroleum and ultimately inherited those properties. Par Pacific did not do any due diligence on those specific parcels when they inherited the properties, so they do not know the full extent of the clean-up that occurred or did not occur. The County did their due diligence and obtained State Department of Health records which reflected signing off on the tank removal process that occurred in the early 2000s, but ultimately the amount of risk is unsure at this moment. If testing is done, it could uncover additional risks or unknowns.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Ornellas expressed her confusion about the purchase process as she expected disclosures to be provided during the previous acquisition process. The previous owner would have had to disclose material facts about the property. Secondly, Ms. Ornellas expressed her dismay that the current owners would discourage the County, the Commission, and the Planning Department from doing their own due diligence to confirm facts discovered. Ms. Higuchi Sayegusa stated that she agreed with Ms. Ornellas. Ms. Ornellas further stated that in her experience, there had to have been some kind of information exchange provided during the acceptance of the parcels and that she was not aware of any real estate transaction occurring without this traditional exchange of vital information about the property in question. Ms. Barzilai noted that a request could be made to the landowner, however, it was unsure if any of that information would be provided. Ms. Barzilai further stated that it might be perceived that a condition of this type of acquisition is the associated risk involved and that a Phase I assessment is on-going. Ms. Higuchi Sayegusa clarified that the Phase I assessment is mostly a document review and that any Phase II assessment would be necessitated based upon what the Phase I review reveals. Ms. Higuchi Sayegusa also noted that she has been trying to negotiate the ability for the County to do soil testing at minimum of approximately 2” to support the building of a parking location for surrounding businesses and the eventual memorial site. Given the minimal hazardous material regulations that were in-place years ago, there is a concern about possible soil contamination on the parcel given the gas station activity that occurred on the parcels. The County is still working diligently to work in good faith with Par Hawai‘i to negotiate final terms of the acquisition.</p> <p>Ms. Ornellas stated that though she had not seen what was conveyed to the County Council, she had hoped that for full transparency, the issues of being unable to do soil testing and regarding disclosures would have been pointed out. Ms. Higuchi Sayegusa stated that during the presentation to the Council, she did mention it, and she had also mentioned to Par Hawai‘i that there would ultimately be numerous levels of approvals needed to have this acquisition move forward and those facts would be disclosed to those decision-makers.</p> <p>Ms. Ornellas, in wanting to protect the Commission, asked the Department to clearly communicate the risks involved with the acquisition to all stakeholders. She further stated that</p>	

SUBJECT	DISCUSSION	ACTION
	<p>she was unaware of any real estate transaction where full disclosures are not allowed by the seller or where due diligence to the fullest extent during the J-1 inspection period is not allowed to the buyer of a property. During the J-1 inspection period, the potential buyer is able to measure up their discovery against the disclosures provided by the seller.</p> <p>Ms. Ornellas asked if the County is currently in the disclosure process. Ms. Barzilai stated that it is on-going unless that phase is waived by either party, which is what is occurring during this specific transaction. Ms. Higuchi Sayegusa stated that the County has not signed anything binding at this time. Ms. Ornellas stated that the seller is requesting no testing, but the County has not formally agreed to that. Ms. Higuchi Sayegusa confirmed that Ms. Ornellas was correct. There is no active escrow on-going right now. Ms. Higuchi Sayegusa stated that first the Department had to go to the County Council to obtain approval on the funding before any negotiations could formally occur.</p> <p>Ms. Ornellas encouraged the Department to try to work out a lot of the details prior to the purchase contract being submitted. This would allow for a shortened process, reduces the number of loopholes, less post-discovery issues, etc. Ms. Ornellas just wants the Commission to understand that they are currently being discouraged from the due diligence process and therefore the Commission needs to standby that decision as it goes to higher-level decision-makers. Ms. Higuchi Sayegusa stated that she does bring up these facts periodically with community members and stakeholders throughout the discussions. Ms. Ornellas stated that she felt these important facts were glossed over during the presentation to the County Council.</p> <p>Ms. Ornellas stated that the property is currently being used to fix vehicles, so the amount of chemical exposure or other hazardous environmental risks are concerning to her. Ms. Higuchi Sayegusa agreed that the landowner should be managing their property better. Ms. Ornellas requested that the Department make it clear that the Commission is requesting that monies be spent on parcels that come with risk and that full discovery is not being allowed prior to acquisition.</p> <p>Ms. Higuchi Sayegusa agreed that there are risks involved and the County would need to make</p>	



SUBJECT	DISCUSSION	ACTION
	<p>the decision on acquisition knowing the risks involved.</p> <p>Mr. Ono asked who makes the final decision. Ms. Higuchi Sayegusa stated that at this point in the process, the final decision falls in the hands of the Administration and the Mayor.</p> <p>Ms. Ornellas stated that when a seller withholds information, that is a tool used in negotiations in regard to price. Ms. Higuchi Sayegusa agreed that this transaction has not been an ideal one, and that this lack of ability to do soil testing and additional discovery has always been an issue as it relates to this specific land acquisition. Ms. Higuchi Sayegusa further noted that at minimum, she hopes that the Centennial celebration can be held at the parcel.</p> <p>Mr. Ono asked if the landowner gave permission to use the property for the Centennial celebration. Ms. Higuchi Sayegusa responded that she received verbal approval, but that she will be meeting with the landowner on August 9, 2024, to formalize the approvals needed through a Right-of-Entry Agreement.</p> <p>Vice Chair Pratt asked what the timeline moving forward looks like for the final acquisition. Ms. Higuchi Sayegusa said that a concrete timeline is difficult to provide as it is unknown how long final negotiations will take and what issues might arise between now and then. If soil testing and ground penetration are allowed to occur, those items would need to be completed with results to follow, and possible action may be needed thereafter. Procurement on a contractor to handle the soil testing and ground penetration is being finalized concurrently with negotiations in the event that those activities are allowed during discovery.</p> <p>Ms. Higuchi Sayegusa stated that these items will appear back on the Commission’s agenda in the future for additional updates, as necessary.</p>	<p>No action was taken as it relates to these agenda items.</p>
	<p><b><u>F.3.</u></b> <u>Update on a proposal to acquire access to State of Hawai‘i property through 4901 Waiakalua Street, Kīlauea, Hawai‘i 96754, Ko‘olau Moku, further identified as Tax Map Key 5-1-005:036 (Richard S. Tallman and Lisa Flores) (Preliminary Report 6/1/2022).</u></p> <p>Ms. Higuchi Sayegusa stated that the Department has been working closely with the Office of the</p>	

SUBJECT	DISCUSSION	ACTION
	<p>County Attorney on this access. The Office of the County Attorney has also been working closely with the property owners’ attorney Mauna Kea Trask on this access. The Department’s position has been that the unfulfilled conditions of subdivision approval are still on the books and requires pedestrian or equestrian access to the State property. There are some unclear areas of that condition which include what is meant by access to State property and whether that includes public access or access just for the State. Secondly, the property owners have adamantly wanted to settle issues related to who would maintain the access, demarking the access, whose responsibility it is to install a fence at the request of the landowner, concerns with hunters and gatherers traversing their property with dogs and guns, etc. Right now, the Department is researching through historical records the intent at the time the conditions were put into place to strengthen the County’s position to have the owners satisfy all levels of the condition including maintenance, demarcation, etc. or to accept responsibility of those tasks if it is deemed that the County had intended to take on those responsibilities. In summary, the current status of this update is that this acquisition is currently at the attorneys’ level.</p> <p>Ms. Dizon asked if the County had yet come up with an initial position as to whether the access was for the public or just for the State. Ms. Barzilai stated that she is of the position that the access was meant for the public and not limited only for State workers or ranchers. Ms. Barzilai further noted that she felt it was intended for public access for all of the purposes outlined in State Law. Ms. Dizon expressed her hope that this could possibly turn into a positive outcome as this issue arose from the County Council.</p>	<p>No action was taken as it relates to this agenda item.</p>
	<p><b><u>F.4.</u></b> <u>Update on ‘Aliomanu Beach Access, located on a lot further identified as Tax Map Key (4) 4-9-004:013 (Preliminary Report 3/9/2017, Supplemental Report 05/31/2022).</u></p> <p>Ms. Higuchi Sayegusa stated that there was a period of time where the Department lost contact with Nalani Kaneakua as she has been busy with her many educational programs. However, the Department will be meeting with her in a couple of weeks to further discuss progress on this agenda item. The Department is still trying to set up the Stewardship Agreement to satisfy the concerns of the landowner. The landowner would be amenable to conveying easement since access has already been occurring over portions of the property, but the landowner was concerned</p>	

SUBJECT	DISCUSSION	ACTION
	<p>about formalizing easement until the County had a plan for who would take care of the easement. The Department wanted to ensure that Ms. Kaneakua was involved in the discussion to get a steward who would be willing and able to properly manage the easement for that area. Ms. Kaneakua did provide a list of names in the past, but those names did not lead to any firm commitments for stewardship.</p> <p>Ms. Ornellas asked if the access is near the stream. Ms. Higuchi Sayegusa responded that the access is on the north-side of the stream. Ms. Ornellas stated that the reason why that access was decided upon was two landowners ago, they were the only people who let the children gain access. The road is a County road and there used to be a bridge there. The actual beach access is on the straightaway. Ms. Sayegusa stated that the Department did go on a site visit to determine the legal beach access. Ms. Ornellas further explained her recollection of what had occurred in the area regarding property ownership, a landowner erecting a rock wall to adjoin parcels, washing out of the bridge, and landowners trying to restrict further beach access in the area. Ms. Ornellas noted that the beach access from the Anahola-side was the beach access that most of the public used when she was a child growing up. Ms. Ornellas asked what it would take to get that beach access back instead of this current proposal of the stream access. Ms. Ornellas suggested gaining back the access over the rock wall. Ms. Higuchi Sayegusa stated that there were numerous complaints about the rock wall and blocked access, but Planning’s Enforcement Division confirmed that there was no County access in that area. Ms. Ornellas explained that her recollection was that there was a County public access in that location.</p> <p>Ms. Ornellas stated that she and Ms. Dizon were both on the Commission when \$300,000 was spent on Phase 1 of the public access project. After that phase concluded, the next phase was to include which accesses were going to actually demarcate but reclaim.</p> <p>Ms. Ornellas further stated that she believes the focus on this current access in ‘Aliomanu was only supposed to be pursued if the County was unsuccessful in enforcing the removal of the rock wall that was put up to block the original access that was in-place.</p> <p>Ms. Koga offered to do a little more research on this item and to meet with Ms. Ornellas so that</p>	

SUBJECT	DISCUSSION	ACTION
	<p>exact locations could be identified. Ms. Koga further noted that this item could appear on the Commission’s next agenda once additional research could be done to clear up any discrepancies. Ms. Ornellas stated that Nalani would also have that information.</p> <p>Ms. Higuchi Sayegusa also suggested that a map be created of the area to show which areas the County does have accesses to for additional discussion.</p> <p>Ms. Ornellas thanked the Department for their worked. She asked if at some point the County may have sold the access rights. Ms. Barzilai stated that the County would not have sold it as that transaction is not permitted under law.</p> <p>Ms. Higuchi Sayegusa reiterated that the current update for this item is that the Department will continue to circle back with Ms. Kaneakua and the landowner to further discussions. The landowners were not opposed to public access, they were just concerned about stewardship and maintenance.</p> <p>Ms. Ornellas provided her recollection of the Commission’s huaka’i to the area. The Commission traversed on the County’s roadway to the washed-out bridge that was decided by the County would not be repaired. Neither side of the roadway had bamboo planted, but now both sides have bamboo planted which created a smaller roadway. Ms. Ornellas expressed her frustration with inaction at addressing those takings by property owners of public roadways and accesses. Ms. Ornellas asked if a requirement could be included to have the landowners remove the bamboo plants that were planted that encroach upon the County’s roadways. Ms. Higuchi Sayegusa stated that the bamboo plants have already been identified as one of the issues there. If the bamboo is in the County’s right-of-way, the Department of Public Works would need to have the landowners clear the bamboo plants from the County’s right-of-way. Ms. Ornellas asked if the Commission would have to pay for the surveying of the area to get that work done quicker. Ms. Higuchi Sayegusa stated that the Commission could consider funding the work to expedite the completion of the work if they felt warranted to do so. However, the Department of Public Works would need to enforce the right-of-way concerns with the landowner.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Ornellas asked if there had been any discussion with the landowner about beach access along Kukuna Road. She felt it might be prudent to bring that topic up as a part of this package as it was previously brought up during Ms. Kaneakua’s presentation to the Commission. Ms. Higuchi Sayegusa stated that access in that area falls under a different landowner, but there was no discussion with this current landowner about the Kukuna Road access.</p> <p>Ms. Ornellas felt as if the parcels surrounding the public access areas may have changed hands numerous times throughout the years. Ms. Higuchi Sayegusa confirmed that those discussions with this current landowner did not take place as it relates to the Kukuna Road access.</p> <p>Ms. Dizon stated that during the Commission’s last site visit to the area, the encroachment to the County’s right-of-way was very evident and could not understand how there were no violations related to the bamboo patches or the rock wall that were enforced. Ms. Dizon found it very concerning that no action or movement was taken by the County as it relates to those obvious encroachment issues. She sees a habitual pattern of lack of enforcement and hopes that things improve in regard to protecting access for the public before it is lost. Ms. Higuchi Sayegusa committed to looking at what the Planning Department can do as it relates to enforcement, and in working with the Department of Public Works to enforce areas under their jurisdiction as well.</p> <p>Ms. Dizon encouraged the Department to check-in with the Department of Public Works to ensure that enforcement is being handled properly and expediently. Ms. Higuchi Sayegusa responded that she is aware of the Planning Department’s Enforcement Officer attempting to get the Department of Public Works to respond accordingly, but that has not been successful. Ms. Dizon stated that she finds that unacceptable and that if additional budget is needed to push along enforcement efforts to protect these areas, then that is what should be proposed. Furthermore, Ms. Dizon stated that the Department of Public Works should be doing more to ensure their responsibilities related to ensuring the stream is cleared properly, etc. are done as well, and that duty is also lacking. Ms. Dizon expressed that she does not think the Department of Public Works realizes how much they are a part of the problem instead of being a part of the possible solution as far enforcing public accessing and keeping the stream clearing of invasive plants to allow the necessary fresh water to flow for the growth of the limu.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Ornellas stated that the funds spent for this project can give the County the transaction that it needs to get more things accomplished related to public access. Ms. Ornellas expressed her dismay at knowing that the Commission spent \$300,000 on a report that may just be sitting on someone’s desk and not being used it its fullest potential. There are more than 700 deeded access on the island. Most people on the island do not know that. Ms. Ornellas would like to report back to the constituency how the monies were used and to provide the actual report to the public. Perhaps the report could be used to help the Department of Public Works enforce public access around the island. Ms. Ornellas encouraged the Commission and the Department to move the report to the next phase and make things happen. Mr. Ornellas requested that whoever is responsible for the report and the next steps provide an update to the Commission on what is being done and when. She recalls that the next steps should have included identified which accesses would be moved towards demarcation and enforcement.</p> <p>Ms. Barzilai and Ms. Higuchi Sayegusa noted that the Commission’s agenda item F.6. was added to have a discussion on how to move forward with the recommendation that Ms. Ornellas noted.</p> <p>There being no objections, Item F.6. was taken out of order and proceeded as follows:</p>	<p>No action was taken as it relates to this agenda item.</p>
	<p><b><u>F.6.</u></b> <u>Discussion and recommendations for prioritizing improvements for coastal accesses.</u></p> <p>Ms. Higuchi Sayegusa stated that the Department wanted to get direction from the Commission on how to take the inventory that was completed to move forward. She wanted to get feedback on how to prioritize which coastal accesses would be pursued or maintained as the Fund itself was approved to be used to maintain coastal accesses in addition to improving acquisitions at the time of acquisitions. Ms. Higuchi Sayegusa reminded the Commission that there are only limited funds that the Open Space Fund receives each year so a prioritization would need to occur to best utilize the limited amounts of funds that may be available at any given time. The Commission could decide to prioritize a certain percentage of the funding for specific purposes or not. Similarly, the Commission could also decide to go out and conduct additional outreach to identify additional land acquisitions for public access purposes.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Ono asked for clarification if by “access” the Commission was deciding on coastal access or access in general. Ms. Higuchi Sayegusa responded that the language in the Kaua‘i County Code and Kaua‘i County Charter indicate coastal accesses. The Commission can also fund improvements for land acquisitions. Mr. Ono indicated his interest in trying to change the Charter to include the ability for the Commission to seek out mauka accesses as well as coastal/makai accesses. Ms. Ornellas expressed her support as well. Ms. Higuchi Sayegusa stated that for coastal accesses, the intent was to allow funds to be spent to improve coastal accesses, when necessary, but for other accesses, to improve them upon acquisition. Ms. Higuchi Sayegusa also noted that the Department has a Charter Amendment going through the Charter Review Commission regarding using Open Space Fund monies for maintenance purposes subject to a threshold so that the entire Fund is not used solely for maintenance purposes only. Ms. Higuchi Sayegusa stated that the Commission could decide to pursue the action of proposing changes to the Charter via a Charter Amendment proposal in a future election cycle as it would not make the General Election timeline for a proposal to appear in this year’s election cycle. This Charter Amendment proposal would allow for use of the Fund to be used for any improvements on any accesses that the Commission deems warranted and that the County owns.</p> <p>Ms. Dizon asked that for accesses provided through the subdivision approval process, whether the maintenance responsibility falls on the landowner of the subdivision or on the County. Ms. Higuchi Sayegusa responded that for any new subdivisions that would come into play, the County is careful to structure the responsibility aspect into any agreement. The more recent access discussions under the Kīlauea Mauka Access (Agenda Item F.3.) center around agreements and conditions from a time period where those responsibilities and issues were not as clearly laid out.</p> <p>Mr. Ono asked whose responsibility it is to ensure that all of the public accesses around the island are being maintained or not. Ms. Higuchi Sayegusa does have the public access inventory which includes the access condition, area, tax map key identification, legal access, conveyance information, etc. The Department asked the Commission for its assistance and guidance in prioritizing the access list and how to go about addressing the list it has. Ms. Higuchi Sayegusa</p>	

SUBJECT	DISCUSSION	ACTION
	<p>explained that the County of Maui has a similar list posted on the County’s website. This brings attention to the general public of the various accesses around the island and brings more attention to these areas.</p> <p>Mr. Ono asked whether publicly displaying their list of public access points had been a problem for the County of Maui. Ms. Higuchi Sayegusa responded that she believes it has been to some extent. Some residents would rather keep certain access points and culturally sensitive areas away from the larger general population or tourists. The question before the Commission is how they want to handle this inventory list and how would they like to see the Department move forward if at all. The Department would like to proceed cautiously to ensure that they have vet the issues related to all accesses and to make sure they remove accesses that perhaps the general population should not necessarily have access to so easily. Does the Commission want to improve all the accesses to a point where everyone will go and use it, attracting a larger crowd and use of the area is a question that was put before the Commission. Mr. Ono stated that he understood where the concern came from, but it was a strange way to think of public access in that manner.</p> <p>Ms. Ornellas requested a copy of the report. Ms. Higuchi Sayegusa stated that she could provide that. Ms. Ornellas stated that it is very difficult to provide recommendations or direction without having seen the final report. Ms. Higuchi Sayegusa stated that if the report is provided in the Commission’s packet, the report becomes a public record. Ms. Ornellas stated that the Commission can be provided a link if the information needs to be held confidential for now. Ms. Ornellas further stated that seeing the report is the only way she feels she could make concrete recommendations on a path forward.</p> <p>Ms. Dizon asked if the accesses were prioritized based on the condition level. Ms. Higuchi Sayegusa responded that there was no prioritization included at all. Sea Engineering went out, took an inventory of the locations, and created GIS points that could be incorporated in a GIS map.</p> <p>Mr. Kinney asked if the GIS points included information about the condition of each location.</p>	



SUBJECT	DISCUSSION	ACTION
	<p>Ms. Higuchi Sayegusa responded that the condition of each location is detailed in the large spreadsheet that was provided. Mr. Kinney also requested access to the report and information that was produced by Sea Engineering. Ms. Higuchi Sayegusa recommended that the Commission meet with the Ms. Barzilai in Executive Session to possibly discuss privileges and liabilities as it relates to the report and data being requested. Mr. Kinney stated that if the Commission is going to help with improving accesses each Commissioner could probably help with those accesses in their specific areas of the island that they reside or have history in.</p> <p>There being no objections, Item J.6. was taken out of order and proceeded as follows:</p>	
	<p><b><u>J.6.</u></b> <u>Discussion and recommendations for prioritizing improvements for coastal accesses.</u></p> <p>There being no objections, the meeting was recessed at 2:02 p.m. for the Commission to enter into Executive Session.</p> <p>There being no objections, the meeting was called back to order at 2:35 p.m. following the Commission’s Executive Session, and proceeded as follows:</p>	<p>Mr. Ono moved to go into Executive Session on Agenda Item J.6. Ms. Dizon seconded the motion. A roll call vote was taken and unanimously carried.</p>
	<p><b><u>F.6. (cont.)</u></b> <u>Discussion and recommendations for prioritizing improvements for coastal accesses.</u></p> <p>Ms. Barzilai summarized that the Commission convened in Executive Session.</p> <p>Ms. Dizon asked that the Department prioritize legal signage for coastal accesses. Currently, the demarcated coastal accesses that the County does has should have proper legal signage to protect the County from any liability challenges. Ms. Dizon further stated that the last acquisition project at Kaumumene was a perfect example of excellent signage, but that other projects acquired prior to that need to have better signage. Ms. Higuchi Sayegusa stated that signage has to be paired with demarcating the accesses and indicating clearly where the accesses start and ends and facilitate the public to traverse it in a safe manner. Ms. Higuchi Sayegusa further noted that</p>	

SUBJECT	DISCUSSION	ACTION
	<p>opening up certain accesses to the public could bring about cultural, biological, and ecological harm to the areas that were not meant through simply open up public access. The Department really wanted to get more insight from the Commission on how to prioritize the list, whether to address access regionally, etc. Ms. Higuchi Sayegusa also entertained the option of the Commission forming a Permitted Interaction Group (PIG) to meet with staff to go over the inventory list, identify what work remains to be done, and what could be recommendations to the Commission for next steps moving forward. Ms. Higuchi Sayegusa noted that some accesses are not fully conveyed to the County yet and others are in various states of being conveyed, identified, etc. Ms. Dizon expressed her support for the formation of a PIG.</p> <p>Ms. Barzilai stated that if the Commission would like to form a PIG, that they work to place the item as such on the Commission’s next agenda. Ms. Higuchi Sayegusa stated that the Department will work to get that item on the next agenda where the Commission could decide upon the scope of what the PIG would investigate and complete, and who would make up the PIG.</p> <p>Mr. Ono stated that if Commissioners could identify accesses that are readily used, those should automatically be placed at the top of the list as it would most likely pose the greatest liability to the County.</p> <p>Mr. Kinney stated that the Commission has the duty to uphold the Public Trust and public access to beaches is a public trust component. He further noted that perhaps a part of this exercise could be to seek out additional public accesses that are not on any list but are of interest to community members.</p> <p>Ms. Dizon expressed her appreciation at signage she saw near Kalihiwai and the Dragon’s Breath area as it keeps people to stay away from the area though they may not have been erected by the County.</p> <p>There being no objections, Item F.5. was taken out of order and proceeded as follows:</p>	<p>No action was taken as it relates to this agenda item.</p>

SUBJECT	DISCUSSION	ACTION
	<p><b><u>F.5.</u></b> <u>Discussion and recommendations to fill the vacant at-large position of the Commission.</u></p> <p>Ms. Higuchi Sayegusa clarified that the position is an open At-Large position that is Commission-appointed. Administrator Ching stated that the Commission has nine positions. There is one vacancy which is an At-Large position. The other vacancy is a Council-appointee for the Hanapēpē-‘Ele‘ele area.</p> <p>Mr. Kinney asked if the Council was currently looking. Administrator Ching stated that at least once a year, she encourages the Council to appoint someone to their vacant appointed positions. On another commission, the commission actually recommended people to the Council for them to select from to fill their vacancy. The Council was very open and receptive to this as well. Administrator Ching stated that if any Commissioner had recommendations for the Council-appointed Hanapēpē-‘Ele‘ele vacancy, to please send them to her to transmit to the Council for their consideration.</p> <p>Mr. Ono asked whether the person had to reside in the Hanapēpē and ‘Ele‘ele areas and how far those boundaries extended to. Administrator Ching stated that she would have to look into that.</p> <p>Mr. Ono recommended that perhaps Mike Miranda might be a possible candidate as he met him doing the ground penetration work at the Hanapēpē Cemetery. Ms. Higuchi Sayegusa stated that he may live in the Līhu‘e area.</p> <p>Ms. Shintani asked whether there were any other requirements that the person may need to meet to serve on the Commission. Administrator Ching responded that they would need to be a resident elector (voter) in the County of Kaua‘i.</p> <p>Ms. Higuchi Sayegusa stated that the Department will continue to place this item on the Commission’s agenda to keep it on everyone’s radar.</p>	<p>No action was taken as it relates to this agenda item.</p>

SUBJECT	DISCUSSION	ACTION
<b>G. Communications</b>	<p>There were no Communications on the Commission’s agenda.</p> <p>Ms. Dizon commended the Department for creating a social media post for the Commission’s recent appearance before the County Council. Ms. Koga stated that she plans to post the website for the Hanapēpē Massacre Centennial Celebration information and blessing details.</p>	
<b>H. Unfinished Business (For Action)</b>	<p>There was no Unfinished Business on the Commission’s agenda.</p>	
<b>I. New Business (For Action)</b>	<p>There was no New Business on the Commission’s agenda.</p>	
<b>J. Executive Session</b>	<p>An Executive Session was not needed for items J.1-5.</p>	
<b>K. Announcements</b>	<p><b><u>K.1.</u></b> <u>Topics for Future Meetings.</u></p> <p>Ms. Higuchi Sayegusa stated that the following will appear on the next Commission agenda:</p> <ul style="list-style-type: none"> <li>• An update on ‘Aliomanu accesses.</li> <li>• Prioritizing improvements for coastal access, creation of a Permitted Interaction Group related to the prioritization, and other related matters regarding the access inventory list.</li> <li>• The Commission’s At-Large vacancy.</li> <li>• An update on the Hanapēpē parcels acquisition.</li> <li>• An update on the Kīlauea Mauka access.</li> <li>• Possible discussion about a potential Charter Amendment related to changing use of the Fund to support all accesses and not just coastal accesses.</li> </ul> <p><b><u>K.2.</u></b> The next regularly scheduled meeting of the Public Access, Open Space, and Natural Resources Preservation Fund Commission will be scheduled for October 10, 2024, at 1:00 p.m.</p>	
<b>L. Adjournment</b>		<p>Ms. Dizon moved for adjournment of the meeting.</p>

SUBJECT	DISCUSSION	ACTION
		Ms. Shintani seconded the motion. Motion carried 6:0.  The meeting was adjourned at 2:50 p.m.

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

Reviewed and Approved by: \_\_\_\_\_  
Robin Pratt, Vice Chair

- ( ) Approved as circulated.
- ( ) Approved with amendments. See minutes of \_\_\_\_\_ meeting.

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

## Public Access, Open Space, and Natural Resources Preservation Fund Commission (“Open Space Commission”)

### PRELIMINARY REPORT NO.1

#### I. SUMMARY

Consideration of the possible acquisition of a property located at 5-5528 Kūhiō Hwy, Hanalei.

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

1. Recommendation that the County Council consider acquiring the property using Open Space Funds; or
2. A recommendation that the County Council NOT consider acquiring the property; or
3. A recommendation to defer consideration.

#### II. BACKGROUND OF PROPERTY

PROJECT INFORMATION			
<b>Parcel Location:</b>	5-5528 Kūhiō Hwy, Hanalei 96714		
<b>Tax Map Key(s):</b>	(4) 5-5-005:007	<b>Area:</b>	0.5431
LAND USE DESIGNATIONS & VALUES			
<b>Zoning:</b>	Open		
<b>State Land Use District:</b>	Urban		
<b>General Plan Designation:</b>	Residential Community		
<b>Real Property Assessed Value:</b>	\$2,146,400.00		
<b>Market Value:</b>	N/A		
<b>Owner(s):</b>	Scarp Ridge Propco LLC		
<b>Owner Response:</b>	Currently off the market		
<b>Date Public Recommendation Received:</b>	September 18, 2024		
<b>Preliminary Report Date:</b>	September 19, 2024		

#### III. PROJECT DESCRIPTION AND USE

The subject lot of record is approximately 0.5431 acres in size and is located in Hanalei, Wai'oli Ahupua'a, Halele'a Moku, Kaua'i Island, Hawai'i. The property is located within the County of Kaua'i's Open Zoning District, State Land Use Urban District and its General Plan Designation is Residential Community.

The lot of record is situated just south of Kūhiō Highway. To the north and east, the property is bordered by residential properties currently in use, while to the west, it is bordered by a state owned parcel that is partially within the Wai'oli Stream.

#### **IV. FINDINGS AND BACKGROUND**

The lot of record is not currently listed for sale on the open market.

At present, there is a structure on the property for which we have been unable to locate a permit.

There are at least three designated beach access points near the subject lot of record. The Wai'oli Stream can be accessed from Hanalei Beach, with the closest access to the stream—known as Pine Trees—located on Anae Road.

On the west side of the Wai'oli River is the Halulu Fishpond parcel, which is privately owned by the Waipā Foundation. The foundation hosts public community events such as the Waipā Foundation Music and Mango Festival, Kalo Festival, and Waipā 'Āina Festival, along with many other cultural and community learning opportunities next to the Wai'oli Stream.

The subject parcel currently abuts the State parcel that contains the stream. See Exhibit A for aerial depictions of the property and nearby accesses to Wai'oli Stream.

The lot is approximately ten (10) feet above sea level and is nearly level. There are different types of trees that border the property on the north and south sides.

A community member has proposed the acquisition of the subject property to "protect and preserve the ecological and biological integrity of the watershed." They noted that the area serves as a nesting site and habitat for species such as the Nene, black-crowned night heron, pueo, and kolea. Additionally, the community member emphasized that the site holds cultural importance as "a culturally significant site and burial area." For more details, refer to Exhibit B, which includes the community member's proposal submitted through the Open Space Input process survey.

#### **V. EVALUATION**

The following should be considered regarding the possible acquisition of the property:

**Under Rules of Practice and Procedure of the County of Kaua'i Public Access, Open Space, and Natural Resources Preservation Fund Commission, as amended on April 14, 2016, (Open Space Rules) §1-5-4, the possible acquisition of the property complies with the criteria for acquisition:**

- 1. The proposal fulfills at least one of the Commission's purposes, specifically the following:**
  - a. Public outdoor recreation and education, including access to beaches and mountains
  - b. Preservation of historic or culturally important land areas and sites
  - c. Protection of significant habitats or ecosystems, including buffer zones
  - d. Preserving forests, beaches, coastal areas and agricultural lands
  - e. Conserving land in order to reduce erosion, floods, landslides, and runoff
  - f. Improving disabled and public access to, and enjoyment of, public land and open space
  - g. Acquiring disabled and public access to public land, and open space
  - h. Conserving land open space and scenic values

Given the subject lot's proximity to the Wai'oli River, the County's acquisition of the property would provide access to treasured resources. Outdoor recreation would be further served with greater access and community space in the area. Currently, there are at least three existing coastal access points near the property, with the closest being on Anae Road, commonly known as Pine Trees, which offers the nearest route to the Wai'oli River.

Acquiring the subject property would enhance access to the Wai'oli stream, improving public and disabled access to, and enjoyment of, public land and open space. Additionally, acquisition could ensure that the property remains mostly undeveloped, thereby conserving open space and scenic values.

- 2. The cost for the acquisition *WILL NOT* be commensurate to the public interest served by the property's acquisition.**

The lot of record is not currently listed for sale on the open market. The department is in the process of reaching out to the owners to explore their willingness to sell the



property. However, the owners may not be inclined to sell, and if that's the case, the cost of acquisition may not align with the public interest it would serve.

3. **The process for acquiring the property *will not* be commensurate to the public interest served. Factors may include, but are not limited to:**
  - a. **The type of property interest that is proposed for acquisition (for example, an easement versus fee simple ownership)**
  - b. **Whether or not the acquisition will be an adversarial process.**

Again, the lot of record is not currently listed for sale on the open market. In the event the owners are unwilling to sell, the process to continue to pursue the acquisition will require litigation and condemnation, which would be complicated, costly, and time consuming. The condemnation litigation process that could take at least one (1) to two (2) years including the appraisals and court proceedings that would be required.

The public interest served will not be commensurate with the complicated condemnation process for acquiring the property.

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

Depending on the intended use for the property, maintenance costs involved with acquiring the entire property could be substantial. Acquiring the property to maintain it as open space would require grass cutting, weed whacking, and tree trimming to make sure the property does not become overgrown and inaccessible for the community's use.

Ideally, a stewardship agreement with an interested community group could ease the burden on the County. No group has been identified to take on such a role.

5. **In addition, pursuant to Section 1-5-5 of the Open Space Rules, any proposed acquisition that contains extremely dangerous attributes in the land or that poses a risk of serious injury or death shall not be recommended.**

There do not appear to be any prohibitive factors for acquisition of the subject property.

## VI. CONCLUSION



Approved & Recommended to Commission:

By  \_\_\_\_\_

JODI A. HIGUCHI SAYAGUSA  
Deputy Director of Planning

Date: 10-3-2024

**“Exhibit A”**



**“Exhibit B”**

# OPEN SPACE PUBLIC INPUT PROCESS

Submitted By: Anonymous user

Submitted Time: September 16, 2024 1:25 PM

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



**What type of suggestion do you suggest for this place?**

Aquire property

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

This proposal is to conserve the half acre tract located at 5-5528 Kuhio Highway. The land is privately owned and in escrow. We want to protect and preserve the ecological and biological safety of the watershed.

It is a nesting site and habitat for nēnē, black-crowned night heron, pueo, kōlea, and many more species. We want to protect this land, as it is not within financial reach for local housing, and is not an optimal site for any housing, as it is a flood zone; rather than become another private investment development, we would like to see this land protected to conserve open space.

The land hosts an ancient Hawaiian burial site currently in the process of formal documentation, and therefore should be left to rest, and made accessible to lineal and cultural descendants.

It is our kuleana to preserve Wai'oli Stream from further development and degradation, ensuring the wellbeing of future generations through our regenerative leadership efforts.

Me ke aloha pumehana

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

2) Preservation of historic or culturally important land areas and sites, 3) Protection of significant habitats or ecosystems, including buffer zones, 5) Protecting watershed lands to preserve water quality and water supply, 6) Conserving land in order to reduce erosion, floods, landslides, and runoff, 9) Conserving land open space and scenic values

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

Yes

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

Yes, we propose a fee simple approach to guarantee protection of the habitat, protect a watershed, preserve a culturally important site, and preserve water quality. It is also a culturally significant site and burial area, and should be left to rest. If it's an easement for access, then the new owners may still be able to build on a culturally and ecologically significant site, albeit in a flood zone. The land is currently being sold to new owners from Scarp Ridge Propco out of Crested Butte, CO. Once we have the new owners contact information, we will reach out to see if they are interested in conveying or selling the property for tax credit in perpetuity, guaranteeing its protection.

**Describe the maintenance requirements involved with the proposal?**

bimonthly mowing.

Potential for stones to be laid at the entrance so vehicles cannot pull onto the site, but so lineal descendants can park just off the highway and access the site if necessary.

Removal of a shed.

**Please note, a proposal may not be considered if it poses a hazard risk.**



**Additional information (Optional)**

I am the neighbor of this site and I care deeply about this land. This site fits the exact profile of parcels the commission seeks to protect. Thank you.