

MINUTES

PLANNING COMMITTEE

August 21, 2024

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Bernard P. Carvalho, Jr., Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, August 21, 2024, at 9:17 a.m., after which the following Members answered the call of the roll:

Honorable Addison Bulosan
Honorable Bill DeCosta
Honorable Ross Kagawa
Honorable KipuKai Kualii
Honorable Bernard P. Carvalho, Jr.
Honorable Felicia Cowden, Ex-Officio Member
Honorable Mel Rapozo, Ex-Officio Member

The Committee proceeded on its agenda item as follows:

PL 2024-02 Communication (08/08/2024) from Council Chair Rapozo, requesting the presence of the Planning Director, to provide a briefing on the beach access to the area fronting the end portion of 'Anini Road. **(This item was Deferred.)**

Councilmember Kualii moved to receive PL 2024-02 for the record, seconded by Councilmember Bulosan.

Committee Chair Carvalho: I will turn it over to you.

Council Chair Rapozo: I am a non-committee member. I asked to put this on the agenda. I think everyone is familiar with 'Anini Beach. I think for those of us that were here when we were little, tiny "tots," for those of us that could not afford to travel to the mainland, 'Anini Beach was one (1) of our vacation spots, as well as Kōke'e and Hanalei Pier. For those of us that went to Summer Fun back many years ago, 'Anini Beach was one of the common field trips that we would go to. 'Anini Beach is very special to so many of us. I had always assumed that 'Anini Road was a public road. Many of you know that I used to be a police officer. We never looked at 'Anini Road as being a private road. As far as we knew, it was a County road and at some point, the County stopped maintaining the road and trash service on the road. I honestly have not been down to the end of 'Anini in many years, so when I saw the post about the blocking of...Mr. Morimoto made a post on Facebook about the access being blocked, residents being kicked off the beach, access to the end of 'Anini Road being closed, I started to ask questions and found out that maybe, private landowners may have claimed some of the public property, and that is not right. I did not ask the Department of Public Works (DPW) to be here, but I did ask for the records on the maintenance and trash service because I knew, I was on the Council when it stopped. We received a lot of calls from the residents that lived on that section of the road and let me read DPW's response. My question was, how long has the County maintained the road and provided trash services? "Historically, the County Roads Division,

Hanalei Baseyard maintained 'Anini Road from Kūhiō Highway up to where the pavement ended back Calendar Year 2012, as well as approximately nine hundred (900) feet of unimproved road that continued beyond the paved portion, and they have a map attached. Additionally, County refuse collection services were historically provided for residences along the entire length of 'Anini Road. Due to the short time requested for this response, we relied on anecdotal evidence." Bottom line, that is what I remember. We did the trash all the way to the end. Also, why were maintenance and trash services terminated? They "terminated for the non-County owned portion of 'Anini Road, due to a roads-in-limbo issue." Again, I remember when former Council Chair Jay Furfaro was here. The roads-in-limbo was a big issue. The State does not want it, the County does not want it, but it is still a government road and at that point, back in 2012, the County made a decision to stop all of that. "Termination of refuse collection services for the unimproved coastal portion of the road followed due to roadway conditions which were unsuitable for the trucks." Basically, the County had maintained that road and collected trash for a long time and then it stopped. When we stopped maintaining the road, it fell in disrepair, so then we could no longer pick up trash. As I look at the maps and the testimonies from a lot of you, and I appreciate all of you that sent in a testimony, as well as talking to long time Kaua'i residents that are familiar with 'Anini, which I think is most of the population in my area because 'Anini was so popular. It still is. It was clear to me that the Council needed to take a look at this, and I know that there is a question about jurisdiction because this is a State beach. At the end of the day, we cannot sit back and wait for the State to do something or for someone else to do something. All I want to do is raise awareness. My goal is to have the State do a shoreline survey and have that survey be delineated so that everyone knows where the State property ends. This is not just for 'Anini, but around this island. Any landowner that tries to claim State land, they need to stop. The Council needs to go back and reclaim that land, take all of their 'ōpala and fake vegetation off and put that beach back for the locals to use. It is simple, so that is why we are here today. Councilmember Carvalho, hopefully, at the end of the day, we will have enough information, and the State will listen and do that certified shoreline survey (Shoreline Certification), so that we can once and for all determine where the State property ends. There is also an issue about the road, but I do not know this. Until there is a shoreline survey, I would not be surprised to find that the road is in the State right-of-way. Until we get that survey done, we just do not know. That is Step 1, and I am hoping that this meeting will encourage the State to move forward quickly and get that survey done. With that, thank you, sir.

Committee Chair Carvalho: Thank you. Are there any other members?

Councilmember Cowden: I have a little presentation, but I can...

Committee Chair Carvalho: What is this for?

Councilmember Cowden: ...my agenda item. Let me know when it is a good time.

Council Chair Rapozo: I did ask Mr. Morimoto, because he has done a lot of research. He is registered as a speaker, and he has a presentation as well, Councilmember Carvalho.

Committee Chair Carvalho: Okay, so we will have Mr. Morimoto come up and do the presentation first.

Councilmember Kagawa: After that presentation by Mr. Morimoto, will we have Planning Department as well? I want to see not only the public's point of view on what the situation is, but I also want to see the County's point of view, even if we have maps to show exactly what is State and private. Like you stated, Council Chair Rapozo, 'Anini Road has been a lifestyle for a lot of us not from the North Shore and we need to preserve access and fishing rights. Thank you.

There being no objections, the rules were suspended to take public testimony.

PETER MORIMOTO: Good morning, Councilmembers. Thank you for taking on this issue. My name is Peter Morimoto. I am a registered voter, and it is an election year, which is why I raised the issue. For over a hundred (100) years and since at least 1892, 'Anini Road provided public access to 'Anini Stream and the big channel that allows boats to get past the reef and out into deep water. Depending on the conditions, you can swim, fish, dive, surf, and kayak on that stretch of beach. Recently, and I have been told that it was in 2020, someone put up a guardhouse and a gate across the road, essentially cutting off access to the stream and channel. They replaced the gate with cones, but they still restricted the public access. There are boulders on the beach that prevent the public from putting their boats and watercrafts into the channel. Often, commercial beach chairs and surfboard stands are placed on what appears to be public property. There are two (2) issues that I want to bring to your attention. First, this is a public road under the Highways Act of 1982. I have some photos here. This is a screenshot (shot) of Bing Maps of the area. This is Princeville and 'Anini Beach at the top. This is a shot of the same area from Google Earth, and you can see all the subdivisions have been graded. "Scape the *'aina*," as we say. This is a close up from Bing Maps of where 'Anini Stream meets 'Anini Road. This is a Google Earth image of the same area, and you can see all the runoff in the stream going out into the ocean. This is a screenshot from the Kaua'i County Tax Map website (site) and that lot that is in blue, in the middle there, is owned by the State and it is past the area where they coned off and put the guard, so I do not know how that happened. This is the gate. Someone sent me this picture. I did not take these photographs (photos). I think Ms. Pacheco sent me this one. Here is another one without the gate, but with some sort of vehicle. Here is a map of Hanalei done by W.A. Wall in 1893 and this is a closeup of that area and you can see the road going across the stream at that point. Here is another map by Wall done in 1903. This is a close up of the area. Again, you can see the road crossing 'Anini Stream and going up towards Princeville. Here is another map from 1907, the Hawai'i Territory Survey of 'Anini *Kuleanas* and Government Land, and as you can see, there is a road again going towards the stream. This is a subdivision map of Princeville Ranch done in 1968 by R.M. Towell and this is a closeup of that same area. You can notice that the road stops right where it says 'Anini Government Reserve and then it continues on past that. That is an interesting one. I do not know how that happened, but they made the road disappear. This is a photo of the area just beyond where they post the guard, and you can see the surfboard stands on the beach. Here are some lawn chairs, beach chairs that they put up. Notice that the grass here is really green and lush-looking, it is because they put dirt and planted the grass on what appears to be public property. Here is another photo of the area, sort of a "before" picture. Here is another "before" picture. Here is an "after" picture, and another "after" picture. This is a passage from the Diamond v. State Case, and kudos to Caren Diamond for suing the

State. Basically, it talks about where the shoreline is located and the reason why that is important is because the shoreline determines public property. There are two (2) ways to determine the shoreline. One (1) way is by the vegetation line and the other is by the wash of the waves, so in this case, this owner planted, dumped dirt, and artificially planted vegetation to enlarge the vegetation line and make the vegetation line go *makai* of what the actual shoreline was. The court said that is wrong and you cannot do that, merely planting artificially vegetation does not determine the shoreline, so they decided that the shoreline would be determined by the upper reach of the wash of the waves. I think what needs to happen here is...we have to, as Council Chair Rapozo said, determine where the shoreline is because that would determine where public property begins. This is from the Hawai'i Administrative Rules (HAR), Section 13-221-2 and it talks about unencumbered lands, which includes beach and coastal areas. This defines commercial activities. For the purposes of this statute or rule, it means the use of or activity on State land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity, and it goes on. Commercial activities include activities whose base of operations are outside the boundaries of the unencumbered State lands or Kaua'i transportation to or from the unencumbered State lands. Here is the rule that prohibits any commercial activities without a permit. This is from the Kaua'i Special Management Area (SMA) Rules and Regulations. It says no person shall be allowed to conduct any use, activity, or operation on lands located within the SMA, which may significantly impact coastal waters or related coastal resources, without first obtaining a SMA permit, so I think what needs to happen here is that someone needs to look into this, determine where the shoreline and public property is, and figure out whether an SMA permit and a permit from the Department of Land and Natural Resources (DLNR) is needed to conduct those activities, on what I believe is State property. The second thing is that the road cannot be closed off to public access. It is a public highway under the Highways Act of 1892, and I believe that there is a law against obstructing public access. I need to look it up and I will share it with the Council if I find it. What is happening down there is that they are privatizing this beach and it is a microcosm of all the issues facing Hawai'i, especially Kaua'i. You have the "one percenters" that are trying to squeeze off the local people from resources that they have had access to for generations and that is wrong. I am hoping that in this election year, you people will do something about it. Thank you.

Councilmember Kagawa: For me, it is nothing about election. I never thought about of myself of doing more during an election year. I just do what is right. Have you brought your concerns...you have a lot of experience, a lot of respect, you have worked here a long time. Did you bring your concerns to the Planning Department and the Mayor and what was their response?

Mr. Morimoto: You will hear, hopefully, from community members who brought this to the attention of the government back in 2020.

Councilmember Kagawa: Was it to Mayor Kawakami?

Mr. Morimoto: I do not know to whom. To the Planning Department, correct?

Councilmember Kagawa: The Mayor, being an avid surfer and avid supporter of the fisherman, I am surprised that the Mayor has not responded because it is a travesty. I have not encountered the blockage, so I personally did not know

about it until now. Anyway, I am pretty shocked and I would hope that the message you presented with all the facts is conveyed to the Mayor. I am sure that he would do something about it. As far as the grass being planted on the beach and access being blocked, I think that the Mayor would do something.

Mr. Morimoto: To put it in the bluntest terms, whoever made the road disappear for five (5) years, going on five (5) years, has a lot of “juice,” you know what I mean. Thank you for taking this on because you are “bucking” someone with “juice.” Look into it and find out what is what. Thank you.

Committee Chair Carvalho: Members, any further clarifying questions?

Councilmember Cowden: No, I have a lot to say, but I will say it on my own.

Committee Chair Carvalho: Okay. Thank you, Mr. Morimoto.

Councilmember Cowden: Thank you, Mr. Morimoto.

Committee Chair Carvalho: Is there anyone else in the audience wishing to testify? We will open up now.

Councilmember Cowden: Are we going to hear from Planning Department?

Committee Chair Carvalho: After.

Councilmember Cowden: I have a whole presentation also that might add something.

Committee Chair Carvalho: I would rather do the members first.

Council Chair Rapozo: I would recommend doing the public testimony because I think the public may have information that we can...

Committee Chair Carvalho: That we can use.

ROSLYN CUMMINGS “MANAWAIAKEA”: *Aloha no*, my name is Roslyn Cummings also known as Manawaiakea. My experience is that we sued the Governor for two (2) years in a row on the Emergency Proclamation and then Mr. Morimoto was a representative of the (inaudible) in Kōloa for development, so what he says is true. When you have money involved, it is not an easy fight, so stopping small things is not hard, but something like this, where you can clearly see if you go down there, the privatization. Our family goes down there because I know of burials in the area. I am a *ho’oilina* of Keali nui who has a pretty much a keli ahinui under his name. I am here for the people actually. What is happening is detrimental to the health of the people. ‘Anini became very desolate. I was born in 1983. My father used to take us down there because he is a surfer. I come from a (inaudible) family. I take my kids as much as I can down there because I do not want them to lose that connection to the area. If we talk about mental health and talk about the vision given to me by God, we are going to have an increase in suicide no matter what age because of disconnection to the *‘aina*. Things like this is considered violations of laws, so I am going to go down.

On the record, for the record, notice to agent is notice to principal and notice to principal is notice to agent. I am one of many heirs, descendants, Mo'opuna Ho'oilina who has inherit birth rights to 'aina as a (inaudible) Patent 11215, not above nor below, as equals, with *kuleana*, I see that there is an illegal representative in the room. People need people, so unjust enrichment and argument of Trust Law cannot be at the benefit of corporate interest like PRW Princeville Development Company, LLC or any corporations over *kanaka* public interest, especially not *hoa 'aina* native tenants *kuleana* land holders, so unjust enrichment came up in the lawsuit pertaining to the State vs. Maunakea. Basically, the government cannot put corporate interest above public interest. If someone is receiving money, then that could be an unjust enrichment. The Kānāwai written by Kanaka for Kanaka, based on the rights of *kanaka*, the people written in the Bill of Rights in 1839, a right cannot be taken, but a privilege can, because it was given. In the Hawai'i Revised Statutes (HRS) Section 7-1, right-of-way, so this is where the right-of-way access comes from. It is the oldest written law in Hawai'i. It refers to the Civil Code 1859, 14-77. In the Law of 14-77, right-of-way, no new law right to access cannot be taken away because the Constitution is already protecting it. In the event that you are arrested, because of trespass, no one can take from you what God has given. In Section 172-11, Law 1872, Chapter 21, Section 1, was revised in 1897 Republic Law. (Inaudible) the kingdom sealed document by Virtue of Law. Living descendants, laws are made to protect you. Officers do not know the law, so if the officer in the courts should not and cannot make an arrest out of ignorance or indifference. How many times should we be confronted by officers and or any warranty deed holders ignorant in their offices...

Committee Chair Carvalho: Can you hold off? You can come back up again for an additional three (3) minutes.

Ms. Cummings: I was actually going to close...are a danger to our *lahui*.

Committee Chair Carvalho: *Mahalo* for your testimony. Madam clerk, is there anyone registered to testify?

SHARI RABAINO, Council Services Assistant I: No.

Committee Chair Carvalho: Is there anyone else in the audience? Please come forward and you have three (3) minutes to testify. There is a green light and a yellow light, it means thirty (30) seconds.

JADE HAUNANI PACHECO: *Aloha*, my name is Haunani Pacheco. I live in Kīlauea and my family has more than one hundred (100) years of history in 'Anini. It was a place that people did not want to go to because it was so remote, but now it has become the place where people want to go. The ocean was our "ice box." Let me tell you that...I work for Princeville Corporation for nineteen (19) years, and we have to pick...during those days, you needed to choose jobs and Princeville saved Kīlauea. They employed all the people, retrained them, so they could work on the golf courses and had a job because they had to buy homes. In those days, too, there were designated areas of visitor destination areas (VDAs) that would be developed as tourist bases. One (1) was Princeville, the other was Waipouli and the others were Nāwiliwili and Kōloa, where we had VDAs. The difference in tourism during that time, because I have been in that business for a long time, was that tourists would

come to Kaua'i. I worked for inter-island resorts that was Kaua'i Surf, Islander on the Beach, and they would run tours through Kaua'i for two (2) days, so they would bus them in. They would check-in, they would go to Waimea. The next day they would go to Hanalei, they put them on the bus, take them to the airport and they would be out of here, so very little impact on any of our landscape on Kaua'i. They dropped their money and left. Then you folks all allowed them to come into our neighborhoods, which was a very big mistake because now, we are feeling it. I warned the County about this many years ago. It is not only in the VDA, but it is in all of our neighborhoods now, where all the taxes are rising because the value of properties are rising because they are able to charge whatever they want to charge to be in those areas. You can rent, rentals in 'Anini were twelve thousand dollars (\$12,000) a week, which again raises the value and makes the taxes higher, which again makes all of us...

Committee Chair Carvalho: You have the red light; you can come back if you want for an additional three (3) minutes. Great job. Is there anyone else in the audience? Come forward. State your name.

ROBIN KUTKOWSKI: I am Robin Kutkowski. I was born and raised out in 'Anini. I would like to ask for the State to get involved with the survey. I think that would be a really great first step and I would absolutely support that. The grass situation, I think is something to look at, as well. If we could remedy the grass once the survey gets done, because the grass is now considered their property and there are personal belongings like chairs and other things. I personally have not been asked to leave from that place, but I have had the cones up and was not able to go down to the end in different circumstances and things. Another topic is that the area is being a pretty dangerous area for drownings and things, like the back channel there, so there needs to be the access for fire trucks and ambulances to be able to come down there accessibly and the traffic there is insane with all the potholes and everything. It is intense to get down there in the first place. That is an area where people do drown, so that would need to have more public access maintained and managed. It just worries me, the progress that has been made in the last few years, what is to come with that area, because we know that there are large plans, so now, I think is absolutely the appropriate time to get involved and see if this road is government property. I wonder why it has taken this long for it not be serviced. That is all I am going to say today.

Councilmember Kagawa: I have a clarifying question. You said "they," have efforts been made to question if this is their property and do they defend that?

Ms. Kutkowski: Things that I follow. Yes, people are asking why you are assuming ownership of this area and...I am not exactly sure.

Councilmember Kagawa: The "they" that we are talking about, are they absent owners who have property managers?

Ms. Kutkowski: No, the "they" they are talking about is the North Shore Preserve and the Princeville Corporation. Jeff Stone, right?

Councilmember Kagawa: Is it Jeff Stone's property?

Ms. Kutkowski: I mean he is the owner of the North Shore Preserve and they have the business homes there and another spa home in the back.

Councilmember Kagawa: Thank you. That answers a lot of questions.

Committee Chair Carvalho: Is there anyone else in the audience wishing to testify? State your name. You have three (3) minutes.

K. HOKU CABEBE: *Aloha*, Hoku Cabebe. I am sure, I mean maybe some of you are not as familiar with this, but we definitely should be familiar with. This is not just an 'Anini Beach problem, this is a Kaua'i problem. Zuckerberg pretty much "blew that up" from the get-go, so it is pretty much from the same thing, right, or no? Pretty much. That is like she said, Kōloa, you know what I mean. Maybe the Westside, one of the least, except for the genetically modified organism (GMO) companies, owning and blasting, and pretty much ruining all of our beaches. The mountain to the oceans, same thing. Now, they are taking over the beach, but their golf course has been ruining 'Anini reef for generations. We barely fish over there. Why? Because of all that runoff that comes off the golf course, I am sure. It does not take a scientist to figure that out, which I am not. It is just atrocious and sad, and it is some billionaire humbug that has taken over our island, all the way out to Hā'ena. Thirty (30), forty (40) years that our family had to fight to even get Hā'ena and now, it is 'Anini. You have to go through all of that just to protect an area. It is sad how hard we need to fight and to come here and even do this is atrocious. I barely can get out of bed this morning because how? Just the "juice" and money, it does not take a scientist to figure out what is going on down there. It should not take a whole island. Representative Nadine, Representative Evslin, you folks already know. This is not something new on our island. I love Mr. Morimoto's presentation, but "duh," or is it just me? Thank you, folks, for bringing this up and hopefully, we can clean up this billionaire humbug that is "stinking up" our whole island.

Committee Chair Carvalho: Thank you. Is there anyone else wishing to come forward and testify? Planning Department is going to come up after.

Council Chair Rapozo: The reason that we are taking public testimony first is because if you folks have any questions, then it is much easier to get it before Planning Department comes up, so they can address the concerns.

Ms. Pacheco: I guess the meeting is regarding access and we are losing our accesses, mainly Pīla'a, Larson, Secret Beach, Kahili are all in jeopardy because we are losing all those accesses on the North Shore. On January 2, 2022, I filed a complaint in regards to Jeff Stone blocking the access to where my cousin lives. She could not get home that day. They put in the gate, and I contacted Representative Evslin and he actually came down to look at it and was working on it. He sent me a couple of maps that said the property owner can put a gate at the beginning of his property, and he was looking into it. He gave me a name and I have it in my phone and of course, we went through the pandemic and the whole thing. At the day I went down to check, they had trucks there, a roller, and people working on the road and beach. I have pictures of that. I can tell you who they were and so, he came down and got them to take out the gate that was at right at the entry of that area. I just want to let you know that my grandfather, when he lived down there, he tried to block the road himself. He put a gate, a chain across the road and Mr. Chism filed a complaint, at that time, with the DLNR, and there are records of

that in our file with the DLNR. The reply came back to him that he had to remove the chain because it was a public road, because that road used to go back and there is a government road that goes up on the top, that probably used to be the very old road before. Then I understood that they bought the government road on the top. You see, I work for Princeville. I know that the problem was that they could not have yet have access down to the beach and they were wanting to get down to 'Anini from way before. Of course, now, it is a whole different "ball game," a whole different owner. Now, they are developing the western plateau, when we are doing, we were pretty much on the eastern plateau.

Committee Chair Carvalho: Thank you so much for your testimony. Is there anyone else in the audience wishing to testify? Maka'ala.

MAKA'ALA KA'AUMOANA: *Aloha*, Maka'ala Ka'aumoana, for the record, in protest because I like to wait until after Planning Department. This is an example of how we lose our culture, how we use our information, how we lose our practices, and how we lose our knowledge. This area, at the very end of the road is personal for me. We have *'ohana* lands there and we, for generations, have fished there. I, in my own lifetime, have fished *kala* there. *Pelehu kala* is aunty's favorite, so losing that access is huge, but more importantly, this is serving as an instruction, as an example for us all over Kaua'i that you cannot plant the beach. Caren Diamond has been fighting this fight solo for decades now. Let us *hui* up and make this the shining example of how you not treat the beach. It is not your beach. I have focused on this area in recent times more related to monitoring for sea level rise and I have seen it myself. The debris line of the high wash of the wave, which is the legal definition for shoreline, *mauka* of that road. The debris was actually in the North Shore Preserve property at this, what they are calling "The Beach Club." It was on that lawn, so if we are going to push them back, get a survey, push them back to what is the truth today. This is how we are going to save our accesses, and this is how we are going to protect our people from sea level rise. It is important that we use this place as a textbook, an example to our residents and government folks that this must occur. I will tell you that from personal experience, requesting a shoreline survey of the State is a very long process. They wait for a surveyor to fly over. You need to press the speed button on this. DLNR takes a long time. It is just their capacity issue, but if you say no, that this must be done immediately and to do it now, they will come. They come with a team, and they must inform us of when they come. They will Caren know. They will let me know. They will let you folks know, and we will all go down there with our evidence, because they do not necessarily come on a day when the debris line is visible. This is personal to me and I am trying to be helpful here and use this as an example for all of Kaua'i, and all of Hawai'i. The law is the law. *Mahalo*.

Committee Chair Carvalho: Thank you, Maka'ala. If there is no one else in the gallery wishing to speak, we will call Planning Department to come forward. I am sorry. You can come back up and have your additional three (3) minutes.

Ms. Cummings: Roslyn Cummings, again, for the record. I have been in court since 2019, trying to fight for our rights. The reason why law is important is because when you go to court, the judge will utilize the law, so if Kingdom Law does not exist, then the statutes does not exist. HRS Section 7-1 has Civil Code 1859, so HRS Section 7-1 includes building materials, water, landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be

deprived of the right to take firewood, house-timber, *aho* cord, thatch, or *ki leaf*, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right-of-way, so the law is written in here. The entire area has become desolate due to the water diversions and populations from developments. I have fought development in Hanalei, and I have had someone who worked in PRW Princeville Development Company, LLC admit to me that why are making such a big deal over five (5) burials when they did Princeville, there were bones every eight (8) to ten (10) feet. We numbed out society at this point and ignorance to law is not an excuse, but our cultural practices are being lost every single day. I am forty (40) years old, and I have seven (7) children. My grandma taught me to fish at 'Anini and she taught me about waterways. I have a hard time teaching my children the same thing because of access, so I urge you folks to please look up the law itself, because it must be upheld. As far as planning goes, there is an excuse that we need to be notified before Planning Department...that is not an excuse. Anything that is new condition that is introduced to Planning Department, must be obtained to the point where the Planning Department has to pull and process their permits. There are many laws that are being violated in these agencies. It takes a person one (1) year to just go through files for one (1) development area. That is how long it took me, so I urge you folks to please take this matter seriously in the capacity that you can. *Mahalo*.

Committee Chair Carvalho: *Mahalo*. Thank you for your testimony. Now, can we have the Planning Department come forward? Hi, Jodi.

JODI A. HIGUCHI SAYEGUSA, Deputy Planning Director: Good morning. Jodi Higuchi Sayegusa, Deputy Planning Director. I have to apologize in advance. Our Director has been more intimately involved in this particular issue. He personally went out to 'Anini last week, along with our inspectors. He could not be here. He provided notice in advance that he was not able to be here, so you have me, but to the best of my ability, I can provide the information that I gained over the couple of days to get up to speed on this issue. I think the previous presentations by Mr. Morimoto has provided a lot of information that we agree with. There is a map, that is up currently. At the end of the pavement is where the County considers its right-of-way. Beyond that, the gravel road is within State unencumbered lands, but clearly there is access there. It is a public access that goes all the way to the other side of that property that had the cones. The property that came up, that had the cones and formerly had the gate, is not actually an easement granted through the State, so there is reserved public access through that easement to the other side, which is State unencumbered lands. That is adjacent to the stream, so there should be access, we agree.

Committee Chair Carvalho: Can you use the pointer?

Councilmember Kagawa: It looks like you are pointing, but you do not have a pointer?

Ms. Higuchi Sayegusa: This is the property where...this property expands *makai* of this easement and *mauka*, yet there is an easement through this property here to reach State unencumbered lands here, and this is the stream. It is public access. Right now, there are cars and people can access the beach, and folks are parking along this area here. Sorry, it is hard to see. It is a little zoomed out.

There is parking happening here, but again, this is an easement, and this is State unencumbered lands. I understand that there are boulders placed here and it was placed there by the State. It may or may not, and this is just my understanding to date, it may or may not have been in response to possible homeless issues. I do not know. I cannot speak for the State as to the exact reason, but that was one (1) of the thoughts, that it was in response to homeless. Let us see. That is my understanding, to date.

Councilmember Cowden: I have a question, and I wonder if I could use the pointer. I actually have been asking questions for a number of years and definitely when Aunty Haunani raised that issue, I sent letters to Planning Department. Right here, I noticed there is a *kuleana* land that belongs to Kevin Pike, so he has *kuleana* right there. I believe that right here, we have the owner of that property sitting in the room. I might have that one right, so access down there is something that is important. I had looked at this at the time, right here at this area, and on the qPublic site for Real Property Tax (RPT), it said PRW Princeville Development Company.

Ms. Higuchi Sayegusa: Which one?

Councilmember Cowden: Right here. This was assigned on our RPT qPublic site, it had it to Princeville, so I immediately called Mike Loo and Jay Furfaro, and asked what is up with that? They said that they had gotten it and when I looked at the report section of qPublic, it had a date in there of when it had been assigned. I had fits over that. They are both my friends, but I could never find it on the Board of Land and Natural Resources (BLNR) piece and now, our County qPublic site does not name reports on any of the road properties. I was looking for this here. Do you know what is up with our qPublic site, why it does not? That is something that I would like to find out. I guess when it is my turn, I will bring more up then, but my question is...I guess I asked my question and you said that you did not know. Up until very recently, because I have been watching and addressing this issue for five (5) years, we have another person in the room here that I have been addressing it with for...this had already said Princeville. I just do not understand why now it is not there, on the road, on the report. When I have my presentation, I will ask a little more.

Councilmember DeCosta: Thank you for being in the hot seat, Jodi. My question is, Mr. Morimoto brought up some old land maps that showed 'Anini Road traversed all the way up to the stream. I know that road exists because when I was small boy, we would poke prawn, *hīhīwai*, malut and *moi*. That was a very precious area. What has happened? Do you know from the time that Mr. Morimoto's map that showed the road? How can we not take that road now? Your picture does not show that road, but the maps that Mr. Morimoto presented had a road. Who is responsible for removing roads from maps that you provide before the Council? How does that happen? What division has the right to look at maps and either install or remove a road?

Ms. Higuchi Sayegusa: I do not know.

Councilmember DeCosta: That is what I want to know. What happened to that road? The road ends now, over there, but the road used to go up quite a bit of ways.

Ms. Higuchi Sayegusa: I do not know what happened.

Committee Chair Carvalho: Councilmember Kualii.

Councilmember Kualii: Very simple, when you were talking earlier, you were talking about that property within the black box. Did you say that the property includes, and the black box shows it...you said that it includes all of this property *mauka* of the road and that little bit of property *makai* of the road?

Ms. Higuchi Sayegusa: Right.

Councilmember Kualii: It would not have always been that way because that was a government road and you would think the government owns the road.

Ms. Higuchi Sayegusa: Also, this morning, we were able to find the old tax map key (TMK) maps, so this sort of reflects. According to our records, this is the end of 'Anini Beach road here. This is an old government road and here is that property that reflects an easement here, and so these are sixteen (16) lots that were carved out within this subdivision. This government road is within the "quote unquote" State unencumbered land area.

Councilmember Kualii: Would you not say that if you look at that map, the part this is *makai* of the road seems very significant compared to what you actually see, because one (1) of the testifiers had stated, too, that the water debris would come up even *mauka* of the road. If that is true, even way back when, why would that, *makai* of the road, be private property?

Ms. Higuchi Sayegusa: Are you talking about this road here?

Councilmember Kualii: Yes. Well, here or there.

Ms. Higuchi Sayegusa: This is just a reflection of the historic TMK map, the condition that existed when this subdivision was carved out. You are right. As time goes on, the evidence of the historic upper reaches of the waves were washed. That is what delineates State lands versus private property lands. That is why we or the State requires a State certification to delineate which lands are public, State unencumbered lands versus private property lands. When we are talking about this property, and this is the sliver of green where there are lawn chairs, etcetera. Yes, there is clearly a need to be delineate which is public, State lands now and still private property, which is why there is a need to follow-up and work with the State to get a certification done, based on the historic evidence of the upper reaches of the waves of the wash.

Councilmember Kualii: Would you be initiating that?

Ms. Higuchi Sayegusa: That is part of the issue. I do not know of any process where it is landowner led or requested, but that...

Council Chair Rapozo: This would be the first.

Ms. Higuchi Sayegusa: This is something we have been working. As for Planning Department, we do not necessarily...if there is a proposal like a SMA application or other structures, yes, we do require a certification before we accept an

application. We do not ever become a party to request a certification. It is just pursuant to review of our permits that process has to be done.

Councilmember Kualii: But not only does the private landowner come to the Planning Department to initiate the process to evaluate and make the determination, the public can go to the Planning Department, right? We would take a community nonprofit or entity. Does it have to be some entity? We are the County, right?

Ms. Higuchi Sayegusa: It becomes an issue on the State regulating their properties, the State unencumbered lands. Any encroachments within the State unencumbered lands. Much like we have jurisdiction to regulate what goes on our beach parks, that is our jurisdiction and lands, but there is an issue or could be an encroachment or things that are existing in State lands, that is a State regulation to regulate what goes on in their areas.

Committee Chair Carvalho: Thank you. Councilmember Kagawa.

Councilmember Kagawa: Again, Councilmember Cowden stated that she has been sending correspondence for five (5) years. What has been accomplished in five (5) years?

Ms. Higuchi Sayegusa: Again, in my limited couple of days in getting up to speed, we did have complaints based on the blocking of the roadway, to which we agreed this is a public roadway.

Councilmember Kagawa: Did you folks have inspectors go out and tell the gentleman that the gate needs to be open?

Ms. Higuchi Sayegusa: As far as I know, yes, but we also had to loop in State because again, that is a State access easement to the unencumbered lands.

Councilmember Kagawa: Just letting the State know that you would be going out on their behalf and notifying the owner that access needs to be open. Was that gate to prevent homeless at night or something, like at Mahaulepu Beach?

Ms. Higuchi Sayegusa: I do not know what instigated the gate.

Councilmember Kagawa: They probably read the map and said that the easement is on our property, and we can protect the rights of our property and figured that they could put that gate up, then found out that the gate is illegal. The more important question is, even for Mr. Matthew Bracken, having heard and seen what Mr. Morimoto has presented, some of the illegal questions, the need for an immediate survey, is there going to be some sort of meeting with the Mayor to say that a Councilmember has been saying for five (5) years, Hoku folks have been saying "no brainer," do you see some sort of meeting taking place where we can take action and try to preserve the rights of our local fishermen and beachgoers? Families like yours, your father-in-law goes to 'Anini every Labor Day.

Ms. Higuchi Sayegusa: To my knowledge, the Planning Director has already reached out to the State to see what we can do to address these access issues.

Councilmember Kagawa: Thank you. Certainly, Jeff Stone can own whatever he wants, but he cannot take away what is not his. We need to set the rules down right now and stop all this nonsense about trying this or that and seeing if I can get away with it. Just set the rule now and protect the folks without money, so that they can have what they deserve. Thank you.

Committee Chair Carvalho: Council Chair Rapozo.

Council Chair Rapozo: Thank you for being here, Jodi, and I apologize that you had to come on short notice, but who enforces the SMA law on Kaua'i?

Ms. Higuchi Sayegusa: We do.

Council Chair Rapozo: The County, not the State.

Ms. Higuchi Sayegusa: Yes.

Council Chair Rapozo: Does the Planning Department have the ability and authority to go out and enforce the public access laws?

Ms. Higuchi Sayegusa: You are right. I think as I have sat here, we are taking note of issues that we probably need to investigate as far as the activities in the SMA.

Council Chair Rapozo: I am extremely frustrated, not at you, Jodi because you were not here five (5) years ago, but this is my first attempt to try and resolve this issue. In five (5) years, we could not even go down and do an investigation. We could not even go down there and look at what was the problem. Is there an SMA permit for that location?

Ms. Higuchi Sayegusa: I would have to check what exactly was permitted.

Council Chair Rapozo: Now, based on what you saw today, the testimonies from the residents, and even some Councilmembers, we know that the upper reach of the wash is well above that nice green patch of grass that has been artificially planted, which is against the law.

Ms. Higuchi Sayegusa: Right. Not only that, SMA...there is jurisdictional issues between the State and County, but yet we do regulate the SMA.

Council Chair Rapozo: Correct. I keep hearing about the State. Let us focus on what the County can do. We regulate the SMA law in the County. My question again, it is the violation of the law to artificially expand the vegetation. That is not my law, it is the State law. Does the County have the authority to enforce that law?

Ms. Higuchi Sayegusa: Yes, under the SMA, any placement of materials or structures within the SMA, would require an SMA permit.

Council Chair Rapozo: That is not the State's responsibility to enforce.

Ms. Higuchi Sayegusa: Correct. I am just saying...I am not necessarily only blaming the State. I think that State involvement is inevitable and necessary to fully tackle the issues that we have heard.

Council Chair Rapozo: That is the next step, but my question is, what is in the County's toolbox right now, that we can go down there to take care of the problems that are existing?

Ms. Higuchi Sayegusa: Right, but if the issue is...there are various things, right. As far as I know, the access is...again, this is just my understanding is from the last couple of days, the cones were removed, and the security guard clearly cannot be diverting people. There is already access next to the property in question. It is really whether there is also access down the road onto the State unencumbered lands with the boulders, and the State put the boulders there. There are various issues that need to be tackled.

Council Chair Rapozo: Jodi, I am not interested in what the State is doing or not doing. Today, the discussion is on the County. We have had complaints where the public was kicked off the beach. We heard complaints of people not being allowed to go into the public access. There is a law, right? Is there a law? I think former Councilmember Gary Hooser, many years ago introduced a bill or law that I believe was a thousand dollar (\$1,000) a day fine for any private landowner who was blocking public access. Who is charged with enforcing that law?

Ms. Higuchi Sayegusa: I can say that from Planning Department's perspective, again, we do regulate the SMA, but whether that allows us to regulate against the security guard being there...it is tricky. We have had situations where folks put up lawn chairs during the day for a couple of hours, every day, but whether that is a structure within the SMA, I am just saying that it gets tricky with the gradation of the uses.

Council Chair Rapozo: It is not tricky when they are blocking access. They could have ten (10) security guards up there and watching, but when they block our community from going in, that is a violation of the law. My question is who is in charge of enforcing that law. Is it Planning Department, DLNR, or the Kaua'i Police Department (KPD)? I do not know and I am asking the question, because those violations have already occurred, but there was absolutely no penalty, no citations, nothing. I am just trying to understand.

Ms. Higuchi Sayegusa: As far as I understand, the previous complaints on access that Planning Department dealt with, we have involved the State to have the State go and enforce their easement, to open access again. That is how Planning Department has used the power that we have in order to address that access issue.

Council Chair Rapozo: I guess I am trying to figure out where the County's power end and the State's begin or is there dual authority as far as enforcement. Thank you.

Committee Chair Carvalho: Councilmember DeCosta.

Councilmember DeCosta: Sorry to ask these difficult questions. The question that I want to ask is, do we have the right as a County to impose a fine on an area that has an illegal structure post or gate? Do we have the availability as the Planning Department to issue a fine?

Ms. Higuchi Sayegusa: Yes.

Councilmember DeCosta: Thank you. I think we did that with the Grove Farm fence that went down to Mahaulepu Beach. Now, that gate is obstructing an access. How can we not go there and impose a fine or just remove the gate?

Ms. Higuchi Sayegusa: Again, I have to sit down...

Councilmember DeCosta: I know, but I am just saying that you recognize that we have that power.

Ms. Higuchi Sayegusa: ...and look at all the previous enforcement files of what happened, but yes, if there is a structure that is fixed in the SMA, then yes...

Councilmember DeCosta: The last question that I have for us. On Kaua'i, do we allow gated or gates to block off communities to be on another side, in any subdivision, any access area from Kekaha all the way to Hā'ena? Do we, as Kaua'i, allow gates to exist where folks cannot go in and out?

Ms. Higuchi Sayegusa: That cannot go in and out? I cannot speak to the whole island. I do not know exactly.

Councilmember DeCosta: I can tell you that we do not, but I just wanted to say that for the record.

Committee Chair Carvalho: Councilmember Bulosan.

Councilmember Bulosan: Just the same thought process, but with the grass. I am assuming that is a State issue.

Ms. Higuchi Sayegusa: Again, the placement of materials and things that are fixed to the ground, yes, that is within the SMA purview.

Councilmember Bulosan: Thank you.

Committee Chair Carvalho: Councilmember Kualii.

Councilmember Kualii: Can you put up slide 5 from Mr. Morimoto's PowerPoint? Anyway, on that slide, it shows the property and beyond the property, you had mentioned it too, the blue box is State property. Then they would have to go through that the access easement, the government road...in the handout, it has a blue box, but that is okay. Basically, towards the stream side of the property that we were talking about in the black box, that the government access road goes through, there is a State property, you said.

- Ms. Higuchi Sayegusa: Yes.
- Councilmember Kualii: Is it DLNR?
- Ms. Higuchi Sayegusa: I am sorry...the end of the road?
- Councilmember Kualii: At the end, closer to the stream?
- Ms. Higuchi Sayegusa: I believe that it is managed by DLNR, Land Division.
- Councilmember Kualii: All I am asking is whose property is it, how is it used, and what is Planning Department's record of the allowable uses on that property?
- Ms. Higuchi Sayegusa: I cannot speak to...I do not think there are any permits in our possession.
- Councilmember Kualii: Is it conservation land or something?
- Ms. Higuchi Sayegusa: Mr. Morimoto put up the statute that delineates the unencumbered land and secluding beaches.
- Councilmember Kualii: Even then there, where the State property is, then there is other property in the back. Is that private property?
- Ms. Higuchi Sayegusa: Which one?
- Councilmember Kualii: Whatever this is here.
- Ms. Higuchi Sayegusa: I am sorry. Are you asking if that is a private property?
- Councilmember Cowden: I think that the owner is in the room.
- Councilmember Kualii: Then, does the County then have...what is the use of that property? Obviously, they have to go through that road to get through to their property, like the public would need to use that other State property, which is not being used. Maybe you can just follow-up and figure out if DLNR is holding onto it or if they subleased it to anyone. I guess it just takes some follow-up.
- Ms. Higuchi Sayegusa: Clearly, again, I think we all agree that this is a public access.
- Councilmember Kualii: And two (2) more public lands.
- Ms. Higuchi Sayegusa: Yes.
- Councilmember Kualii: Including the stream, I guess, which is there, not just the ocean.
- Ms. Higuchi Sayegusa: Yes.

Councilmember Kualii: Okay. Thank you.

Committee Chair Carvalho: Are there any other questions for Planning Department? Just one (1) more question. Bottom line, is the SMA permitting process under the County, Planning Department? I just want to make that clear.

Ms. Higuchi Sayegusa: Another option within the Planning Department's or actually the Council's purview is, of course, the Open Space Fund and that is a fund that can be used to purchase access, acquire coastal lands. That is one (1) option. Of course, it should go through the Open Space Commission and the proper vetting, and ultimately if it is approved by you folks, that fund could be used to purchase that sliver of property, possibly condemn it, most likely condemn.

Committee Chair Carvalho: Council Chair Rapozo.

Council Chair Rapozo: Or the Council could initiate the eminent domain proceedings without going through Open Space to make it a lot quicker.

Ms. Higuchi Sayegusa: Right, but it is a pocket of moneys. Yes, and the Open Space Fund...

Council Chair Rapozo: We would use their money.

Committee Chair Carvalho: Members, are there any more questions for the Planning Department? If not, thank you.

Councilmember Cowden: I have a simple PowerPoint that I would like to show that I think will show and will add a lot. This might help Mr. Morimoto. Can I do that?

Councilmember Kagawa: Is this part of the ten-minute discussion that we have? I do not want to set the policy now, but if it is not your item because you are from there, you can have more time to speak than the other members.

Committee Chair Carvalho: We will just leave it here. Just call it back to order here.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: I am curious. It sets precedents.

Committee Chair Carvalho: I am telling you, let us do it that way. Further discussion here at the table with the Councilmembers.

Councilmember Kagawa: This is not a political forum.

Councilmember Cowden: Okay, I will try not make a political forum, and I did ask the Council Chair, but I guess not. Can I put up my little presentation? I will "whip through" it quickly. I have been focused on this for a long time and I think I have something to add here, and I will try to make it go very fast. Did you folks get a copy of my presentation?

Council Chair Rapozo:
other members received one.

You gave me one (1) copy. I am not sure if the

Councilmember Cowden: I saw that they were printed out. Allison, do you have them? Did someone hand them to you? The Historic Trail System present at the *ʻili* of ʻAnini in Hanalei. Public Access on Pre-1892 trails and roads are secured by 1892 Highways Act and HRS Section 264. The Historic Trails are held in trust by State unless disposed of according to HRS Section 171. The Historic Alanui trail system at ʻAnini has not been relinquished by the State nor has the access on it. The next slide is a map. This map came, I believe from 1833, and this shows all the *alaloa*. This map was made by a woman. Can I just say, yay girls. This is done by a missionary and so, if we flip to the next page, the American Board of Commissioners Foreign Missions (ABCFM) Calvinist Mission showed where with the little blue dots on this next slide. You see the little triangles and blue dots, these are churches and outstanding meeting houses, so we see between the Waioli Mission in Hanalei and the next square up in ʻAnini, which is right next to this, I think they are calling it a “snack surf house.” They have a little school there and then outlined missioned house. The next slide, again, we are seeing where these churches are between Hanalei and ʻAnini. They had a road, an *alanui* that went in between these two (2) places and this is the early maps. We have one (1) more little one. We really went through a lot of effort to look at the paperwork and the assignments that came there. They called (inaudible) a little bit, that was another word for the area. Here is the Highways Act of 1892 and the part of it in the Chapter 264-1(b) for the HRS. You all have a copy of it, but when we have been asking about the pertinent laws, and I sent to Mr. Morimoto since he asked, HRS Section 115 is the coastal access law and HRS Section 115-9 is specifically about not blocking beach access. Something that I sent as a question to the Planning Department and the Office of the County Attorney, this is Uncle Teddy Blake at the Hapa Trail. He sued and what came out of that lawsuit, is that it is up to the State. The County cannot assign a road to a private entity. It has to go through BLNR and relative to Princeville, right now, it is empty on that road on the County website, but if it did go to Princeville from the County and I see no record of it in the State, it is probably still a road-in-limbo and does not belong to this property here. Since it is my style, I called Jeff Stone, and I always try to talk to whoever might be impacted. I want to hear from both sides. He was super helpful. Hope and I went down to the property on Monday and met with their team. We did talk about this. This is a picture of the high wash of the shoreline, the waves, the sand comes over. I will show you another picture in a moment where it does not just to this property, but many properties, so we have to be a little careful if we decide that the high wash of the wave is where it ends. Sometimes, it ends in the middle of yards and even into the back of people’s garages, up against their house. I want to say that his team was great. They were super helpful. We had the documents there and we were looking at the history of the elements. We talked about the State putting the boulders there. This is an area that I do spend time at, and the State put the boulders there to keep the houseless community away. I did go, somewhat door-to-door, asking people a little bit to the East how they felt. There were mixed feelings. Some were very unhappy with the closing. Others appreciated the security. I did talk to the team there about the security because I will tell you that I have been blocked walking along the beach and was told to get off the beach. The security system did not know who I was, not that I am somebody special, but I did pull rank and tell them that they cannot tell me to get off the beach. I challenged that. I do go down and I talk to the team there about going down there when there is a high wash of the waves and I see fresh raking and the grass comes back way faster than could ever

possibly happen. I do not recall that in the history for grass being there, they were actually amazingly good. They were like, "hey we are totally fine if people are walking on this road, walking through there." They were hoping and feeling that the white picket fence was very relevant.

(Councilmember Kagawa was noted as not present.)

I copied Haunani Pacheco because you have something good to say here. It says, "my 'ohana has lived in wanini for over one hundred (100) years. This past Thursday, the road to the end of the road was blocked off for public access. Those of you who go to the end of the road to picnic and fish are not able to drive to it." She speaks about what it is there. I know that I have a very short period of time, but I felt that her point was very important. All this, we need to go to the BLNR, Na Ala Hele, Aha Moku, The Office of Hawaiian Affairs (OHA), State Historic Preservation to do a Cultural Impact Assessment, Ka Pa'akai Analysis and Shoreline Certification before any sort of disposal of a historic trail, but I would say at least with the crew there, from Jeff Stone's office, they said "we do not want to take it away." What I do know is who might be working one (1) day is not necessarily what might be the case in two (2) or three (3) years, but I was really encouraged and I communicated with Jeff. After the communication, he was behind it. It was tense, but positive, so what I would like to happen is that these things works. We get the process of creating that confirmed win-win and we talked about what can be talked about a cart trail. I learned that it was Princeville that turned the word from "highway" to "cart trail," but if you come up next to The Westin Princeville Ocean Resort and there is a guava road that I think is really for birds pooping on the fence. It is like there is a tree tunnel and a guava tree tunnel. All of that needs to make sure is held in perpetuity as our historic trail. Then, Christiane, I gave you those other two (2) pictures. There are two (2) more pictures that are...I had pictures that were in someone's house because this is important to me where you can see how far up the high wash of the waves goes. Here is a picture of one (1) house. See how the sand comes across and into someone's place and there is a next picture. This is another area, and I had gone in there while they were cleaning it out. Another friend of mine, they were sweeping this out, so if we were to say that the high wash of the wave is absolutely the shoreline, then we are going to be taking away...really, you can see that it would have gone into the living room right here. The high wash of the waves can be really extreme down there in 'Anini, but guaranteed, it goes over the road and pretty regularly, I will go down there after a big surf, and you can see all the little pieces of wood that have gone into the yard. Okay, did I miss my time period?

Committee Chair Carvalho: Yes.

Council Chair Rapozo: We have to take a caption break, unless we can wrap it up.

Committee Chair Carvalho: Can we wrap it up?

Councilmember Cowden: We had a break because we were taking pictures.

Council Chair Rapozo: It was not a ten-minute caption break. I would say that we should take the caption break.

Committee Chair Carvalho: We will do a caption break at this time for ten (10) minutes and then we will bring this issue back to the floor.

There being no objections, the Committee recessed at 10:37 a.m.

The meeting was called back to order at 10:50 a.m., and proceeded as follows:

(Councilmember Kagawa was noted as not present.)

Committee Chair Carvalho: We are at final discussion here at the table. Members, I know Council Chair Rapozo will wrap it up...

Council Chair Rapozo: I do not know if I will wrap it up. I am not a Committee Member.

Committee Chair Carvalho: I know. We can have other Members speak first.

Council Chair Rapozo: If anyone else would like to go first...

Committee Chair Carvalho: Let us start with Councilmember Bulosan.

Councilmember Bulosan: I want to thank Chair Rapozo for bringing this issue to our Council and having this in our Committee Meeting. This was a tough one. Like many local people who were born and raised in Līhu'e, not living on that side and not being rich, our excursions with family were to the North Shore and to the Westside. Those were our memorable moments as a family. At that end of the road, we have a lot of camping memories and I have a lot of memories there. To see these photographs (photos) are a travesty. It is breaking my heart in every possible way. Having a newborn at five (5) months thinking that he will not experience the things that I had experienced as a kid and hearing the many testimonies sharing the testifiers' perspectives on practicing their culture and practicing their livelihood...the best one was where one of the testifiers said this is a "no brainer," and the "duh" was so loud in my head that it hurt. I am at the point where the County must take immediate action as soon and as quickly as possible, so I am open to every suggestion that is on the table, many of which were extreme in which I am definitely open to.

Committee Chair Carvalho: Councilmember DeCosta.

Councilmember DeCosta: Thank you. Where do I begin? I will tell you where I will begin. I will look out into the community right here and recognize Pearl who sat on the Public Access, Open Space, Natural Resources Preservation Fund Commission from 2003 to 2005. We spoke about this issue. We spoke about many open space accesses *mauka* to *makai*. Pearl and I spoke about a very important issue—open space in Kalāheo. I want to reference this because we spoke to Alexander & Baldwin to try to negotiate, and in good faith, we tried to talk to landowners. I was not a Councilmember, I was just a Public Access, Open Space, Natural Preservation Fund Commission member. In good faith, they said, "Yes, we will open it to the public and let the hunters go." Do you know where that access is today? It is absorbed into a subdivision that was sold to a billionaire, and that Kalāheo mountain access is gone, because that is what happens when we turn a blind eye, and think we can negotiate and hold people in good faith. The Kobayashis, the Hermosuras, the Horiguchis, the

Ornellas', the Pachecos, the Olanolans, and the Hamadas. They are all friends of my father from when I was little. We would go out to the North Shore. I am not a Westside politician, I am a Kaua'i politician. When I look at this, I am really worried that gate is still standing...that access. That gate should be removed, dug out, and put back to its natural state. Yes, there may be some homeless individuals who traverse through there.

(Councilmember Kagawa was noted at present.)

Councilmember DeCosta: There are other ways to deal with those who are homeless than to block off access to our local people. When I saw the road, it does not even go to the last two (2) properties. Those last two (2) properties should have an available road going through. The stream should be available for us to park our vehicles, and if they are there, we should be able to get 'o'opu, hīhīwai, and prawns. Do you know what happens to our generation? It skips one (1). Our children, and our *mo'opuna* will not be able to go down to that stream. They have not for a generation. When we lose that, then we lose that sight, just as Mr. Peter Morimoto showed us the land map with the road and the County's new land map does not have the road. Somewhere along the line, government officials let that road disappear. I am sorry that Ms. Jodi Higuchi Sayegusa is the person who was called on, because she has not been working for the County that long. You can go back decades to see that this is a problem. Let us fix the problem, let us rewrite the wrongs, and let us get our accesses back. There are a lot of accesses that still need to be available, not only *makai*, but also *mauka*—*mauka* right in Kīlauea, *mauka*, Unit "C," above the billionaires. It is all open for access with County easements that are in language since the 1970s, yet they are not opened. We let it be absorbed by those agricultural (Ag) owners, then there is a generational gap where information is lost, and unless you know people within the Planning Department and the Administration, to be able to get the information, because we are not smart about that...Ms. Higuchi Sayegusa is the smart one. She is the person who can pull the information and help us, unless we have community members, like Mr. Morimoto or Ms. Roslyn Cummings, who came forward with old maps, or like Ms. Pacheco with her testimony of one hundred (100) years. Let us not lose any more accesses. Let us get back everything for our people. Thank you.

Committee Chair Carvalho: Vice Chair Kualii.

Councilmember Kualii: *Mahalo nui loa* to Chair Rapozo for asking for this issue to be put on the agenda, and *mahalo nui loa* to the folks who came forward and shared all their testimony, especially to Mr. Morimoto and Councilmember Cowden for sharing the maps and some of the research that you folks have done to see all the historical things. Public access is absolutely a critical priority for our fishermen, hunters, gatherers, families, and our kids. It is actually for the way of life for many of us, right? I grew up in a poor family. We did not go away on vacation. We, as some said before, went to the North Shore and Hanalei Bay, we went camping with the Pacheco and Kimura family, and we went to 'Anini and all of that. It has been a long time since I have been there in that way, but that is how we were brought up. I think this public access issue across the island is critical for our families and our future, so we have to do what we need to do, work with the State. I do not think the County and the State can do this thing where one says, "It is for you to do," and the other says, "No, it is for you to do." They just need to work together and get it done, because that is what the people demand and deserve, and maybe every instance is

going to be a little different, and if we have cooperative landowners, even better, but we have to make sure that these types of pictures do not show up. It is troubling to see that the people would be inhibited from accessing their own public lands, whether it is along the coast or *mauka*. It is just important that we do what we need to do. I am hopeful that after today we will get some follow up from the Planning Department and the County will pursue this further to make sure that...Aunty Haunani (Ms. Pacheco) not only mentioned this specific place in 'Anini, but also mentioned a whole list—Pīla'a, Larson's Beach, Kahili. We can go across the entire island and find different examples from what the testifiers shared. I think it is important that we stay on it and follow up. Thank you.

Committee Chair Carvalho: Councilmember Kagawa.

Councilmember Kagawa: Thank you, Chair Rapozo. First of all, I want to thank Ms. Higuchi Sayegusa. I think she has done a tremendous job stepping in for Mr. Hull and other staff who may have spent more time with this. Her humbleness and her wisdom were great. Thank you, Ms. Higuchi Sayegusa. I also want to thank Mr. Peter Morimoto for, obviously, spending a lot of time telling us some of the history, and for giving us arguments about why this is so important and why we need to do something about it. Our hope here at the Council is that when an issue like this is brought up...if Mr. Morimoto were to do this presentation and talk to the Mayor, the Mayor would get his team on it and "nip it" if it was five (5) years ago, two (2) years ago, or five (5) days ago. However, the progress has obviously not happened and there are still questions and outrage. Is this going to be a lingering problem with this rich developer who has money? If I was to meet with him, my conversation would be very different from Councilmember Cowden's. I would tell him, "I know you have money, but I expect you to...if you want to be part of the community, you need to give more than you are entitled to, because it goes a long way to make peace with the middle class and the poor to let them have more rights than they had prior to your ownership. That would show the community that you have all the money and you can buy this, but at least you can be trusted on some level. If you do not see that, it will be typical scenario where you have the money, you will do whatever you want to have what you want, and forget about the people." I may not come from the North Shore, but I taught special education for eighteen (18) years and driver's education for ten (10) years at Kapa'a High School. I know the North Shore community, especially the younger generation that I taught. I know them well, so I care about the whole island, even though I am from the Westside. I am a Westside boy, so the Westside folks will call me all the time. Maybe they called Councilmember Cowden for this issue, but when the issue is brought up to a Councilmember, I think the key is that in the future we need to give everyone a chance. If nothing happens in five (5) years, then perhaps you need to call me instead, because it is about the results, right? It is about the results. If you are five (5) years away and we are here, maybe I could have done something more in two (2) years. It is just giving everyone a chance, because we do not need to hog or be possessive about one (1) issue being ours that we are going to cure. Together, as a team of seven (7), we need to figure out a way to get this thing to the Mayor, so he can get his team to work together and accomplish what was before and what will be for the future, which is total access and even improved access. This is not to disrespect transient vacation rental (TVR) owners and their residents. Local people are not like that. We do not trespass on property, we respect property, but we make sure that they do not take more away or treat our residents in ways that make them feel uncomfortable, because the beach is a right. It is a privilege for our residents for forever, and we need to protect that. I remember my first night

diving experience. I was about ten (10) years old, it was at 'Anini Beach, and we had that heavy cast iron diving light that had about ten (10) D cell (D) batteries inside and would last about four (4) hours before just going out, so if you went for more than four (4) hours out there, you would be in the darkness. In the old days, everyone slept early, so it is sort of spooky. There were no lights. You do not know where the lights are. It is a picture I cannot get out of my mind, because 'Anini was so colorful, it was like Jacques Cousteau looking at all these beautiful colors of coral, fish, and seaweed, but it is nothing like that now. It is brown, yellow, or whatever color the water becomes after a flood, and it does not have the abundance of fish or lobsters. We could be choosy. Now, I think the kids shoot whatever they can see, otherwise they will be diving for hours and not take anything home to eat. Basically, I think if our kids are middle class or poor, they eat everything that they catch. There is no waste to me even if they shoot something that is undersize, but as long as they eat it. It is the memories of 'Anini that go back that we need to somehow improve that aspect as well. We need to bring that back to how it was before. I think this Council needs to once again get our Mayor to do something rather soon—do the surveys, remove the grass in the case that it is on beach property, issue fines to discourage that action in the future...big fines, not small fines...and give the money to improve 'Anini Park. My family camped there this week. It was a big family gathering, and they had a wonderful time. Thank you to the North Shore people for always hosting the Eastside and Westside people who, like Council Chair Rapozo said, do not have money. For those who do not have the money to go to the Mainland U.S., 'Anini is their Disneyland. *Mahalo*. Contact all the Councilmembers in the future, because, like I said, we all work in different ways, but I feel I am results-driven. Thank you, Chair.

Committee Chair Carvalho: Again, *mahalo* to all of you for coming in and testifying. This whole discussion about 'Anini is very important for all of us, family-wise, politically, and overall, with taking leadership by working closely with Planning Department and making sure we follow through on everything that we discussed here. That is an important part. Access, Special Management Area (SMA), or whatever the permitting process is. I know we can go on and on, but I appreciate all the discussion. Be assured that we will follow through by working closely with the Planning Department, and of course, with the Administration taking a lead as well, and the Council providing support. It is a team effort. That is what I am hearing right here. I just wanted to say that upfront, a lot has been said already, and be assured that there is a commitment by this side to move forward. At this time...

Councilmember Kualii'i: I have one more point before you go to him.

Committee Chair Carvalho: Go ahead.

Councilmember Kualii'i: I forgot to say this. I was happy to hear Councilmember Cowden say that she has a relationship with Mr. Jeffrey Stone, that working with his team was great, that they were helpful, and that they did not want to take the access away. The only thing I would say to Mr. Stone and his team is please do not even give any type of appearance that will look like you are inhibiting the public from accessing the area. Remove all cones, stop parking the all-terrain vehicle (ATV) at the entrance, remove surf racks and boards from the beach, remove the furniture, chairs, and tables and put it on the white side of the fence on the *mauka* side of the road, and have your guest of whoever enjoy it there. If they go on the beach, they have that right, too. They can carry the chairs with them and sit there, but when they leave, they should take it back with them, so that it does not look like you are

putting your presence there as if you own it, because you do not. It is the beach. Personally, I am okay with you helping to maintain the beach, but do not put yourself on there like you own in. In fact, in the future, if the Planning Department shows us how...there was talk about public access moneys and trying to buy that piece of land, it is the beach, so I ask you, Mr. Stone, to donate that piece of land that is *makai* of the highway and *makai* of the ironwood trees. There is nothing *makai* of ironwood trees that should be public lands. Obviously, the ironwood trees are there to protect to private lands *mauka* of that from the sea breeze and all of that. It is a small piece of land that is an extension of the beach. The pictures show that very clearly. Whether we see grass or sand, it is literally just feet...not far from the ocean. The sand comes up in the high wave time and it is just very clear, so let the public enjoy that, please.

Committee Chair Carvalho: Council Chair Rapozo.

Council Chair Rapozo: Thank you. First of all, thank you Mr. Morimoto for posting that on Facebook. I think it was Ms. Cabebe who said we should all be aware of everything that is going on. Unfortunately, we do not know what we do not know on this body. Maybe some Members know, but I can honestly tell you that I did not realize 'Anini...I have not been down there in a long time, but I did not realize it is as bad as it is. As Councilmember Kualii said, seeing these pictures is quite disturbing. When I came back to being on the Council a year and a half (1½) ago, Councilmember DeCosta came up to me and said he really wanted to focus on public access, and that he had been unsuccessful in his prior term for whatever reason. We immediately submitted a request to the Planning Department and we received a list of all the accesses that the County has, and it is a lot. There are a lot of accesses that need to be reclaimed. We are working on about four (4) of them right now, but then 'Anini popped up. When I saw the 'Anini issue and when I did my research, I realized that this was the one we needed to attack first, because in my opinion, it was the most egregious. That is how this all started. A lot has been said today, there were a lot of pictures and stories, and it is very easy to get tangled in the weeds with something like this and to start making excuses. There is no excuse for this. There is simply no excuse. I mentioned about the public access law that was passed...thank you, Mr. Bracken. It is HRS Section 115-9. I will read it. "Obstructing access to public property. A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing a public right-of-way...this qualifies...a transit area, a public transit corridor..." I think they may be talking about roadways "...a beach transit corridor," yes "...and thereby obstructs access to and along the sea, the shoreline, or any inland public recreational area. Physical impediments that may prevent traversing include but are not limited to gates...that is one...fences, walls, constructed barriers, rubbish, security guards," uh huh "...guard dogs or animals and..." this is the one that I think we need to act on right now, "...a landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches within beach transit corridors." That is exactly what is going on at 'Anini. This is even better, because I thought it was a civil thing. Obstructing access to public property is a misdemeanor. It is a criminal offense. It means you can go to jail. In other words, that security guard can be arrested, whoever planted that grass can be arrested and should be arrested. That is the law. I appreciate efforts to negotiate, but our County has lost accesses, as Councilmember DeCosta talked about, because we have miserably failed at negotiating with landowners. I am not interested in negotiating. When it is our right and our land, what is there to negotiate? I am serious. What is there to negotiate? Give us back our

land and we will give you something. No. In other words, get your things off or you will be arrested. You will not be cited; you will be arrest. That is how. That is the approach that needs to be taken, and this is a great example of where to start. We have lost so many accesses. I can sit here and talk about 'Anini, the 'āweoweo, shining the light at night to see the lights glitter, how you can throw your pole in the water, and I think I said in a meeting last year that you did not need to put bait on the hook. You just threw the hook in and you caught the 'āweoweo because...I do not know, I guess they eat metal. Mr. Morimoto did a lot of research. Mr. Morimoto is well-respected, I consider him an expert, and he gave us every reason of why we should act, as did many of you. I have worked with sending memoranda to DLNR when there was the *alaloa* controversy in Moloa'a where Mr. William "Bill" Ailā flat out said, "We are not interested in pursuing *alaloa*." It is not your option. The *alaloa* is the *alaloa*. He was the Director at the time, but even if you are the Director, you do not have the right to say, "We are not going to pursue it." No, that is the *alaloa*. That is on the maps. You cannot give that away. We cannot negotiate giving away our rights to our public accesses. It is wrong. This extension of the shoreline by the property owner...he plants the grass...Councilmember Kualii'i, I am not sure if you were with me and Ms. Caren Diamond. We saw irrigation pipes and tubes in the ground. I ripped them all out. Call the cops. It was so egregious and disrespectful for the landowner to actually plant *naupaka* and put in irrigation hoses to water them so that his or her property could be extended, taking away our public access to the beach. That is wrong. As I am finding out and remembering, it is also a criminal offense. I love that it is a criminal thing. Ms. Higuchi Sayegusa, the answer to my question is, "If it is a criminal matter, then we would probably call the KPD." That is the clue to all of you. If you are ever bothered by anyone at any public access, call KPD, then call me, and I will make sure the police officers do their job. Once you arrest a couple of these people, it will stop. I am not very optimistic about getting any help from the State. I am not. I do not think they care. First of all, Committee Chair Carvalho, I will ask that this be deferred for two (2) weeks rather than received it for the record. In two (2) weeks, we will have Mr. Hull, DLNR, BLNR, the Office of Conservation and Coastal Lands (OCCL), and whoever we need to get in the same room and at the same time, so this matter can be clarified once and for all. I am asking for that for the next Committee Meeting and to keep this item going. This is what I would like to see and this is what I encourage my colleagues to support: (1) Investigate and enforce existing laws at 'Anini. Send someone out there right now, send the police officers. From the photos, we know where the shoreline is, and we know where the upper reach of the wash is. I understand Councilmember Cowden's comment that the upper reach of the waves might be extreme. In some cases, it is, but that is not in place because we are trying to protect the rights of the property owner. That is in place because we are trying to protect the property owner's life and property, and we do not want to see their homes and structures in the ocean. That is why we have that, so we have to use it. I am not talking about the upper reach of the hurricane. With the way the statute reads, I think it is seasonal, so it is during the winter. It is the highest reach during the winter, not that of a hurricane. You are not counting that. The highest reach of the wave during the winter season is where the shoreline should be. Is that my twenty (20) minutes? Can I get one more thing in?

Committee Chair Carvalho: One more.

Council Chair Rapozo: We need to get the State to do the shoreline survey. If they do not, I have asked Mr. Bracken to look into if the County can. I believe the County can. I think the County can request and pay for the shoreline

survey. I think we need to start looking at exercising the County's right of eminent domain for that area. We will start exploring that, as far as condemnation of that is, then the County can condemn what it wants, and can make it a vehicular access with a parking lot and a bathroom. The County can do a lot of those things if it goes down that road. Thank you, Committee Chair Carvalho.

Councilmember Cowden: Can I ask a follow-up question? If you look at past practices, this has been a problem for so long. I would watch it along Hanalei. I would work with Ms. Diamond, too. I would call her up and work on it with her. They move. We have strong landscaping companies who extend the vegetation line fifteen (15) feet for two (2) weeks around five (5) properties, then two (2) weeks later, they do it again, and again, and again, so people get forty (40) feet onto their property. You lose all that place to play with your babies on the beach. This has been a problem. This has been a persistent problem for a long time. I was complaining when my children were babies. I think we definitely need to look at 'Anini, but we need to consider how to do this everywhere, especially along the North.

Committee Chair Carvalho: As Council Chair Rapozo said, we will follow up on all the others, making sure we bring it back, revisit everything, and bring it back to the table. Without any further discussion...

Council Chair Rapozo: I would ask that there be a motion to defer it and the same item will show up again.

Committee Chair Carvalho: We can move to defer so we can relook at everything again and bring it back to the table.

Councilmember Bulosan moved to defer PL 2024-02, seconded by Councilmember Kualii and unanimously carried.

Committee Chair Carvalho: With no further discussion for the meeting, I would like to adjourn this meeting. Are there any closing remarks?

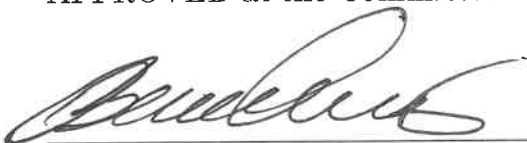
There being no further business, the meeting was adjourned at 11:18 a.m.

Respectfully submitted,



Shari L. Rabaino
Council Services Assistant I

APPROVED at the Committee Meeting held on October 2, 2024:



BERNARD P. CARVALHO, JR.
Chair, PL Committee

