

COUNCIL MEETING

JUNE 12, 2024

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, June 12, 2024, at 8:44 a.m., after which the following Members answered the call of the roll:

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

(Note: No one from the public provided oral testimony via the Zoom remote technology platform on any agenda item.)

APPROVAL OF AGENDA.

Councilmember Kualii moved for approval of the agenda, as circulated, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for approval of the agenda, as circulated, was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

MINUTES of the following meetings of the Council:

May 15, 2024 Council Meeting
May 22, 2024 Public Hearing re: C 2024-96

Councilmember Kualii moved to approve the Minutes, as circulated, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to approve the Minutes, as circulated, was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

CONSENT CALENDAR:

C 2024-112 Communication (05/21/2024) from Jodi A. Higuchi Sayegusa, Clerk of the Public Access, Open Space, and Natural Resources Preservation Fund Commission, transmitting for Council information, the Public Access, Open Space, Natural Resources Preservation Fund Commission 2022-2023 Biennial Report, pursuant to Chapter 6, Article 14, of the Kaua'i County Code.

C 2024-113 Communication (05/28/2024) from the County Engineer, transmitting for Council consideration a Resolution Amending Resolution No. 2022-44, Authorizing The Mayor Or The Director Of Finance Of The County Of Kaua'i To Enter Into An Intergovernmental Agreement With The State Of Hawai'i, Department Of Health For A Loan From The State Water Pollution Control Revolving Fund For The 'Ele'ele Subdivision Collection System Rehabilitation, Project No. C150050-12.

Councilmember Kualii moved to receive C 2024-112 and C 2024-113 for the record, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there discussion or public testimony? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

Councilmember Cowden: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Cowden: Is this what you are talking about?

Council Chair Rapozo: Yes.

Councilmember Cowden: Are we not going to talk about it?

Council Chair Rapozo: I would suggest if you wanted to discuss that item, we should set it up as a different briefing.

Councilmember Cowden: Okay.

Council Chair Rapozo: Because they are not here to present.

Councilmember Cowden: It was great and significant, but it just seemed like maybe we can do that on a different...

Council Chair Rapozo: Yes, that will be a briefing itself versus today. If we are going to discuss that, I would want to give them an opportunity to prepare. We can check with the Planning Department and find out how much time they need to get an actual presentation, and we can get that set as soon as possible. Is there any further discussion or public testimony? Seeing none.

The motion to receive C 2024-112 and C 2024-113 for the record was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please

COMMUNICATIONS:

C 2024-114 Communication (05/17/2024) from the Mayor, transmitting the Public Access, Open Space, Natural Resources Preservation Fund Commission's recommendation to request up to \$1,444,000.00 from the Public Access, Open Space, Natural Resources Preservation Fund for acquisition of two (2) Hanapēpē parcels at Tax Map Key (TMK) Nos. (4) 1-8-008:065 and (4) 1-8-008:071.

Councilmember Kualī'i moved to receive C 2024-114 for the record, seconded by Councilmember Carvalho.

Council Chair Rapozo: This is the Communication. We will be covering the draft bill later today. Is there anyone wishing to testify on the Communication?

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to receive C 2024-114 for the record was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

C 2024-115 Communication (05/24/2024) from the County Engineer, requesting Council approval to accept a donation from the Department of Hawaiian Home Lands, in the total approximate value of \$260,000.00 of two (2) trailer-mounted pumps, to provide backup pumping capacity or to provide redundancy at the County's Sewer Pump Stations servicing the Hanapēpē and 'Ele'ele area.

Councilmember Kualī'i moved to approve C 2024-115, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion? Would you like to have the Department of Public Works up?

Councilmember Cowden: Yes. I have a question.

Council Chair Rapozo: With that, I will suspend the rules.

There being no objections, the rules were suspended.

TROY K. TANIGAWA, County Engineer: Good morning, Council Chair, and Councilmembers.

Council Chair Rapozo: Good morning.

Mr. Tanigawa: This request involves pumps from the Department of Hawaiian Home Lands (DHHL). From what I understand, and this just recently came in, that they prefer using the term “convey” the equipment rather than donate. Basically, these pumps will be used by the Wastewater Division for their operations.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: Because there are several different wastewater things, and I will talk about it at another point, but I see we have an item in here to raise the amount from the State Revolving Fund (SRF) and we are looking at ‘Ele‘ele sewer improvements, so my question is, when we do that ‘Ele‘ele sewer improvement, are these pumps working together with that, so that as we develop the DHHL subdivision off of Moi Road, is that all related together? There are three (3) different budget items, so I am just trying to understand how they come together. Are we providing sewage for Hanapēpē Heights DHHL properties?

DONN KAKUDA, Civil Engineer VI, Wastewater Management Division: The pumps are part of the deal with DHHL to provide sewer, I think it is eighty (80) something lots, right, on their second phase. We told them we needed extra capacity at our pump station, and so they said they would provide these pumps to provide backup in case of an emergency. That is the deal. The other one that will come up later is to rehabilitate the old ‘Ele‘ele Subdivision...

Council Chair Rapozo: We will talk about that later.

Councilmember Cowden: So, this?

Mr. Kakuda: Is totally different.

Councilmember Cowden: Okay, this is totally different than the other one. We are going to somehow provide sewage to the people up there in the new subdivision?

Mr. Kakuda: For the DHHL part.

Councilmember Cowden: That is what I am asking.

- Mr. Kakuda: Yes.
- Councilmember Cowden: So, this assist that as a contribution.
- Mr. Kakuda: That is how they are helping us out with capacity. We told them we want more backup at our pump station and in order to do that, that is what they provided.
- Councilmember Cowden: Okay, that is what I wanted to know, that they are contributing. Great.
- Council Chair Rapozo: Are there further questions for the Administration? Councilmember Kualii.
- Councilmember Kualii: You used the word "negotiations." Is this standard practice where whenever we...
- Mr. Kakuda: Yes.
- Councilmember Kualii: ...partner with DHHL...
- Mr. Kakuda: Or any other developer.
- Councilmember Kualii: ...or any other developer, and DHHL is primarily responsible for affordable housing?
- Mr. Kakuda: That is my understanding.
- Councilmember Kualii: How is it that we as a County are actually supporting and not charging, if you will, DHHL, for affordable housing that is built here on Kaua'i for the people of Kaua'i?
- Mr. Kakuda: That one is the same as all other affordable housing. Once they receive the letter from the Housing Agency that they are affordable, then we do not charge them the wastewater treatment capacity assessment charge (WTCAC) fee. In that case, it was my understanding that this development falls under that category.
- Councilmember Kualii: Will the charging of the fees happen later?
- Mr. Kakuda: We are not going to charge the fee as long as...
- Council Chair Rapozo: This item is on the pumps. Receiving a donation of the pumps.
- Mr. Kakuda: Yes, that is correct.
- Councilmember Kualii: I am questioning why they negotiated with DHHL, that they had to donate those pumps in the first place, because two hundred

thousand dollars (\$200,000) could easily have come from our budget and to pay for and let DHHL use that money to do more affordable housing to address the thirty thousand (30,000) people on the waitlist.

Mr. Kakuda: In our ordinance...

Councilmember Kualii: That is all I am asking. I do not think...

Council Chair Rapozo: Let him finish. Go ahead.

Mr. Kakuda: In our ordinance we require everyone to chip in. We felt that was fair to provide backup capacity. They are adding capacity, so we have to make sure we get the backup pumps that can handle it. Every development that comes in, we hold them to the same thing. We have been discussing with Grove Farm, too...

Councilmember Kualii: This is a matter of an ordinance?

Mr. Kakuda: Our County standards.

Councilmember Kualii: Our County law?

Mr. Kakuda: Our County sewer standards.

Councilmember Kualii: Okay, so I would like you to, and staff if you can just, I want to revisit that. What I am saying is, you are just following the law.

Mr. Kakuda: I follow the County sewer standards.

Councilmember Kualii: But the law could be different working with our Housing Agency to support affordable housing in a different way, where we could be paying for that and not asking DHHL to pay...

Council Chair Rapozo: Again, I do not want to get into the discussion on how we negotiate. This is about a donation. We either support the donation or...

Councilmember Kualii: The conveyance. You want it to be called a "conveyance," you said?

Council Chair Rapozo: Well, they wanted it to be called a conveyance, but we do not allow conveyances of...

Councilmember Kualii: Okay, I just want a follow up.

Council Chair Rapozo: That is fine. This discussion today on this item is the donation.

Councilmember Kualii: Yes.

Council Chair Rapozo: Not how we got there, it is a donation. We can have that discussion with the Housing Agency or the Wastewater Management Agency of how you folks determine that, but for today, it is just this donation and you either support it or not.

Councilmember Cowden: What does WTCAC stand for?

Mr. Kakuda: Wastewater treatment capacity assessment charge. For Residential, it is three thousand and change. We typically charge a connection charge, too, and it is about nine hundred dollars (\$900), so typically it is about four thousand dollars (\$4,000), but since it is affordable, we do not charge.

Councilmember Cowden: What does the "T" stand for again?

Mr. Kakuda: Treatment.

Councilmember Cowden: Treatment. Okay. Thank you.

Council Chair Rapozo: Are there any further questions for the Administration? If not, thank you. Is there anyone in the audience wishing to testify? Seeing no further discussion.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2024-115 was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next, item, please.

C 2024-116 Communication (05/28/2024) from the County Engineer, requesting Council approval of the indemnification provisions contained in the Autodesk Terms of Use, which provides software products and services for the architecture, engineering, and construction industries.

Councilmember Kualii moved to approve C 2024-116, seconded by Councilmember Carvalho.

Council Chair Rapozo: I see Troy coming up. I will suspend the rules. It seems like you want to say something.

There being no objections, the rules were suspended.

Mr. Tanigawa: Our Chief of Engineering Michael Moule will be up to explain the details.

Council Chair Rapozo: The first thing they taught me in the military is when they ever ask for volunteers, do not raise your hand, but that is okay if you want to come up and speak on every item. Go ahead.

MICHAEL MOULE, Chief of Engineering Division: Good morning, Councilmembers. Michael Moule, for the record. I did not raise my hand; he raised my hand. We are here to ask for the Council's approval of the agreement for the software. Our understanding is that our software was reviewed by the Office of the County Attorney, and since these software agreements include an indemnification clause indemnifying the company for any of our use of their software, we would have to go to the County Council for your approval for any indemnification clause. We just wanted to get this approval so that we can renew our software for this year and continue doing our engineering work. That applies to this item and the next item. Same issue, just two (2) different software pieces.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I have the same question for both, and it might be that the County Attorney is the more appropriate person to ask. What I learned when I attended the National Association of Counties (NACo) meetings, is that whenever you are looking at any of these and I looked through it, but not with a fine-tooth comb, there are lots of details in here. What they tell us is it is so important to look really carefully for whatever loopholes are put in, because that is becoming standard practice to have loopholes that will cause them to not be culpable if we have an internet intrusion. If we have some sort of breach, they have all these different words for it, but if we get attacked, did the Information Technology (IT) or the Office of the County Attorney review it in detail? We are getting trained again and again of how important engineering is, I just wondered if that was looked at.

Mr. Moule: I am going to refer that question to the Office of the County Attorney. My understanding is that they read the entire agreement to make sure it does not have any problems with the County, but they can answer that question.

Councilmember Cowden: They do trainings of how important it is to look at where they are able to basically "beg" out of responsibility if we somehow have an intrusion, and I know we have that in the Department of Water. Do you know if that was looked for with the IT Division?

LAURA BARZILAI, Deputy County Attorney: Good morning, Laura Barzilai, Deputy County Attorney. I am here today on behalf of County Attorney Matthew M. Bracken. All of the agreements that come through the Office of the County Attorney before Mr. Moule will be here discussing with you have been approved by the Office of the County Attorney, so, yes, that factor was looked at.

Councilmember Cowden: Do you know that factor was looked at, the IT piece?

Councilmember Kagawa: Council Chair, I have a process question?

Council Chair Rapozo: Go ahead.

Councilmember Cowden: Yes?

Councilmember Kagawa: Where are we going with this question? It seems like we are bringing up questions that are off base, to me. If we really need a legal answer, I think we should send what our question is in writing, so that we do not have any confusion as to...

Council Chair Rapozo: Councilmember Cowden just asked the question and the attorney just answered the question that every indemnification request that comes up to the Council has already been approved by the County Attorney.

Councilmember Kagawa: They answered the question.

Councilmember Cowden: Yes, I was just...

Councilmember Kagawa: They said "Yes."

Councilmember Cowden: Okay.

Councilmember Kagawa: How many versions of "Yes" do you need?

Ms. Barzilai: All of the terms of the agreement are required to be approved before it comes to the Council.

Councilmember Kagawa: She just repeated it, Council Chair, that was my point.

Ms. Barzilai: Thank you.

Council Chair Rapozo: Are there further questions? Go ahead, finish up.

Councilmember Cowden: I do not have any further questions. I will just put that in our discussion piece.

Council Chair Rapozo: Okay. Are there any questions on the terms? If not, thank you. Is there anyone in the audience wishing to testify? Mr. Sykos.

LONNIE SYKOS: For the record, Lonnie Sykos. First, I would like to thank Councilmember Cowden for when she attends the NACo meetings, that she pays attention to, and she comes back and brings us with a factual benefit to us taxpayers. I just listened to the Deputy County Attorney's response and the response that we review all of these agreements does not answer the question of whether or not there are loopholes in which, "If our system gets intruded, that the software supplier has no liability." The members are utterly correct that this is a huge problem. If you do not think it is a huge problem, it is. Our Department of Water cannot even send me a bill, so I can pay my water bill because they still messed up. No one on Kaua'i is receiving a water bill because they cannot bill us, and now we are all going to receive a water bill for three (3) or four (4) months all at once. This is a serious problem. This County can be shut down and our money stripped out of our accounts

if we have a bad enough intrusion. From the Office of the County Attorney, are there or are there not loopholes as the member asked, not that we generally...of course they review everything, but that was not the question. Councilmember Kagawa, I agree with you, it was asked and answered and re-asked, but the answer did not answer the question. Thank you all very much, and you do need to revisit this.

Council Chair Rapozo: Is there anyone else? Is there further discussion? Councilmember Kagawa.

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

Councilmember Kagawa: Just to clarify with the Department of Water issue, Mr. Sykos is correct. We had the Water Board here before us, the management here before us, telling the Council about the problem they have with the meters. The intention was good to be able to read the meters without opening the covers. The battery of the Bluetooth device or whatever they used expired. They went beyond ten (10) years without changing the batteries and that is why they are in this conundrum, trying to catch up and put a battery in every single meter on the island, so that is why all the *pili kia* is coming up with the water bills. People may get some bad surprises later because they are using estimates right now. I hope it is not too bad in the end, but again, if you go to a newer system where you are using Bluetooth, you have to change the battery. It is commonsense. Do not come to us and say it is the prior manager; it is not the prior manager, because now that you are the manager, it is your problem. It needs to be addressed as to why that problem snowballed. I want the County Attorneys to have fair time to answer questions besides this. On the floor, it can be hard. Legal opinions are better if we ask them in writing and give them some time to give a good answer when we are talking about...for us as the Council, I do not think we should be looking into procurement and those types of things. Of course, if there are problems, then it is time we look into it, but I have not seen an issue of a problem to where we should be asking those questions on the floor. Thank you.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: Thank you for your comments, Councilmember Kagawa. Each time I attend those conferences, I sit in on the entire panel discussion of artificial intelligence (AI) meetings, and the way it does intrusions on software systems, it is learning and learning and each time it gets more and more difficult. We have a new person in the IT Division, who I did meet with, and it sounds like we are really lucky to have this person, because he has that skill. I am just trying to have a standard practice when any type of indemnification comes before us, is that they would be able to say, "We have gone through and we have looked for"—because I had a special meeting on this, like what they need to look for to make sure that there is an all-encompassing piece on what does happen if we had an internet intrusion. While I appreciate, we have the problem with the billing, that is the transponder. We did have an intrusion in our billing system, we also had an intrusion in the Hawai'i Medical Service Association (HMSA) and I had to change all my credit cards and bank cards. I do not know why that is, if it is intrusions that happened, but they are going into the billing systems. To go into the engineering system is another

area of where all kinds of havoc can happen and when I listen to these things that are brought in there, we listen to stories that happened of people being near a base or near any of these things, that is where the intrusion goes. They can shut things down. The group, the AI at NACo, this is an incredible board that is on there. They are a group that is doing it, they are sharp, they work in these industries, and they are scared, and they say, "It is the biggest issue in front of us." To just have a "brush off" and I am not meaning any type of insult, just that maybe not everyone in our County understands every single thing like this. We need to be looking clearly at those contracts, because it could cause tens of millions of dollars plus shutdown our ability to function with our engineering. We saw what happened with our sprinkler system, right, getting things wet. This type of problem is a problem across the country and when we are having rumors of war underneath, this is what we learn at NACo—be careful with your infrastructure because it is a target. I am coming back, sharing what I learned, and I have been repeatedly saying it, I would like to see us have a standard practice where we look for that, because it could financially devastate us and it could cripple us in terms of what we are trying to do with the Department of Public Works. Thank you.

Council Chair Rapozo: Is there anyone else?

The motion to approve C 2024-116 was then put, and carried by a vote of 6:1 (*Councilmember Cowden voted no*).

Councilmember Cowden: I am a "No." I am not confident; nothing gave me the confidence that was looked at. It is a 6:1.

Council Chair Rapozo: Okay. So noted. Next item. C 2024-117 will be taken up after the Executive Session.

There being no objections, C 2024-118 was taken out of order.

C 2024-118 Communication (05/30/2024) from the Executive on Aging, requesting Council approval to receive and expend Federal funds, for the third allotment in the amount of \$8,123.00, Fiscal Year 2024, and to indemnify the State Executive Office on Aging, for the Nutrition Services Incentive Program (NSIP) provision of congregate and home-delivered meals.

Councilmember Kualii moved to approve C 2024-118, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony? Do you have questions?

Councilmember Cowden: No, I am fine with that. I appreciate all of the great work you folks do, total confidence.

Council Chair Rapozo: Is there anyone from the public wishing to testify?

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to approve C 2024-118 was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: There is a request to defer C 2024-119.

Council Chair Rapozo: Yes, County Attorney Bracken is out sick today, so he has requested we defer this item. Is there anyone in the audience wishing to testify before we take the motion to defer?

There being no one present to provide testimony, the meeting proceeded as follows:

C 2024-119 Communication (05/31/2024) from the County Attorney, requesting authorization to expend funds up to \$150,000.00 to retain Special Counsel to represent the County of Kaua'i in enforcement of the Comprehensive Zoning Ordinance as it relates to transient accommodations.

Councilmember Kualii moved to defer C 2024-119, seconded by Councilmember Carvalho, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please

C 2024-120 Communication (06/04/2024) from the County Engineer, requesting Council approval of the indemnification provisions contained in the Bluebeam's General Terms and Conditions of Use, which provides highly customizable document management, markup, and automation tools with a built-in collaboration space, and helps engineers get actionable data insights and standardize communication across the project lifecycle.

Councilmember Kualii moved to approve C 2024-120, seconded by Councilmember DeCosta.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I am going to say, "No," or I would like to defer on the same rationale. I think we need to make sure that we have a process where we are actually really truly looking at this, it is not that I do not trust our Engineering Division or their choice of their software, I am just looking at how important this is based on these meetings that I attend and spend a lot of money attending.

Council Chair Rapozo: Is there any other discussion? Is there any public testimony? Mr. Sykos.

There being no objections, the rules were suspended.

Mr. Sykos: For the record, Lonnie Sykos. Once again, the language of indemnification is an issue. Councilmember Cowden is completely correct that the County is derelict and negligent in protecting the public's assets if the Council cannot tell us affirmatively that these indemnifications have been analyzed for what the, not just the Councilwoman, but NACo brings up as "a" or "the" major issue. This is a huge issue in homeland security. It is a huge issue in corporations. It is a huge issue for everyone, right? You run the possibility of coming to work one morning, you turn your computer on, and the screen shows, "You give us one hundred million (100,000,000) bitcoins or all your data is gone forever." What are you going to do? That is going to come because there are loopholes in these contracts and then when the problem occurs with the software, the people who wrote it know that they are not going to be on the hook, you are. If you have a contract that says that they are utterly responsible as long as we do our due diligence for it, then we are protected, but if there are loopholes in it, we are not going to be protected and sooner or later it will bite us—hospitals, school systems, municipalities, all over the country are attacked successfully every single day. This is important. This is not mere housekeeping. Thank you.

Council Chair Rapozo: Is there anyone else in the audience wishing to testify? Councilmember Cowden.

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

Councilmember Cowden moved to defer C 2024-120.

Council Chair Rapozo: Is there a second?

The motion to defer C 2024-120 failed for a lack of second.

Council Chair Rapozo: The motion to defer fails. The motion is to approve. Is there any further discussion? Councilmember Kagawa.

Councilmember Kagawa: I think there are layers of internal control that we have with the Engineering Division, with fiscal that they work through with the Purchasing Division, and the Office of the County Attorney, of course. I think there are layers of internal controls, and they are going to prevent anything bad from happening like AI. All we can do is do the best with what information we have. I do not think there is enough information to support denying the contract and therefore, I will be supporting the item.

Councilmember Cowden: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Cowden: I am not trying to deny the contract, I am just trying to make sure...I just want that clarity, that it is looked up by IT. When we have these meetings when they are teaching us, these are big cities, these are medium-sized cities, these are people with IT departments that are so much on a

large scale and legal departments that larger scale, so I am just trying to put it across that we need to set precedence. It is no disrespect to our local teams.

Council Chair Rapozo: Councilmember Bulosan.

Councilmember Bulosan: I appreciate Councilmember Cowden's comments and her pursuit to protect our community. It will be tough for us to do this at every indemnification communication. I agree with the suggestion of Councilmember Kagawa that we have more in-depth, procedural look at these things specifically with our IT and the Office of the County Attorney, they probably have significant training on this because it is a worldwide issue. We see it every day. Recently, we saw on the news the possibility of banning all Apple products in Tesla because of AI. I do not think this is a light issue and I appreciate Councilmember Cowden's concern and the purpose of bringing it in front of us, so that we can be aware of it, but I think it would be most useful if we just bring IT and the county office in a specific discussion specifically for these issues so we can get clarity on the specific things that they are doing to protect us.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I agree with Councilmember Bulosan. I think if Councilmember Cowden wants to have specific discussion on all types of software, etcetera, being affected by AI, I think that would be good to put it in a committee meeting and we can go over it with IT and I guess try to tell them how to do their job. I do not feel comfortable micromanaging, but if the Council wants to go in that direction, I am supportive of it. I want to approve this today. I think it is a sign of not only disrespect, but it is a lack of confidence with the controls that we have within our Administration. I do not feel like it would be good policy for the Council to deny this, even with a two-week deferral. Thank you.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: I sat with you, Council Chair Rapozo, in some of those briefings at NACo. NACo allows us to sit in on these briefings, but it is not where we take the knowledge and come back to fix the problem in the County—that is not our job. We do not fix these types of problems. We get the vendors' information from NACo and we put them in contact with the IT Division people, that is what we really do when we attend these meetings. We have some contacts with people who can actually assist IT, so I will be looking into that, but I want to approve this. Like Councilmember Kagawa, we do not micromanage. We have enough on our plate. Thank you.

Council Chair Rapozo: Is there anyone else?

Councilmember Cowden: I am just looking for a checklist, I am not trying to micromanage. I have asked for it. Maybe not clearly enough. I am not meaning to insult anyone; I am just wanting to make sure we are good.

Council Chair Rapozo: Is there anyone else? In our agenda packet, and I know the public does not get this unless you request it, but there is supporting documentation for everything that is on the agenda. I know the public does not get to see it. Honestly, sometimes only some of our Councilmembers read it.

Councilmember Cowden: I did.

Council Chair Rapozo: But in this particular case, Bluebeam is a cloud-based construction software that we use daily. I will say that I am frustrated that this current license expired on May 25th and today is June 12th and we are getting a request for an extension or an approval of the terms, because we had an extension until yesterday. This says that there is no guarantee we will get further extensions, so we are already late. I am a little frustrated that this was not here two (2) weeks ago, one (1) month ago, because now you are asking us to approve something that may not even work because the license expired yesterday, that is number one. For those out there that think the indemnification, the reason it is here is because of the indemnification, because the Council has to approve indemnifications. If you read the memorandum, it is very clear that we indemnify the vendor only if we are infringing or violating any intellectual property or other right of any person or third party, that is indemnification. Every one of our vendors...and I cannot say this for everyone, but I have to believe because it is run through, and I have to, and I agree with Councilmember Kagawa, it is not our job to take a part the terms on the County Council, we are legislative. After you read all of these terms, you have a concern, please, meet with the Administration or the County Attorney. Indemnification is to protect them against stupid things that the County does. That is everywhere you go. You rent a car, you sign that contract, guess what? There is an indemnification in there that if you are drunk driving and crash, you are responsible, not the car. That is the way of life. I think for Councilmembers who are concerned about how we go through these things, have the discussion with the Administration, share your concerns, but we are not going to take apart every single indemnification agreement on the Council floor, we are not going to do that. It is like we are "fishing." Go through the terms first, if you have questions about the terms, then you ask the Administration so that they can come prepared to answer. I do not want to say it is a formality because it should not be. The reason it is here is for the Council to take a look and to scrutinize, but please, go through the documentation first and come up with your questions, and then...it is just one (1) phone call away. Meet with the Administration and share your concerns. With that, the motion is to approve.

The motion to approve C 2024-120 was then put, and carried by a vote of 6:1 (*Councilmember Cowden voting no*).

Council Chair Rapozo: The motion is carried. Next item, please.

LEGAL DOCUMENTS:

C 2024-121 Communication (05/16/2024) from the Deputy County Engineer, recommending Council approval of a Dedication Deed, from BBCP Kukui'ula Infrastructure, LLC to the County of Kaua'i, for land dedicated for public beach parking in the Boyden's Pond area, pursuant to Ordinance No. PM-2004-370, located at Tax Map Key (TMK) No. (4) 2-6-019-028.

- Dedication Deed

Councilmember Kualii moved to approve C 2024-121, seconded by Councilmember Carvalho.

Council Chair Rapozo: With that, I will suspend the rules. Troy.

Councilmember Kagawa: Council Chair?

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: Do you have a map?

There being no objections, the rules were suspended.

Mr. Tanigawa: I do. I have a copy.

Councilmember Kagawa: Just so the public knows where exactly the location is. I think if you just say "Boyden's Pond," only ninety-nine percent (99%) of Kaua'i does not know where Boyden's Pond is.

Councilmember Kualii: I never heard of it. What is the Hawaiian name?

Council Chair Rapozo: Hawaiian name? I do not know.

Councilmember Kagawa: I am sorry I am wasting time requesting the map, but it pertains to the area.

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

Council Chair Rapozo: Let us move on to the next item, C 2024-122.

There being no objections, C 2024-122 was taken out of order.

C 2024-122 Communication (05/29/2024) from the Housing Director, recommending Council approval of a Grant of Easement made by and between the County of Kaua'i and the Board of Water Supply of Tax Map Key (TMK) No. (4) 2-1-013:001, 'Ele'ele, Kaua'i, Hawai'i, for the Lima Ola Permanently Supportive Housing Project in Phase I of the Lima Ola Subdivision, along with the related indemnification provision contained therein, to read water meters and to construct, install, re-install, maintain, repair, and remove potable water pipelines and related meters, valves, and other associated waterworks facility improvements and appurtenances within the easement area.

- Grant of Easement

Councilmember Kualii moved to approve C 2024-122, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony? It is just another step to get Lima Ola up and running. Is there any public testimony?

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to approve C 2024-122 was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Are we ready with the map for C 2024-121? Let us go back to item C 2024-121. Troy, can you provide the Council with a quick overview of what this is?

There being no objections, the rules were suspended.

Mr. Tanigawa: Troy Tanigawa, for the record. This Dedication Deed is a revisit from a prior one that the Council already reviewed and approved. The reason why it is being put before you again is because the developer indicated that there was another easement that is part of this piece of property that is being dedicated to the County. It was not explained before, so the developer felt that it was necessary or it would be prudent to do it again to make the process complete. The map you see up here shows the parking lot. The easement that is being included in the description is Easement A-19, an easement through the parking lot, it roughly follows the parking lot configuration. The easement provides access to the property owner of that lot.

Councilmember Kagawa: Do you have a pointer? That would help.

Mr. Tanigawa: This is the parking lot right here. The boundaries are roughly the edges of this grass alignment and then on this side of the parking lot. This is the property here. It is privately owned property. The easement benefits that piece of property. This is what looks like a pump station for the property owner. That is the only addition—is this description of this easement to that dedication deed.

Councilmember Kagawa: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: What is the building to the right of that?

Mr. Moule: Are you talking about this building here?

Councilmember Kagawa: Yes, or that one.

Mr. Moule: Michael Moule, for the record. This is part of the Lāwaʻi Beach Resort.

Councilmember Kagawa: Oh, okay.

Mr. Moule: And this is some other smaller condominium building.

Councilmember Kagawa: Alright. Does that have a public restroom next to that parking lot?

Mr. Moule: I do not believe it does.

Councilmember Kagawa: It does not?

Mr. Moule: The nearest public restroom is the Lāwaʻi Beach Resort parking, which is to the right of this image.

Councilmember Kagawa: Oh, okay, so there is a public parking lot before, correct?

Mr. Moule: I can show you real quick.

Councilmember Kagawa: People are confused whether it is the Lāwaʻi Beach Resort's or the County's, right?

Mr. Moule: This is another public parking lot for beach access.

Councilmember Kagawa: And that is County owned.

Mr. Moule: This is a public restroom for that.

Councilmember Kagawa: And that is the restroom? Okay.

Mr. Moule: Either County-owned or County easement, I forget.

Councilmember Kagawa: Alright. Thank you.

Mr. Moule: Yes.

Councilmember Kualii: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Kualii: Is that sandy square Lot-28 of the Kukui'ula residential subdivision?

Mr. Tanigawa: I believe that is Lot-27, Lot-28 is actually the piece that is being dedicated to the County.

Councilmember Kualii: Where the pointer is now?

Mr. Moule: Lot-28 is bounded by roughly this fence, this fence, then this fence right here, and then the road. Lot-27 is the pump station. I think it has other utilities, but it is mainly the pump station. I believe it is for wastewater

Councilmember Kualii: Is that what is being dedicated to the County?

Mr. Moule: What is being dedicated to the County is Lot-28 and the reason we are here, as Troy mentioned, is that the easement across the parking lot and through here was not included in the previous dedication, so they have access to their pump station.

Council Chair Rapozo: This has already received Council approval, right?

Mr. Tanigawa: Correct.

Council Chair Rapozo: In the memorandum it says, "Prior to recording, the Grantor granted a non-exclusive access easement over the property to the adjoining property,"—the parcel, Lot-27?

Mr. Tanigawa: Correct. Mauna Kea Trask is present, representing...maybe he can respond.

Council Chair Rapozo: Yes, okay. Who owns Lot-27?

MAUNA KEA TRASK: *Aloha.* For the record, Mauna Kea Trask, on behalf of BBP Kukui'ula Development Co., LLC. Just to correct the record a little bit, and I apologize I was not clear. The dedication deed before you, if you look at the last page, what this reports to add is paragraph 26, so everything up to paragraph 25 is the exact same thing you approved. It is just a declaration of access easement, Easement A-19 recorded in the bureau under that document number. If you look above paragraph 22, the dedication deed before you and the one you already approved back in February does identify designations of easements A-19, the same one today. The purpose is for roadway access, and it is referenced in File Plan 2483, so that is

the subdivision map. The easement was there, it is just that a declaration was also filed to make it abundantly clear, so that is what we are doing today. It allows for roadway access, so BBCP who also owns Lot-27 can drive through the parking lot, which anyone can drive through the parking lot in order to access that. Therefore, they own that lot.

Council Chair Rapozo: Yes, but that was not part of the original condition, right? The condition was that parking lot was going to be dedicated...

Mr. Trask: Yes, it is still being dedicated.

Council Chair Rapozo: Right.

Mr. Trask: It is just that there is an easement going through it to reach that pump station because that is a part of the infrastructure, so for maintenance, like what Mr. Moule said, there may be an electrical situation over there. That was recorded on the subdivision map itself, so it is already preexisting. You already approved that with that, it is just the thought it was best to also do a declaration of the easement versus just a reference to an existing...

Council Chair Rapozo: What is the difference between a declaration of access easement and designation of easement in Condition No. 22?

Mr. Trask: I am not really sure. There are better lawyers than me who understand that.

Council Chair Rapozo: I am concerned. Not that I do not trust you as a lawyer, but why would you put that in when you already have it in Condition No. 22 and it just looks funny that the Council approves it, but before we recorded it, the grantor, which, I do not know how much authority the grantor had at that time to grant a non-exclusive access easement on a property that they already had conveyed over to the County?

Mr. Trask: Okay, so, it was already an existence on the File Plan, so the easement is already there, and it is in favor of Lot-27, so it does already exist.

Council Chair Rapozo: Right.

Mr. Trask: And it was included. By making a declaration, there are a bunch of ways to create an easement, you can do it by reservation, declaration, or notifying it on a map in a subdivision process, it is just that for clarity. This is being conveyed to the County, the pump station in the future, if there is a different landowner, whoever it is, it is for clarity, so you do not have to reference a file map. I think it is just good practice.

Council Chair Rapozo: Maybe we should call up our County Attorney. That is who should be advising us, but is there anything that this easement

granted back to the owner that dedicated the land to us or gave us the land? What is the worst-case scenario?

Mr. Trask: I actually...

Council Chair Rapozo: What can happen down the road because now they own the easement? Can they block the easement? I am not saying your client, anyone else who owns that property can say, "We are going to build a train through..."

Mr. Trask: No, it is for roadway access purpose to access that lot. I actually think, and this was done way before me, but it is a public parking lot, anyone can drive through it.

Council Chair Rapozo: Right.

Mr. Trask: And so...

Council Chair Rapozo: That is why I am suspicious of why would you go through all this hassle to make an easement when you already can drive through?

Mr. Trask: I think during the subdivision process, that was what came out of it, so in the Planning Commission and whoever approved the subdivision. With regard to this being before you today, it was already referenced, and I think a question comes up, and the Office of the County Attorney being really good about public notice, dotting the "I's" and crossing the "T's" but also taking the extra step to give you notice, thought it was wise to come back here and just recertify it for approval. I do not think anything is lost, in fact, the easement...you are still the property owner of the parking lot. The easement just allows the owner of Lot-27 to drive through. Again, which is arguably neither here nor there, but they cannot use it for anything beyond roadway access to that specific lot, so it cannot be a railroad, they cannot block it off. In fact, I do not think it does much of anything except effectuate what was already approved in the subdivision process, and it is a requirement of the ordinance that we dedicate it this way.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: I want to help clarify this. I know a little bit about easements, because I have an easement on my own property. The terminology used to clarify the easement helps if the property transfers ownership. In case that back sandlot station where the pump station is ever gets transferred to a new owner, they have a guaranteed in writing easement than they can still traverse over the County's property. If the County decides to relinquish that parking lot for some reason, that easement would still be indemnified for the parking lot in the back of the pump stations. That is what helps, right? It is the strong language—in case the property transfers ownership, correct?

Mr. Trask: It is clear, yes.

Council Chair Rapozo: My point is currently under Condition No. 22; it is already there. Can I get the County Attorney up? I am not sure if she is prepared to respond. I want to know what the difference is between designation and a declaration. I do not want to be a "nitpicky" person, but I am a little concerned when it is showing up. I appreciate the transparency, but for the life of me, it is already there, why the need...what benefit to the County is the declaration of access easement being added to this?

Ms. Barzilai: Council Chair, I have not read the documents, but I think that Mr. Trask, representative, that is for a limited purpose, and it already does appear on the subdivision map. The right is there, I do not have any problem with it. If there are certain questions that you would like me to refer to Matt, that we can discuss later, you can defer the item, but the easement is on the map. It should be sufficient.

Council Chair Rapozo: Right, but Condition No. 22 already has the designation of Easement A-19, it is there; purpose, roadway access, referenced the subdivision map, it is there existing right now. But, today we are being asked to approve a new Condition No. 26, which has declaration of access Easement A-19 recorded with the bureau...that is the question. I am trying to figure out what the difference is. Is the designation sufficient?

Ms. Barzilai: I am sorry I do not have the benefit of the documents, but it is a confirmation that Kukui'ula is seeking to confirm their easement right. It does not affect the County's ownership under the dedication.

Council Chair Rapozo: Got it.

Mr. Trask: It is more of a redundancy specifically for the reasons that Councilmember DeCosta talked about.

Council Chair Rapozo: Yes, so I guess the hypothetical is that if the County was to hypothetically sell that property and I bought that property, I still would be required based on Condition No. 22 to provide that easement A-19, right? It would not go away.

Ms. Barzilai: Yes, but I do not know if that document was recorded.

Council Chair Rapozo: Well, apparently, it was not because it is saying that prior to the recording, after the Council approved that document with Condition No. 22, then the owner granted this easement to himself before it was recorded, so I think...I am not sure how that happens, right, but it did. I am not sure if it was ever recorded.

Ms. Barzilai: Are there written questions or something that I can brief Matt on later?

Council Chair Rapozo: I mean, I am going to support it. I was just curious as to the intent and why? I want to be sure we are not taking away any rights from this County by approving this declaration versus the designation, that is all.

Ms. Barzilai: Not that I can see on the surface, Chair, being that it was already designated on the subdivision map.

Council Chair Rapozo: Okay, thank you. Are there any further questions? Is there anyone in the audience wishing to testify? Ms. Parker.

ALICE PARKER: Alice Parker, for the record. I think it is very important to have a recorded easement. I had (inaudible) who owned property up in Malibu Canyon, Deer Creek Canyon, and there was a neighbor next door and one behind, who had sort of a corner, triangular lot. They granted access to that triangular lot, and both neighbors in front did, because there was no road, but there was no legal document. Now, if they all got into a "tiff" that back (inaudible) would not have access, so we need recorded easements. Thank you.

Council Chair Rapozo: Is there anyone else? Is there any further discussion? Councilmember Cowden.

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

Councilmember Cowden: I would like to say thank you to Kukui'ula. I know this is something that has been intended, but it is still valued and appreciated that we have a community partner who is giving us parking, so if you can convey that, thank you.

Council Chair Rapozo: Is there anyone else? Councilmember Kagawa.

Councilmember Kagawa: Can the County look at the boundaries, it seemed like the boundaries are much wider than the paved parking area, so I would like to see how we can maximize use based on current needs, especially with the stresses put on by the overtourism down there. How can we help our local beachgoers benefit from that space and if we can, how can we expand the use of that space? Thank you.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: I keep saying this, and this might seem like a minor thing to some people, but I appreciated when Councilmember Kagawa got the map up right to start off, so they can point that out. Basically, it is the Kukui'ula parking lot that is across from the harbor there. I am not sure why it is referred to as the Boyden's Pond area. I do not see that anywhere, I never heard of that, and I think it is really important, so whoever put this item forward to the Council, it is important you use the Hawaiian names as much as possible. It could be as simple as saying, "the Kukui'ula parking lot," because that is what you ended up pointing to.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Great comments on the floor by our Councilmembers. I am not sure the date of this easement was in effect with the subdivision, but I believe there are many subdivisions across the island that have easements that are not designated and have not been exposed to our public for access. It is a good time that the Council does some homework and find out what easements are out there within subdivisions across the island, that we can get for our local people to access, whether it be traversing to the beach or mountain.

Council Chair Rapozo: Is there anyone else?

The motion to approve C 2024-121 was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

CLAIM:

C 2024-123 Communication (05/20/2024) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Sixt Rent A Car, LLC, for vehicle damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kualii moved to refer C 2023-123 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there anyone from the public wishing to testify? Is there any discussion? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to refer C 2023-123 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

COMMITTEE REPORT:

COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2023-12) submitted by the Committee of the Whole, recommending that the following be Received for the Record:

“COW 2023-05 – Communication (04/02/2024) from Councilmember DeCosta, requesting the presence of Wendy Gady, Executive Director, Agribusiness Development Corporation, the Department of Land and Natural

Resources, and the Department of Hawaiian Home Lands, to provide a briefing relating to fire mitigation on their lands on the island of Kaua'i,"

Councilmember Kualii moved for approval of the report, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item, please.

RESOLUTION:

Resolution No. 2024-19 – RESOLUTION AMENDING RESOLUTION NO. 2022-44, AUTHORIZING THE MAYOR OR THE DIRECTOR OF FINANCE OF THE COUNTY OF KAUAI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF HEALTH FOR A LOAN FROM THE STATE WATER POLLUTION CONTROL REVOLVING FUND FOR THE 'ELE'ELE SUBDIVISION COLLECTION SYSTEM REHABILITATION, PROJECT NO. C150050-12

Councilmember Kualii moved for adoption of Resolution No. 2024-19, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none, the motion is to...

Councilmember Cowden: Are we not going to talk about it at all?

Council Chair Rapozo: If you want to. Do you have any questions?

Councilmember Cowden: I do. Thank you for all your hard work. I would assume we are basically putting in an extra one million dollars (\$1,000,000), going from four million dollars (\$4,000,000) to five million dollars (\$5,000,000), because everything is more expensive. Is that basically it?

There being no objections, the rules were suspended.

DONALD FUJIMOTO, Civil Engineer VII, Wastewater Division: Yes.
Donald Fujimoto, Chief of Wastewater Division. This is the first project that we are doing and it addresses probably the oldest sewer system on Kaua'i—the 'Ele'ele area. Again, it is an existing system, there are a lot of unforeseen conditions. There is no way of knowing what is out there. There are very little extended spectrum beta lactamases (ESBLs). That is the reason we are asking for additional funding.

Councilmember Cowden: I am trying to stay on page, I am not trying to say, "No," in any way. I know maybe a year or two (2) ago, the Council approved one hundred million dollars (\$100,000,000) worth of bonds that the County can do. This is in addition to that, right?

Mr. Fujimoto: Yes.

Councilmember Cowden: But the County has not exhausted those one hundred million dollars (\$100,000,000), this is because we are trying to...

Mr. Fujimoto: The one hundred million dollars (\$100,000,000) was Capital Improvement Projects (CIP). A lot of that was SRF funded, and this is one of the SRF-funded projects. Yes, a lot of that at the time was based on estimates back then, so with the escalating costs and everything, that amount has grown.

Councilmember Cowden: Okay. I am trying to keep my mathematics (math) straight in my head. Has the County already exhausted that one hundred million dollars (\$100,000,000)? Is the County going to...

(Councilmember Kagawa was noted as not present.)

Mr. Fujimoto: No, the County has not.

Councilmember Cowden: Okay.

Mr. Fujimoto: Again, the County has not reached one hundred million dollars (\$100,000,000), but a lot of the projects that were part of the one hundred million dollars (\$100,000,000) have also not come forward for approval yet. If you add the cost that we have expended at these escalating costs, the total one hundred million dollars (\$100,000,000) is a little higher.

Councilmember Cowden: It is probably two (2).

Mr. Fujimoto: Yes.

Councilmember Cowden: You already asked for four million dollars (\$4,000,000). You are saying, "It is not going to be four million dollars (\$4,000,000), it is going to be five million dollars (\$5,000,000)." That is basically what this is saying?

Mr. Fujimoto: Yes.

Councilmember Cowden: Okay.

Council Chair Rapozo: Are there any other questions? If not, thank you. Is there anyone in the audience wishing to testify? Mr. Sykos.

Mr. Sykos: For the record, Lonnie Sykos. As a member of the public, I would like to thank the Wastewater Division managers for their due diligence and for trying to clean up the mess that they have inherited in the County’s failure to upgrade these facilities through the years. We are very grateful that the County is making progress, we are grateful to the State and Federal governments both for lending and giving the County money, and congratulations to them for “grabbing the bull by the horns” in trying to get all this under control. Thank you very much, Wastewater Division.

Council Chair Rapozo: Is there anyone else? Seeing none, is there any further discussion? Roll call.

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

The motion for adoption of Resolution No. 2023-19 was then put, and carried by the following vote:

FOR ADOPTION:	Bulosan, Carvalho, Cowden, DeCosta,	
	Kagawa, Kualii, Rapozo	TOTAL – 7*
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua’i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion.)*

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Seven (7) ayes.

Council Chair Rapozo: Next item, please.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2923) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2024-896 AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2024 THROUGH JUNE 30, 2025, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2923) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 10, 2024, and that it thereafter be referred to the Committee of the Whole, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?

Councilmember Cowden: I see that the Planning Department is here. Can they come up?

Council Chair Rapozo: Okay.

There being no objections, the rules were suspended.

KA'ĀINA S. HULL, Planning Director: *Aloha*, Chair and Members of the Council. Ka'āina Hull on behalf of the Planning Department. I am also joined by the Public Access, Open Space, Natural Resources Preservation Fund Commission (Open Space Commission) staff, Shalea Koga. Jodi Sayegusa is actually the clerk of the Open Space Commission. She is out of state right now, so I can provide a brief response to questions or inquiries. Jodi will be here for the Committee Meeting, and I do believe commissioners and members of the public from Hanapēpē plan on attending that particular meeting as well to provide a briefing, but I am here for any questions.

Councilmember Cowden: Okay. I just have a couple of really simple ones. I really appreciated the meeting that we had. It answered a whole lot of questions. Shalea, I know that you have a big part in this, so I was happy to talk to a number of people in the Filipino community and International Longshore and Warehouse Union (ILWU). Everyone is excited about it. Not everyone was aware it was on the agenda. I am looking at Shalea, because she is probably the right person to ask, but I will look at both of you. In the meeting, when I asked if there were any barriers to just an absolute "yes," my understanding was that we do not yet have a group that has agreed to steward.

(Councilmember Kagawa was noted as present.)

Councilmember Cowden: Is that correct?

Mr. Hull: They are working with individuals in the community and parts of the Filipino community and the labor community, but have not secured a specific group for the stewardship.

Councilmember Cowden: Okay. I heard that, I am enthusiastically supportive of this, and I would like it to go through as fast as it can. My nature, I made a few phone calls and I think that it is not going to be hard to put a group together, so what is the right way, because I am not on this commission, I am just excited, right? How do we make sure that when it comes to us next week that we are able to say, "Alright, we at least have these three (3) organizations that they are sort of good to go with it," or what is required so, because it is not my job? What would a stewarding organization need to be willing to say "yes" to, so we can have everything happen?

Mr. Hull: Jodi has been out in Hanapēpē on almost a monthly basis for the past year and a half with the community members going over the processes for acquisition as well as potential steps forward on improvements. Ultimately, it is a sign of a memorandum of understanding (MOU) type of situation

with the stewardship agreement. I am sorry, it is not an MOU, it is a stewardship agreement and the conditions under that.

Councilmember Cowden: Where can I find that stewardship agreement?

Mr. Hull: There are sample stewardship agreements of ones that have been signed previously.

Councilmember Cowden: Can that get sent to me?

Mr. Hull: Absolutely.

Councilmember Cowden: Because I was surprised and pleased. I was surprised that people who would be my first go-to were unaware of it, and those first go-to people were sort of willing, but when I do not really know what it means...maybe if the people who are spoke to were like, "I do not know," there might be something in there that is a difficult piece, so my first go-to people were not aware, but they are leaning towards yes.

Mr. Hull: Absolutely, and we can get you a list of the current working group—those who have been participating pretty extensively.

Councilmember Cowden: I have spoken to a couple of them, yes, but they were like, "no," they are not going to take it over. They were not my first ones, so I want to be able to make sure when we come next week, because if we come when we have a Committee Meeting, if we do not have a steward who is willing to take it over, can we still purchase it?

Mr. Hull: Yes.

Councilmember Cowden: Okay. That is my big thing. I want to be able to make sure it works. You are clear on what I need?

Mr. Hull: Yes. We will get a sample of one of the stewardship agreements that have been signed in the past.

Councilmember Cowden: And maybe a list of who all...

Mr. Hull: The working group.

Councilmember Cowden: The working group.

Mr. Hull: Absolutely.

Council Chair Rapozo: Are there any other questions? If not, thank you.

Mr. Hull: Thank you.

Council Chair Rapozo: Is there anyone in the audience wishing to testify? Seeing none. Is there any further discussion? Councilmember Kagawa.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Thank you, Chair. Total support from me. A lot of the fundings from the Open Space Commission have gone to the North Shore and Po'ipū areas and while I know all of our acquisitions are important, it is good to at least see some balance with this project going to the Westside. It is a constant thing where when you talk to people from the Westside, they say, "Do not forget about us," so I am glad that this one is on the Westside. I am hoping that it can also be an example for volunteerism from the Westside. The communities used to volunteer in the past, and I hope that can be revisited so that it becomes a public and County partnership. Thank you.

Council Chair Rapozo: Councilmember Carvalho.

Councilmember Carvalho: Just totally supportive of this project. We have talked about it numerous times in the past and I think with the partnership and the teamwork, this particular project will make a big impact on the Westside, so I think it is a good thing and we just need to continue reaching out and bringing people in. That is the big thing, for me.

Council Chair Rapozo: Is there anyone else? Councilmember Kualii.

Councilmember Kualii: We have been hearing about this for a while and there was that woman who was doing the film who passed away, but the stars have aligned that the owner is willing to sell both properties now, so it will make for a very nice city corner park, if you will, right along that whole area. The one-hundred-year anniversary is coming up, so it is important that this moves forward, and I know we will hear from whomever we need to hear from within the community for support.

Council Chair Rapozo: Is there anyone else? The Hanapēpē Massacre was a very important part of this island's history. Huge. I think many people do not even know that it happened and what it is. If you have not, I suggest that you "google" it. It is a very important part of our history. This opportunity to purchase these two (2) lots may not be here forever. I am not as concerned as to what the plan is going forward, because at the end of the day, worse-case scenario, the County ends up with two (2) new parcels of County land that the community can use. It is relatively low maintenance—mowing. The ideal scenario will be that we will identify a community group that will adopt this, become the stewards of this property, and really enhance and showcase that part of our history to not just the tourists, but also the local residents. It is a win-win. I know it is a very big commitment, and I would encourage the Administration that when they are looking at stewardship agreements, that they find not just people who are willing to raise their hand, but people who are willing to make that commitment, which is labor commitment, fiscal commitment, and that they need to continue that process. It is a win-win. It is a great

deal. Thank you to the Open Space Commission for bringing this up. Like Councilmember Kagawa said, we rarely see Open Space Commission recommendations. I do not think we have ever had any from the Westside. I really do not. Again, awesome parcels, *mahalo* to the owners. Apparently, it has gone on for many years where they will sell one (1), but not the other, and the County finally has the opportunity to buy the two (2) lots that encompasses the area of the historic event and that the County can now move forward. Thank you, Open Space Commission. Thank you, Planning Department. Let us make this thing happen. With that, roll call.

The motion for passage of Proposed Draft Bill (No. 2923) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 10, 2024, and that it thereafter be referred to the Committee of the Whole, was then put, and carried by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Cowden, DeCosta, Kagawa, Kualii, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item, please.

Proposed Draft Bill (No. 2924) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2024-897 AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA‘I, STATE OF HAWAI‘I, FOR THE FISCAL YEAR JULY 1, 2024 THROUGH JUNE 30, 2025, BY REVISING THE AMOUNTS ESTIMATED IN THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND—CIP

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2924) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 10, 2024, and that it thereafter be referred to the Committee of the Whole, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion or public testimony? This is the money bill for the item that we just talked about. Is there anyone in the audience wishing to testify? Mr. Sykos.

Mr. Sykos: For the record, Chair “hit the nail on the head” in talking about the historic significance of this site. I went back to college in the 1990s and studied marketing, and I had five (5) textbooks written by authors who had zero (0) connection with Hawai‘i, in which both the Hanapēpē Massacre as well as the unionization effort in which the union organizers came, organized on Kaua‘i, sent people who had been trained by the longshoremen’s union activities, sent people from Kaua‘i to the Philippines, they got on the ships with the new recruits, and by the time the union busters arrived in Hawai‘i, they were union members and the

union was supported. The story of Kaua'i is taught around the world in marketing classes as how do you with nothing beat the big guys. Kaua'i is taught to this day around the world, it is to our credit that the County is getting control of those properties and we pray that history will become available to both the public here on Kaua'i as well as all of our visitors. Thank you.

Council Chair Rapozo: Thank you. Is there anyone else? Seeing none, is there any further discussion? Councilmember Cowden.

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

Councilmember Cowden: Other than to also echo that I am really happy for this to be there and it is long overdue, I want to acknowledge for the Open Space Commission and source of funding—Kaumumene Coastal Access, also know as Hideaways in Princeville—that the vast majority of that money, the one million two hundred seventy-nine thousand dollars (\$1,279,000), did not get spent, so it is really nice that we were able to create that access with modest investment, and that it is returned here in something that I did look at in this document that I would have just called attention to had we been discussing it, is that while Hanapēpē is going to be blessed, we also have money left over if we want to work with one of the other projects, so it is not taking away from anyone else. Oftentimes, that is the “humbug.” When we are ready to do something, someone else does not get. Hooray. Good job that the County was able to do the North Shore fix for very little money and I am very excited that the County is doing this area in Hanapēpē. I think it will keep for safer evacuation and open space down there for whatever reason, though really happy to have it be honoring, especially the history of our Filipino culture, though it will honor more than that. We are all in this together, so I am very supportive.

Council Chair Rapozo: Thank you. Is there anyone else?
Councilmember DeCosta.

Councilmember DeCosta: I am going to support this. I grew up in the Pākalā and Kaumakani area, plantation. My grandfather, John Costa, was the only sheriff who had a permit to be sheriff with a handgun, and he told us many stories. The Filipino community—what a great asset to the diverse culture throughout our small little island. I sat on the Open Space Commission from 2003 to 2005. We spoke about these properties way back then and it just goes to show you that when we have a pot of funding that the County can access land, it is a good thing. This is a good thing for Kaua'i and for our Filipino community. Thank you.

Council Chair Rapozo: Councilmember Bulosan.

Councilmember Bulosan: I want to echo all the sentiment and really put an effort to acknowledge the many people who have resurrected this information and put this forward. There are so many people for whom this has gone unnoticed, who have spent so much time recovering the information and the accuracy of what has happened, and then continued to pursue to preserve this knowledge so that we can learn from it. There are just too many names to mention, so...and just appreciate it,

because it reflects my ability to take pride in my heritage and call this place home, but to also have all these resources and amenities that might not have been possible without the sacrifice that has happened.

Council Chair Rapozo: Thank you. With that, roll call.

The motion for passage of Proposed Draft Bill (No. 2924) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for July 10, 2024, and that it thereafter be referred to the Committee of the Whole, was then put, and carried by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Cowden, DeCosta, Kagawa, Kualii, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item, please.

EXECUTIVE SESSION:

Ms. Fountain-Tanigawa: The next item is ES-1129. There is a request to defer ES-1130.

(Councilmember Kualii was noted as not present.)

There being no objections, ES-1130 was taken out of order.

ES-1130 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session to provide a briefing on the retention of Special Counsel to represent the County of Kaua'i in enforcement of the Comprehensive Zoning Ordinance as it relates to transient accommodations. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Council Chair Rapozo: Let us defer ES-1130. ES-1130 is being deferred for the same reasons. Mr. Bracken is out due to illness, so he has asked for that to be deferred. Is there anyone in the audience wishing to testify on ES-1130? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

Councilmember Kagawa moved to defer ES-1130, seconded by Councilmember DeCosta, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kualii was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Council Chair Rapozo: The motion is carried. Next item, please.

ES-1129 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council, to provide the Council with a briefing on Special Counsel's continued services to represent the County of Kaua'i in employment related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Council Chair Rapozo: I have a question. It is probably for the legal...I was informed by Mr. Bracken that there will be a couple of recusals on this matter. Does that happen before we vote the item into Executive Session? I would guess the recusal would be from even the Communication, right?

Ms. Barzilai: Deputy County Attorney Laura Barzilai. I would recommend that we commence and enter Executive Session, Chair, then the parties can recuse themselves.

Council Chair Rapozo: We can vote on this as a full Council?

Ms. Barzilai: Yes.

Council Chair Rapozo: Thank you very much.

Ms. Barzilai: Thank you.

Councilmember Kagawa moved to convene in Executive Session for ES-1129, seconded by Councilmember DeCosta.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none. Roll call.

(Councilmember Kualii was noted as present.)

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to convene in Executive Session for ES-1129 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bulosan, Carvalho, Cowden, DeCosta, Kagawa, Kualii, Rapozo	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: With that, we will recess for ten (10) minutes and then we can reconvene in Executive Session. We will come back out of Executive Session to vote on the only open matter.

There being no objections, the Council recessed at 10:02 a.m., to convene in Executive Session.

The meeting reconvened at 10:32 a.m., and proceeded as follows:

(Councilmember Cowden and Councilmember DeCosta were noted as not present.)

Council Chair Rapozo: Clerk, can you read the last item, please.

C 2024-117 Communication (05/30/2024) from the County Attorney, requesting authorization to expend additional funds up to \$200,000.00 for Special Counsel's continued services to represent the County of Kaua'i in employment related matters. The representation will include cases in federal court, the state courts, administrative contested cases, agency hearings, and arbitrations.

Councilmember Kualii moved to approve C 2024-117, seconded by Councilmember Bulosan.

Council Chair Rapozo: Is there any discussion or public testimony?
Seeing none, roll call.

The motion to approve C 2024-117 was the put and carried by the following vote:

FOR APPROVAL:	Bulosan, Carvalho, Kagawa, Kualii, Rapozo	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Cowden, DeCosta	TOTAL – 2.

Ms. Fountain-Tanigawa: Five (5) ayes, two (2) recused.

Council Chair Rapozo: With that, do you want to call back the other two (2) Members and we can have the County Attorney up to close us out? Until we get everyone in, let us take a five-minute recess.

There being no objections, the meeting recessed at 10:33 a.m.

The meeting reconvened at 10:34 a.m., and proceeded as follows:

Council Chair Rapozo: Can we have the County Attorney up, please?

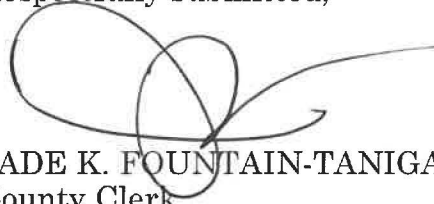
Ms. Barzilai: Chair and Councilmembers, Deputy County Attorney Laura Barzilai, for the record. There was an Executive Session held for ES-1129. Matters were discussed, the disclosure of which would violate the purpose of the Executive Session, and the Members concluded with their vote. Thank you.

Council Chair Rapozo: Thank you so much. With that, this meeting is adjourned. Thank you, everyone.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 10:34 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk