

ADEPT Committee

From: Axel I. Beers
Sent: Thursday, June 22, 2023 11:12 AM
To: ADEPT Committee
Cc: James G. Krueger; Ellen B. McKinley; Kate Griffiths; Gabe Johnson
Subject: ADEPT-12 Informational Materials
Attachments: wgulch n reserve kelly king.pdf; Waipuilani Beach Reserve dlNr (1).pdf

Aloha, staff,

CM Johnson requests that these informational items be added to the granicus file for ADEPT-12.

Thank you,
Axel



Axel Beers, Executive Assistant
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Wailuku, HI 96793
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Director of Council Services
Traci N. T. Fujita, Esq.

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David M. Raatz, Jr., Esq.

COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

December 27, 2022

TO: Honorable Michael P. Victorino, Mayor

FROM: Kelly Takaya King
Councilmember, South Maui Residency Area
Chair, Climate Action, Resilience, and Environment Committee

SUBJECT: **ACQUISITION OF WAIPUILANI AND KULANIHAKOI WETLANDS
PROPERTIES IN KIHEI**

As I serve my final week on the Maui County Council, I would like to express my strong support for the preservation of the Waipuilani and Kulanihakoi gulch wetlands in Kihei. There are parcels in these gulch and wetland areas which are currently undeveloped and should remain that way, primarily to aid in flood control, support biodiversity and avoid worsening the chronic muddy deposits that plague Kihei during intense storm events.

Specifically, these TMKs are critical to protect from development as further loss of these wetland properties in the gulches would exacerbate Kihei's flooding issues:

- (2) 3-9-001-162:0000 (7.0 acres)
- (2) 3-9-062-019:0000 (2.42 acres)
- (2) 3-9-001-164:0000 (3.34 acres)
- (2) 3-9-001-007:0000 (12.95 acres)
- (2) 3-9-059-001:0000 (2.14 acres)
- (2) 3-9-058-061:0000 (1.08 acres)
- (2) 3-9-046-011:0000 (e.53 acres)

In September 2022, the Maui County Council passed Bill 91, CD1 (2022) (Ordinance 5421) to conserve and protect wetlands. This legislation will advance the policy to increase and protect wetlands from development and allow for restoration in areas not yet developed. While the wetlands mapping is being completed, the above-identified parcels targeted for development should be acquired as soon as possible and protected as open space.

Aerial photos of these parcels show their locations in the path of water and mud flows from the gulches during storm events. Allowing development of the parcels in areas known to flood would further deplete the natural environment and contribute to worsening of the ongoing problems caused by decades of wetlands loss.

Wetlands provide many benefits when allowed to function naturally:

- Improved water quality by intercepting runoff, removing pollutants through biological processes
- Erosion control – wetland plants stabilize soils and reduce water velocity
- Flood abatement – wetlands soak up flood water
- Habitat enhancement for threatened and endangered species
- Cultural activity area
- Water supply – retained water is released slowly into surface water and ground water
- Aesthetics – wetlands are appealing as open space

Through my terms as the South Maui residency area councilmember and four decades as a resident of Kihei, I have seen the impacts of development on our ecosystems and infrastructure. Flooding events are a regular occurrence, brown water smothers our reefs, and native ecosystems are stressed and disappearing. These impacts will continue to worsen as the climate changes and sudden and severe rain events become more common. It is incumbent upon all branches and levels of government, in partnership with community advocates and organizations, to do what is necessary to preserve these sensitive ecosystems which serve as important natural infrastructure and open space.

Recently, much progress has been made in restoring the potential of green infrastructure and ecosystems to exist in harmony with the built environment. The work of a number of South Maui non-profit wetlands groups, as well as the Kihei Drainage Master Plan Ecological Alternatives Assessment, shows that the preservation of these wetlands not only provides the aforementioned benefits, but also allows implementation of natural solutions which serve as infrastructure with low impact and less cost than conventional concrete channelization.

As a reminder, the Council did include the purchase of the Kulanihakoi parcels in a previous budget; however, the amount allowed by the Council (\$750,000.00) was not acceptable to the previous owners.

Unfortunately, the recent purchase of parcels within the Waipuilani and Kulanihakoi gulches and wetlands by another developer has included destructive activity commenced in preparation for development. These potential new projects and the accompanying degradation threatens the integrity of the wetlands systems and would result in ecological harm while making South Maui less resilient to storms and climate change.

I can think of no better use of Maui County's Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund than to acquire parcels in the Waipuilani and Kulanihakoi wetlands so that they may be preserved and managed as public resources, either by the County or capable community groups. Doing so would be in alignment with the Maui Island Plan and would be an investment benefitting many generations to come.

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I urge the County Administration and the Conservation Planning Committee to do all that is within your power to allocate funding and take action so that the Waipuilani and Kulanihakoi wetlands may be acquired, preserved and managed as public lands.

Mahalo nui loa,

A handwritten signature in cursive script that reads "Kelly T. King".

Kelly Takaya King

Cc: Conservation Planning Committee
Kihei Community Association
Mayor-Elect Richard Bissen
Brandi Corpuz
Robin Knox

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 12, 2019

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 17MD-148
Maui

Amend Prior Board Action of February 23, 2018 Item D-7, *Set Aside to County of Maui for Public Park Purposes, Waiohuli - Keokea Beach Homesteads, Maui, Tax Map Keys: (2) 3-9-007:004 & Portion of 005; and*

Amend Prior Board Action of November 22, 2010, Item D-7, *Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; and Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key Numbers: (2)3-9-007: portion of 005, (2)3-9-007:065, (2)3-9-008:001, (2)3-9-009:011, (2)3-9-009:031, (2)3-9-009:032, (2)3-9-009:033, (2)3-9-009:034 and (2)3-9-010:777.*

The purpose of amending the Board's February 23, 2018 action is to: (A) increase the area of the set-aside from 2.788 acres, more or less, to 24.917 acres, more or less; and (B) specify that the seaward boundary of parcels (2) 3-9-008:777, 3-9-009:777, and 3-9-010:777 included in the set-aside shall be the mean lower low water line. The purpose of amending the Board's action of November 22, 2010 is to delete portions of the approved action relating to the: (1) negotiation and execution of a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; (2) grant of term, non-exclusive easement to Tri-Isle Resource Conservation & Development Council, Inc. for land management purposes; and (3) issuance of management right-of-entry permit to Tri-Isle

Resource Conservation & Development Council, Inc. for land management purposes.

BACKGROUND:

At the Board of Land and Natural Resources ("Board") meeting of February 23, 2018, Board members approved the set-aside of 2.788 acres, more or less, of government land to the County of Maui for public park purposes. The area of the set-aside is adjacent to and south of Waipuilani Park, which is a County oceanfront beach park. The set-aside will cure an encroachment issue with the County's comfort station, and will make the County responsible for maintaining the vegetation in the area. A copy of the February 23, 2018 stamped submittal is attached as Exhibit 1.

ORIGINAL AREA REQUESTED:

0.628 acres, more or less: TMK (2) 3-9-007:004
2.160 acres, more or less: TMK (2) 3-9-007:005
2.788 acres total, more or less

REVISED AREA:

0.628 acres, more or less: TMK (2) 3-9-007:004
2.160 acres, more or less: TMK (2) 3-9-007:005
0.155 acres, more or less: TMK (2) 3-9-007:065
1.770 acres, more or less: TMK (2) 3-9-008:001
11.400 acres, more or less: TMK (2) 3-9-008:777
1.878 acres, more or less: TMK (2) 3-9-009:011
0.347 acres, more or less: TMK (2) 3-9-009:012
0.095 acres, more or less: TMK (2) 3-9-009:031
0.541 acres, more or less: TMK (2) 3-9-009:032
0.103 acres, more or less: TMK (2) 3-9-009:033
0.413 acres, more or less: TMK (2) 3-9-009:034
2.700 acres, more or less: TMK (2) 3-9-009:777
2.727 acres, more or less: TMK (2) 3-9-010:777
24.917 acres total, more or less

A map of the revised area is attached as Exhibit 2.

CURRENT USE STATUS:

- (2) 3-9-007:004 - Unencumbered
- (2) 3-9-007:005 - 1.880 acres encumbered by EO 4342 for set-aside to County of Maui for Veterans Center and Community Support activities. Exhibit 3.
- (2) 3-9-007:065 - Unencumbered
- (2) 3-9-008:001 - Encumbered by Non-Exclusive Term Easement

S-6079

- (2) 3-9-008:777 - Unencumbered beach reserve
- (2) 3-9-009:777 - Unencumbered beach reserve
- (2) 3-9-009:011 - Unencumbered
- (2) 3-9-009:012 - Unencumbered
- (2) 3-9-009:031 - Unencumbered
- (2) 3-9-009:032 - Unencumbered
- (2) 3-9-009:033 - Unencumbered
- (2) 3-9-009:034 - Unencumbered
- (2) 3-9-010:777 - Unencumbered beach reserve

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended. See Exhibit 4.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost, where applicable.

REMARKS:

Amendment is being requested of the February 23, 2018 Board approval of Item D-7 which is attached as Exhibit 1. This item requested the set-aside of government lands to the County of Maui for public park purposes. After the Board approved the set-aside and after a survey of the area was underway, it was agreed, between staff of the Maui District Land Office (MDLO) and the County of Maui Department of Parks and Recreation (DPR), that it would be more beneficial to the public to also include the State lands immediately south of the approved area. The State has no plans for this area and it would be ideal if the County take responsibility for maintaining the area as a public park.

After the Board approval on February 23, 2018, the County of Maui hired a surveyor to map the set-aside area, and the surveyor had questions regarding property boundaries. Staff from the County DPR discussed the boundaries with MDLO staff, and it was agreed that DPR would take responsibility for the adjacent beach reserve and the other adjacent oceanfront parcels so that the entire swath of sandy beach in that area, as well as the coastal strip of land mauka of the beach,

would be transferred to the County via executive order. The additional area we are requesting to be set aside in the current amendment was the subject of a prior Board approval as explained in the next paragraphs.

On November 22, 2010, the Board approved agenda Item D-7, which authorized the Chairperson of the Department of Land and Natural Resources (Department) to negotiate the terms and conditions and sign a Memorandum of Agreement (MOA) between the Department, Tri-Isle Resource Conservation & Development Council, Inc. (Tri-Isle), and Uluniu Beach Reserve Association (UBRA) regarding maintenance of the Uluniu Kihei Beach Reserve. The submittal also requested to grant a term, non-exclusive easement to Tri-Isle for land management purposes, cancel revocable permit S-6710 to Myron Higashi and revocable permit S-5377 to Douglas M. Sherman, and issue a management right-of-entry. A copy of the approved submittal is attached as Exhibit 5. The MOA referred to in the submittal was not consummated, the term, non-exclusive easement was not executed, and the management right-of-entry was not issued. However, the two revocable permits were cancelled on January 6, 2011 pursuant to the Board approval.

MDLO staff contacted the president of UBRA on June 18, 2018 and were informed that Tri-Isle is no longer participating in Uluniu Beach Reserve activities. Tri-Isle was one of the applicants for the beach reserve maintenance easement because UBRA did not have non-profit status at that time and Tri-Isle was participating in name only. UBRA subsequently obtained non-profit status and therefore Tri-Isle is no longer involved in this matter.

Because the MOA between Tri-Isle/UBRA and the State was not done and there are no plans to execute an agreement, a request to amend the November 22, 2010 Board approval under agenda Item D-7 by deleting the approvals relating to the MOU, the grant of easement, and the issuance of a right-of-entry permit is presented to the Board today.

The reason why the MOA between Tri-Isle/UBRA and the State was not executed was because Tri-Isle/UBRA did not want to pay fair market value for the easement. There is no provision in HRS Chapter 171 that would allow the Board to issue an easement to UBRA at nominal rent, and UBRA's status as an Internal Revenue Code Section 501(c)(4) entity does not change that.¹

UBRA was provided with a draft copy of the current submittal and responded with written comments. They prefer not to have the State set-aside the subject parcels to the County of Maui. A copy of UBRA's

¹ HRS Section 171-43.1 only allows direct leasing at nominal rent for eleemosynary organizations that have been certified as tax exempt under Sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended.

comments is attached as Exhibit 6. The exhibits for their comments are not included here due to the large volume, but UBRA is invited to submit testimony directly to the Board.

By setting aside the entire area referenced above to the County of Maui, MDLO believes the area will receive more attention and care than it does now. There are three coastal parcels to be included in the set-aside designated as TMKs (2) 3-9-008:777, 3-9-009:777, and 3-9-010:777. To avoid creating a situation where the County has jurisdiction of the fast lands of the area but not the adjacent beach, staff is including a recommendation below that the set-aside of these parcels be to the mean lower low water line. Department staff, including representatives from Land Division, Division of Boating and Ocean Recreation and Division of Conservation and Resources Enforcement, met with County Parks Department staff on Friday February 22, 2019 to discuss the purpose and intent of the set aside and the benefits it will bring to the south Maui community via coordinated coastal land management along a contiguous shoreline.

A draft of this submittal was disseminated to the agencies listed below, with the results indicated:

Agency	Comment
DLNR - Historic Preservation	Response attached as Exhibit 7
DLNR - State Parks	Responded with no comments
DLNR - Conservation and Coastal Lands	No response
DLNR - Engineering, Maui District	Responded with no objections and no comments
County of Maui - Planning	Comment received: The County Parks Department should manage the dunes along the shoreline in consultation with Tara Owens, UH Sea Grant Coastal Hazards Specialist and the County Department of Planning
County of Maui - Parks & Rec	Electronic mail response dated 3/5/19 in support of transfer attached as Exhibit 8
County of Maui - Public Works	Responded with no comments
Office of Hawaiian Affairs	No response

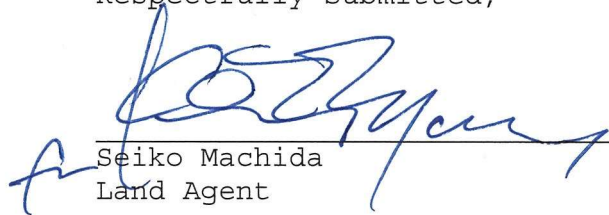
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have

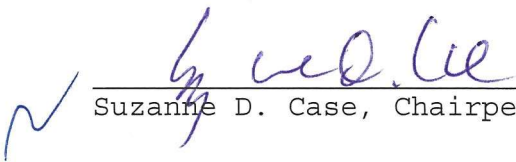
minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Amend its prior Board action of February 23, 2018, under agenda item D-7, by changing the area requested for the set-aside from the original area of 2.788 acres total, more or less, to 24.917 acres total, more or less. The seaward boundary of TMK parcels (2) 3-9-008:777, 3-9-009:777, and 3-9-010:777 included in the set-aside shall be the mean lower low water line;
3. Amend its prior Board action of February 23, 2018, under agenda item D-7 to delete the portions of the prior Board action of November 22, 2010, under agenda item D-7, relating to the MOU, the grant of easement, and the issuance of a right-of-entry permit to Tri-Isle Resource Conservation & Development Council, Inc.; and
4. Except as amended hereby, all terms and conditions listed in its February 23, 2018 and November 22, 2010 approvals to remain the same.

Respectfully Submitted,


Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson