

COUNCIL OF THE COUNTY OF MAUI

PARKS AND RECREATION COMMITTEE

December 6, 2002

Committee
Report No. 02-186

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Parks and Recreation Committee, having met on January 30, 2002 and November 13, 2002, makes reference to County Communication No. 01-209, from Councilmember Alan Arakawa, transmitting correspondence from a concerned citizen dated June 25, 2001, relating to beach access, maintenance, closure and signage for shoreline access at Ae Place, Paia.

By correspondence dated August 15, 2001, your Committee Chair transmitted the following:

1. Human Services and Parks Committee Report No. 00-203, dated October 20, 2000, recommending that the matter of beach access at Ae Place be filed;
2. Correspondence dated October 12, 2000, to the Kane Ohana and Mr. and Mrs. Clint Gima, outlining the discussion and outcome of the former Human Services and Parks Committee meeting of October 4, 2000;
3. Correspondence dated October 3, 2000, from the Department of the Corporation Counsel, providing a legal opinion on the ownership of the roadway and beach access at Ae Place;
4. Correspondence dated October 4, 2000, from the Ka Ohana Kane, requesting closure of the beach access at Ae Place;
5. Correspondence dated January 5, 2000, from the Chair of the former Human Services and Parks Committee, transmitting correspondence dated January 3, 2000, from Lisa N. Kakiuchi-Gima, et. al., requesting the closure of the beach access at Ae Place;

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6. Correspondence dated January 5, 2000, from Lynette Stephens, requesting closure of the beach access at Ae Place; and
7. A copy of County Communication No. 99-272, from Councilmember Charmaine Tavares, referring this matter to the former Human Services and Parks Committee.

By correspondence dated August 20, 2001 and November 9, 2001, your Committee Chair requested that the Department of the Corporation Counsel provide a legal opinion relating to the installation of a fence and the status of the ownership for a roadway and beach access at Ae Place.

By correspondence dated October 11, 2001, Councilmember Michael J. Molina, transmitted documents from the Planning Director, outlining research conducted to clarify the possession of real property used as a roadway and beach access at Ae Place.

By correspondence dated November 6, 2001, Councilmember Wayne K. Nishiki, transmitted legal opinions from the State Attorney General and the Department of the Corporation Counsel regarding the closure of shoreline access routes.

By correspondence dated November 9, 2001 and January 24, 2002, your Committee Chair urged the Mayor to pursue the acquisition of property in Paia to establish additional shoreline access.

By correspondence dated January 24, 2002, the Department of the Corporation Counsel provided a legal opinion on the installation of a fence to block shoreline access and the status of ownership for a roadway and beach access.

At its meeting of January 30, 2002, your Committee met with the Director of Parks and Recreation; the Director of Public Works and Waste Management; the Deputy Director, a Senior Planner, and a Staff Planner III from the Department of Planning; and a Deputy Corporation Counsel.

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Your Committee received public testimony from three persons asking that the access at Ae Place remain closed. The testifiers provided your Committee with the history of the roadway and beach access. They further stated that a fence was installed to prevent certain abuses and misconduct by individuals utilizing the roadway and beach access. One testifier indicated that the roadway and beach access were initially installed for use by the residents within the subdivision.

One individual testified in support of removing the fence and opening the beach access. The testifier stated that the ownership of the roadway and access remains unclear; therefore, the property owners have no right to install a fence. The testifier also stated that the beach access has been identified as such for nearly 15 years and has been included in the County of Maui Shoreline Access Guide.

The Deputy Corporation Counsel reviewed a legal opinion submitted to your Committee on January 24, 2002. He stated that statutory dedication and acceptance of land by the County must occur prior to the land being utilized as public access. Furthermore, maintenance and repair of the roadway and beach access by County staff does not constitute acceptance. He further stated that without consent or permission by the landowner, easement by implication is not valid in this case. He stated that in cases of easement by means of prescription, the burden of proof is placed on the party claiming the easement, who must prove that continuous and uninterrupted, open, notorious and exclusive access is allowed with the knowledge and acquiescence of the owner. He stated that the ownership of the roadway and access remain in question. Therefore, in order for the County to accept or condemn the property, proprietorship must be determined. Furthermore, he noted concerns that the Maui County Code regulates the acceptance of substandard rights-of-way. The subject roadway and beach access currently do not meet County requirements for streets and shoreline access. He indicated that a title search should be performed on the subject property to clarify ownership, prior to pursuing any further action.

The Deputy Planning Director stated that the Department could not locate evidence that the County accepted dedication of the subject property.

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Your Committee noted that this matter had been reviewed by the former Human Services and Parks Committee and the former Land Use Committee. Your Committee expressed a desire to resolve this matter, once and for all, to keep the issue from recurring.

In response to an inquiry by your Committee, the Deputy Corporation Counsel recommended that the title search be performed on all the parcels in the area commonly known as the Kekahuna Subdivision. He stated that the estimated cost for the title search is \$2,000; however, should the search require further investigation, the cost may increase. Furthermore, he indicated that the beach access should remain closed until the title search has been completed.

As a result, your Committee requested that a title search be commissioned for the nine parcels of land surrounding and inclusive of Ae Place, commonly known as the Kekahuna Subdivision.

Your Committee expressed a desire to fund the title search with resources from the Council's legislative budget.

As a result, your Committee deferred the matter pending further discussion.

By correspondence dated February 4, 2002, your Committee Chair requested that the Council Chair provide a recommendation for funding a title search for properties located at Ae Place, commonly known as the Kekahuna Subdivision.

By correspondence dated February 8, 2002, the Council Chair requested the Department of the Corporation Counsel to: (1) commission a title search for the properties commonly known as the Kekahuna Subdivision; (2) authorize the transfer of funds for said purpose; and (3) provide an opinion and recommendation on the findings of the title search.

By correspondence dated March 27, 2002, the Council Chair requested that the Department of the Corporation Counsel provide a status report on the matter relating to a title search for properties along Ae Place, Paia.

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By correspondence dated April 9, 2002, the Department of the Corporation Counsel provided a review of the procurement process for securing a title report on properties along Ae Place. It was disclosed that the bids received to conduct the title search ranged from \$5,500 to \$11,000.

By correspondence dated April 12, 2002, your Committee Chair requested assistance from the Council Chair in determining whether additional funds are available in the Council's budget for a title search of properties along Ae Place in Paia.

By correspondence dated April 25, 2002, the Council Vice Chair requested the Department of the Corporation Counsel to: (1) proceed with the title search; (2) provide a legal opinion and findings on the results of the report; and (3) authorize the expenditure of additional funds.

By correspondence dated July 16, 2002, your Committee Chair requested the Department of the Corporation Counsel to provide a status report on the title search.

By correspondence dated November 12, 2002, the Department of the Corporation Counsel transmitted copies of the title search performed on nine properties surrounding Ae Place in Paia, commonly known as the Kekahuna Subdivision.

By correspondence dated November 12, 2002, the Department of the Corporation Counsel stated that the roadway and beach access appear to be private property.

At its meeting of November 13, 2002, your Committee met with the Director of Parks and Recreation, the Director of Public Works and Waste Management, the Deputy Director and Staff Planner from Department of Planning, and a Deputy Corporation Counsel.

Your Committee received testimony from four individuals who requested that the beach access remain closed and the roadway remain private.

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Two testifiers indicated that since the beach access has been closed, the area has been quiet, with no disturbance from the general public. The testifiers also noted that potential criminal and inappropriate activity have decreased significantly. The testifiers also noted that because of the limited size of the roadway, parking was a problem while the beach access was open; however, since its closure, the matter has been resolved. The testifiers recommended that the County consider acquiring property currently owned by Maui Electric Company, Ltd.(MECO) to use as a beach access.

One testifier requested that the issue be resolved once and for all, to prevent the matter from recurring.

One testifier stated that the roadway and beach access is not owned by the County; therefore, it never should have been identified as a public shoreline access. She stated that the County had no right to erect shoreline access signs at this location. As a result, this matter has caused the residents of Ae Place a significant amount of hardship and frustration in dealing with the public trespassing onto their properties. She also stated that because of certain inappropriate actions by the public utilizing the access, the Kekahuna family had to take action to limit their liability from individuals entering their property.

The Director of Parks and Recreation noted that beach access currently exists about 100 yards away at Lower Paia Beach Park, commonly known as Baby Beach, which he believes is adequate to serve shoreline access needs in the area. He also indicated that same beach access allows entrance onto the beach fronting the properties along Ae Place.

A Deputy Corporation Counsel reiterated that the title reports indicated that the beach access and roadway are privately owned and have never been dedicated to the County for public right-of-way purposes.

Your Committee Chair noted that she had previously met with representatives of MECO to discuss the use of their property for beach access purposes. Representatives from MECO informed your Committee Chair that they intend to phase out the use of the subject property as a power substation within the next four years. As a result, MECO indicated its interest in discussing the possible transfer of the subject property to the County at that time.

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Your Committee also noted that the roadway and beach access remain under the ownership of Blanche Garcia Cook, deceased with no probate proceedings on record. As a result, your Committee noted that in order to determine if the Garcia family has heirs to the subject property, a quiet title action in a court of law must be pursued. Your Committee noted that it should not be the responsibility of the County to determine the rightful heir to this property, and encouraged the property owners surrounding Ae Place to pursue this matter.

Your Committee also noted that since the beach access and roadway are privately owned, they should not be utilized as public shoreline access and should remain private.

In response to an inquiry by your Committee, the Deputy Director of Planning stated that the County of Maui Shoreline Access Guide was published in 1987 and revised in 1994. According to the Deputy Director of Planning, the Ae Place beach access was included in both editions. However, he was not certain why or how private property was included as a public shoreline access.

Your Committee indicated that the title search was very helpful in clarifying the ownership question. Your Committee noted that since it is clear that the County does not have possession of the access and roadway, the matter should be put to rest once and for all.

Your Committee stated that it will not pursue this matter any further because the subject property is privately owned; the property was never dedicated to the County for public access purposes; the roadway and beach access are substandard; and a public shoreline access, which provides entry to the same beach fronting Ae Place, exists within 100 yards of this location.

Your Committee voted to file the communication.

Your Parks and Recreation Committee RECOMMENDS that County Communication No. 01-209 be FILED.

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Adoption of this report is respectfully requested.

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JO ANNE JOHNSON Chair

MICHAEL J. MOLINA Member

ROBERT CARROLL Vice-Chair

CHARMAINE TAVARES Member

DANNY A. MATEO Member

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