

Minutes of the May 21, 2013, Legacy Land Conservation Commission Meeting

Date: May 21, 2013

Time: 12:30 p.m. to 4:00 p.m.

Place: Room 322C, Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawai‘i

COMMISSION MEMBERS PRESENT:

Ms. Rebecca Alakai

Mr. Thorne Abbott

Ms. Lori Buchanan

Dr. Joan E. Canfield

Mr. Kaiwi Nui

Dr. Robert J. Shallenberger

COMMISSION MEMBERS ABSENT:

Dr. Carl J. Berg

Mr. Herbert (“Monty”) Richards

Ms. Karen Young

STAFF:

Molly Schmidt, DLNR, DOFAW

PUBLIC:

Nanette Sapangtong

MINUTES:

ITEM 1. Call to order and introduction of members and staff.

Legacy Land Conservation Commission (“Commission”) members, staff, and members of the public introduced themselves.

ITEM 2. Approval of Legacy Land Conservation Commission meeting minutes from the March 7, 2013, meeting.

Member Canfield moved to approve the March 7, 2013, meeting minutes. Member Alakai seconded the motion. All were in favor.

ITEM 3. Update from staff, discussion, and possible action regarding the Fiscal Year 2014 Legacy Land Conservation Program grant cycle, including the review of timeline, forms, and procedures to be implemented.

Ms. Schmidt stated that there were a few general announcements: Members Berg and Young were ending their terms in June and chose not to attend this meeting, Member Richards was not

able to attend. Deputy Attorney General Julie China would be attending the meeting at 1:30 p.m. Ms. Schmidt state that she had recently returned from being out of town for work.

Member Alakai stated that this would be her last meeting, she was ending her term with the NARS Commission in June. Chair Kaiwi asked if she knew who her replacement was; she stated that it would be up to the members of the NARS Commission. Ms. Schmidt added that there were two new members of the NARS Commission. Member Alakai stated that there would also be an additional cultural representative as per the bill that passed to allow a cultural representative in place of the Dept. of Education Superintendent. Member Kaiwi asked if the cultural practitioner had been named. Member Alakai stated that the Superintendent's term would end June 30, they would not likely name anyone until then.

Ms. Schmidt suggested that the Commission go though the agenda and save any legal questions for Ms. China.

Ms. Schmidt stated that, in review, at the last meeting the timeline was discussed. Forms would be available June 17, 2013, pending the Chairperson's approval. The program would try to improve outreach a little by including news sources such as Ka Wai Ola in the announcement. Consultation forms would be due to State agencies by July 19, 2013, due from agencies back to applications by August 30, and then the entire application would be due to Legacy Land by September 16.

Member Abbott arrived, Ms. Schmidt updated him on the meeting status.

Ms. Schmidt stated that she would try to get applications to the Commission by end of September or sooner, however, it would depend on the number of applications received.

The Commission had suggested an early October meeting, the dates between the 7th and the 18th. She had sent a meeting poll for this and the December meetings but would re-send it after this meeting. She added that there had been a request at the last meeting to improve site visit coordination by requesting availability dates from applications at the October meeting.

There hadn't been many adjustments to the forms: typographic edits; changes to the consultation form and application form to communicate that a lack of response from agencies during the consultation process would not hurt applicants; remove the mentions of the Public Land Development Corporation from all processes and forms pursuant to Ac 38, SLH 2013.

Member Abbott asked whether funding came back to the Land Conservation Fund from the PLDC. Ms. Schmidt stated that Act 38 has mandated the return of any unused funds that had been taken from the LCF under Act 55, SLH 2011, however; this was only one of the two ways that funds had been directed to the PLDC from the LCF, she wasn't sure how much would remain of this portion. She added that she hadn't contacted PLDC staff. Member Alakai mentioned that funds had also come to PLDC from DOBOR. Chair Kaiwi asked an estimate of the amount; Ms. Schmidt replied that she wasn't certain, at one point funds were dedicated via the budget bill and then a previous amount was also dedicated under Act 55, she couldn't recall the amounts. Member Buchanan stated that she had thought it to be around \$600,000, in

sum. Ms. Schmidt stated that she also wasn't sure how the various funds from different sources had been mixed or used by PLDC.

Member Canfield asked if the consultation process still existed with the remaining three departments. Ms. Schmidt confirmed. Chair Kaiwi asked Ms. Schmidt if it would be alright to simply strike the PLDC. Ms. Schmidt stated that the AG had been alright with it, however, they could double-check when she came into the meeting.

Member Buchanan asked about the October time frame. Ms. Schmidt stated that the goal was to have an early October meeting and then start the site visits immediately after.

Member Shallenberger asked if applicants would provide site visit dates at the time of application. Ms. Schmidt stated that it might be hard for them to provide dates that early, so she could check in with them right before the October meeting.

ITEM 4. Review by staff of status of the development of a grant cycle, timeline, and procedures for the disbursement of management funds grants through the Legacy Land Conservation Program.

Ms. Schmidt stated that members had asked for a status update on management funds from Legacy Land. To review, in 2008, a statutory change passed to allow funds to be granted for management, maintenance and operations from Legacy Land to applicants that had previously received land acquisition grants from Legacy Land. When they had gone through rulemaking, they had tried to look ahead to see how the process would work to avoid having to go back through rulemaking again. The Commission had formed a Subcommittee to develop the two sets of criteria for management and land acquisition grants. Now the criteria and rules were in place, however, the management funds had some administrative issues that land acquisition grants did not. The grants for management funds were considered subject to procurement laws as "goods and services." Under procurements statutes, this process was to be kept private, however, to involve the Commission under Sunshine Laws, the process had to be made public. The Division had received a limited exemption from the State Procurement Office to allow the process to work together, and at one point, they were operating under the assumption that this exemption was nearly sufficient and just a few details had to be nailed down in order to make the two processes work together. Then they ran across a statutory provision that seemed to state that procurement laws take precedence over Sunshine Laws, so they had sought input from the Office of Information Practices and were waiting for a response on whether or not the use of executive session might be appropriate for this situation. The original request had been sent in May 2012, the OIP had received it and it had been reassigned among staff members and then back-burnered due to a backlog of requests at OIP. Ms. Schmidt stated she had also back-burnered the item since the funding had been short for a period of years, and the Commission had indicated that acquisition would be the priority. Member Abbott asked where it stated that procurement laws trump Sunshine. Ms. Schmidt stated that this characterization had been her attempt at paraphrasing – they ought to look to the actual language. She read from section 105 of HRS Chapter 103D, "Part I of Chapter 92 [which is the Sunshine Law] shall not apply to discussions, deliberations, or decisions required to be made confidentially under this chapter."

Chair Kaiwi asked whether sole source was an option. Ms. Schmidt stated that she would have to look back at the different processes; however, it might be problematic to award funds to more than one applicant in a year. Chair Kaiwi stated that it wouldn't be practical to be doing an RFP for this. Ms. Schmidt agreed. Chair Kaiwi went through the steps of the RFP, stating that it was lengthy and challenges were a possibility. Member Canfield asked if there was an easier way if there was only one applicant. Chair Kaiwi stated that he was suggesting the sole source method of procurement for this reason.

Member Shallenberger asked how much funding was available. Ms. Schmidt stated that it was limited to five percent of the previous year's revenue, roughly \$200,000 max. Member Abbott stated that sole source procurements became less complicated if kept under \$25,000. Possibly they could consider a cap as one grant per year. Ms. Schmidt stated that minimizing the bureaucracy would be a good idea. Member Abbot stated that appropriate criteria ought to be sufficiently transparent. Member Shallenberger stated that the amount would almost be insufficient. Chair Kaiwi, Member Abbott, and Member Shallenberger discussed the amount. Chair Kaiwi suggested that Ms. Schmidt check on the specifics and they could continue the discussion at a future meeting. Ms. Schmidt agreed and added that there might be other issues, however, it was difficult to discuss without the information at hand. Chair Kaiwi stated that scheduling multiple reviews would also be difficult. Ms. Schmidt stated that she would check on the various procurement issues for the October meeting. She added that a statutory exemption might be possible; however, putting in a bill relating to Legacy Land might come with unintended consequences given how things morph throughout the process.

Member Canfield asked whether Ms. Schmidt would put an announcement regarding management funds with these application materials. Ms. Schmidt stated that she did not think it was necessary, there was no application form available, so that was a pretty clear indication to any potential applicants that the funds are not available. Ms. Schmidt responded to several comments regarding the impending OIP response, stating that it seemed that many times agencies took the chance of asserting a position on something like this so that they could proceed with their respective missions.

Member Canfield asked if the deputy AG could help with this matter. Ms. Schmidt stated that they could check in with her at 1:30 pm, she was familiar with the matter. She added that Ms. China had been consulted throughout the process thus far, through the exemption and she was copied on the memo to OIP.

Member Buchanan stated that there were now two questions: the use of executive session and the possible use of sole source. Member Shallenberger asked if it was limited to previous awardees, why would it have to be under executive session?

Ms. Schmidt stated that it was complicated. There was a private procurement process and a public commission and, although it looked like they were going to have a workable exemption at one point, then they discovered the one section in statute that stated that procurement would override Sunshine Law – so they just needed somebody to interpret this provision for them. The overall goal was to keep Legacy Land in clear and verifiable compliance with the laws so that nobody would come through after the fact and challenge awards granted based on the

process. Ms. Schmidt stated that a statutory exemption would be the clearest thing. Member Buchanan asked why this even needed to be done when the awards were limited to prior applicants. Member Shallenberger asked why they could not just supply two application forms and review both at the same time. Ms. Schmidt stated that this process had been the ideal. He asked why it had been any different than land acquisition. Ms. Schmidt stated that it was a part of the way the laws were written, and it was also complicated by the fact that other grants programs within the division that gave management funds went through an RFP process. She added that, in previous years, it hadn't seemed like the timing was right to seek a statutory change, but maybe it would work this upcoming year. Member Buchanan stated that the statutory change had been poorly thought through. Member Canfield asked Ms. Schmidt if it had been an initiative from the Division. Ms. Schmidt stated that she had thought so. She added that she was getting a sense that she was to look into the procurement questions that had arisen. They could also ask the AG in a moment. She stated that she had thought there was a reason but could not remember why they had not initially gone to the AG's office with the question. Chair Kaiwi asked whether the five percent would remain in the fund, Ms. Schmidt replied that it would.

Member Buchanan added that a land trust may approach the program for management funds. Ms. Schmidt stated that many groups might be interested. She added that nonprofits might have an additional concern relating to environmental assessments. State agencies could use exemptions; this matter needed more looking into as well. Member Shallenberger asked if any legislators had indicated that management funds were to be a priority, back when they were asking about administrative rules. Ms. Schmidt stated that she had not received any communications regarding management funds and added that many other programs with higher profiles hadn't had administrative rules, so the attention to this program had been odd. Chair Kaiwi asked if administration had wanted the management funds. Ms. Schmidt replied that she thought so. Chair Kaiwi asked if there was any support for eliminating that use of the funds, given the technical constraints. Member Shallenberger stated that the options for granting the funds had not yet been exhausted. Ms. Schmidt stated that her preference as staff was to have the program work efficiently. Member Canfield asked to what extent the Commission can decide to move forward with granting the funds. Ms. Schmidt stated that it would be a recommendation to the Department or the Board. Member Canfield stated that there had been a lot of interest at one point in moving this forward. Chair Kaiwi stated that they had been advised that there is a procurement process tied to it. Ms. Schmidt stated that it was difficult to discuss at the moment without all of the information available. She added that the Commission at one point had been less interested in seeing this move forward, but was expressing more interest now. Chair Kaiwi asked if DLNR had a private entity attached to assist with procurement. Ms. Schmidt stated that she wasn't aware of one. Member Shallenberger asked why these funds weren't just treated as an addendum to the original award. Ms. Schmidt stated that it had to be funding to an entity with a completed land acquisition, and in the interest of fairness, they'd have to create an opportunity for all applicants with closed projects to apply. She added that the draft application for management funds that had been used as a discussion tool had requested that the original application be appended. Member Canfield stated that the Commission hadn't reviewed any management actions at the time the original land acquisition applications had been submitted.

Chair Kaiwi stated that Ms. Schmidt should look into the topics of RFP, sole source, statutory exemption for the next meeting. Member Abbott added that Ms. Schmidt should check the Chapter 343 exemption list. Ms. Schmidt stated that Legacy land had an exemption for Legacy Land, she wasn't sure if it would extend to management funds grants. Member Alakai mentioned that the Office of Environmental Quality Control had a new director.

ITEM 5. Review by staff of bills in the 2013 Legislative Session that may affect the Legacy Land Conservation Program. Discussion and possible action by the Commission regarding related policy recommendations to the Department or Board of Land and Natural Resources. Possible executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with counsel regarding powers, duties, privileges, immunities and liabilities of the Commission in relation to any recent legislation.

Ms. Schmidt stated that she had forgotten to make an announcement at the start of the meeting: Item 6 would be cancelled, Mr. Jokiel hadn't been able to attend the meeting.

Ms. Schmidt stated that, at the last meeting, the Commission had requested that she look into its ability to testify at legislature. She stated that HRS Chapter 26, section 35, stated that boards and commissions were subject to the administrative supervision of the head of the department, and that the head of the department represents the Commission in communications with the governor and with legislature, unless the legislative committee specifically requests to meet with the chair of the commission. Chair Kaiwi stated that individuals could still testify on their own behalf; Ms. Schmidt agreed. Member Alakai asked whether a Commission action would be required. Ms. Schmidt stated that a vote would be required to make official recommendations from the Commission.

Ms. Schmidt discussed legislative actions and stated that they'd already covered Act 38, in that it would repeal the PLDC and remove it from Legacy Land forms. She stated that there was an additional revision to the Legacy land statute per this act. Section 4 of the Act revised language to read that the Board shall be "an owner of a conservation easement" instead of an owner of "any such" conservation easement. Her guidance from the AG's office, after looking at the committee report, was that it was a technical, non-substantive revision. The committee report did not mention this change. Ms. China clarified that, where a meaning or language within a law that is passed is vague, the committee report can provide further information. If the committee report does not include any additional information but says that technical non-substantive edits are made, then the assumption is that these edits are technical and non-substantive.

Ms. Schmidt stated that it did not seem to change anything for the grants process; she did not have any recommendations but was open to any ideas. Member Shallenberger asked if they had ever gained clarification on the distinction between agricultural easements and conservation easements. Ms. Schmidt stated that they had dealt with this question during rulemaking. There wasn't a statutory definition of ag easement, so they had clarified it in rule. She didn't have the rule with her, but recalled that it allowed for funding to be granted to any ag easement that might be defined elsewhere in federal or state laws. Otherwise, it'd already be fundable as a conservation easement.

She and Chair kaiwi asked if there were further comments on Act 38. There were none.

Ms. Schmidt continued that the previously-mentioned bill placing a cultural representative on the NARS Commission was Act 4, SLH 2013, if anyone wanted to look into it. Other items related to Legacy Land or land acquisition – two resolutions SCR 164 and SR 121 made a specific reference to the Legacy Land Conservation Commission Chair being a member of a working group for the acquisition of lands at Turtle Bay. Chair Kaiwi asked what the procedure would be. Ms. Schmidt replied that her understanding was that it would be up the Governor's office to call a meeting of the group. She added that the budget bill had included \$100,000 to DLNR for due diligence. Ms. Schmidt stated that House Bill 1424 required DLNR to work with partners to acquire 280 acres at Lipoa Point in Maui. She added that the bill mentioned the Maui Land and Pine Pension Fund. Ms. China clarified that the bill requested that proceeds from the acquisition be directed toward the fund. Ms. Schmidt stated that \$20 million had been included in the State budget for that acquisition. Member Shallenberger asked if the bill was in the meeting documents. Ms. Schmidt stated that it was not, but could be looked up online by bill number, and that HB1424 carried the language and budget bill HB200 carried the funding. Ms. Schmidt stated that a few bills had proposed increased funding for all conveyance tax programs, but those bills had not succeeded. She stated that other DOFAW conservation programs had fared well, the watershed initiative had received \$5 million in CIP funds and \$3.5 in general funds. Member Canfield asked if any of the funds would affect Legacy Land, Ms. Schmidt replied that they would not; however, Legacy Land did get to keep its original funding this year. She stated that general funds for watershed went through an RFP process. Member Shallenberger asked who made the decisions. Ms. Schmidt stated that it would be a selection committee set up under the parameters of the procurement process.

ITEM 6. Briefing by Division of Forestry and Wildlife staff member Jordan Jokiel on the Wildlife Program Access and Acquisitions Project.

Ms. Schmidt stated that Jordan Jokiel had planned to be present and update the Commission on his program, which was titled the Wildlife Program Access and Acquisitions Project – there had been some confusion at the last meeting on where he was working and on what. To answer, he was located in the Wildlife Program, one of the sections of the Division of Forestry and Wildlife. Hopefully he'll be able to attend the next meeting. Member Buchanan stated that she had thought he was access and acquisitions for all programs, Ms. Schmidt stated that it had been unclear for a while. Member Buchanan stated that Legacy Land projects had been listed in a report as his projects. Ms. Schmidt stated that he was responsible for Recovery Land Acquisition funds, and other funds most heavily used by the Wildlife section. These programs sometimes used Legacy land as match, so the same projects would show up.

ITEM 7. Briefing by program staff on:

- a. Status of the Fiscal Year 2013 grant cycle; and
- b. Status of projects funded by the Legacy Land Conservation Program in previous fiscal years.

Chair Kaiwi asked for the bill numbers on Turtle Bay bills and also asked if there would be a conflict with his participation on a committee and his employment at OHA. Ms. Schmidt stated that she wasn't knowledgeable enough to answer on the conflicts topic; however, the Ethics Office staff would be able to provide him some guidance.

Chair Kaiwi asked if one agency could simply be struck from the forms and procedures for Legacy Land, could another be easily added? Ms. China stated that it would be if the law had been amended to add an agency, it would be. Chair Kaiwi stated that OHA should have been added to the review. Member Buchanan stated that the Commission could form a recommendation to the BLNR to do this. Member Alakai asked if it could be proposed in a non-statutory format. Member Abbott asked if the law limited the number of agencies. Ms. China stated that Legacy Land "must" get comment from those agencies. If they started including agencies that were not listed in statute, members of the public might want to know why other agencies would not be included. Ms. China suggested that the Commission could recommend that the BLNR, as a matter of policy, include other agencies like OHA on the list. Member Abbott suggested requesting comment from various agencies. Ms. China stated that the law only required applicants to send the consultation, it did not require agencies to respond.

Ms. Schmidt stated that the authority for the approval of the annual grant process had been delegated to the DLNR Chair. She asked if the Chair could approve adding agencies to the consultation in order to put this change into effect this year. Ms. China stated that she wasn't sure what the language for delegation was, and whether it had been extensive enough to cover this topic. Chair Kaiwi stated that the matter did not need to go into effect his year, the OHA policy board would want to consider its interest in participation first anyway. Member Shallenberger asked if Chair Kaiwi was concerned about preventing negative cultural impacts, or broadening opportunity for participation. Chair Kaiwi replied both. Member Shallenberger stated that OHA could interpret itself as an appropriate land conservation organization. Ms. Schmidt stated that DLNR was passing all of its submittals by OHA at one point, however, staff had stated that Legacy Land did not need to keep submitting its grant approvals to OHA. This had been a while back, and probably included different staff than would be assigned today. Member Shallenberger stated that it would be good to include OHA at an earlier stage. Chair Kaiwi stated that he also had to clarify whether there would be a conflict for him in this scenario. Ms. Schmidt clarified that she recommended that Commission members contact Ethics Office staff because they regularly review these cases and can analyze and spot red flags quicker and better than her. Member Buchanan stated that there was a nexus for having the OHA consultation, since there was an official cultural representative on the Commission under law. Member Buchanan added that putting reviewing agencies in now might balance the process and would not be unduly burdensome on applicants.

Chair Kaiwi asked for further comments. Member Canfield asked what the budget for the upcoming grant cycle was. Ms. Schmidt stated that she hadn't looked into it much; however, the conveyance tax revenues should be similar to this year, three to four million.

Ms. Schmidt stated that there had been sufficient funds to cover all FY13 projects at their requested amounts, and that staff was currently in the process of encumbering the funds. As for

previously-funded projects, there were 15 open projects, three lapsed and 17 closed. The three lapsed projects included KPLT Kahili Beach, Malu Aina HILT, and HILT Kipuka Mosaic. They had already discussed the previous two projects; the third project had lapsed more recently, due to a change in interest by the landowners. Ms. Schmidt asked if the Commission wanted her to run through the entire list. Member Shallenberger asked if it was posted somewhere, Ms. Schmidt replied that all projects and their respective statuses were on the "Projects" page of the website. Chair Kaiwi asked if they had been able to fully fund Whitmore. Ms. Schmidt replied yes. He asked if they had secured their match. Ms. Schmidt stated that she wasn't sure. Applicants were not required to secure match until after funds are awarded, but were required to provide evidence of match before closing. They did not have to maintain the same sources listed in the application; however, they did have to maintain the same proportion of matching funds to Legacy Land funds. Chair Kaiwi stated that he was curious because the proportion of match had been huge for that project.

Chair Kaiwi asked if Commission members had further questions on prior grant cycles or projects. There were none.

ITEM 8. Announcements.

Ms. Schmidt stated that she was providing a Legacy Land presentation at a series of workshops on agricultural conservation easements that was being hosted by Oahu Resource Conservation Development Council. NRCS, county programs, TPL, land trusts and others were participating. The Molokai workshop was scheduled for May 30, 2013, and the next two workshops were in early June on Oahu and Kauai. The tentative dates were June 6 and 7. Member Canfield asked if the focus was agricultural, Ms. Schmidt replied that it was, and that the federal programs participating were targeted towards protecting ag lands. Maui and Big Island would be later in the summer. Member Shallenberger asked if Fish and Wildlife Service was participating. Ms. Schmidt stated that a mention of their programs would probably be made, however, the focus was on ag, so NRCS programs were more appropriate. Ms. Schmidt stated that Commission members were welcome to join and participate.

Chair Kaiwi asked what ideas Ms. Schmidt had to expand outreach for the program, aside from Ka Wai Ola. Ms. Schmidt stated that she had not generated many ideas since the March meeting but would be looking at it before the beginning of the grant cycle. She said that her last effort to broaden the list of contacts had been a while back, so it was time to go through and look for new and additional groups that might be interested. Chair Kaiwi asked if it was too late for an HCC panel. It might be good to have a panel of Commission members explaining the program. Member Canfield suggested a poster. Ms. Schmidt stated that she had done a poster two years ago and a presentation last year. Member Shallenberger stated that they might be missing an opportunity to inform on conservation easements, to let new landowners know about conservation easements and potential funding sources. Chair Kaiwi stated that more competition would be better. The number of applicants may have been dampened by additional procedures added over the years; however, this program was still a very good opportunity. Chair Kaiwi asked Ms. Schmidt to check in with him regarding Ka Wai Ola; she agreed. Member Buchanan added that Clean Water Natural Lands Commission might be having the same issue;

Ms. Schmidt could check with them. Member Canfield suggested the Town Square talk show or the The Conversation on HPR might be good opportunities to get the word out. Ms. Schmidt added that the Chair's office had also suggested an Olelo panel.

Member Canfield asked if they had covered the issues they meant to check over with the AG since her arrival. Ms. Schmidt stated that they had covered the removal of PLDC from forms and procedures. The other question had to do with management funds. She stated that she had assumed OIP to be the correct resource for addressing Sunshine Law issues as opposed to consulting the AG's office, Ms. China replied that this was correct. Ms. Schmidt stated that she had copied the AG's office on the memo. She added that the Commission had questions regarding the staff's plan to use the RFP method of procurement for management funds, however, she couldn't recall why RFP was the appropriate method offhand as she hadn't looked into the matter for a while and did not have the info with her. Ms. China suggested looking back at old meeting minutes where staff had discussed it in depth. Ms. Schmidt encouraged Commission members to ask any questions they might have. She stated that she would look into the following matters regarding management funds grants for the next meeting: following up on the memo to OIP, looking at other procurement methods, and looking at a legislative proposal.

Member Shallenberger stated that the pool of applicants for management funds was already very limited by the statutory language, the sole source method ought to be a good fit. Ms. Schmidt stated that she did not know the sole source method off hand. Ms. China stated that an exemption might be required for the use of that method, and the number of applicants might be up to fifteen, which would be too many. Member Abbott stated that if the sole source for each potential grant was a single recipient – would the sole source method of procurement work? Ms. China stated that she did not know, they'd have to look into it.

Member Abbott asked if there was an exemption for Chapter 343 for management grants. Ms. China stated that it would be according to management action, she did not think there would be an exemption covering it. Applicants would have to come under DOFAW's exemption list, and the exemptions were narrow and would be different according to each action. Ms. Schmidt asked if nonprofits could use DOFAW's list, Ms. China stated that they could. Member Abbott asked how difficult it would be to get exemptions. Ms. Schmidt stated that she had gone through the process once, and that there were now exemptions for Legacy Land acquisition grants and for DOFAW conservation land acquisitions as a result, however, they had not covered the million other actions that might arise under management and maintenance grants, and she also didn't know if the DOFAW list was built to serve those organizations taking actions to manage different resources like cultural or agricultural. Ms. China suggested designing the grants to require applicants to comply with Chapter 343, HRS. Member Abbott stated that it would be difficult for nonprofit applicants. Member Abbott stated that agencies could write a one-page exemption for a specific action at a specific time. Ms. China stated that DLNR would have to support any decisions made in this area. Member Canfield asked if DLNR would support. Ms. Schmidt stated that she did not know; the process and people involved had changed since 2008, when she had last gone through it. Member Abbott offered to send a sample of the exemption form, which was like a FONSI. Ms. Schmidt stated that she was not familiar with the process he was referring to and would have to look into it. Ms. China stated that DLNR was under extremely high scrutiny; it is possibly that the processes used for other county or State agencies

might not be feasible or desirable here. Member Alakai stated that she had worked for the OEQC and was interested in learning about the various approaches. Member Abbott stated that it was an evaluation form done by an agency according to each project or expenditure, and it was used by several agencies within the law. He added that he was interested in sharing what might work, but was not interested in advocating for it if it was not preferred by DLNR. Member Buchanan added that was incredibly difficult to get permission for simple management actions, like spraying pesticide in order to manage invasive plants.

Chair Kaiwi asked if there were any further comments. Member Canfield asked if Member Buchanan had any interest in executive session – it had been mentioned at a previous meeting. Member Buchanan stated that she was no longer interested in it, she had just wanted to reserve the option in case this legislative session had presented matters for discussion. Member Shallenberger asked if concerns relating to the access and acquisitions program had been addressed. Member Buchanan stated that she had been confused about why Legacy Land projects had been listed as projects by a staff member that she had never met. Ms. Schmidt stated that she had also thought there had been a little ambiguity about the program and job description, she had appreciated Member Buchanan's questions as they had helped staff understand the need for more clarity. That staff did work for the Wildlife Section, and not as the overall DOFAW. If he referred to Legacy Land projects, it was probably due to the fact that the projects were also funded by the federal RLA program, which was his area of responsibility.

Chair Kaiwi called for further comments; there were none.

ITEM 9. Adjournment.