

Minutes of the Friday, July 6, 2007 Legacy Land Conservation Commission Meeting

COMMISSION MEMBERS PRESENT:

Dr. Dale B. Bonar, Chair (arriving at 10:07 a.m.)

Dr. Carl J. Berg

Dr. Joan E. Canfield

Dr. Charles (“Chip”) Fletcher

Dr. Robert J. Shallenberger

Mr. Wesley Kaiwi Nui Yoon (arriving 8:16 a.m., departing 9:45 a.m., returning 1:40 p.m.)

Ms. Karen G.S. Young

Mr. Herbert (“Monty”) Richards (arriving at 9:00 a.m.)

STAFF PRESENT:

Julie China, Deputy Attorney General

Ian Hirokawa, Project Development Specialist, DLNR, Land Division

Gavin Chun, Project Development Specialist, DLNR, Land Division

Molly Schmidt, Legacy Land Conservation Program Coordinator, DLNR, DOFAW

AGENDA

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

Commission members and staff present at the meeting introduced themselves. Member Fletcher assumed the duties of the chairperson in Chair Bonar’s absence.

Item 2. Approval of May 7, 2007, and May 18, 2007, meeting minutes.

Member Fletcher asked for comments or corrections on both sets of minutes. Members of the Commission made suggestions to staff member Ms. Schmidt in conducting the review process for minutes. After one correction by Member Shallenberger on the May 7, 2007, meeting minutes, Member Berg moved to approve the minutes as amended, Member Canfield seconded. All were in favor.

Item 3. Program timelines, deadlines, and announcements.

Ms. Schmidt stated that the Department and Governor’s Office would be seeking a ninth member for the Commission. Members Young and Shallenberger inquired as to which criteria this new member would meet. Ms. Schmidt replied that statutory criteria had been met by the selection of the current members. Member Canfield suggested recreation and hunting as values that could be represented by a new Commission member.

Ms. Schmidt stated that she was seeking input from the Commission on what values were missing from the Commission. Ms. Young replied representation from a different island... Molokai or Kauai. Member Fletcher suggested a member knowledgeable in organic farming. Ms. Schmidt stated that it was the Governor’s choice, but that the Commission might be able to provide input.

Member Berg suggested notices to Environment-Hawaii, the OEQC bulletin, KAHEA, and Kawai Ola o OHA. Member Canfield suggested the HEAR website. Member Fletcher

suggested another member knowledgeable of Hawaiian culture. Ms. Schmidt re-read the list of suggestions for clarification.

Member Shallenberger asked whether there are provisions for what happens if a member of the Commission can no longer serve. Ms. Schmidt replied that an interim appointment would be made. Member Canfield stated that her term expired in 2008 and that she had received the impression there is usually an opportunity for commission and board members to “re-up” for a second term.

Member Fletcher asked if Ms. Schmidt had any other announcements. Ms. Schmidt updated the Commission on the progress of the Fiscal Year 2007 grants.

Member Kaiwi asked Ms. Schmidt how people responded to the Commission’s recommendations at the June 8, 2007, Board meeting. Ms. Schmidt replied that many people testified, and Senator Kokubun and HARC’s Stephanie Whalen had testified in support of the grant to the Agribusiness Development Corporation.

Member Canfield commented on the allocation of \$1.1 million to the federal Farm and Ranchland Protection Program and Legislature’s support of the use of funds in Kunia, stating that it appeared that the Commission did not need to make a recommendation on this project. Member Young asked whether other applicants for this appropriation would have had a chance. Member Canfield asked whether the Commission had wasted its time making a recommendation on the project. Ms. Schmidt replied that there had been two of these appropriations and that the first hadn’t required the Commission’s approval, because the Commission had not yet been in existence, while the second had; and that perhaps some confusion had been caused by this situation.

Member Young asked what organization had received the first appropriation. Ms. Schmidt replied that the Maui Coastal Land Trust (MCLT) had, and that MCLT had received federal Farm and Ranchland Protection Program funding. Member Fletcher asked what the first project had been. Ms. China replied that it was an agricultural easement for the preservation of the lands agricultural values in perpetuity.

Member Kaiwi stated that he did not think the Commission had wasted its time making the recommendation; that the Commission had shown its concern for those issues. Ms. Young stated that according to what Ms. Schmidt said, the Board did not take it into much consideration. Ms. Schmidt responded that, to the contrary, those in support of the project were forced to testify at the meeting out of concern. Member Fletcher stated that project supporters had to get all their forces together to get the project through, and that the Commission had not simply been a rubber stamp. Member Canfield stated that it was also a consequence of timing and the appointment of the Commission.

Member Fletcher mentioned agricultural issues were complicated due to the many definitions of agriculture. Member Canfield mentioned that the owner of Nalo Farms had spoken at the Board hearing in support of HARC and for keeping lands in agriculture, even though Nalo Farms is an organic operation.

Ms. Schmidt continued to update the Commission on the progress of the FY07 grant awards. Member Berg asked whether Ms. Schmidt was involved in this process. Ms. Schmidt replied that she was. Member Berg asked whether it was in the purview of the Commission. Ms. China replied that it was not.

Member Young commented that Senator Hanabusa had stated some preference for keeping Legacy lands as State lands, and asked the possible future implications for the Commission. Ms. Schmidt stated that the Department (and the Program and Commission) is bound to follow the statute as it is written, and that it may require legislation to change how the Program is run.

Member Berg stated that the comment made by the Senator was basically asking why the State should provide money for nonprofits to acquire land instead of acquiring the land itself. Member Berg stated that National Tropical Botanical Garden (NTBG) was an excellent example – why would the State provide money to a nonprofit instead of acquiring an interest and leasing the land?

Member Shallenberger stated that as written, the act allows the Program to be more creative about how to provide protection for lands.

Member Young stated that NTBG had an excellent history of stewardship, and that the State did not.

Member Berg stated that the Senator was expressing an interest in keeping the land with the State. Member Fletcher asked what happens to land when a nonprofit is no longer operational. Ms. Schmidt stated that it depends on the nonprofit – some easements have backup holders and that the State, for Legacy Land projects, gets the value of the land being sold that is proportionate to the amount granted from the State for the acquisition.

Member Fletcher asked whether the use of the land would still be conservation in these cases or if it would be vulnerable to development. Ms. China stated that conservation easements were perpetual. Member Berg stated that, in the case of NTBG, there was no conservation easement, so that property could be sold. Ms. China stated that there is a provision within the Legacy Land statute. Ms. Schmidt stated that the value proportionate to the grant goes back to the State. Ms. Schmidt stated that the State would execute a contractual grant agreement with each entity, and insert legal provisions to protect the land.

Member Fletcher stated that the control of the land would be gone. Ms. Schmidt stated that unless it was legally possible to insert protective provisions in the grant agreement, control would be gone. Ms. China stated that the act provides a remedy for the situation, which is the reimbursement of proportionate value to the State.

Member Fletcher asked whether a conservation easement was better protection than a grant to a nonprofit for fee acquisition. Ms. China stated that that was not immediately answerable question; however, conservation easements are perpetual.

Ms. China stated that the Commission needed to return to the agenda.

Ms. Schmidt made announcements regarding the upcoming deadlines for the next grant cycle, citing September 1st as the estimated date for the announcement of the request for applications and October 15th as the estimated deadline. Member Fletcher asked whether there were requirements regarding the announcements. Ms. Schmidt responded that there were no specific legal requirements because the process falls outside of the procurement laws. Ms. Schmidt stated it would be published widely as possible. Member Fletcher asked if the Commission could make suggestions. Ms. China stated that it was not on the agenda. Member Canfield stated that the Commission members were concerned about where the announcement would be published.

Member Young stated concern over whether applicants would have enough time. Ms. Schmidt stated that at the last meeting, the Commission had stated a preference for reviewing the applications as early as possible in the fiscal year, and that, since the Commission was providing recommendations on the revision of the application, the earliest possible announcement date would be September 1, and that a month and a half was a reasonable amount of time for completion of the applications. Ms. Schmidt stated that applicants from the last cycle had not given feedback on the time period.

Member Young stated that last-minute information from applicants should be avoided. Member Canfield stated that that had happened the last time because of the long period between the deadline for applications and the appointment of the Commission. Ms. Schmidt stated that she would look further into the issue of how much time is needed for applicants to finish applications.

Member Canfield asked whether options other than receiving applications on an annual basis (e.g., rolling basis) would be pursued. Ms. Schmidt stated that, because of the newness of the program and the fact that many aspects of the program are still being refined, it would be best to maintain an annual program at first. Member Young asked whether there was a possibility for more funding. Ms. Schmidt stated that the program ceiling had been set at \$5.1 million for the next two years, meaning that there would be \$4.7 million for grants.

Member Young asked whether \$1.1 was dedicated to agriculture again. Ms. China stated that it had been an appropriation for a specific year.

Member Kaiwi asked whether the Commission would have enough time to thoroughly review each application. Ms. Schmidt stated that the Commission could meet multiple times and should have plenty of time. Member Canfield asked whether there would be opportunity to get more information from applicants. Ms. Schmidt replied yes.

Ms. Schmidt stated that an estimated \$4 million went into the Land Conservation Fund per year. Ms. Schmidt added that the ceiling was slightly higher than the revenues to provide for the use of monies that accumulated in fiscal year 2006. She stated that it may be prudent to use the money in the fund to avoid it being taken for other uses.

Member Fletcher (?) stated that the only way to increase funding would be to see another source. Ms. Schmidt stated that real estate conveyances were booming in 2005 and had slowed down a bit. Member Shallenberger stated that the percentage of funds from the tax going into the Land Conservation Fund could change. Member Young asked what would happen to Program funds

that are not spent. Ms. Schmidt stated that it would return to the Land Conservation Fund, and would stay there, unless some sort of budget crisis occurred and the State's special funds were raided.

Member Shallenberger asked what would happen if a project fell through. Ms. Schmidt stated that the money would go back into the fund, unless there was still time within the fiscal year to reallocate the money to another project under the current fiscal year ceiling.

As a follow-up to an earlier question by Member Canfield, Member Shallenberger asked whether State conservation easements could be put on Legacy Land projects. Ms. China stated that this would be a matter for the Department or Legislature to take up; and that it was not a priority for the Commission's consideration under the statute.

Member Fletcher stated that it would be worth the discussing the different levels of protection, and the Commission's ability to recommend further protections to Legislature or the Board at a future meeting. Ms. Schmidt added that she would put the matter on the next agenda.

Member Fletcher asked whether workshops needed to be Sunshine meetings. Ms. China replied yes.

Ms. Schmidt stated that she had finished her announcements regarding the program.

Member Young asked whether, in the future, it would be helpful to have additional members of the Commission present at Legislative consultation or Board meetings. Ms. China stated that Commission members would have to perform it on their own time. Member Richards asked for clarification. Ms. Schmidt stated that travel for official commission business could be paid for, and that she would seek more information on how many members could attend on State funds.

Member Young asked if the Board was salaried. Ms. China stated that only the Chairperson was salaried.

Member Kaiwi stated that he would need to be excused for a meeting at 9:45 a.m.

Member Richards stated a preference for arranging his own travel.

Member Fletcher called a short recess until the commencement of the Ethics Commission presentation at 9:00 a.m.

Item 4. Ethics Commission Presentation (9:00 a.m. to 10:00 a.m.)

Ms. Nancy Neuffer presented information on State Ethics policies and laws regarding the operations of State boards and commission.

Chair Bonar arrived during the presentation and called for short break at its conclusion.

Item 5. Commission action and recommendations to the Department of Land and Natural Resources.

Chair Bonar offered copies of Stephanie Whalen's testimony from the June 8, 2007, Board meeting to Commission members. He then initiated a discussion regarding the avenues of action for the Commission.

Chair Bonar asked: at what point does the Commission need to do rulemaking; at what point does it need to make policy changes? At what point does there need to be rulemaking, at what point is it mere modification of policy, at what point does there need to be statutory changes? In light of the grant application forms and grant evaluation forms, what is the flexibility the LLCC has in reviewing, modifying, changing these forms? My understanding is that DLNR had gone through these forms originally submitted – where do all of these things stand?

Ms. Schmidt stated that that forms were put together prior to the second act which created the Commission and its duties. It was passed by the Board a first time, and then passed by the AG's to make it consistent with the second act creating the commission. Ms. Schmidt stated that the forms had been created before the Commission's existence, and that, while it was legally consistent with the act subsequent to the AG's review, the forms were not the founding basis of the criteria forms.

Chair Bonar asked what modification of the criteria form required. Ms. Schmidt stated that the act states that the Commission must make rules to form criteria. Chair Bonar asked if secondary criteria would require rulemaking. Ms. China stated it would, but clarified that the application form (not the criteria form) would only require recommendations to the Department (and Board approval) for revisions. The criteria form must comply with Chapter 173A and would need to go through the Board. If the Commission sets out criteria under the authority of the statute, it must promulgate rules. In response to a question from Chair Bonar, Ms. China stated that words not defined in the statute could be further defined by the Commission, under rulemaking processes.

Member Canfield asked adding a term to the criteria form would require rulemaking. Ms. China stated that, ideally, the criteria form and rulemaking should be done concurrently to avoid conflicting definitions of terms. Ms. China stated that it would better for the Commission to have rules.

Member Richards stated that rulemaking and criteria should not be too specific, because the Commission cannot predict all future circumstances of projects/applications. Ms. China agreed.

Member Young stated that she at least wanted to indicate a preference for non-GMOs, so that applicants would have notice that the Commission is trying to do its best for the environment.

Member Shallenberger stated that, if he was an applicant, he would want to know the criteria and the scoring process. He would want to know: what does the app form look like, how does it comport with the evaluation form, and what are the criteria? The first two sound like, if you follow the law, why would it require another rule? Ms. China clarified that forms could be revised by the Department, rulemaking could be done by the Commission.

Member Canfield stated that it would be expeditious to change the forms and then get working on the rulemaking meanwhile. This way, the Program can have improved forms in time for this year's applications.

In response to a question from Ms. Schmidt, Ms. China stated that administrative functions could be done by the Department, if it is decision-making within the Commission's functions; it is the Commission's duty.

Member Shallenberger stated that the Program could ask for info as part of info collection even if it hasn't spoken to how it is used in the ranking. Ms. Schmidt nodded. Member Canfield stated that it sounded like there is not a problem with revising either form. Ms. China stated that, as long as it is consistent with the statute, it is OK.

Chair Bonar stated that the evaluation form is more of a guideline document rather than hard-and-fast criteria that the Commission is bound to. Ms. China stated that, as long as it is consistent with the statutory priorities, the Commission can revise the form.

Chair Bonar stated that the Commission members would probably have different feelings and values, e.g., GMO use, that would come out in the evaluation, but are not hard-and-fast criteria. Ms. China agreed, and stated that the evaluation forms could be used as a guidance document, or not at all, it is for the Commission to decide.

Member Richards asked whether the evaluation form was for the Commission's internal use. Ms. China replied yes, unless the Commission agrees to use it ...

Ms. Schmidt asked whether it was subject to Sunshine laws if the form is mentioned at a meeting. Ms. China stated that right now, because it is a Departmental form, it is subject to Sunshine. The numbers on it, unless it is mentioned in your evaluation or in your discussion of the grants, are not subject to Sunshine.

Chair Bonar asked whether, if Commission members produced numerical rankings at a meeting, how he originally got to his number is was subject to Sunshine. Ms. China stated that a document used to produce this score may be subject to Sunshine.

Member Shallenberger asked if whether an application form covered all criteria, and the evaluation form just contained a blank space for scores, and that number could translate to a flip chart – the evaluation form would just be used as a worksheet – the Commission is just trying to make the form more responsive and relevant to the application.

Chair Bonar stated that one concern that had been voiced was whether a Commission member's scores on a given project could be used by non-recipients to attack the process. Chair Bonar stated that he had served on many local and federal grant committees, and had never seen a process that was entirely open to Sunshine.

Ms. Schmidt stated that the point of the Sunshine law was for deliberations to be made at an open meeting where the public has access. She stated that she didn't see why personal homework sheets could be used; but that anything brought to the meeting or discussed at that meeting needs to be public. Ms. China stated that the difference is ... in the last round, each member did her/his homework, and that the rankings changed as an open discussion was conducted. Ms. China stated that the blank sheet was subject to Sunshine.

Member Young stated that, in the last round, her thoughts on the applicants had changed dramatically by the meeting from what they had been after using the criteria form as a guideline.

Member Berg stated that some of the criteria had been pointless, and that the Commission had picked their top five.

Member Young stated that Ms. Lea Hong [Trust for Public Land] had stated that one of the applications was not ready, and that fact had changed her rankings. Projects that were ready to go were pushed to the top.

Member Canfield stated that, in the future, there will not be such a discrepancy between application information and actual project readiness; the Commission will have more time to meet and gather information. Member Richards added that the ability to see the land will affect the Commission's decisions.

Ms. China stated that if it was a member's working notes, and not his/her final score, it could be private.

Chair Bonar stated that getting too far into numbers eliminates the point of having a Commission.

Member Richards stated that pictures taken of lands on site visits might be public information. Chair Bonar stated that power point presentations are public record. Ms. China stated that the discussion of any such items at a meeting is public.

Chair Bonar suggested moving to agenda Item 5, subcommittees and taskforces, and asked Ms. China to inform.

Ms. China stated that, regarding whether a meeting should be Sunshined, it does not matter what it is called. Discussion of Commission business should be Sunshined, revisions to forms done in subcommittee should be Sunshined, and administrative revisions could be done with the assistance of Ms. Schmidt. Ms. Schmidt clarified that recommendations to the Department must be made by the Commission as a group, and not by individual members.

Ms. China stated that the Commission can act on its own or with Ms. Schmidt's assistance. Chair Bonar asked whether, if Ms. Schmidt collected the Commission members' comments to convey to a subcommittee, the Sunshine law would be violated. Ms. China stated that the purpose of the subcommittee is to entrust it with a duty.

Ms. Schmidt stated that the goal of the Sunshine law was not to obstruct progress but to make sure that business is conducted at a Sunshined meeting, and to consider the question in light of this. Ms. China stated that testimony may be submitted by Commission members. Chair Bonar suggested that the Commission members submit [the testimony] to Ms. Schmidt. Ms. China stated that she may disseminate it to the subcommittee members as testimony. Ms. Schmidt stated that she was not able to disseminate any information between Commission members that they could not disseminate themselves.

Member Canfield stated that a subcommittee could accept information. Chair Bonar stated that his impression of the ethics presentation had been that Ms. Schmidt could disseminate information to the Commission. Ms. Schmidt stated that she could, as long as the information was not part of a deliberation. Chair Bonar stated that information in preparation for a deliberation... Ms. China stated that it would be testimony to help a subcommittee form a proposal for the Commission. Ms. Schmidt suggested bringing the topic to the Office of Information Practices to resolve uncertainty. Ms. China stated that a subcommittee was part of the Commission, and that information would be presented as testimony.

Member Fletcher asked whether Ms. Schmidt could assemble all comments from the Commission into a draft before the next meeting. Chair Bonar stated that the application was a feasible document for this process, but that the evaluation form might need more discussion.

Member Shallenberger suggested that the Commission review each member's comments and reconcile any differences in opinion at the meeting to create a unified recommendation to Ms. Schmidt. Member Canfield agreed. Chair Bonar agreed.

Chair Bonar asked whether a subcommittee or task force needed to be set up at a Sunshine meeting of the Commission. Ms. China stated yes. Chair Bonar asked whether there needs to be a specific agenda item on possible formation of a task force or subcommittee in advance of the formation of one at a meeting. Ms. China replied yes. Chair Bonar commented that this slows progress. Ms. China stated that consideration of the creation of a task force or subcommittee must be placed on the agenda. Chair Bonar disagreed. Ms. Schmidt suggested putting the possible formation of a subcommittee or task force on an agenda every time it becomes a possibility. Chair Bonar responded that, in the future, it should be placed under every agenda item.

Ms. China stated that, in the last instance where the Commission had wanted to form a subcommittee, the agenda did not state that the Commission would set up a subcommittee and did not even refer to the subject matter that the subcommittee would handle; thus, there was not enough information to inform a member of the public that may have wanted to testify on the matter.

Member Canfield stated that new ideas often come up at meetings. Member Bonar stated that the Commission hadn't discussed the matter and had only formed a subcommittee.

Ms. China stated that her opinion was that an agenda item should have been placed. Ms. Schmidt stated that the Natural Area Reserve System Commission Deputy Attorney General had agreed with Ms. China.

Member Richards moved that possible formation of a task force or subcommittee be inserted, in parentheses, under each agenda item. Member Young seconded the motion. All were in favor.

Chair Bonar, stated that before the formation of a task force, the Commission should consider whether it was necessary. Member Fletcher stated that it did not seem too onerous to have the Commission discuss the forms at the meeting and ask Ms. Schmidt to put the results into the draft.

Chair Bonar asked about program deadlines. Ms. Schmidt stated September 1 was the targeted request date, October 15 was the approximate due date, plus she needed a month at most to review the applications for completeness. Member Fletcher asked whether the Commission would have the applications by November 15. Ms. Schmidt replied yes, as long as the rest of the process was on schedule.

Chair Bonar asked whether Ms. Schmidt had asked for extra information from applicants after the deadline. Ms. Schmidt replied that she had reviewed the applications for completeness and contacted applicants for minor missing or vague items.

Chair Bonar asked whether the Commission wanted a situation where applicants could provide further information. Ms. Schmidt stated that, in the last round of applications, no applicant had omitted information to an extent that appeared intentional. Chair Bonar asked whether Ms. Schmidt would have a month to sort through the applications and put them up on the website, etc. Ms. Schmidt stated that smaller organizations sometimes need more assistance. Chair Bonar stated that he did not feel Ms. Schmidt should be using time to assist less sophisticated organizations; they can call before the deadline to get assistance. Member Young stated that smaller organizations may be at a disadvantage.

Member Fletcher proposed that the Commission, after receiving the applications on November 15th, take two weeks to review the applications, and then conduct a meeting to discuss each application without decision-making. In the discussion, missing information could be pointed to and asked for. There is no reason to rush this, is there?

Ms. Schmidt stated that there had been a preference for rushing because there had been some interest in rolling deadlines, but since this option had been eliminated, there is no rush.

Member Berg stated that pushing the process up would give the Commission time to reappportion any grant funds from a failed project. Member Fletcher stated that, if the Commission made its recommendation in March, it would still have three months.

Chair Bonar stated that, in his experience in working with government, much time was needed for the encumbering of funds, etc. Ms. Schmidt agreed. Chair Bonar asked if everything from last year had been encumbered. Ms. Schmidt stated that she had not yet received official confirmation from DAGS, but that everything had been turned in complete and on time.

Chair Bonar stated March was too late, and he preferred the end of the year. Member Berg asked whether applicants would be presenting more information, in which case, there would be no need for a period of time for gathering more information. Member Canfield stated that attendance could possibly be a requirement. Member Fletcher stated there might not be time for site visits. Member Young stated that a checkbox list on the application should make apparent any missing information. Member Canfield suggested requiring an explanation from applicants (on the application) for any missing information.

Chair Bonar stated that if there were two meetings, there would be two times where testimony would be heard. He suggested having one meeting where applicants are asked questions instead of being required to present testimony. Member Young stated that the last round of applications had been mostly complete. Chair Bonar stated that it had been an advantage for those applicants

that testified. Member Richards stated that there was so much money involved... applicants ought to be present to testify. Member Fletcher asked how realistic site visits were, if, for example, the Commission received 20 applications. Member Canfield suggested dividing the visits among members to cover everything. Member Richards stated that visits were necessary.

Ms. China stated that no more than two members could attend a site visit.

Ms. Schmidt stated that December was a busy travel time.

Chair Bonar stated he preferred before the end of the year. Ms. China stated that she had a trial in December and would find someone to cover for her.

Member Fletcher stated that, generally, the fewer meetings the better, however, the next couple of years would be somewhat experimental for the new program, and he is willing to try different things.

Chair Bonar pointed out that there had been a long lag time (between receipt and review of applications) last round that would not occur this round. He agreed that at least one member should visit each site; that it was helpful for each island to have members. Member Richards commented on photographs and public record requirements. Chair Bonar stated that the Commission could discuss this at a later time.

Chair Bonar stated that tentatively, the general goal is to complete the review before the end of the year, with the understanding it could be pushed to January if need be; with the Commission performing the review in one meeting.

Chair Bonar then moved to the subject of the grant application form and called a short break.

Item 6. Review of application and criteria forms, and revision process; revision of forms and content.

Upon its return, the Commission went through the application form and provided comments regarding each section, which Chair Bonar recorded and gave to Ms. Schmidt.

Member Shallenberger stated that proposals should not be limited to just include information on the application. Member Berg stated that the Commission might want to discourage large unreadable stacks of supplemental information.

Member Shallenberger stated that Mr. Wichman's extra materials were influential. Chair Bonar stated that these extra materials can be put into PDF, and suggested that the materials be in hard copy and PDF.

Chair Bonar asked what information might go into a table. Ms. Schmidt stated the objective information. Member Shallenberger stated that the information might not need to be seen in a table. Chair Bonar stated that agency, property, size, location, and values could be in a table. Member Young stated that it had been helpful to know the dollars per acre. Member Richards stated that the information shows how much effort the applicants have put into seeking other funds.

Member Fletcher stated that the seller's willingness had been important and he would like to see it on the list.

The Commission started to go through the draft of the application that Member Shallenberger had written comments on. Member Young pointed out that the box on the upper right of the application could include the award decision. Chair Bonar stated that it was for the agency's use and could be omitted if the agency didn't find it useful.

Chair Bonar moved to Section B and asked for comments. Chair Bonar stated that the preservation purposes should be on a quick reference table. Member Shallenberger stated that there should be some justification shown for the check marks in the preservation purpose boxes.

Member Berg asked if that was what the rest of the form did. Member Shallenberger stated that the Commission would have to deal with the scoring issue of whether a project with many conservation values would be better than a project with one very strong conservation value. He stated that the application didn't systematically address all nine of the criteria, the law addresses these categories, applicants should have a chance to flesh out details. Member Fletcher and Chair Bonar agreed.

Chair Bonar stated may want to put values table further back in the application. He suggested moving "3" to the beginning of section D.

Chair Bonar asked if Member Canfield had wanted elevation range under "D3." Member Canfield said yes.

Member Shallenberger suggested adding type of public access under "5", stating that it is critically important and distinct enough that can stand alone.

Member Shallenberger stated that the Commission should recommend putting "9, 10, and 11" could be put under cultural and historical. Chair Bonar suggested deleting "9" on the original form and dropping "10 and 11." The Commission agreed

Member Berg informed Ms. Schmidt that the Commission was using Member Shallenberger's revised application form to make comments and checking to see how the other members' comments fit into it.

Member Shallenberger instructed Ms. Schmidt to add another comment about threatened and endangered under "D3."

Member Canfield suggested adding estuaries under #7.

Member Canfield asked if the Commission could add the cultural impact assessment under "D4"? Member Shallenberger stated that it would actually go under "C10."

Member Canfield stated that under "C9," land use activities, Ms. Schmidt should cross out "are."

Chair Bonar stated that on number 14, regarding hazards ... there needs to be section underneath asking for a description.

Member Canfield commented on the inclusion of “uneven or fallow ground.” Ms. China commented it on being a liability issue of concern for the Board of Land and Natural Resources. Members of the Commission suggested taking it out. Ms. Schmidt stated that the Department could always re-include it if it felt it important.

Chair Bonar commented on the suggested revision to Section F. Member Shallenberger had suggested the total estimated value as well as the cost of a conservation easement, if applicable.

Chair Bonar stated that they’d want to know if it was a bargain sale, the FMV of property, and/or the FMV of conservation easement; and whether there was a bargain sale reduction in price.

Chair Bonar restated for Ms. Schmidt that the Commission had suggested the following revision for Section F: The first one is going to be FMV of fee lands and acquisition costs, if different (or the agreed upon sale price, if different). The second one will be the easement value, easement sale price if different. The third will be how the estimated value was determined.

Chair Bonar asked Mr. Chun if the appraisal needed to be by federal Yellowbook standard. Mr. Chun replied no.

Mr. Chun stated that the State requires USPAP standards for appraisals of Legacy Land projects.

Ms. China stated that grantees have to submit an appraisal after the grantees receive the funds, which the State would review.

Member Berg stated that the application should ask the applicant to indicate date and author of appraisal report.

Member Shallenberger suggested adding a question regarding is there a contract or letter of intent to seller and whether there is there a willing seller? Chair Bonar stated that a willing seller checkbox would be enough.

Chair Bonar suggested making the columns on the acquisition costs worksheet wider.

Member Shallenberger suggested another row on the anticipated matching funds worksheet for the percentage of matching funds, requested funds, etc. Chair Bonar restated for Ms. Schmidt that “grey box next to where it says total matching funds will be the percentage box.”

Member Shallenberger asked whether pending funds should be explained. Chair Bonar suggested that further explanation of “pending” status be required. Member Fletcher suggested an asterisk requiring an explanation of pending funds. The Commission agreed.

Chair Bonar moved onto the last section of the application, the project description section, and asked whether the 2-page limit was sufficient. He suggested allowing applicants to affix supplemental materials in an appendix, and suggested limiting it to single-spaced, 12-point-font.

Chair Bonar stated that relevant appended materials are OK. These materials are optional and should be concise and relevant. Ms. Schmidt added that language clarifying to applicants that these materials are optional and may not be considered might be useful.

Member Shallenberger requested applicants provide a link to its website.

Member Young had suggested adding (in #3) anticipated commercial uses to the site – Chair Bonar stated this should be added.

Chair Bonar requested adding mission statements from nonprofits to the list of required materials. Member Canfield clarified that it would be a checkbox on the list of required materials.

Member Shallenberger asked what level of management experience was required for holders of conservation easements and fee simple. Chair Bonar briefly explained tax requirements and legal requirements for easement holders. Member Berg suggested making management concerns a separate section so that applicants understand its importance to the Commission.

Member Young suggested that it be set up in the new Section H, and that question 3 be given an entire page. Chair Bonar clarified that questions 1 and 2 are to be given one page, and question 3 the second page.

Member Canfield asked whether there should be language under stewardship about qualifications, experience, expertise, etc., for managing property. Member Shallenberger suggested asking who would manage the property, if not the applicant.

Member Canfield asked if whether Member Kaiwi were present he'd prefer a natural and cultural resource plan be required, since he had mentioned it at past meetings. Chair Bonar stated that it was included already in the language. Member Canfield suggested that the language be changed to request a "natural and cultural resource plan."

Chair Bonar asked if applicants should be required to provide a cultural resource plan regardless of the type of project. Member Richards suggested leaving some of these considerations for the discussion period with applicants, or waiting for Member Kaiwi to return to ask his opinion.

Chair Bonar suggested that the front page contain check boxes for additional requirements to the application, and have cover page signed and acting as certification.

Member Young suggested having a willing seller indicated, and where holder is other than the applicant, have the applicant supply a letter indicating willingness.

Member Richards made a motion to recommend the Commission's revisions to the Department for the upcoming grant cycle. Member Young seconded. All were in favor. Chair Bonar handed the notes he had taken to Ms. Schmidt.

The Commission took a five minute break.

Chair Bonar suggested a quick run-through of criteria form, and going through it at the next meeting. Member Fletcher asked whether it needed approval by the Board. Ms. China stated that it depended on the form's use. She said that if it is a guidance document, the Commission should get it approved by the Board.

Member Berg stated that it was his impression that the Commission intended to use the form as a guiding document. Ms. China stated that if it was not an official document, the Commission may be able to revise it informally without Board approval. Ms. China stated that the question could be answered at the next meeting after some discussion with the Department.

Member Shallenberger stated that his biggest frustration had been that the application did not comport with the criteria form, thus it was not clear to applicants what they would be scored on. He suggested responding to the statute's criteria more directly.

Chair Bonar stated that part of the difficulty was in comparing apples and oranges – that is, lands with very different resource values. He stated that the funding leverage, acquisition costs, the urgency and threats to the area (the secondary criteria) were therefore very helpful in that they are comparable across projects. He asked whether the Commission should be trying to prioritize, turn for turn, which resource value and which islands are balanced out over time.

Chair Bonar referred to the consultation meeting with members of Legislature, stating that this meeting had reflected to him that the Commission needed more time to reflect on certain issues, for example, legislative support for projects or political pressures.

Member Canfield stated that, all things being equal, the best project should fly.

Member Richards stated that the Commission should give some consideration to which islands are funded so that the people of the State get what they want.

Member Fletcher agreed with Member Canfield that the Commission should stick with the best projects. He stated that he hoped that, once the Commission shows a commitment to select the best projects, the community can push the Commission in a certain direction, based on the excellence of their proposals.

Member Shallenberger pointed out multiple resource values would be a big consideration and that leverage would also be a driving force, projects that have multiple funding sources, constituencies. Member Young stated that, while she agreed with this, she would also like to see some balance between entities with lots of resources and those with few.

Chair Bonar suggested future meetings on outer islands to provide information and assistance to possible applicants. Member Shallenberger stated that transparency in the selection process would be helpful to applicants. Chair Bonar suggested making examples available to applicants.

Member Fletcher stated that the revising of the application will help, because the details that truly show the excellence of a project will now be more apparent.

Member Kaiwi returned to the meeting and Chair Bonar updated Member Kaiwi on the Commission's progress.

Member Shallenberger asked if the Commission is not going to do numerical rankings, does the Commission need to use numbers at all? Member Fletcher stated that numbers had not been necessary, but had served as a tool for guiding his thinking. Member Shallenberger stated that scores had been dependant on the specific wording used, and if the Commission uses scores, it needs to be careful that the wording is right. Member Young stated that the reasoning behind some of the values assigned had not been apparent to her. Member Shallenberger stated that the form tended to reward multiple-value projects. Member Berg stated that there had been no way to address the significance of the rarity of and/or endangerment to the resource. Member Young stated that hazardous conditions (such as the presence of a cliff) should not count against a project in its evaluation.

Member Canfield stated that cumulative points are not a big part of the process, the idea had been to get a general reflection of the Commission's feeling on the project. She suggested getting rid of numerical valuations.

Chair Bonar stated low to high ranking is useful in that it forced him to think about each of the subsections. Member Fletcher stated that he ended up disregarding the evaluation form for other overriding concerns.

Member Berg stated that the question for the Commission is whether the criteria form should be revamped to omit numerical scores and valuations, since the form is being used as a guide for the members' thought processes. Members Fletcher and Richards suggested "yes or no" or "plus or minus" responses.

Member Kaiwi stated that he had reflected heavily on the concept of putting value on the resources and felt that he could not value rocks against trees against birds, etc., because it is an interconnected system. He stated that he did not use the form because it is hard to measure one area of land against another – it is all Hawaii – and, in his view, pieces of land are not assigned hierarchical values. He pointed out that these questions about land value force people to think a certain way.

Member Kaiwi suggested a workshop to help the Commission members understand his perspective.

Member Kaiwi stated that his first question on a project would be what the intention of a project is, and that intent would be the most important project criteria for him.

Item 7. Announcements.

Member Young discussed her visits (as a citizen) to the properties of grant recipients on the Big Island.

Chair Bonar mentioned possible future meeting times and dates. He asked whether the Commission needed another meeting to go over the criteria form. Member Shallenberger stated that the Commission could also take the statutory criteria and put it in a format that it can use as a checklist with very little additional information. Member Canfield stated some of the revisions that she had suggested in her revision of the form. Chair Bonar suggested that Members

Shallenberger and Canfield form a subcommittee. Member Richards motioned and Member Fletcher seconded and all were in favor.

Chair Bonar estimated the next meeting could occur in late September, unless there is a need to meet before that time.

Item 8. Adjournment.