

Minutes of the May 7, 2007, Legacy Land Conservation Commission Meeting

COMMISSION MEMBERS PRESENT:

Dr. Dale B. Bonar, Chair
Dr. Carl J. Berg
Dr. Joan E. Canfield
Dr. Charles (“Chip”) Fletcher
Mr. Herbert (“Monty”) Richards
Dr. Robert J. Shallenberger
Mr. Wesley Kaiwi Nui Yoon
Ms. Karen G.S. Young

COMMISSION MEMBERS ABSENT:

[all members present]

STAFF:

Julie China, Attorney General’s Office
Randall Kennedy, DLNR, DOFAW
Molly Schmidt, DLNR, DOFAW
Gavin Chun, DLNR, Land Division
Barbara Lee, DLNR, Land Division
Charlene Unoki, DLNR, Land Division

VISITORS:

Alfredo Lee, Agribusiness Development Corporation
Kevin Kinvig, Natural Resources Conservation Service
Lynn M.Y. Owan, Agribusiness Development Corporation
Guy Nakashima, National Tropical Botanical Garden
Lea Hong, Trust for Public Land

ITEM 1: Call to order and introduction of members and staff. Chair Bonar called meeting to order at 9:37 a.m., members introduced themselves followed by staff.

ITEM 2: Presentation by State Ethics Commission → ITEM CANCELLED due to illness of presenter.

ITEM 4: Brief PowerPoint presentation by Molly Schmidt, Coordinator, LLCP.

Ms. Schmidt gave general overview of topics concerning the Commission, including: an overview of Chapter 173A, timeline of the LLCP and goals for 2007, powers and duties of the LLCC, other laws and duties of State boards and commissions, LLCC administrative support, 2007 bills, 2007 fiscal year.

Member Kaiwi commented on the consultation with Native Hawaiian culture, historic preservation, and asked to what point the Office of Hawaiian Affairs (OHA) had been involved in the process. Ms. Schmidt responded that BLNR submittals from the Department are reviewed by OHA before they are submitted to the BLNR. There was

further discussion of constituencies that may need more representation on the LLCC, such as native Hawaiian representation.

Member Young commented upon the need for casting a wider net in advertising the grant funding. Ms. Schmidt responded that the Resource Land Acquisition Plan may be a good tool for identifying missing constituencies.

Member Canfield inquired about the Resource Land Acquisition Plan. Ms. Schmidt answered that this plan is the responsibility of the Department under HRS Chapter 173A.

Member Berg suggested meetings to get information to outer islands, and gather public comment and input from missing constituencies.

Member Shallenberger asked Dale what is required to fill the vacant ninth position on Commission. Chair Bonar responded that one nominee had declined, and it was too late at that point to nominate another member; and that the Commission currently meets all of the statutory membership requirements. Member Shallenberger inquired as to which Commission members fulfilled which statutory requirements. Ms. Schmidt responded that the process had been documented, and that these documents would be forwarded to Commission members upon request.

Chair Bonar asked whether certain missing constituencies ought to be promoted in searching for a ninth Commission member. Member Richards replied that this would probably have an effect on which lands are selected. Member Young commented on the lack of definition for “nonprofit land conservation organization” in Chapter 173A. Member Shallenberger requested further definition of the term. Member Young inquired whether the 8th Generation planner had answered this question. Ms. Schmidt replied that the planner had not. Mr. Kennedy explained that the 8th Generation planner had done work to build a framework for the program, prior to the passage of Act 254, which formed the Commission. Chair Bonar continued that a number of the procedures for the LLCC and LLCP are still vague, and that it would be a challenge for the Commission to define policies; for instance, which organizations are appropriate cultural organizations.

ITEM 3: Presentation by State Office of Information Practices (OIP)

Ms. Brooks from OIP presented the Commission’s duties and responsibilities under the Sunshine Law, Part 1 of H.R.S. Chapter 92.

Break. Back into session.

Going back to Agenda item 4, Member Kaiwi asked Ms. Schmidt if there was a native Hawaiian seat on the BLNR. Ms. Schmidt responded that she didn’t know. Commission members chimed in that they didn’t think so. Member Kaiwi responded that if the LLCC’s recommendations are not paid heed to by the Board, then the Native Hawaiian voice is ineffectual in the process. Chair Bonar responded that that is indeed the reality of the situation.

ITEM 5: Discussion of Legacy Land Conservation Commission's practices and procedures. Chair Bonar mentioned that he'd had a number of discussions with DLNR staff to determine how the commission might review applications in the future. Chair Bonar asked if Ms. Schmidt had suggestions for discussions. Ms. Schmidt distributed a suggestion for ITEM 6.

Chair Bonar asked whether Robert's Rules were appropriate for the Commission. Member Fletcher mentioned that his experience with Robert's is good, but best to have it be an overall scheme and guidance, but not followed specifically, because is too burdensome. There was some concurrence from other members of the Commission.

Chair Bonar discussed whether he is a voting member under the HRS. Ms. China replied that he is a voting member.

Chair Bonar mentioned that meeting frequency dates and times should be left for later discussion. Chair Bonar asked whether program is bound to annual grants. Ms. Schmidt stated that the feedback from Deputy Attorney General Linda Chow is that the program is not required to be annual, but that it may be preferable for certain reasons. Chair Bonar proposed LLCC meet as necessary rather than laying out a schedule. Chair Bonar suggested meetings on other islands periodically as is done for the NARS Commission. Commission seemed to agree. No official motion was heard.

Chair Bonar discussed evaluation sheets. Ms. Schmidt pointed out that the sheets were in the Commission's materials and that the sheets were formed by the Department prior to Act 254 and then made consistent with the Act after it passed, at the request of a Deputy Attorney General. Ms. Schmidt stated that the point of providing the forms is to give the Commission something to work from if it chose to do so, that is, the forms are unofficial.

Chair Bonar pointed out the difficulty of balancing subjective and objective merits of projects. Chair Bonar proposed that in the first round, LLCC uses ranking system to assign points (without totaling), then make a subjective evaluation/ranking. Then go back to objective rankings and see what totals are. The point is to be able to compare subjective and objective reviews.

Member Shallenberger pointed out that the DLNR form could have the effect of biasing projects towards those that have value over a broad scope of criteria as opposed to those that have heavy value in just one or two areas, such that really excellent projects may be overlooked.

Chair Bonar pointed out that there is \$1.1 million appropriated for use with the federal Farm and Ranchland Protection Program (FRPP) and \$3.6 million to be distributed for other projects. Ms. Schmidt pointed out that the Commission must make a recommendation on the FRPP grant, even though there is only one applicant, as a part of the statutory process. Member Young asked whether the funds were earmarked. Ms. Schmidt replied that they were, for use with the FRPP.

Member Berg stated that the LLCC has the option of recommending to the board for whether the applicant gets our recommendation, in which case the Board will do whatever it wants to do anyway. But if the Commission does not spend that money that way, it will not be available this year.

Member Shallenberger pointed out that the applicants were not given the best sense of the criteria on which they would be judged. Ms. Schmidt pointed out that she guided applicants to the statutory criteria. Member Shallenberger asked whether the forms would be public. Ms. China replied yes. Member Shallenberger pointed out that applicants should know criteria in advance.

Chair Bonar agreed that this is an important goal, but that the Commission needed to make decisions in a very limited time frame this year.

Member Fletcher stated that the evaluation using the criteria sheets should be informative rather than competitive, that the sheets be used to draw out more questions, considerations. Chair Bonar pointed out that criteria needed to be assessed in themselves. Member Young asked whether LLCC was bound to use the form. Ms. Schmidt pointed out that the criteria form is just there for LLCC's convenience, if the LLCC wants to use it.

Chair Bonar pointed out that stewardship is not strongly emphasized in forms.

Member Shallenberger asked whether land would be in Conservation District, or State-owned. Member Berg pointed out that land can be in any district.

Member Richards stated that evaluations of land should be done on one sheet where public can view, and that private notes in decision-making might not be appropriate.

Chair Bonar called lunch recess, will come back to see if any items left under ITEM 5. The meeting resumed at 1:10 p.m.

Chair Bonar mentioned the idea of flexibility in accepting applications and then posed a question – if something spectacular comes up, can we commit next year's funds? Ms. China replied no, because the Commission does not know how much money there will be.

Chair Bonar asked whether the Program can encumber future funds. Ms. China stated that Ms. Schmidt should investigate it as a fiscal question. Mr. Kennedy stated that the State sometimes does similar things with contracts, and that he thought it acceptable. Member Shallenberger pointed out that the matter was within the Board's authority. Ms. China pointed out that there may be a problem with making decisions for a future Commission – not legal. Mr. Kennedy mentioned that contracts can be set up to allow the withdrawal of commitments.

Chair Bonar asked whether bonds would be available for conservation lands under H.R.S., Chapter 173A.

Member Young asked whether funds can be used for stewardship. Ms. China stated that grants are allowed under 173A – acquisition of fee title or conservation easements under Chapter 198, or administration costs.

Chair Bonar asked whether projects can be paid for over multiple years. Ms. Schmidt stated that she did not know, and will have to research the question. Ms. China stated that there is a procedure for the Commission to ask legal questions to the AG's office through the Chairperson.

Ms. Schmidt stated that she will coordinate the different research aspects of the question: fiscal office, attorney general's office, etc. Ms. China stated that they can work together on it.

Chair Bonar asked if there was anything left under Item 5. Member Shallenberger asked if can have rolling deadline for applications instead of annual. In cases where property comes up opportunistically, this is advantageous would like to have Commission determine the timeframe for accepting applications. Chair Bonar stated that it would be good for item for the next meeting. Ms. Schmidt stated the meeting after next may be better.

Member Shallenberger asked: Preserve money for emergency or have it all out at once? Member Young asked: Can it be used similar to a down payment? Mr. Kennedy replied that there is a procedure for setting the budget; the Governor can request an emergency spending cap of Legislature. It takes so long to go through the process of purchasing property, that money can be lost to spending cap if not spent within a year.

Chair Bonar suggested having a list of priority projects, and if nothing comes in to top it within the year before the spending cap has expired, the funds could be encumbered for these projects.

Member Shallenberger pointed out that projects are of a tenuous nature, involving pending cost shares and appraisals that aren't done yet.

Member Richards stated that the Board can change any decisions that the Commission makes in this regard. Ms. China agreed.

Member Young inquired whether the Commission is facing a June 30th deadline. Chair Bonar answered yes and stated that if a project falls apart, the Board can drop down to the next project on the recommendation list.

Ms. China stated that the funding would lapse back into the fund.

Chair Bonar asked: once money is encumbered, what time must it actually be spent? Ms. Schmidt points out that money encumbered by PO is to be spent in 1 to 2 years, depending on when in the fiscal year the encumbrance is placed.

Member Fletcher stated that it is a policy call to give money to projects that are lined up and ready to go. Chair Bonar pointed out a need for encumbering funds earlier in the fiscal year to give projects more time. Member Shallenberger wanted to commit to be ready to go next year with criteria and applications.

Chair Bonar stated that Ms. Schmidt has to submit the Commission's process to BLNR, and asked whether early disbursement be a policy call that goes into that submittal. Member Fletcher pointed out an analogy to rolling admissions at colleges – some admissions depend on criteria being fulfilled, some are granted right then and there.

Member Shallenberger asked whether an economist could guide the Commission's decision. Chair Bonar stated that it should be discussed in future.

Ms. Schmidt stated that Ms. Chow recommended applications be received on an annual basis so that there is an equal ground for comparing applications. Member Fletcher stated that for National Science Foundation grants, one can't circumvent the grant process for emergency funding.

ITEM 6: The 2006 Legacy land Conservation Program applications

Chair Bonar asked whether the applications were online. Ms. Schmidt replied that they are on; if the Commission wants password protection, must decide. OIP opinion makes them public records

Chair Bonar stated that that having the applications online is one way to avoid stacks of paper, and asked: does the Commission want hard copies? Does the public need to see it, or can it be public password protection?

Ms. China stated that there is no requirement that documents be posted online in public forum, however, the Department must honor requests for information

Member Shallenberger was fine with online applications, but was concerned that applicants have not had notice that records are public. Member Berg pointed out that DOH grants are confidential. Ms. China stated that OIP has opined that records are public.

Member Shallenberger asked whether the applicants had notice. Ms. Schmidt stated that they did not have notice, but did not think they needed it under law. Ms. China stated that they did not.

Ms. China pointed out that DLNR can redact any confidential information before giving out applications.

Chair Bonar asked again whether the applications should be online. Member Young asked for hard copies. Ms. Schmidt stated that the Program could distribute hard copies to those that request and post online for everyone.

Chair Bonar asked whether there is wireless in the building.

Member Shallenberger asked: how many applications? Ms. Schmidt stated that there are ten.

Chair Bonar suggested setting up the next scheduled meeting time and looking at May 18 through May 21.

Chair Bonar stated that some of the issues can come back up on the next agenda. Member Richards pointed out that he will not be able to attend next meeting. Chair Bonar asked whether Member Richards could turn in his rankings. Ms. China stated that members not present may not vote, they can only turn in feedback in form of testimony and read at next meeting, to be discussed by other members present.

Member Berg asked whether recommendations will get to be voted on if members not presented. Ms. China responded that all actions must be taken at a Sunshine meeting. Member Canfield pointed out that, due to time restrictions, all discussions and decisions must take place at the next meeting.

Chair Bonar pointed out that ranks will not be the “absolute decider,” rather they would be a part of the evaluation. Member Berg pointed out that they will be a mechanism for getting comments and bringing them in.

Chair Bonar asked whether members could join a meeting via telephone. Ms. China stated that only videoconference communications do not violate the Sunshine Law.

Chair Bonar proposed a meeting time of May 18th from nine to four.

The Commission further discussed whether online or hard copy applications would be best.

Member Shallenberger asked whether the Commission could vote something to the top priority but not at full funding? Ms. China: Yes, the Commission can do that, but if a project falls out, the money goes back to the pot. It is either appropriated or it is not, the Board cannot shift funds between projects. Encumbrance of funds involves a commitment to a specific recipient, so the Program can't change recipients afterward.

Member Shallenberger asked: a lot of projects are in infancy, so, if they lose matching funds, do they lose their Legacy Land funding? Chair Bonar pointed out that the Commission may have suggestions for DLNR to submit to legislature.

Member Kaiwi stated that it made him uneasy, culturally, to simply base the decision on pieces of paper without time to interview applicants.

Chair Bonar stated that future years will be different.

Chair Bonar raised the issue of outside reviewers for future consideration.

Chair Bonar suggested giving feedback to applicants after the Commission makes recommendations so it can improve applications in the future.

Member Shallenberger asked whether it is necessary for the Commission to use score sheets. Chair Bonar suggested that they help make the process more transparent. Member Richards stated that score sheets might be better used as a single document from the Commission rather than individual. Chair Bonar stated that having a detailed process might help minimize political pressures on the program.

Member Richards pointed out that score sheets can be used to put political pressures on the Commission, in that small details can be attacked.

Mr. Kennedy stated that, in his experience, other programs sometimes use the sheets to focus things in their own minds, and that generally the public asks to look at the rankings, not the sheets themselves.

Member Richards stated that applicants that don't receive grants may be contentious, and attempt to use individual score sheets to attack the process. . Member Fletcher stated that the score sheets can be used to support the Commission's decision process, rather than a negative tool.

Member Berg asked whether applicants would be notified of the decision process. Ms. China stated that there is public notice of Commission meetings and opportunity to testify. Ms. Schmidt listed the applicants and the requested amounts for the Commission members.

Member Fletcher suggested having score sheets to focus the discussion, and mentioned that applicants will be present for the discussion of their projects... and that the Commission is faced with a great list of applicants and projects.

Member Young asked whether testimony will be time-limited. Chair Bonar stated that the Commission can limit it. Member Young asked whether decisions need to be made at the next meeting. Chair Bonar stated that, because of the time limit for encumbering State funds, the decision must be made at the next meeting.

Member Young requested a copy of the list of applicants and Mr. Kennedy left to make copies of this list.

Member Kaiwi asked what the EA/EIS and other preliminary requirements exist. Ms. Schmidt stated that it would not be necessary for each project to do an EA and added that the applications had been checked for completeness.

Member Kaiwi commented that the time span for decisions is incredibly short.

Member Young requested meeting earlier at 8:00 a.m. Chair Bonar asked whether the Commission members could meet at 8:00 a.m. (affirmative).

ITEM 7: Brief discussion of topics that will need to be discussed in the future:

Chair Bonar suggested discussing safeguards to make sure moneys get distributed among the islands and organizations. Member Kaiwi stated that the issue would become clearer over time as applications are submitted. Member Berg asked whether a list of nonprofit land conservation organizations should be provided to give the Commission more familiarity. Chair Bonar stated that the Commission should focus on the characteristics of an organization rather than create a list of organizations so as not to exclude organizations. Chair Bonar mentioned that the Land Trust Alliance had recently created a certification process.

Member Fletcher asked to focus the discussion on procedure and asked which amount would be distributed. Chair Bonar stated the amount was \$4.7. Member Fletcher stated that the Commission should know how important it is to the success of each project to receive the exact amount requested. Chair Bonar asked Ms. Schmidt to get this information for the Commission by the next meeting. Ms. Schmidt clarified with the Commission which questions to ask applicants: which changes there have been in matching funds, what flexibility do applicants have in accepting less funding.

Member Fletcher asked how the Commission would do rankings. Chair Bonar suggested each member produce an individual ranking. Member Fletcher asked whether the Commission could reach consensus. Member Shallenberger stated that additional questions should only be asked of applicants if each applicant has a fair chance to answer.

Ms. Young asked whether the Commission would have an impact on the \$1.1 million appropriation. Chair Bonar stated that the Commission would have weight in the Board's decision. Ms. Schmidt stated that the \$1.1 was appropriated for use with the Farm and Ranchland Protection Program, and that there was one FRPP-approved project requesting the funds.

Chair Bonar brought the conversation back to the decision-making process. Chair Bonar stated that there were several factors for consideration: conservation values, available funds, etc., and that the Commission could prioritize the top few for funding and the last would receive partial funding.

Member Fletcher asked whether a matrix could be created for holding the individual project rankings of each member. Member Berg stated that this method may thin out the number of qualifying projects effectively. 13759

Member Shallenberger stated that a project with a small bottom line is potentially more valuable because of that bottom line. Member Young agreed.

Member Berg stated that the bottom line should be the best conservation needs. Member Fletcher stated that ignore the requested amount and go on terms of conservation need and have the next step be value. Suggested a need for the Commission to be on the same page as far as what values their rankings represent.

Member Shallenberger stated that poor matching funds should be a criteria for ranking a project. Member Richards stated that an organizations capacity to manage the land should also be a consideration.

Member Fletcher expressed concern about quantification of values, especially such a wide range of values to be considered for the project rankings.

Chair Bonar entertained a motion that the Commission return at the next meeting with projects ranked from 1 to 10, in addition using the criteria form as a tool. Not meaning that the Commission's 1 through 10 need to match the criteria form. The 1 through 10 are subjective, and can contain more than what is in the criteria form.

Members Shallenberger and Canfield requested clarification.

Member Shallenberger suggested that the subjective ranking be the one submitted, and be the entire picture, and that criteria form be used to stimulate the thinking on the matter. A discussion can then occur on the properties.

Chair Bonar stated that it is critical to bring in as much information on the decisions as possible.

Mr. Kennedy, upon a request for his opinion, stated that it is a difficult situation for the Commission to be sorting out all of the values that need to be considered and have it amount to \$4.7 million; and that a discussion is the best method (after the rankings) to reach this sort of decision.

Chair Bonar restated the motion: we will come in with our rankings of 1 to 10 considering the statutory priorities. Those will be our personal rankings of how we feel the proposals fall out. At the same time we'll also come in with a list of if we rank the following with the strictly numerical aspects of that evaluation form, what the ranking would be as something to be used of our internal analysis of whether this is an effective system to be used.

Member Richards asked whether forms were open record. Ms. China stated that papers used at a meeting to produce rankings are most likely subject to the Sunshine Law. Member Shallenberger pointed out that these papers will help support their position if necessary. Ms. Schmidt clarified that the rankings that would be brought in, on record, would be the subjective 1 to 10 based on the statutory priorities. Chair Bonar confirmed.

Chair Bonar asked whether there were any statutory requirements for land conservation organizations, for future consideration. Ms. China pointed out that this issue would normally be a consideration based on fact, and that she did not know of any relevant legal definition of "land conservation organization."

Ms. Young asked whether mission statements were included in the application. Ms. Schmidt replied that the application had not asked for this information but that the Commission could make this request now.

Chair Bonar asked whether projects could be substituted at the last minute before the Board approval, if one should drop out. Ms. Schmidt replied that it is possible. Chair Bonar suggested having a few "back up" proposals in the case that a project should drop out after being recommended.

Member Kaiwi asked whether the program was unnecessarily rushing the Commission into making a quick decision. Ms. Schmidt replied in the negative. Member Kaiwi stated that he was not comfortable making judgments on the cultural resources of a property within a short time period.

Chair Bonar restated the motion above (each of us evaluate the proposal, bring in 10 list, provide some description of rationale for discussion, members which cannot attend with send in rankings only for sake of discussion. Numerical sheet will be filled out so have something to begin comparing against for future use.

Member Canfield added that a matrix would be used.

Member Berg described the matrix sheet to Ms. Schmidt.

Ms. China clarified that all rankings would only be a starting point for discussion.

Member Berg briefly described a scholarship program that he had participated in and how the process that is used provides a good framework for discussion; and that the questions that the Commission asks evolve over the years.

Chair Bonar entertained the above-stated motion. Member Berg moved; Member Young seconded. All were in favor.

ITEM 8: Announcements. Set next meeting date.

Ms. Schmidt asked for clarification of what was needed from applicants by the next meeting. Chair Bonar clarified.

Member Fletcher handed Ms. Schmidt a rough draft of the matrix that would hold the Commission members' scores.

Ms. Schmidt asked if anyone needed hard copies of the applications.

Member Richards moved to adjourn. Member Fletcher seconded. All were in favor.

ITEM 9: Adjournment.