

Minutes of the December 19, 2008, Legacy Land Conservation Commission Meeting

DATE: December 19, 2008

TIME: 8:00 a.m. to 3:00 p.m.

PLACE: Board Room, Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawai`i

COMMISSION MEMBERS PRESENT:

Dr. Dale B. Bonar, Chair

Dr. Carl J. Berg

Ms. Lori Buchanan

Dr. Joan E. Canfield

Dr. Charles (“Chip”) Fletcher

Mr. Kaiwi Nui

Mr. Herbert (“Monty”) Richards

Dr. Robert J. Shallenberger

Ms. Karen G.S. Young

STAFF:

Julie China, Deputy AG

Ian Hirokawa, DLNR, Land Division

Randall Kennedy, DLNR, DOFAW

Molly Schmidt, DLNR, DOFAW

PUBLIC:

Lea Hong, Trust for Public Land

Ati Jeffers-Fabro, DLNR, DOFAW

Kevin Kinvig, USDA, NRCS

Blake McElheny, North Shore Community Land Trust

Greg Pietsch, Sunset Ranch

Cynthia Rezentes, Oahu Land Trust

AGENDA

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

Chair Bonar called the meeting to order. Members of the Commission and staff introduced themselves.

ITEM 2. Disclosure by members of the Commission of any potential conflicts of interest involving Fiscal Year 2009 (FY09) projects (a list of applicants is attached to this agenda).

Chair Bonar and Members Shallenberger and Kaiwi stated that they would be recusing themselves from voting on specific projects.

ITEM 3. Commission recommendations regarding FY09 projects to the Board of Land and Natural Resources for funding from the Land Conservation Fund.

Member Fletcher made the motion that the Kauai Public Land Trust (KPLT) proposal that would be voted on be switched from the Sheehan properties to the Hodge property, with the understanding that the amount requested would not be changed.

Member Berg seconded the motion.

Member Fletcher stated that opportunities do not follow deadlines. He stated that when special opportunities arise, the Commission should act on it. KPLT is simply asking to switch parcels and there are compelling reasons. It is in the spirit of the Commission's mission to figure out how to best spend the money for public land conservation. If it is controversial, the Commission can take the heat, and that is the point of having an independent decision-making body. He did not feel that it was unfair to the other applicants, given the specifics of the request.

Member Shallenberger stated that he agreed with Member Fletcher, however, the Commission should take care to document its rationale. When the subcommittee for rulemaking meets, it should consider policies that provide flexibility, such as considering properties within a specific boundary.

Member Richards stated that the Hodge parcel was one of the last pieces on Hanalei Bay, and that if a house were built, it would be gone. This decision was best for Kauai.

Member Berg stated that he supported the decision and that this situation is an emergency, the owner has a 6-month building permit; he would either commit to conservation or use the permit to build. He stated that the Commission should be able to respond to emergency situations.

Member Young stated the area was stunning; however it would not be fair to the other applicants. They did not have the opportunity to switch parcels.

Member Canfield stated that she agreed with Members Fletcher and Shallenberger and suggested closing the gap between the application deadline and the decision-making in future cycles. Shortening this time might lessen the need for changes to project proposals.

Chair Bonar stated that the Commission did not have policies in place yet. This situation shows that waiting to form solid policies had been wise, since previously, this issue hadn't been considered.

He stated that, since there was more money available than feasible projects, other applicants would not be blocked from funding by KPLT's success. He stated that, if it can be done legally, openly, and adequately explained, the Commission should allow KPLT to submit the best possible project by switching the parcels. He stated he was

comfortable with the decision and that the Commission should aggressively pursue getting policies in place for future grant cycles.

Chair Bonar stated that he had applied for National Science Foundation (NSF) grants in the past, and the way that the program operated, with strict deadlines, made it frustrating for applicants.

Member Fletcher stated that the NSF now had “target” deadlines because they saw the arbitrary and capricious nature of a strict deadline. NSF staff can reject additional paperwork submitted if it does not have time to process.

Chair Bonar stated that there are things missing from KPLT, like the letter from Mr. Hodge, however, the Commission has verbal assurance.

Member Shallenberger stated that any parcel that is submitted should have all information ready, even if the Commission pursues allowing parcels within a contained area.

Ms. Young stated that this was the existing policy – the information was asked for on the application form.

Chair Bonar stated that the Commission could still allow late information.

Chair Bonar asked for a vote on Member Fletcher’s motion.

Members Shallenberger, Canfield, Fletcher, Richards, Bonar, and Berg voted in favor of the motion. Member Kaiwi abstained from the vote. Members Young and Buchanan voted against the motion. The motion passed with six votes in favor.

Member Richards asked whether KPLT was adding or replacing the parcel. Chair Bonar replied that the Commission was replacing the parcel.

Chair Bonar stated that Maunalua Fishpond Heritage Center’s (MFHC) request for stewardship funding could not be accepted due to the lack of a process for disbursing funds, since the act had passed last year. He asked the Commission members how the MFHC request should be handled.

Member Berg stated that the original proposal had been for acquisition, which was no longer feasible due to the circumstances around the project.

Chair Bonar stated he would entertain a motion to remove the MFHC project for consideration in this year’s grant cycle. Member Canfield moved, Member Shallenberger seconded the motion.

Ms. Schmidt asked for clarification on the grounds for removal. Member Canfield replied that one parcel had been withdrawn and that MFHC had asked for management funding for the remaining parcel. The Commission could not award these funds yet.

Member Berg added that MFHC stated this on the site visit and again at the meeting yesterday. Instead of withdrawing their proposal, MFHC chose to go through the process to gain some knowledge of Legacy Land Conservation Program. Member Young stated that MFHC had been open about its situation.

Chair Bonar stated that the motion was to remove the proposal from consideration in this round. Member Berg added that the technical word was “disqualify.” Chair Bonar restated that the motion was to disqualify MFHC from consideration and called for a vote. All were in favor.

Ms. Schmidt mentioned that some testimony had been received around mid-day yesterday and passed it out to the Commission members.

Member Shallenberger stated that the amount available this year exceeded the amount being requested, now that two projects had been removed. Chair Bonar stated that there was still a possibility that the legislators, the Board, or the Governor, might still reduce the amount of funds available.

Member Shallenberger asked where the scoring sheets fit in to the process, if the projects would be discussed again before the ranking forms would be used. Chair Bonar explained the forms available to the Commission members.

Ms. Schmidt added that the ranking forms would be used at the meeting to collect votes, and would be kept for public record. Member Richards stated that the Commission ought to cross out the projects that had been deferred. Chair Bonar added that members should also cross out any projects from which they were abstaining to vote.

Member Shallenberger asked whether the recusing members had left the room for discussions last year. Chair Bonar stated that they had. Ms. Schmidt added that the Office of Information Practices had recommended this as a best practice, based on the idea that having a Commission member in the room might influence the other members.

Chair Bonar asked if there was any further discussion regarding the DOFAW-Hamakua project. Member Shallenberger stated that he thought it to be an excellent project. He stated that there was not a current threat, but there could be one soon. Member Richards agreed, mentioning that the area was surrounded by development. Member Shallenberger stated that DOFAW might not get all the management funding it needed, however, it was still important to secure protection for the parcel. Chair Bonar stated that the community support was strong. Member Canfield stated that the timing was right for funding and support. Member Young stated that DOFAW had been consistent with its efforts.

Member Berg asked whether Legacy Land could award a small management amount this year. Ms. China replied no. Member Berg asked whether receipt of funding this year would enable them to seek management funds next year. He stated that he viewed management funds as a very legitimate use of Legacy funds for this project. He recommended that DOFAW approach the Commission when management funds are available. Chair Bonar stated that the legality of different mechanisms for awarding funds would have to be explored.

Member Kaiwi stated that the historical cultural meaning of the area was nice information, but that he preferred more information on present cultural use of land. He commented on the conservation planning efforts, stating that applicants should incorporate the past cultural uses into the present cultural uses planned for the property. He stated that the plan stated that DOFAW was “contemplating” a perpetual easement. He preferred stronger language committing DOFAW to the perpetual easement. He added that the plan spoke of “culturally appropriate” re-interment of iwi, however, putting the iwi in a pile in order to protect stilts did not reveal cultural appropriateness to be the highest priority. He commended DOFAW for having consulted the appropriate families.

Chair Bonar stated that many iwi had come from storage lockers and other inappropriate situations. When applicants seek to incorporate the iwi into their plans, they run the risk of making a commitment without adequately seeking community input. He stated that Member Kaiwi had read too much into the language of the plan, but that the sentiments were clear.

Member Kaiwi stated that he read the words carefully because iwi kupuna are important to the Hawaiian community.

Member Berg stated that there were iwi in storage lockers from areas around Kailua, and that DOFAW had taken a proactive step in re-interring the iwi.

Member Kaiwi asked if re-interment was the only option given to the community. Culturally speaking, the exact location of the iwi is not supposed to be known.

Chair Bonar stated that this requirement was difficult if applicants were also expected to fence areas with the iwi.

Member Kaiwi stated that more culturally-appropriate options may not have been discussed yet, for example, re-interring the bones at an unspecified location.

Chair Bonar asked if there was any further discussion on the Kona Historical Society (KHS) project.

Member Young stated some concern over the pending status of matching funds, but believed that KHS had the ability to get the funding. Member Canfield stated that it was a bit presumptuous, given the standards that the other applicants meet. Member Berg

stated that KHS did not have matching funds or the appraisal, and had hinged the entire proposal on the receipt of Legacy Land funds. He stated the owner was willing to negotiate on the fair market value limitations. Member Young stated there were mathematical issues on the application. Ms. Schmidt stated that KHS had clarified the figures on page 11.

Member Fletcher stated that Legacy Land could be the first link in the chain being built, as long as the Commission was confident in the ability of the applicant to secure the match.

Member Richards stated that KHS had been the first effort in the state to preserve the ranching history of Hawaii. They did not have people on staff for acquisitions like larger land trusts, etc., so there might be some flaws in filling out the paperwork. He stated that this is the year of the paniolo, and the Commission should not let the smaller points cloud the merit of the project. This is owned by a historic ranching family and was a great opportunity for West Hawaii.

Member Shallenberger stated that he was married to a cattle rancher's daughter, and had heard stories from his wife's father and met many ranching families and heard their history. He had felt it a shame that there had been little effort to preserve this history and it pained him to see these documents and artifacts in Matson shipping containers. He did not think there was a more stable private group established. KHS had been around for about 35 years and hadn't had trouble raising money for past projects. He stated that the land may be under threat if it passes to the third generation.

Chair Bonar stated that KHS had an endowment and made their budget every year. If anybody could do it, KHS could. This project could affect all of Hawaii.

Member Kaiwi stated that the historical parts of the presentation had been well done.

Chair Bonar asked if there would be further discussion on the KPLT in addition to the previous discussion, now that the Commission had voted to switch the parcels.

Member Shallenberger stated that Ms. JoAnn Yukimura had indicated that the Commission would be seeing many more KPLT projects in future years for this project area. He mentioned using less costly conservation tools, like conservation easements.

Member Kaiwi asked if the Commission had any options if Mr. Hodge changed his mind. Chair Bonar stated that, like any other project, it would not receive funds if it could not perform its commitments.

Member Berg stated that the price of the property was \$3.3 million; KPLT had \$1 million from the county and would be asking the county open space fund for \$1 million. He stated that the total was \$50,000 short. He stated that he did not think this shortage would be a problem because the open space fund had the ability to supply the funds and

the community was very supportive. He suggested getting the requisite letters immediately.

Ms. Schmidt asked Member Berg where the county was in its funding cycle. Member Berg stated that there was not a cycle; the funds were awarded by the County Council. KPLT could approach the Council directly.

Member Kaiwi asked how the County of Kauai performs in managing its parks. Member Berg stated that overall; the county managed its parks well and had addressed any complaints made. This expansion would be adjacent and would not put much more stress on the system. Member Berg stated that he thought the county would leave the area as a large grassy area.

Member Young stated that the property was already in good condition for this use. Member Berg stated it would not require much work to integrate the parcel into the system.

Member Kaiwi asked if the Sheehan properties would add pressure on the parks department. Member Berg stated that he did not think it would be a burden. Member Young mentioned that there had been parking issues that the addition of these parcels might alleviate.

Member Fletcher stated that Hawaii had a problem with inadequate beach access paths and hoped that this property would be implemented for parking to enhance public access to the shoreline. He stated that this project could also be an opportunity to recreate a natural endemic Kauai coastal ecosystem. He stated that this beach was one of the few accreting shorelines in the State. The trade winds blow east to west over the mouth of Hanalei Bay, bringing sand, and the waves bring it to the beach.

Member Buchanan added that there were State DLNR management issues relating to SUVs and county cooperation. If the counties push the issue, can help the State enforce its SUV restrictions.

Member Berg stated that Mr. Sheehan was currently charging \$5.00 for parking.

Chair Bonar moved the discussion to the Malu 'Aina project.

Member Canfield stated that the application might have been stronger if they'd had grant writers helping them. She stated that it would be great if the Commission could do something to assist smaller farming organizations with grant writing.

Member Fletcher stated that projects like this one sold themselves. He stated that he was on this Commission for projects like this. He stated a desire to help these organizations communicate and build their capacity to apply for funds.

Member Young stated that applicants should be given an approximate time when they could be expected to provide testimony. Ms. Schmidt added that the inability to pinpoint a scheduled time for appearing at meetings was frustrating for applicants.

Chair Bonar stated that the Commission had put the application together with respect to the varying grantwriting expertise of different applicants.

Member Shallenberger stated that he found the project frustrating. Malu 'Aina saw the new property as a potential incubator, but they had been on location for 30 years, and the facilities were a bit run down, with old equipment. He had the sense that Malu 'Aina had put every dollar it received into the ground and neglected the facilities. He questioned their capacity to take on additional land, and write grants for the management.

Chair Bonar asked, if the organization was not sustainable, would the land revert to the State? Ms. China stated that, if the organization filed bankruptcy, the bankruptcy court would have jurisdiction. If they decided to sell the land, the Board would decide what conditions to put on the transfer.

Chair Bonar stated that they would also have to give the grant money back to the LCF. Ms. China concurred.

Member Shallenberger clarified that he did not expect Malu Aina to go belly-up. He stated that their ideas were a bit ahead of their reality.

Member Young stated that it was a true nonprofit.

Chair Bonar stated that he ran a true nonprofit, and they had a new tractor.

Member Richards stated that Chair Bonar's nonprofit had different funding resources.

Member Young stated that they might be able to apply for management funds next year.

Member Richards stated that he approved of the project and was happy to see Malu 'Aina moving in this direction, primarily for the benefit of food security. He stated that the organization did not have a refined business plan, however, the goals of the project were worthy of being given the chance to try. He stated that Mr. Albertini might not be the best poster boy for publicity efforts, but the project was of high merit.

Member Kaiwi stated that this project was not unlike the KHS project, where the group was not a fine-tuned business-oriented organization, but had successfully taken on stewardship of a very important part of Hawaii's history. He stated that Mr. Gigi Cocquio had taken on his mission and maintained it for 30 years, and had affected many people. This outcome was worth the money.

Chair Bonar stated that this project was more about a legacy for the people.

Member Berg stated that Mr. Albertini had worked on getting his land going, ad hoc, one day after another. Mr. Albertini had stated that two to three dozen had come out on a work day, which was once or twice a month. Member Berg stated that, if the project were about the affecting the people involved, the numbers don't matter as much. At the same time, the land will be preserved. If a pragmatic approach to land preservation based on acreage and resource value was taken, there might be a different outcome. He stated that he valued cultural and natural resources present on land more so than agricultural operations.

Member Berg also asked what the sustainability of the organization would be if it were based solely around Mr. Albertini. Member Buchanan stated that the Center for Nonviolence had many entities throughout the State. A board member from Oahu had been sitting in the back of the meeting yesterday. In Mr. Albertini's absence, the board would decide what to do.

Member Shallenberger stated that he supported the projects goals, but still worried about capacity in taking on an 11 extra acres.

Member Kaiwi stated that, historically, State agencies and other entities had not done a much better job of land management.

Member Shallenberger stated that Mr. Steiner and other supporters had confirmed their support and wanted to put energy into the project. Member Young stated that there had been enormous support.

Chair Bonar stated that MA'O Organic Farms faced the same issue, and was making youth training a part of the operation. Member Berg stated that this must be built in. Member Kaiwi stated that he thought Malu Aina had this intention.

Chair Bonar left the room for the discussion of the Maui Coastal Land Trust (MCLT) project. Vice-Chair Fletcher chaired in his absence.

Member Canfield stated that she had been encouraged by the landowner's offer to donate an extra 25% if the matching funds should be needed. Member Shallenberger agreed. He asked if it appeared on the aerial map that the valley had been trashed up to the top piece. He asked if this was a token conservation piece. He stated that he did not view this as a catalyst for conservation efforts.

Ms. China stated that TPL and the State had purchased an area of Pupukea-Paumalu.

Member Fletcher stated that he also saw this as a last piece instead of a first.

Ms. Hong stated that across the street and makai, there were families interested in preservation. Mauka there was another 100 acres with preservation potential. She stated that it was not a perfect situation, but there was plenty of potential for future efforts.

Member Fletcher stated that there was heavy development to the top of the valley, but then there was also strong protection on the surrounding areas that would lock the development in.

Member Kaiwi stated that it reminded him of Waipio Valley where development had been landlocked. He asked if there were any rare or endangered species up there.

Ms. Hong stated that it was former ranchland, and not the best habitat. Member Canfield mentioned that the present owner's grandmother used to garden native plants.

Member Berg asked how well the Boy Scouts managed the neighboring land. Mr. McElheny stated that the Boy Scouts had very strict guidelines and rules and adult supervision. He encouraged the Commission members to visit the land and stated that it was very well-managed. Member Berg stated that, at the moment, there were no management plans.

Mr. McElheny stated that it might not be reasonable to expect the Boy Scouts to manage State land. Member Berg stated that he had meant that the location of the Boy Scouts on the property did not make it a nature preserve.

Member Berg stated that the subject might not be pertinent to the discussion at hand.

Ms. China stated that a portion of the Boy Scout land is zoned conservation.

Member Shallenberger asked what public access and management would be.

Mr. McElheny stated that the primary goals were preservation of agricultural land and prevention of development in the area surrounding the Kaunala Loop trail. Preservation would assist users of the trail. Existing conservation uses would be enhanced and the scenic and open space views would be protected.

Mr. McElheny stated that the property might encourage more access and exploration of the mountain resources by youth, linking mauka to makai by Pupukea Road. Residents and visitors would be able to see a working ranch. The project would also create an example of how agricultural land can be protected in Hawaii.

He stated that this easement was similar to the conservation easement the Commission had nominated in the last grant cycle. Public access had not been provided, but public benefits in the form of open space and scenic resources and opportunity for public utilization via partnerships (instead of a developed subdivision) would be provided.

Member Berg stated that the project was a matter of development density: one house versus twelve houses on the property. He stated he could see the aspects of ranching, but that it was not presently an intensely productive farm.

Mr. McElheny stated that it was not presently a productive farm, however, conservationists had to take proactive steps with landowners in a place like Oahu where such land is becoming extremely rare. This project could serve as a model for Hawaii. Similar conservation easements that protect the residence of a single farmer or rancher have been implemented nationwide. He stated that Oahu in particular was trying to catch up. They need to move now while the federal funds are available.

Ms. Hong stated that residences of farms protected with conservation easements were a very common arrangement. Farmers and ranchers lived where they worked, in New England and the West, these are very common. The strict requirements of the Farm and Ranchland Protection Program are adequate to protect the agricultural values of the land.

Member Kaiwi asked how the project would work with Native Hawaiian access rights. Mr. McElheny stated that access rights were not his area of expertise. He stated that the Pietsch family had been one of the only landowners to enter into discussions with Hi'ipaka on doing joint programming. This is the family that established Waimea Valley and they are trying to continue the legacy. The valley has an access that curves behind the entrance to the Pietsch family property and intersects with the Kaunala Loop Trail, so one could foresee someone coming up through the valley and taking the trail or coming back down to see what the Boy Scouts are doing or entering the Pupukea-Paumalu valley. This easement is a way for us to increase the benefit to the public.

Member Richards stated that inheritance taxes force large landowners to sell, there is rarely a way of passing this land to heirs. This tax had broken many large ranches and farms. The conservation easement will allow the property to remain un-subdivided. He added that he was older than dirt, and that this was dirt speaking.

Member Fletcher stated that he did not see the property as an active ranch; it was a great big lawn. He stated that his ranking would reflect his view. He stated that he appreciated the value and intent of saving the property intact for future generations, but disagreed with hearing it vigorously defended as a ranch.

Mr. Kinvig stated that, since 1996, he had seen a pattern of proposals funded by the federal program from communities protecting the open spaces that are important to them, as opposed to currently agriculturally productive properties. He stated that from his agency's perspective, this was not stretching the requirements.

Member Buchanan stated that she had also had trouble with this proposal. She mentioned a similar project which had been approved for Moloka'i, for which a large part of the community was originally unaware and did not support. She stated that access was an issue for her. On one hand, conservationists did the good thing by protecting the land for future generations. On the other hand, conservationists then put up a gate and told the community that they cannot come inside. She stated that, being from Molokai, she regularly climbed over fences. As a Native Hawaiian, she supported gathering rights. In the Moloka'i project, the community had been kept out. She hadn't been on the Commission at the time, so she did not know what the discussion had been. From the

community perspective, being locked out from areas being preserved caused conflict. She stated that the fee holder of the land under the Moloka'i conservation easement had children that could not pay the inheritance taxes. She appreciated that fact; however, Mr. Dunbar had then built two additional vacation rentals along the coast. While the land trust on Moloka'i was newly forming and getting the support of other land trusts, it had not weighed in with the community and had taken a big-brother role. She stated that the community support surrounding a project was the most important consideration for her. To use public monies and then lock the public out afterward was not pono.

Vice-Chair Fletcher asked the Commission to take a short break.

Chair Bonar stated that the next project on the list for discussion was DLNR, State Parks – Kohala.

Member Berg stated that he thought it was a great project and hoped the project would come forward for management and maintenance in the future. He asked if the Commission would be able to award maintenance funds for the entire park or just the property acquired with Legacy funds. Chair Bonar replied that these issues would be discussed by the subcommittee.

Member Canfield stated that she was happy to hear Ms. Martha Yent speak about the advisory group that had been formed and the community volunteers that were involved.

Member Young stated that it was amazing that the State had some of these opportunities for so long and had not acted on them.

Chair Bonar asked if there was any discussion regarding the TPL – Honouliuli project. Member Shallenberger left the room for discussions regarding this project.

Member Young stated it is important not to lose the Preserve after the many years of hard work that has already gone into it.

Member Canfield stated that the proposal was ready this year and hadn't been last year.

Member Berg stated that the acreage of land compared to the amount requested made this project a spectacular opportunity for Legacy Land.

Chair Bonar asked Ms. China if the Commission had the ability to raise the amount of funds that applicants had asked for. Ms. China replied that the applicants were limited by what they had asked for; if they didn't ask for it, they might not be able to provide match for it, there were a lot of issues with doing this.

Member Canfield asked whether, if a small part of the funding for a certain project fell through, the Commission could make a recommendation that extra funds be awarded.

Member Berg stated that when the appraisal amounts came in, the amounts changed. Ms. China stated that the Commission should adhere to what the applicant had asked for and not make second guesses at the proposals.

Member Canfield asked if the applicant could come forward right now to approve the change.

Chair Bonar asked if it was absolutely illegal.

Ms. China stated that they would have to communicate to the Board that they were going over and above what the applicant had asked for. The Commission could ask an applicant, if they happened to be present.

Chair Bonar asked for a legal opinion.

Ms. China stated that it was not a legal question, and that the Commission should ask the applicant.

Member Young asked Ms. Hong what would happen if the city and county open space funds did not come through. Ms. Hong replied that private funds may be available.

Member Berg asked if the project could come back in the following year to ask for more money for the same project. Ms. China stated that they could.

Ms. Schmidt stated that the Commission should, if recommending extra funding to projects, word its recommendation carefully in order to make sure its other recommendations would not be affected if this one were not approved.

Chair Bonar clarified that the recommendations should not have an all-or-nothing approach. Ms. Schmidt agreed.

Member Berg asked if the Board could award a higher amount than what the Commission had recommended. Ms. Schmidt stated that since the Commission was solely advisory, the Board could do this.

Member Fletcher asked if Ms. Hong had submitted an application to the county yet. Ms. Hong replied that the county open space commission had created a process, but the approval was delayed in the office of council services, thus, none of the applicants could apply yet. The council had passed a unanimous resolution to fund the program but stated that it would have to go through the process.

Member Buchanan stated that the Commission, in its advisory position, could make an additional recommendation to the Board that additional funds be granted to this project.

Chair Bonar asked if the Commission could put this into the form of a motion.

Member Kaiwi asked if the Commission could wait until all discussions had finished. Chair Bonar agreed and asked for further comments.

Chair Bonar asked if there were comments on the TPL – Lapakahi proposal. Member Young asked if the project had been proposed before. Chair Bonar replied yes. Member Young commended the applicants for its persistence and for involving the community, and stated that she would give the project high marks.

Member Kaiwi stated that he had been impressed by Mr. Cachola’s testimony but was concerned about State Parks Division. About 40% of State Parks’ sites are cultural, and there were varying opinions on the management of these lands.

Member Richards stated that it makes sense to square up the Lapakahi historical park, it makes sense to consolidate the lands to allow the State to do its planning. It would remove the threat of the house being built.

Member Berg stated concern over some of the matching funds being in a “pending” state, he did not know that the project would receive funding. While he supported the project and thought the Commission should move forward with it, it seemed like a large portion of the matching funds was in question. He asked whether the Commission should commit funds to this project when overall funding was in question.

Ms. Hong replied that if CELCP funds did not come through, there were other options. TPL could conduct a fundraising effort with the fairly wealth folks that live in Kohala and support the acquisition. She stated that it would be easier if TPL had the commitment from Legacy Lands to leverage the rest of the funds.

Member Canfield asked whether the county was interested in funding the project. Ms. Hong stated that the project was not at the top of the list; however, the county might still contribute some funds, just probably not the whole amount, as it would be a State-owned property.

Member Kaiwi stated that this discussion was why he had wanted to wait on making a recommendation regarding Honouliuli. Member Shallenberger re-entered the room. He stated that protecting an individual piece along the shoreline would give momentum to protection efforts along the entire shoreline.

Chair Bonar stated that the Commission would then fill out the voting forms. Ms. Schmidt stated for clarification that the Commission would be voting on all projects as submitted, with the exception of the KPLT project, which had been changed by a previous motion.

The Commission voted using forms that were distributed by and returned to Ms. Schmidt.

Ms. Schmidt recorded the votes on an easel and averaged the scores for each project. The rankings were as follows:

RANK	Agency/ NPO	Location	Size (acres)
1	State of Hawaii (TPL)	Honouliuli Preserve, Waianae Mountain Range, Island of Oahu	3582.00
2	DLNR/DOFAW	Hamakua hillside, Kailua, Oahu	65.56
3	State Parks, DLNR	North Kohala, Island of Hawaii	7.00
4	Kauai Public Land Trust	Black Pot Park area, Hanalei, Kauai	0.74
5 (tied)	Center for Non-Violent Education and Action / Malu Aina	Puna District, Hawaii Island	11.14
5 (tied)	State of Hawaii (TPL)	Lapakahi, Kohala, Island of Hawaii	17.05
6	Kona Historical Society	Kona Mauka, Island of Hawaii	2.11
7	Maui Coastal Land Trust	Mauka end, ahupua'a of Pupukea, North Shore, Oahu	27.44

Ms. Schmidt stated that the total requested amount was \$4,254,544, which leaves the difference between the available amount (\$4,700,000) and this figure remaining.

Chair Bonar stated that the remaining amount was \$445,456. Ms. Schmidt agreed.

Chair Bonar asked the Commission to consider whether it wanted to approve all eight projects.

Member Berg stated that all projects should be funded. Members agreed.

Chair Bonar stated that the Commission could leave the recommendation as is or vote to add funding to projects. He asked if the Commission wanted to discuss additional funds for other projects.

Member Buchanan asked whether the funds could not be given out because nobody had applied.

Ms. Schmidt replied that the Board needed to approve a mechanism for collecting applications and making awards and this had not been done yet. Ms. China added that the act had just passed in 2008.

Member Kaiwi stated that Lapakahi could also use the extra funds. Chair Bonar asked that someone figure out how much should/could be awarded. Nonprofits and county projects would be limited by the 25% matching funds requirement.

Chair Bonar stated that there were now two projects that extra funds had been suggested for: Honouliuli and Lapakahi. Member Shallenberger stated that he could not discuss the matter due to his Honouliuli conflict.

Chair Bonar stated that his take was that the amount available would help Honouliuli a great deal, but would barely help Lapakahi.

Ms. China asked if Ms. Hong had formally agreed to request the extra funds. Chair Bonar asked Ms. Hong if she would, on behalf of the State, request the extra funding. Ms. Hong requested the funds for the record.

Chair Bonar entertained a motion that extra funds remaining under the available amount be awarded to Honouliuli.

Ms. China stated that, if the Board did not accept any of the project, the Commission would have additional funds available, therefore, it should not leave its recommendation open with regard to the exact amount granted.

Chair Bonar asked if they should recommend a residual amount up to \$537,500. Ms. China stated that the Commission should also formally vote on the awards to applicants before making additional recommendations.

Chair Bonar stated the Commission would have a vote recommending projects one through eight for funding. Member Young moved, Member Kaiwi seconded.

Member Fletcher asked if the tied projects should be enumerated differently. Ms. Schmidt stated that they would both be labeled "5".

All were in favor of the motion.

Chair Bonar entertained another motion for additional funds, as available, to the Honouliuli project, up to the \$537,000 amount.

Member Richards motioned, Member Young seconded.

Member Richards stated that the Commission might not want to put an amount in case the Board alters the recommendations.

Member Buchanan asked, with regard to Lapakahi, whether the Commission could recommend a second project for additional funds, in case the first project did not receive the funds.

Member Fletcher stated that the next project down the list would be Hamakua, not Lapakahi. Member Buchanan stated that only Lapakahi was discussed.

Ms. China asked Ms. Hong if she would request the amount, Ms. Hong replied yes.

Chair Bonar stated that the amount to Lapakahi would be \$1,250,000.

Ms China suggested that the Commission word each recommendation to stand on its own in case the others are stricken.

Chair Bonar asked if there was any further discussion on the Honouliuli motion. He asked for a vote. All were in favor, except Member Shallenberger, who abstained.

Chair Bonar entertained another motion that, in the event that the Honouliuli recommendation is denied, the Commission recommendations any additional funding, up to \$1,250,000 be made available for the Lapakahi acquisition.

Member Berg moved, Member Young seconded the motion.

Member Berg stated that the Commission was expecting the CELCP funds to come through, the State was not excusing the applicants from seeking the other funds.

Chair Bonar stated that the funds would have to be encumbered by June 30 of this year, so if the funds had not come through at that point, the State could fund it.

Ms. Schmidt stated that the decision would be final with the Board's approval, at that point the program would start encumbering funds.

Chair Bonar agreed. He stated that, since the legislative consultation appointment would occur the following Tuesday, the Commission should finalize its discussions.

Ms. Cynthia Rezentes stated that the Commission was wording its recommendation to be tied to the former recommendation.

Chair Bonar disagreed. Member Canfield stated that, if another project dropped out (not Honouliuli), it would not receive the funds, because the wording was tied to Honouliuli.

Ms. Schmidt asked if a single recommendation could refer to a list of projects in order of priority to simplify. Ms. China added that they would have to specify the maximum amounts. Member Fletcher suggested the phrase "up to the unsecured amounts."

Chair Bonar stated that the first motion had already passed.

Ms. Schmidt pointed out that this second ranking of projects did not follow the same criteria as the first ranking.

Member Buchanan stated that the Commission could reconsider a motion with a two-thirds vote. She moved for the Commission reconsider the first [Honouliuli] motion.

Ms. Schmidt asked for clarification. Chair Bonar stated that the first motion had passed, the second one had not been voted on, so could be withdrawn.

Member Richards withdrew his motion. Member Young withdrew her second of the motion.

Chair Bonar entertained a motion to reconsider Honouliuli. Member Canfield motioned; Member Buchanan seconded. All were in favor, except Member Shallenberger, who abstained.

Chair Bonar entertained the motion that, if additional funding remains, additional funds be added to: first the Honouliuli project, up to \$537,500; and the second

Member Fletcher asked if Chair Bonar wanted to word the motion “up to the unsecured amount.”

Ms. China stated that, if more funds were available than needed, the Commission would want to limit the amounts granted.

Chair Bonar continued the motion to be entertained: ... and the second to Lapakahi up to \$1,250,000.

Member Buchanan asked if it would be more appropriate to provide extra funds to the projects in the order they had been ranked.

Ms. China stated that the applicants were not here to accept the funds, doing this might be opening a can of worms.

Member Berg stated that the KPLT and SP projects did not have people here advocating for the projects, however, these projects also needed the extra funds. The nonprofit projects, however, were limited by the 25% matching funds requirement.

Member Fletcher suggested providing the Board with discretion to award unsecured funds per the ranking that the Commission has provided. The nature of unsecured funds in the next few months may change. The Commission has ranked the projects and would like the Board to use additional funds to increase the security of the projects listed.

Member Kaiwi suggested adding “as needed” wording.

Ms. Schmidt stated that recommending the ranked order of projects be followed was a good idea; the Commission had put a lot of work into coming up with a fair method of ranking.

Chair Bonar stated that the Commission was still in a learning mode and needed to be able to respond to the practical implications of projects.

He suggested writing the order of the projects on the white board.

Ms. Hong commented that she supported a fair ranking method, however, some projects would have a 25% matching funds limitation.

Member Shallenberger stated that the KPLT project was an example of this.

Ms. Schmidt stated that the Commission could recommend that any extra funding go to the projects in the order ranked, as limited by the statutory matching funds requirement under HRS 173A.

Chair Bonar asked her to record this language.

Member Canfield commented that the situation of having extra funds available was a bit bizarre; the Commission had not encountered this in the past grant cycles.

Ms. Schmidt re-read the motion. Member Berg moved; Member Canfield seconded; all were in favor, except Member Shallenberger, who abstained.

ITEM 4. Discussion and possible reformation of the subcommittee that was originally formed on October 14, 2008, for the purposes of: (1) rulemaking and advising the Department on administrative rules concerning the Commission (2) advising the Department on the process for awarding grants for management funding through the Legacy Land Conservation Program.

Chair Bonar stated that the subcommittee that was set up at the October meeting was for advising the Board on rulemaking and management funding. He and Members Buchanan, and Canfield were on the subcommittee.

Ms. Schmidt stated that Chair Bonar had asked her to investigate whether the members absent at the last meeting (Members Kaiwi, Richards, and Shallenberger) were interested in joining the subcommittee. She had emailed them, nobody had expressed interest.

Member Canfield stated that she thought Member Shallenberger had been interested. Member Shallenberger agreed. Chair Bonar stated that he would be the fourth member.

Chair Bonar asked Ms. China to quickly go over rulemaking: the purpose, process, and implications. Ms. China stated that she was not prepared to do this at the moment, however, Ms. Schmidt had prepared some guidance documents and given them to the Commission at the last meeting. She stated Ms. Schmidt could brief the subcommittee.

Ms. Schmidt stated that the Board would need to approve the program rules and the rules relating to the Commission's criteria. There had been some confusion over this matter at the last meeting. She stated that all rulemaking would have to be a public process; all

rulemaking would have to be done through the rulemaking statute, which granted the authority for rulemaking to government agencies.

Chair Bonar asked what the distinction between the processes for Commission policy and administrative rules would be. He stated that he had been told that administrative rules would be done internally.

Ms. Schmidt stated that the Commission had been given authority under Chapter 173A, HRS, to form criteria for project selection through the rulemaking process. These rules would still have to be done under the rulemaking statute.

Ms. China stated that she would speak with Ms. Schmidt and Chair Bonar.

Chair Bonar stated that he wanted the process laid out so the Commission could proceed as quickly as possible.

Member Young asked Ms. Schmidt whether, when she presented on rulemaking process the second time, it would be to the entire Commission or just the subcommittee. Ms. Schmidt replied that she could present to both. In her opinion, the point of the subcommittee was to do the grunt work related to rulemaking. The subcommittee would still have to approach the entire Commission for any decisions related to its work. The information that the Commission would need to make the decisions would be available.

Member Young asked if the final rules would have to pass by the Commission. Ms. Schmidt stated that the subcommittee would not be taking any official actions without the rest of the Commission.

Chair Bonar asked whether the Commission would have to meet twice, once for informational purposes, and then to vote, in order to approve work done by the subcommittee. Ms. Schmidt replied that task forces had to abide by the three-meeting rule, subcommittees did not. Ms. China added that subcommittees were Sunshined. Ms. Schmidt stated that she would double-check for the next meeting, but was pretty sure that the Commission was allowed to decide on the subcommittee's work in one meeting, given that subcommittee meetings were open to the public.

She stated that task forces were required to do three Commission meetings (one to form, one to report, one to decide) to operate because they did not operate with public meetings. Subcommittee meetings were open to the public, thus they took one meeting to form, one meeting to decide... she would double-check before the next meeting.

Chair Bonar stated that the subcommittee would work out drafts to bring to the Commission.

Ms. Schmidt asked if the subcommittee wanted to handle both rulemaking and the process for granting management funds. Chair Bonar replied that the two were intertwined, so yes.

Member Shallenberger asked if there was a specific charter for the subcommittee. Chair Bonar replied that Ms. Schmidt had created a summary of all policies discussed and distributed it at the October 14th Commission meeting.

Member Shallenberger stated that the subcommittee's purposes should be put into the form of a request or recommendation from the Commission. Chair Bonar stated that this had been done at the last meeting.

Ms. Schmidt suggested having another formal recommendation adding Member Shallenberger to the subcommittee.

Chair Bonar stated that he would entertain a motion to add Member Shallenberger be added to the subcommittee for the rules, criteria, and procedures for the Legacy Land Conservation Commission.

Member Canfield made the motion, Member Richards seconded. All were in favor.

Chair Bonar pointed out that there were four members from different islands. Member Canfield asked if he would be the point person for the subcommittee. He stated that he would appreciate a volunteer. Member Shallenberger stated that he would chair the subcommittee.

ITEM 5. Presentation on the Hanalei Watershed Initiative by Commission member Dr. Carl Berg, owner, Hawaiian Wildlife Tours.

Member Berg stated that he would postpone his presentation until the next meeting.

ITEM 6. Set next meeting date(s).

Chair Bonar stated that the Commission would call the next meeting as necessary.

ITEM 7. Announcements.

Member Young asked when the Commission would know the results of the legislative consultation appointment. Chair Bonar stated that one of the attendees would report to the Commission. Ms. China suggested that Ms. Schmidt also email the Board submittal to the Commission members.

ITEM 8. Adjournment.

Member Richards moved to adjourn, Member Fletcher seconded, all were in favor.